



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

November 30, 2016

His Excellency, Governor Christopher T. Sununu
 And the Executive Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (NHDES) to enter into a **SOLE SOURCE** amendment to the agreement (PO #1051296) with Kittery Point Yacht Yard Corp. (KPY), Eliot, ME, (VC #273028 B001), for vessel and trailer repairs and maintenance to increase the funding award amount by \$85,000, from \$97,500 to \$182,500, effective upon Governor and Council (G&C) approval through June 30, 2019. The original agreement was approved by the G&C on June 29, 2016, Item #99D. Increased amounts are 65% Oil Pollution Control Funds and 35% Federal Funds.

Funding is available in the accounts as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified. Funding for FY 2018-2019 is contingent upon availability and continued appropriation of funds.

Fund Name and Account Number 03-44-44-	FY 2017	FY 2018	FY 2019	Totals
Oil Pollution Control Fund 444010-1400-102-500731	\$25,000	\$15,000	\$15,000	\$55,000
Clean Vessel Act 442010-2061-103-500737	\$5,000	\$12,500	\$12,500	\$30,000
	\$30,000	\$27,500	\$27,500	\$85,000

EXPLANATION

Kittery Point Yacht Yard (KPY) was awarded the contract for maintaining and repairing the NHDES fleet of workboats, barges, skimmer boats, and trailers used to satisfy the mission for oil spill response and boat pumpout services in New Hampshire's coastal waters. The NHDES Oil Pollution Control and Clean Vessel Act Programs are requesting this amendment to allow KPYY additional funding to be able to continue to address known and anticipated routine maintenance, storage, and repair needs to the NHDES fleet and related trailers. This amendment is considered to be **SOLE SOURCE** because this is a continuation of an existing program which was originally awarded through a competitive bid process. Accordingly, it would not make financial or programmatic sense to award the increased amount to

another vendor because work is already underway at KPYY. A copy of the original agreement is included as Attachment B.

Increased funding is needed because there has been more work and repairs needed than initially estimated. A total of \$31,500 of the fiscal year 2017 amount of \$37,500 has been used for both programs. The Oil Pollution Control Program has spent over 75% of the approved encumbrance amount in 2017 and has a number of vessels and trailers yet to receive annual maintenance this fiscal year. The Clean Vessel Act Program has spent over 90% of the approved encumbrance amount in fiscal year 2017 and due to adjustments made through the Budget Office has no funding in fiscal years 2018 and 2019.

In light of vessel and trailer maintenance and repair needs that are now known, the original contract encumbrance amounts in each fiscal year were less than required and it is anticipated that increased funding will be needed to sustain the program through the current fiscal year and in future years. Authorizing this amendment will ensure that NHDES Oil Pollution Control and Clean Vessel Act Programs have the necessary funds to obtain emergency and non-emergency towing services, expert repair services, annual maintenance, and hull cleaning and painting, as needed, over the remainder of the three-year contract period.

In the event that federal or other funds become no longer available, general funds will not be requested to support this program. The agreement has been approved as to form, substance, and execution by the Office of Attorney General.

We respectfully request your approval.



Thomas S. Burack, Commissioner

Attachments

Agreement for Services with Kittery Point Yacht Yard Corp.

Amendment No. 1

This Agreement (hereinafter called the "Amendment") dated this October 13, 2016, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and the Kittery Point Yacht Yard Corp. (hereinafter referred to as "KPY").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Council on June 29, 2016, KPY agreed to perform certain services upon the terms and conditions specified in that Agreement and in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, KPY and the State have agreed to amend the Agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties do hereby agree as follows:

1. Amendment and Modification of Agreement: The Agreement is hereby amended as follows:
 - a. The Contract Price Limitation listed in 1.8 of the General Provisions and as set forth in Exhibit B shall be changed as follows:

Amended Provisions	FY 2017 – FY 2019		
	Original	Revised	Difference
Section 1.8 of General Provisions, Price Limitation	\$97,500	\$182,500	\$85,000

2. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.
3. Effective Date of Amendment: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Council of the State of New Hampshire.

Initial 
Date 11.9.16

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this day and year first above written.

Kittery Point Yacht Yard Corp.

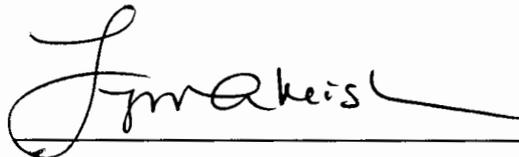
By 
Thomas J. Allen, President

STATE OF Maine

COUNTY OF York

On this the 9th day of November, 2016, before the undersigned officer, personally appeared Thomas J. Allen who acknowledged himself/~~herself~~ to be the person who executed the foregoing instrument for the purpose therein contained.

