

RESOLUTION NO. 2472

A RESOLUTION OF THE CITY OF SALISBURY AUTHORIZING THE MAYOR TO SIGN THE MEMORANDUM OF UNDERSTANDING AND ACCEPT A GRANT OF \$40,000 FROM MARYLAND STATE HIGHWAY ADMINISTRATION'S RECREATIONAL TRAILS PROGRAM FOR THE SALISBURY ROWING AND KAYAK WATER ACCESS PROJECT.

WHEREAS, the Maryland State Highway Administration has the Recreational Trails Program; and

WHEREAS, the Recreational Trails Program funds the development of community-based, motorized and non-motorized recreational trail projects; and

WHEREAS, the creation of a dock, gangway and floating dock will provide for the safe launch of rowing vessels and kayaks from the Salisbury Marina; and

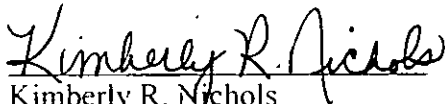
WHEREAS, the City of Salisbury will coordinate the design, permitting and procurement of construction contracts for the project; and

WHEREAS, the project will address the safe access for the public to launch and return a kayak or shell to the Wicomico River.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Salisbury, Maryland does hereby authorize the Mayor to sign the attached Memorandum of Understanding dated _____, 2015 accepting the project term, for the betterment of the City and its residents, and accepts the grant of \$40,000 from Maryland State Highway Administration's Recreational Trails Program for the Rowing and Kayak Waterway Access project.

THE ABOVE RESOLUTION was introduced, read and passed at the regular meeting of the Council of the City of Salisbury held this 9 day of February, 2015 and is to become effective immediately upon adoption.

ATTEST:


Kimberly R. Nichols
CITY CLERK


Jacob R. Day
PRESIDENT, City Council

APPROVED by me this 11th day of February 2015


James Ireton, Jr.
MAYOR, City of Salisbury

MEMORANDUM OF UNDERSTANDING

by and between

**MARYLAND STATE HIGHWAY
ADMINISTRATION**

and

**City of Salisbury
Salisbury, Maryland**

LADRT1521

**MEMORANDUM OF UNDERSTANDING
FOR
NATIONAL RECREATIONAL TRAILS PROGRAM
Rowing and Kayak Waterway Access Project**

THIS MEMORANDUM OF UNDERSTANDING (MOU) executed in duplicate, effective this 27 day, in the month of April of the year 2015, by and between the State Highway Administration of the Maryland Department of Transportation, acting for and on behalf of the State of Maryland, hereinafter called the "**ADMINISTRATION**", and the City of Salisbury, located in Salisbury, Maryland, hereinafter called the "**PROJECT SPONSOR**".

WHEREAS, certain funds have been set aside in the National Recreational Trails Program, under the Federal Highway Reauthorization, for the purpose of providing funding for the development and maintenance of recreational trails and trail related projects, hereinafter called "**NRT FUNDING**"; and

WHEREAS, the ADMINISTRATION, pursuant to SAFETEA-LU, is authorized to distribute NRT FUNDING to agencies or organizations within the State of Maryland, hereinafter called the "**AWARD**", provided the PROJECT is constructed on property owned by and/or on permanent easements held by the PROJECT SPONSOR; NRT FUNDING is used to reimburse a PROJECT SPONSOR for expenses they have paid relating to the PROJECT; and the PROJECT SPONSOR is partially responsible for expenses relating to the PROJECT; and

WHEREAS, the ADMINISTRATION has authorized a disbursement of NRT FUNDING to the PROJECT SPONSOR up to the maximum amount of \$40,000.00, to be used for the Rowing and Kayak Waterway Access Project located in Salisbury, Wicomico County, Maryland which includes the construction of a dock, gangway and floating dock, hereinafter called the "**PROJECT**" as further described in Exhibit "A", the National Recreational Trails funding Application of the PROJECT SPONSOR, attached hereto and made a part hereof; and

WHEREAS, the PROJECT SPONSOR has agreed to co-finance the PROJECT with an amount equal to at least twenty percent (20%) of the PROJECT expenses, hereinafter called the MATCH; and

WHEREAS, the ADMINISTRATION and the PROJECT SPONSOR hereby agree that the PROJECT will be a benefit to all parties of this MOU and would promote the safety, health and general welfare of the citizens of the State.