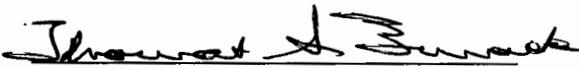
IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Lynn A. Keisker
Notary Public
My Commission Expires 05-14-2017

My Commission Expires: _____

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By 
Thomas S. Burack, Commissioner

Approved by the Attorney General this 8th day of December, 2016. *as to form, substance + execution.*

OFFICE OF ATTORNEY GENERAL

By 
Sr. Assistant AG.

KITTERY POINT YACHT YARD CORP

Certificate of Incumbency and Authority

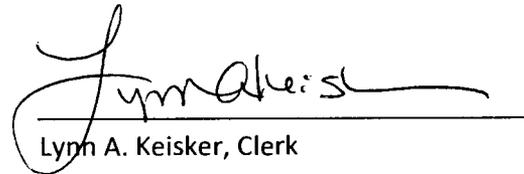
I, Lynn A. Keisker, Clerk of **Kittery Point Yacht Yard Corp**, a corporation duly organized and existing under the laws of the State of Maine with a place of business at Kittery, York County, Maine (hereinafter the "Corporation"), do hereby certify that the following named individuals are all of the Officers of the Corporation:

President: **Thomas J. Allen**

Treasurer: **Margaret J. Allen**

I further certify that the above-named **Thomas J. Allen** is a duly authorized officer of the Corporation with full authority to act under the terms of the By-laws of the Corporation in all matters involving the New Hampshire Department of Environmental Services.

IN WITNESS WHEREOF I have set my hand this 9th day of November, 2016 in my said capacity.

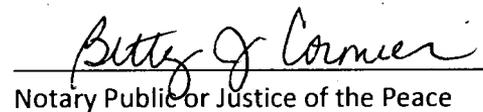

Lynn A. Keisker, Clerk

STATE OF MAINE

COUNTY OF YORK

Personally appeared the above-named **Lynn A. Keisker**, in her capacity as Clerk of Kittery Yacht Yard Corp, and acknowledged her execution of the foregoing certificate to be her voluntary act and deed in her said capacity.

Before me,


Notary Public or Justice of the Peace

BETTY J. CORMIER
NOTARY PUBLIC
State of Maine
My Commission Expires
October 22, 2022

State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that KITTERY POINT YACHT YARD CORP, a(n) MAINE corporation, is authorized to transact business in New Hampshire and qualified on May 10, 2016. I further certify that all fees required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 10th day of May, A.D. 2016

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State

Attachment A

Budget Estimate for Amended Contract*

Fund Name and Account Number 03-44-44-	FY 2017	FY 2018	FY 2019	Totals
Oil Pollution Control Fund 444010-1400-102-500731	\$55,000	\$45,000	\$45,000	\$145,000
Clean Vessel Act 442010-2061-103-500737	\$12,500	\$12,500	\$12,500	\$37,500
	\$67,500	\$57,500	\$57,500	\$182,500

*Encumbrance adjustments made through the Budget Office have occurred as authorized since the original agreement was approved by the Governor and Council on June 29, 2016 and are reflected in the above Budget Estimate.

CVA Grant Funding Details

Fiscal Year	Funding**	Used to Date	Remaining Funds
2017	\$7,500	\$6,809.31	\$690.69
2018	\$0	n/a	\$0
2019	\$0	n/a	\$0

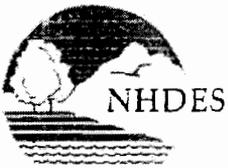
** Encumbrance adjustments made through the Budget Office have occurred as authorized since the original agreement was approved by the Governor and Council on June 29, 2016 and are reflected in the above Funding Details.

Oil Pollution Control Funding Details

Fiscal Year	Funding	Used to Date	Remaining Funds
2017	\$30,000	\$24,691	\$5,309
2018	\$30,000	n/a	\$30,000
2019	\$30,000	n/a	\$30,000

Attachment B

Original Contract



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

Steve Case
RECEIVED
JUL 6 2016
Commissioner's Office

May 25, 2016

Her Excellency, Governor Margaret Wood Hassan
And the Executive Council
State House
Concord, New Hampshire 03301

APPROVED G & C

DATE 6/29/16

ITEM # 99D

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into a contract with Kittery Point Yacht Yard Corp. (KPY), Eliot, ME, (VC #273028), in the amount of \$97,500 to inspect, maintain, clean/paint, tow and repair DES fleet units in the Little and Great Bay areas and Piscataqua River, effective upon Governor and Council approval through June 30, 2019. 92% Oil Pollution Control Funds and 8% Clean Vessel Act.