NOW, THEREFORE, in consideration of the mutual promises between the ADMINISTRATION and the PROJECT SPONSOR, as set forth herein, the adequacy of which is hereby acknowledged, the parties hereby agree to the following:

I. PROJECT DESCRIPTION

The PROJECT shall include the construction of a dock, gangway and floating dock in Salisbury, Wicomico County, Maryland.

II. THE PROJECT SPONSOR SHALL:

- A. Procure all services and materials for which NRT FUNDING is being used to reimburse the PROJECT SPONSOR in accordance with State and federal laws and regulations, which include but are not limited to:
 - 1. Prepare an Invitation for Bids package, to be publicly advertised for the selection of a contractor, in accordance with all the applicable laws, and regulations of the ADMINISTRATION. This package shall include, but not limited to:
 - a. Preparation and submittal to the ADMINISTRATION for technical review and approval, all construction plans, specifications and cost estimates. The SPONSOR shall establish a schedule for the proposed design activities including review submittal dates. At a minimum, a Preliminary and Final Review will be required.
 - b. Preparation and submittal to the ADMINISTRATION for review and approval, construction bidding documents for the selection of a contractor. The documents shall be publicly advertised in conformance with all applicable State and federal laws and regulations.
 - c. Provide the ADMINISTRATION certification that all appropriate laws and regulations regarding selection of the contractor have been followed.
 - 2. Advertise for construction bids, once the ADMINISTRATION issues a Written Notice of Approval. Any advertisement for construction conducted prior to receiving written approval, shall make the project ineligible for reimbursement.
 - 3. Identify as many qualified Minority Business Enterprise ("MBE") firms as reasonable, to afford amply opportunity to MBE firms to bid equally against other vendors.
 - 4. Publicly open bids received, (in front of a witness), prepare a list of responses as they are opened.
 - 5. Evaluate the bids to determine which bidder will receive the award. The award shall be made to the lowest responsive and responsible bidder. Submit to the ADMINISTRATION documentation of all bidders, bid costs and a recommendation of award. Award of the contract cannot be given to a prospective bidder until the ADMINISTRATION has concurred with the recommendation and issues a written Notice to Proceed.
 - 6. Comply with the other applicable requirements of 49 U.S.C. §18-36, copy marked Exhibit "B", attached hereto and made a part hereof.
- B. Coordinate and conduct any required public hearings or requests for public input.
- C. Provide design specifications and estimates to the ADMINISTRATION for review and comment.

- D. Construct all projects using NRT FUNDING, in accordance with applicable design standards including but not limited to:
1. National Environmental Policy Act - Prior to the commencement of PROJECT work, prepare and submit to the ADMINISTRATION environmental studies and environmental documentation required for the PROJECT under applicable State and/or federal law including, but not limited to, those required to obtain National Environmental Policy Act (NEPA) approval.
 2. Americans with Disabilities Act – Construct the PROJECT to be reasonably accessible to individuals with physical disabilities in accordance with federal and State requirements; the PROJECT design shall not include features that would make it more difficult for people with disabilities to use the trail.
 3. Environmental Permits - Prior to the commencement of PROJECT work, apply for and obtain all permits required by federal, State or local authorities, including but not limited to, Erosion and Sediment Control, Stormwater Management, Critical Areas, and Wetlands.
 4. Construction Permits - Prior to the commencement of PROJECT work, coordinate with and resolve any conflicts with all utility companies within the PROJECT limits; purchase or obtain permanent easements to all properties within the PROJECT limits; and coordinate with any State or local agencies for the required traffic control plan approvals.
 5. Liability Insurance - Provide the ADMINISTRATION with evidence of adequate liability insurance to cover third party claims arising from the construction phase of the PROJECT, protecting both the PROJECT SPONSOR and the ADMINISTRATION in amounts and coverages as the ADMINISTRATION may reasonably determine.
- E. Invoice the ADMINISTRATION on a monthly basis for actual costs incurred and paid by the PROJECT SPONSOR in accomplishing the PROJECT as described herein, and further described in Exhibit A, up to the maximum AWARD amount of \$40,000.00. For projects with an award of \$10,000 or less, if actual costs incurred by the PROJECT SPONSOR during any one month do not amount to at least One Thousand Dollars (\$1,000.00), the PROJECT SPONSOR shall withhold its claim for payment until \$1,000.00 or more of actual incurred costs can be invoiced (with the exception of the final invoice). However, for projects with an award of more than \$10,000, if actual costs incurred by the PROJECT SPONSOR during any one month do not amount to at least Five Thousand Dollars (\$5,000.00), the PROJECT SPONSOR shall withhold its claim for payment until \$5,000.00 or more of actual incurred costs can be invoiced (with the exception of the final invoice). Each invoice shall be accompanied by sufficient documentation, in the sole discretion of the ADMINISTRATION, to evidence actual costs incurred. The final invoice for reimbursement shall include a certification signed by the project sponsor indicating that the project was completed in reasonable conformance to the advertised plans and specifications and that all advertised activities have been accomplished.

- F. Prior to the PROJECT SPONSOR submitting their final invoice to SHA for payment of the AWARD, the PROJECT SPONSOR shall certify in writing that the MATCH has been satisfied. Value of MATCH shall be in the form of in kind services.
- G. Maintain the PROJECT both during and after completion of the PROJECT work.

III. THE ADMINISTRATION SHALL:

- A. Provide timely review and comment of the PROJECT design plans, specifications and estimates submitted by the PROJECT SPONSOR.
- B. Following receipt of the required PROJECT documents from the PROJECT SPONSOR, provide PROJECT certification of acceptance in accordance with United States Code, Title 23 federal requirements.
- C. Provide oversight inspection and review of the PROJECT to assure all obligations are being met.
- D. Coordinate monetary reimbursements to the PROJECT SPONSOR associated with the terms of this MOU.
- E. Reimburse the PROJECT SPONSOR within thirty (30) days following the receipt by the ADMINISTRATION of each PROJECT invoice. Invoices will not be reimbursed unless, and until, all three of the following circumstances are met:
 - 1. Request for reimbursement contains all necessary information for processing, including documentation that the PROJECT SPONSOR has met or exceeded their MATCH requirement for the invoice; and
 - 2. No charges are disputed by the ADMINISTRATION; and
 - 3. The invoice does not cause the maximum AWARD amount of \$40,000.00 to be exceeded.

IV. GENERAL

- A. The AWARD for the PROJECT shall be used only for the construction of a dock, gangway and floating dock, the stated purpose of this MOU. The AWARD shall not be redirected by the PROJECT SPONSOR for any other purpose.
- B. Any excess AWARD not needed for the PROJECT shall revert to the ADMINISTRATION for redistribution to other programmed projects at the sole discretion of the ADMINISTRATION. In addition, the funds for this PROJECT shall revert to the ADMINISTRATION if the PROJECT does not move forward within two (2) years of the date of this MOU.
- C. The parties hereto agree to cooperate with each other to accomplish the terms and conditions of this MOU.
- D. This MOU shall inure to and be binding upon the parties hereto, their agents, successors, and assigns. However, the PROJECT SPONSOR shall not assign its interests in this MOU without prior written consent of the ADMINISTRATION, which may be reasonably withheld.
- E. This MOU and the rights and liabilities of the parties hereto shall be governed in accordance with Maryland law.
- F. The PROJECT SPONSOR shall document and certify to the ADMINISTRATION that all PROJECT activities associated with the AWARD have been accomplished in accordance with federal law.


- G. All PROJECT documents and records are subject to audit and shall be retained by the ADMINISTRATION and PROJECT SPONSOR for a minimum of three (3) years after final acceptance of the PROJECT by the ADMINISTRATION.
- H. The PROJECT activities covered by this MOU must be completed within four (4) years of the MOU execution date.
- I. All publications, exhibits, and final products that use these funds must utilize the National Recreational Trails and State Highway Administration logos for recognition purposes.


IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their respective duly authorized officers.


MARYLAND STATE HIGHWAY
ADMINISTRATION

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:


Assistant Attorney General

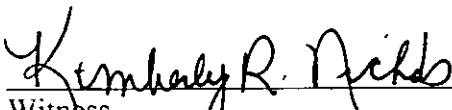

Douglas H. Simmons
Deputy Administrator/Chief Engineer
For Planning, Engineering, Real Estate and Environment



Lisa B. Conners, Director
Office of Finance


Sonal Sanghavi, Director
Office of Environmental Design

City of Salisbury

Tax ID: 52-6000806


Witness

By:  (Seal)
Name: JAMES IRETON JR
Title: MAYOR
Date: 2-11-15

FY 2015 RECREATIONAL TRAILS PROGRAM FUNDING APPLICATION

Maryland State Highway Administration / Office of Environmental Design
ATTN: Terry Maxwell
707 N. Calvert Street Baltimore, Maryland 21202 Phone: 410-545-8637



Application Submission Deadline: July 1, 2014

Please email tmaxwell@sha.state.md.us with any questions about this application.

Project Title: **ROWING AND KAYAK WATERWAY ACCESS PROJECT**

Trail Uses

Check all that apply

☐ Diverse ☐ Motorized Recreational ☒ Non-motorized Recreational ☒ Transportation Trail

Project Types

Check only one category

☐ Maintenance and restoration ☒ Development and rehabilitation of facilities
☐ Purchase and lease of equipment ☐ Construction ☐ Acquisition of easements
☐ Assessment ☐ Interpretive/educational programs

Project Cost:

\$40,000	\$8,000	\$48,000
RTP Funding Request	Matching Funds	Total Project Cost

Project Sponsor (Applicant)

Please provide contact information for the Project Sponsor Entity and the Project Manager.

Project Sponsor Entity	CITY OF SALISBURY
Project Manager	WILLIAM STERLING
Title	PROJECT MANAGER
Organization	PUBLIC WORKS
Address 1	125 N. DIVISION ST. SALISBURY, MD 21801
Address 2	
Telephone	410-548-3170
Cell Phone	410-251-2573
Fax	410-548-3107
E-mail	bsterling@ci.salisbury.md.us

FY 2015 RECREATIONAL TRAILS PROGRAM FUNDING APPLICATION

Maryland State Highway Administration / Office of Environmental Design
ATTN: Terry Maxwell
707 N. Calvert Street Baltimore, Maryland 21202 Phone: 410-545-8637



Application Submission Deadline: July 1, 2014

1. Project Location

**Salisbury Marina, 506 W. Main St.
Salisbury, MD 21801**

Describe the limits of the project, including the City and the County. Include a location map, as detailed in Section 10 of this application

2. Project Abstract

Complete the following sentences. Then provide additional requested information

This project will..... Create additional opportunities for people to utilize the Wicomico waterways by constructing dock, gangway and floating dock for safe launching.

Benefits the trail user by..... Generating safe access for the public to launch and return a kayak or shell to the Wicomico River

- SEE ATTACHMENT

Please create a project abstract. In that document, concisely describe all of the major elements of your proposed project. Include:

- How much planning and design has been completed for the Project?
- Is the project within proximity to any environmentally sensitive area?
- Is the project a missing link or potentially part of the State Transportation Trail network? (Visit <http://www.mdot.maryland.gov/Planning/Trails/trails.html> for more information.)
- Does the project provide access to a regional land or water trail system?
- Does the project help sustain a trail system?
- Does the project enhance tourism/economic development opportunities, particularly for towns?
- Is the project along a byway, within a heritage area, adjacent to a Chesapeake Gateway, or associated with any other tourism related area or activity?

3. Project Summary

Task No. & Name	Task Description
PERMITTING & DESIGN	Working with D.N.R. for best options
ADMINISTRATON	Following City of Salisbury protocol for all materials and contractors
CONSTRUCTION	Construct the facility in the scheduled sequence

List by task and completely describe all the major elements of your proposed project in a concise manner. Although the program does not cover the cost of planning, design, engineering and permitting, please include these items in your summary, even if these tasks are part of the project.