Funding is available in the accounts as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified. Funding for FY 2018-2019 is contingent upon availability and continued appropriation of funds.

Fund Name and Account Number 03-44-44	FY 2017	FY 2018	FY 2019	Totals
Oil Pollution Control Fund 444010-1400-102-500731	\$30,000	\$30,000	\$30,000	\$90,000
Clean Vessel Act 442010-2061-103-500737	\$2,500	\$2,500	\$2,500	\$7,500
	\$32,500	\$32,500	\$32,500	\$97,500

EXPLANATION

The Oil Pollution Control Fund (OPCF), established under RSA 146-A, provides funding for oil spill response, prevention, and preparedness. This contract is to maintain and repair the DES fleet of workboats, barges, skimmer boats, and trailers used to satisfy the mission for oil spill response in the coastal bay and river areas.

DES prepared a Request for Qualifications (RFQ) and Cost Proposal, dated March 7, 2016, to solicit experience and qualifications documentation, and proposed prices for DES vessel repair and maintenance services required for existing DES boats and trailers. The four known marina vendors, listed below, were invited on March 10, 2016 to submit qualifications and cost proposals. The RFQ was published in the legal notices section of the Portsmouth Herald on March 17, 2016. The RFQ and Cost

Proposals were also posted on the NH Department of Administrative Services web site for Requests for Proposals on March 16, 2016.

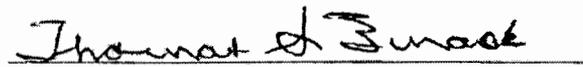
The responses received from prospective area vendors, by the due date of April 8, 2016, were as follows:

		<u>Proposed Costs</u>
1.	Island Marine Service	Proposal submitted \$252,195.00
2.	Great Bay Marine (GBM)	Proposal submitted \$261,915.00
3.	Dover Marine	No Response N/A
4.	Kittery Point Yacht Yard (KPYY)	Proposal submitted \$186,078.19

DES reviewed all three vendors' qualifications documentation and cost proposal prices and found they were responsive to the DES evaluation criteria. Each vendor submitted a bid proposal that provided unit pricing for each bid item and a bid item total based on a reference estimated quantity for each bid item and a total bid price based on that total. Vendor bid item unit prices varied greatly. This bid structure allowed DES to evaluate bids to determine which bidder provided the greatest benefit to DES given the variety of vessels to be serviced and the uncertain nature of repair and maintenance needs over the next three years. KPYY was the lowest bidder with a reference bid of \$186,078.19 and met all evaluation criteria resulting in their selection for contract award. The final contract award is for \$97,500 which provides DES with adequate vessel and trailer services each fiscal year through June 30, 2019.

Authorizing this contract will enable DES to obtain emergency and non-emergency towing services, expert repair services, annual maintenance, and hull cleaning and painting, as needed, over a three year contract period. The agreement has been approved as to form, substance, and execution by the Office of Attorney General.

We respectfully request your approval.


Thomas S. Burack, Commissioner

Attachments

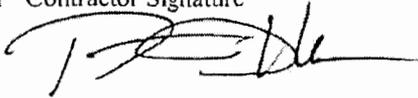
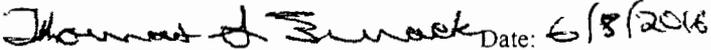
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, P.O. Box 95, Concord, NH 03302	
1.3 Contractor Name Kittery Point Yacht Yard Corp.		1.4 Contractor Address 857 Main Street, Eliot, ME 03903	
1.5 Contractor Phone Number 207-439-3967	1.6 Account Number 03-44-44-444010-1400-102 03-44-44-442010-2061-103	1.7 Completion Date June 30, 2019	1.8 Price Limitation \$97,500.00
1.9 Contracting Officer for State Agency Steven A. Croce, P.E.		1.10 State Agency Telephone Number 603-271-2229	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Thomas J. Allen, President	
1.13 Acknowledgement: State of <u>Maine</u> , County of <u>York</u> On <u>May 25, 2016</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Lynn A. Keisker</u> Notary Public My Commission Expires <u>05-14-2017</u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Thomas S. Burack, Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  <u>St. Andrew Ab</u> On: <u>6-17-2016</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

EXHIBIT A

STATEMENT OF SERVICES

State of New Hampshire

NHDES Contract: Vessel & Trailer Repairs and Maintenance

The Contractor - Kittery Point Yacht Yard Corp. (KPYY) shall provide annual maintenance and repair services for DES vessels docked at and stored on trailers at Great Bay Marine, NH, and for emergency repairs and recovery on the Piscataqua River and in Great Bay.

The following primary tasks are included in the scope of work under this contract –

Task - 1 Annual Tune-ups and Maintenance for DES engines and vessels.

Task - 2 Hull Cleaning and Painting including haul and launch.

Task - 3 Towing, Field Repairs, and Emergency Work.

Task – 4 Trailer (vessel and cargo types) Maintenance including Power Packs.

Task - 5 Other Repairs and Maintenance to DES vessels and engines

[NOTE: KPYY shall provide all docks, on-land repair facilities, parking, power, work staff, subcontractors, equipment, tools and materials for completing each task outlined in the above Statement of Services.]

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EXHIBIT B

CONTRACT PRICE AND PAYMENT PROCESS

State of New Hampshire

NHDES Contract: Vessel & Trailer Repairs and Maintenance

The Contract Price is \$97,500 covering a three year period with \$32,500 encumbered each of the fiscal years for this DES contract.

Item 1- NHDES agrees to pay Kittery Point Yacht Yard Corp. (KPYY) for the NHDES vessel and trailer maintenance services and repairs as specified in the KPYY Revised Cost Proposal, dated April 1, 2016, attached as Exhibit B-1.

Item 2 - DES shall pay for all work in accordance with the NHDES Request for Qualifications titled: "Request for Qualifications and Cost Proposal for Vessel and Trailer Repairs and Maintenance", dated 3/10/2016, and "NHDES Response to Inquiries #1, dated 3/30/2016".

Item 3 - The total amount of payments to KPYY authorized by NHDES shall not exceed the annual amounts set forth in this contract unless the terms of this contract are revised or a contract amendment has been approved by Governor and Executive Council to exceed the original contract award amount stated above.

Submission of Invoices by KPYY -

A. Invoices shall be submitted for each repair and/or maintenance assignment and shall contain at a minimum the following standard information:

1. Vendor name and billing address.
2. Invoice date and invoice number.
3. Vessel/Trailer name and number (originated by NHDES).
4. Period of work being invoiced (start and end dates).
5. Work scope and price based on bid amounts or quoted prices approved by NHDES.
6. Item numbered tasks/activities performed at bid prices.
7. A brief explanation of the tasks performed/completed during the billing period.
8. Copies of invoices and bills from all subcontractor services.

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EXHIBIT B

CONTRACT PRICE AND PAYMENT PROCESS

(Continued)

Payments to KPYY -

- A. Invoices will be reviewed for completeness and compliance with the contract and the assignment by the NHDES-Coastal Coordinator and may be returned to KPYY if incomplete or in error. An invoice approval cover sheet will be completed by the NHDES Contract Manager. Once appropriate signatures have been obtained, the cover sheet and invoice will be forwarded to the NHDES Accounting Office for processing and payment.

- B. NHDES will pay KPYY the approved invoice amount for each assignment within 45 days of the Contract Manager's approval. Full payment of the approved amount shall be paid. However, NHDES reserves the right to make partial or incremental payments of an approved invoice if encumbered state funds become unavailable.

- C. Also, NHDES may make partial payments where invoiced costs are not in accordance with the contract bid prices, terms and conditions, or where the approved assignment budget/quote has been exceeded without NHDES's written approval. The NHDES Contract Manager shall e-mail short-pay information and may send copies of marked up invoices, as needed, to KPYY for resolution or re-submission to NHDES.

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4: Price Schedule

Applicant acknowledges receipt of NHDES Response To Inquiries #1 dated March 30, 2016 (see Exhibit 4).

**Request for Qualifications and Cost Proposal for
Vessel and Trailer Repairs and Maintenance
4/01/2016**

Applicant comments to Tasks are in red.