4. Project Property Owner

City of Salisbury

The Project shall be constructed on property owned by and/or on permanent easements held by the Project Sponsor. If a non-profit is partnering with a Park Manager, please include an email or letter by Park Manager explaining that there is, or will be, an agreement.

5. Project length

Initial access point for future trail

Please include linear feet of the trail, width of the trail. Please note if it is new or reconstructed. Describe the proposed surface material of trail.

FY 2015 RECREATIONAL TRAILS PROGRAM FUNDING APPLICATION

Maryland State Highway Administration / Office of Environmental Design
ATTN: Terry Maxwell
707 N. Calvert Street Baltimore, Maryland 21202 Phone: 410-545-8637



Application Submission Deadline: July 1, 2014

6. Prior Projects

N/A

Describe the status of any previously funded National Recreational Trail funded projects.

- Include the year that the prior project was funded or prior project Recreational Trail number (RT#).
- If there are delays with the prior projects, please explain why they occurred.
- Describe any relationship between this project and previously funded National Recreational Trail Program projects.
- Describe how the proposed work relates to any multi-year work or comprehensive plans that may have been developed.

7. Project Work Plan

Task Number & Name	Start Date	Duration	Responsible Party	Justification
PERMITTING & DESIGN	March 2014	October 2014	CITY	Working w/ DNR
ADMINISTRATIVE	October 2014	Sept. 2014	OF	Initiate after approval
CONSTRUCTION	December 2014	March 2015	SALISBURY	Multiple phases

This table is provided as a guide to developing a realistic project schedule for implementing the tasks described in item 1. **Project Summary**. Although the program does not cover the cost of planning, design, engineering and permitting, please include these items in your schedule if they are incomplete.

8. Project Budget

Task No. & Name	Requested Funds 80%	Sponsor Match 20%	Total Task Cost 100%
1. PERMITTING & DESIGN	-0-	\$6,000	\$6,000
2. ADMINISTRATIVE a. procurement b. public information	-0-	\$2,000	\$2,000
3. CONSTRUCTION	\$40,000	\$105,000	\$145,000
Total Cost			\$153,000

Funds requested for projects cannot exceed \$40,000 for trail construction and \$30,000 for non-construction. (For the FY14 solicitation, we will consider lifting the \$40K cap for construction projects that score exceedingly high with our criteria)

9. Matching Funds (20%)

Task	Source	Type (Cash or In-kind)	Description Including Hours and Rate	Amount
PERMITTING & DESIGN	D.N.R.	IN-KIND	-	\$6,000
ADMINISTRATION a. procurement b. public inform.	CITY of SALISBURY	IN-KIND	-	\$2,000
CONSTRUCTION	P.O.S./ Waterway Improvement Fund	D.N.R.	-	\$105,000
Total				

FY 2015 RECREATIONAL TRAILS PROGRAM FUNDING APPLICATION

Maryland State Highway Administration / Office of Environmental Design
ATTN: Terry Maxwell
707 N. Calvert Street Baltimore, Maryland 21202 Phone: 410-545-8637



Application Submission Deadline: July 1, 2014

10. Location Map

Please attach 8.5 x 11 or 11x 17 map of project area showing as many details of the project as possible. The map must have a north arrow, scale and the title of the project. It should clearly show the project location, property lines, public facilities, state roads, and any other relevant information. **The Map must clearly identify the proposed project site with beginning and ending points.**

11. Submission

It is preferred that applications be submitted electronically to tmaxwell@sha.state.md.us by **2 p.m. on July 1, 2014**. Because our email server rejects most attachments larger than 6 MB, please use an FTP site or file sharing service, to transmit the application and any large attachments. Confirmation will be sent when the application is received. Please contact us at the email above with any questions about submissions or to discuss potential projects. The Recreational Trail Advisory Committee will meet to review projects in August. Awards will be announced in the October.

Options for Submission include:

Internet/E-mail (preferred)

- Complete the form on your computer and save the file on your computer.
- Email the file as an attachment to: Terry Maxwell, tmaxwell@sha.state.md.us
- Use an FTP site or file sharing service to transmit the application and any large attachments.

U.S. Mail

- Mail a completed application to:

Terry Maxwell
Maryland Scenic Byways / Recreational Trails Program
Maryland State Highway Administration
707 N. Calvert Street, MS C-303
Baltimore, MD 21202

ROWING AND WATERWAY ACCESS PROJECT

- *How much planning and design has been completed for the Project?*

Most if not all of the planning and design is complete with a great deal of assistance from the Department of Natural Resources

- *Is the project within proximity to any environmentally sensitive area?*

NO

- *Is the project a missing link or potentially part of the State Transportation Trail network?*

Yes, it creates an excellent point of public water access for the Lower Wicomico River Greenways and the future Wicomico River Water Trail, this helps Maryland's progress in attaining the Chesapeake Bay achievement goals for establishing new water trails and expanding safe public access

- *Does the project provide access to a regional land or water trail system?*

YES, the project provides identified public access to the future Waterways Trail on the Wicomico River as outlined in the 1998 Wicomico County Comprehensive Plan that supports the development of greenways and trails

It also is incorporated in the BLUE CRAB SCENIC BY-WAY

- *Does the project help sustain a trail system?*

YES, this project creates an initial effort to begin developing a water trail on the Wicomico River by establishing recreational water access facilities

- *Does the project enhance tourism/economic development opportunities, particularly for towns?*

YES, by creating a safe public water access point, it enhances the opportunity for the general public. This facility can be used by canoes, kayakers and the future use by the Salisbury University Rowing Club

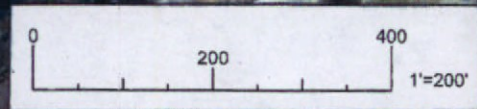
- *Is the project along a byway, within a heritage area, adjacent to a Chesapeake Gateway, or associated with any other tourism related area or activity?*

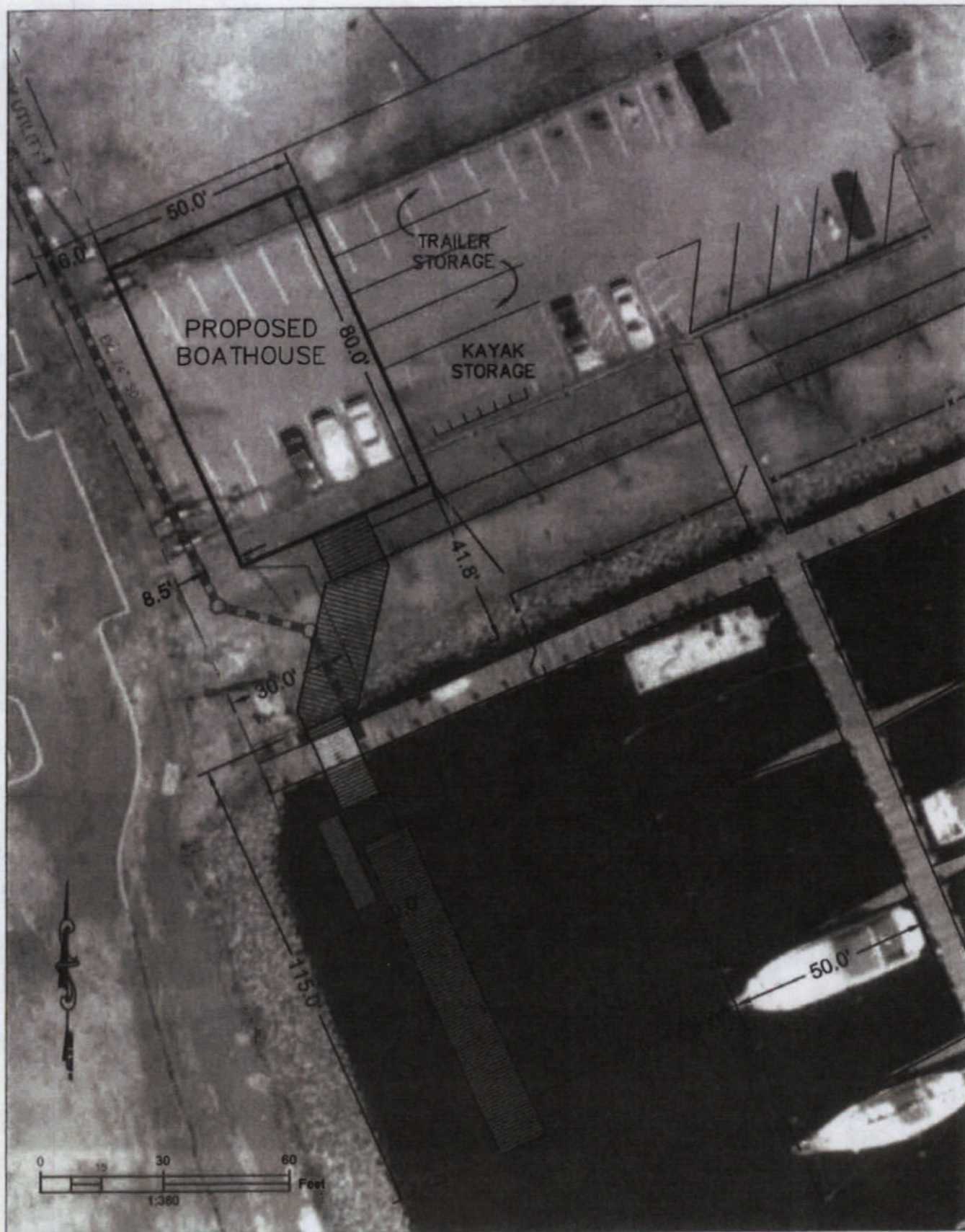
YES, the Lower Eastern Shore Heritage Area