Revised Cost Proposal

Task	Unit Cost (\$)	DES Estimated # of Units	Cost (\$) = Unit Cost x # of Units
TASK 1: Annual Tune-ups and Maintenance for DES engines/vessels:*	--	--	--
<i>"Note, mechanical tasks assume valve adjustment, dropping lower units for water pump inspection, and idle speed and/or carb adjustments with check where applicable."</i>			
A. NHDES 40 w/(2) 50HP Honda Outboard Engines +(1) diesel power pack	\$1,787.68	3	\$5,363.04
B. NHDES 41 w/(2) 90 HP Honda Outboard Engine +(1) diesel power pack	\$1,829.76	3	\$5,489.28
C. NHDES 03 w/(1) 90 HP Honda Outboard Engine	\$844.88	3	\$2,534.64
D. NHDES 04 w/(2) 90 HP Mercury Outboard Engines	\$1,282.52	3	\$3,847.56
E. NHDES 21 w/(2) 225 HP Mercury Optimax Outboard Engines	\$1,567.52	3	\$4,702.56
F. NHDES 37 w/4 cyl. Diesel Cummings Engine	\$1,413.07	3	\$4,239.21
G. NHDES 38 w/6 cyl. Diesel Cummings Engine	\$1,424.81	3	\$4,274.43
H. NHDES 01 w/6 cyl. Diesel Cummings Engine	\$1,440.25	3	\$4,320.75
I. NHDES 15 w/150 HP Evinrude FICHT Engine	\$688.62	3	\$2,065.86
J. NHDES 36 w/150 HP Evinrude FICHT Engine	\$688.62	3	\$2,065.86
TASK 2: Hull Cleaning and Painting:*	--	--	--
A. Cleaning a single Vessel Hull; \$/foot length	\$5.00	300 ft	\$1,500.00
B. Painting a single Vessel Hull: \$/foot length	\$19.00	300 ft	\$5,700.00
C. Haul and Launch: \$/foot length	\$16.00	250 ft	\$4,000.00
TASK 3: Towing, Field Repairs, and Emergency Work:*	--	--	--
A. Towing Vessel (non-emergency) * - \$ cost/hour	\$275.00	100 hrs	\$27,500.00
B. Towing Vessel (emergency) * - \$ cost/hour	\$325.00	50 hrs	\$16,250.00
C. Registered Mechanic (emergency) - \$ cost /hour	\$140.00	50 hrs	\$7,000.00
TASK 4: Trailer Maintenance:	--	--	--

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5.25.16

A. Trailer for 18 foot boat (2)	\$190.00	6	\$1,140.00
B. Trailer for 40 foot boat ; tri-axle	\$380.00	3	\$1,140.00
C. Trailers for 20 & 27 foot skimmers –double axle	\$285.00	6	\$1,710.00
D. Double-axle Cargo Types (5)	\$305.00	15	\$4,575.00
E. Double-axle Reel Types (2) with diesel power packs	\$615.00	6	\$3,690.00
F. (3) Diesel power packs inside cargo trailers	\$330.00	9	\$2,970.00
TASK 5: Other Repairs and Maintenance:	--	--	--
A. Mechanic - \$ cost /hour	\$95.00	500 hrs	\$47,500.00
B. Technician - \$ cost /hour	\$75.00	300 hrs	\$22,500.00
<i>"Note, all electronic equipment repairs are at the A. Mechanic rate above (\$95.00). All other B. Technician repairs are at \$75.00 rate"</i>			
Optional Costs:	--	--	--
A. Disposal of gas/water liquid wastes- \$ cost/gallon		--	--
(i) Waste oil/ Contaminated bilge water- p/gal	\$6.00	--	--
(ii) Waste gasoline- p/gal	\$10.00	--	--
B. Summer Vessel Storage Cost - \$ cost/foot length	\$20.00	--	--
C. Winter Vessel Storage Cost - \$ cost/foot length	\$30.00	--	--
D. Transient Dock Space - \$ cost/foot length/day <i>"Note, that no transient dock charges apply when a vessel is being serviced at either KPYY facility"</i>			
(i) In Season Transient Dock Space- Eliot facility <i>"Note that space can be offered for up to 2 DES vessels at NO CHARGE b/w June 15 and September 15 during this contract period."</i>	N/C		
(ii) In Season Transient Dock Space- Kittery facility <i>"Note that this is a daily rate. Rates are discounted for weekly or monthly periods."</i>	\$3.00	--	--

* Includes all costs for vessel, crew, towing equipment, fuel and tools.

TOTAL BID PRICE (TASKS 1-5): \$186,078.19

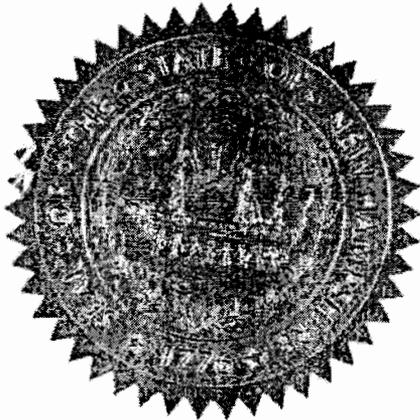
Note: Quantities listed are approximate and for bid comparisons only. Actual quantities will be determined by DES and may require a contract amendment should the quantities increase from those listed above.

TBD
5-25-14

State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that KITTERY POINT YACHT YARD CORP, a(n) MAINE corporation, is authorized to transact business in New Hampshire and qualified on May 10, 2016. I further certify that all fees required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 10th day of May, A.D. 2016

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