Wicomico River has always been a tourist attraction, the project is looking to enhance the experience



KAYAK & ROWING
LAUNCH



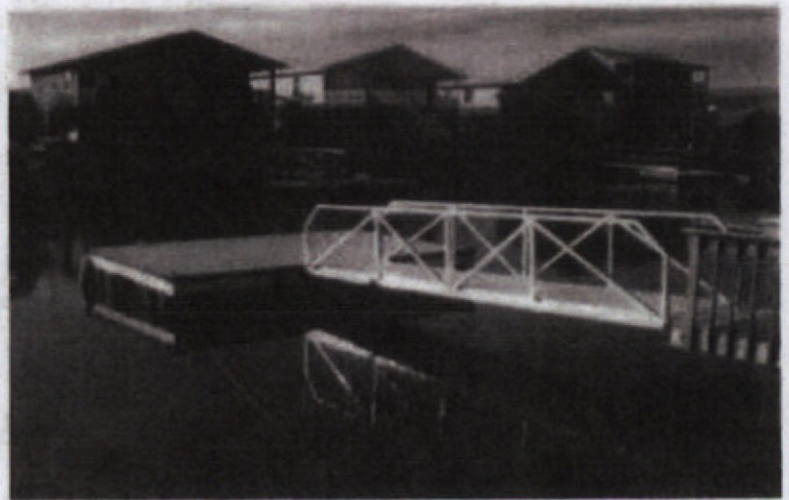
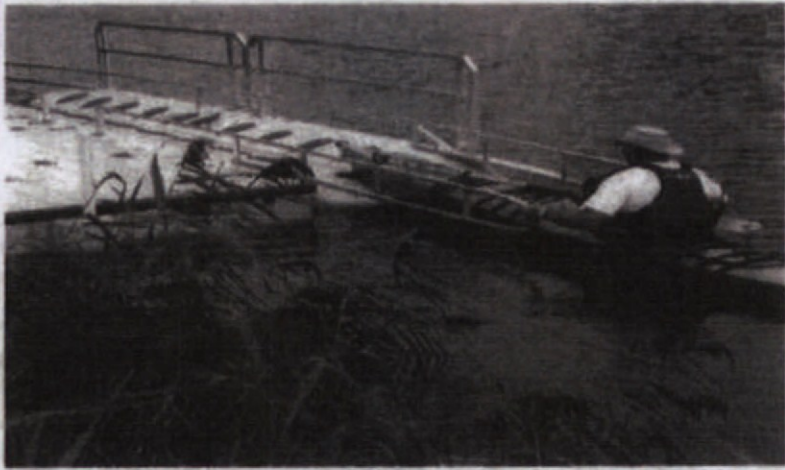


PROPOSED MARINA IMPROVEMENTS

SCALE: 1" = 30'

2010 Photography

U:\CAD Files\DRAW\ALL DCAs\DCA2014\DCA14021.dwg



TITLE 49 - TRANSPORTATION

SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION

PART 18 - UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

subpart c - POST - AWARD REQUIREMENTS

18.36 - Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section..

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) The employee, officer or agent, (ii) Any member of his immediate family, (iii) His or her partner, or (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to

consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only (i) After a determination that no other contract is suitable, and (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to: (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local

authorities) and (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 18.36. Some of the situations considered to be restrictive of competition include but are not limited to: (i) Placing unreasonable requirements on firms in order for them to qualify to do business, (ii) Requiring unnecessary experience and excessive bonding, (iii) Noncompetitive pricing practices between firms or between affiliated companies, (iv) Noncompetitive awards to consultants that are on retainer contracts, (v) Organizational conflicts of interest, (vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and (vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations: (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are

used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in 18.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present: (A) A complete, adequate, and realistic specification or purchase description is available; (B) Two or more responsible bidders are willing and able to compete effectively and for the business; and (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply: (A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids; (B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond; (C) All bids will be publicly opened at the time and place prescribed in the invitation for bids; (D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest.

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and (E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply: (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical; (ii) Proposals will be solicited from an adequate number of qualified sources; (iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees; (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and (v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal

from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies: (A) The item is available only from a single source; (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (C) The awarding agency authorizes noncompetitive proposals; or (D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include: (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see 18.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc.

when: (i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or (ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a brand name product; or (iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system.

Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows: (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold) (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000) (3) Compliance with Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees) (4) Compliance with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair) (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a7) as supplemented by Department of Labor regulations (29 CFR part 5).

(Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation) (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers) (7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

(Contracts, subcontracts, and subgrants of amounts in excess of \$100,000) (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163, 89 Stat. 871).

Read more: <http://cfr.vlex.com/vid/18-36-procurement-19940040#ixzz129MkdnmD>

City of Salisbury



JAMES IRETON, JR.
MAYOR

M. THOMAS STEVENSON, JR.
CITY ADMINISTRATOR

TERENCE ARRINGTON
ASSISTANT CITY ADMINISTRATOR

MARYLAND

Salisbury



2010

125 NORTH DIVISION ST., RM 202
SALISBURY, MARYLAND 21801

Tel: 410-548-3170

Fax: 410-548-3107

MICHAEL S. MOULDS, P.E.
DIRECTOR OF PUBLIC WORKS

To: Tom Stevenson, City Administrator
From: Mike Moulds, Director of Public Works
Date: January 13, 2015
Re: Recreational Trails Grant – Salisbury Rowing and Kayak Water Access Project

At the recommendation of the Department of Natural Resources (DNR), Salisbury Public Works applied for a grant from the Maryland State Highway Administration Recreational Trails Program. The grant will assist with the funding of a sport Rowing and Kayak Water Access project at the Salisbury Marina. SHA has awarded this grant to the City in the amount of \$40,000. The project includes the construction of a dock, gangway and floating dock for safe launching of kayaks and rowing shells. Public Works will provide matching funds in the amount of \$8,000 in the form of in kind labor for design and permitting services, in conjunction with technical assistance from DNR. The goal of the project is to create a safe recreational public water access point for the general public to access the Wicomico River. The facility also has the potential for development of team rowing activities.

The Memorandum of Understanding for the grant is attached, along with the grant application. Additionally, attached is a Resolution for the Mayor to sign the MOU with SHA to accept the Recreational Trails Grant in the amount of \$40,000.00.

Unless you or the Mayor has further questions, please forward this to City Council.

2-11-15
B. Sterling took
(3) copies of mou
to be signed &
will return (1)
copy to me.
KN