

RESOLUTION NO. 15-017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "STATE OF FLORIDA - FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION AGREEMENT NO. 14154" FOR THE BOATING INFRASTRUCTURE GRANT PROGRAM (BIGP) BETWEEN THE CITY AND THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION FOR TRANSIENT BATH HOUSE FACILITIES/DOCKMASTER'S OFFICE AND ELECTRICAL UPGRADES TO THE WAHOO AND KINGFISH PIERS AT CITY MARINA AT GARRISON BIGHT (CFDA NO.: 15.622, FEDERAL AWARD NO.: FL-Y-F13APA-412), IN AN AMOUNT NOT TO EXCEED \$500,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT AGREEMENT; PROVIDING CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached "State of Florida - Florida Fish and Wildlife Conservation Commission Agreement No. 14154" for the Boating Infrastructure Grant Program between the City and the Florida Fish and Wildlife Conservation Commission, for Transient Bath House Facilities/Dockmaster's Office and Electrical Upgrades to the Wahoo and Kingfish Piers at the City Marina at Garrison Bight is hereby approved in an amount not to exceed \$500,000.00.

Section 2: That the City Manager is hereby authorized to execute the grant agreement on behalf of the City of Key West.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 6th day of January, 2015.

Authenticated by the Presiding Officer and Clerk of the Commission on 7th day of January, 2015.

Filed with the Clerk on January 7, 2015.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>

  
\_\_\_\_\_  
CRAIG CAPES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK





## THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

MEMORANDUM

### EXECUTIVE SUMMARY

**TO:** Jim Scholl, City Manager  
Sarah Spurlock, Assistant City Manager  
Greg Veliz, Assistant City Manager

**CC:** James Bouquet, City Engineer  
Doug Bradshaw, Director Port and Marine Services

**FROM:** Carolyn Sheldon, Senior Grants Administrator

**DATE:** November 26, 2014

**RE:** Approval and authorization to execute the attached Boating Infrastructure Grant Program (BIGP) agreement between the Florida Fish and Wildlife Conservation Commission (FWC) and City of Key West in an amount not to exceed \$500,000.00 for transient bath house facilities/dockmaster's office and electrical upgrades to the Wahoo and Kingfish Piers at City Marina at Garrison Bight. Authorize necessary budget amendments and transfers to accept the funding.

#### ACTION STATEMENT:

This resolution will approve and authorize the execution of the attached Boating Infrastructure Grant Program (BIGP) agreement between the Florida Fish and Wildlife Conservation Commission (FWC) and the City of Key West in an amount not to exceed \$500,000.00 for transient bath house facilities/dockmaster's office and electrical upgrades to the Wahoo and Kingfish Piers at City Marina at Garrison Bight. The agreement will remain in effect for twenty (20) years through June 30, 2035 although all tasks and deliverables must be completed on or before June 30, 2015. Necessary budget amendment and transfers to accept the funding will be authorized.

#### BACKGROUND:

The City Marina at Garrison Bight was built in the 1950's. To attract boaters, and especially transient boaters, the Marina transient docks and amenities must be renovated and updated. The bath house has exceeded its life expectancy, the utilities are not meeting the need resulting in frequent power outages to the docks and slips and the dockmaster's office is a leased trailer. The marina has experienced a 30 percent decline over the past few years in transient boater use

*Key to the Caribbean - Average yearly temperature 77° F.*



mainly because of the deteriorating infrastructure. A grant application to obtain funding for improving the Marina transient docks and amenities was submitted in August 2011. Final approval of the grant award was issued in May 2014 with the grant agreement finalized October 2014. The total approved estimated project cost is \$1,700,000.00 (\$500,000.00 Federal / \$1,200,000.00 City). Pre-award costs not to exceed \$55,000.00 (included in the total approved estimated project cost) have been approved for engineering, design and permitting.

**PURPOSE AND JUSTIFICATION:**

BIGP funding will assist with the construction of a combined transient bath house and dockmaster's office as well as electrical upgrades to the Wahoo and Kingfish Piers. The electrical upgrades include an increase from 350 amp to 600 amp service. The new transient bath house includes restrooms, showers/dressing area, and laundry facilities with a folding area for transient boater use only. The BIGP grant is restricted to transient boating improvements. However, shared use of the dockmaster's office for transient boater activity such as registration and use of a lounge area allows for a portion of the funding to be used for the construction of the dockmaster's office on a prorated basis (based on the percentage of transient slips versus total number of slips).

**OPTIONS / ADVANTAGES / DISADVANTAGES:**

1. The City Commission can approve and authorize the execution of the attached Boating Infrastructure Grant Program (BIGP) agreement between the Florida Fish and Wildlife Conservation Commission (FWC) and the City of Key West. This will allow the City to receive an amount not to exceed \$500,000.00 in grant funding for transient bath house facilities/dockmaster's office and electrical upgrades to the Wahoo and Kingfish Piers at City Marina at Garrison Bight.
2. The City Commission can reject the Boating Infrastructure Grant Program agreement with the Florida Fish and Wildlife Conservation Commission. With this option, the City would forgo up to \$500,000.00 in BIGP funding for transient boater improvements at the City Marina at Garrison Bight and would be required to cover 100% of the costs of constructing a new transient bath house/dockmaster's office and electrical upgrades to the Wahoo and Kingfish Piers.

**FINANCIAL IMPACT:**

With the approval of the Boating Infrastructure Grant Program agreement, the City would receive up to \$500,000.00 for transient boater improvements at the City Marina at Garrison Bight. Funds would be deposited into the Garrison Bight State Grants account 413-0000-334.90-00 / GB1302 \$350,000.00 & GB1303 \$150,000.00.

Project costs associated with this grant are budgeted in FY 2015 as follows:

413-7551-575.62-00	\$ 371,063.00	GB1301 Dockmaster's Office
413-7551-575.62-00	\$ 916,000.00	GB1302 Transient Bath House
413-7551-575.62-00	\$ 505,387.00	GB1303 Wahoo/Kingfish Electrical
<b>Total</b>	<b>\$ 1,792,450.00</b>	

**RECOMMENDATION:**

Staff recommends that the City Commission select Option 1, approving the attached Boating Infrastructure Grant Program (BIGP) agreement with the Florida Fish and Wildlife Conservation Commission (FWC) to receive an amount not to exceed \$500,000.00 for transient bath house facilities/dockmaster's office and electrical upgrades to the Wahoo and Kingfish Piers at City Marina at Garrison Bight.

**STATE OF FLORIDA  
FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION**

**AGREEMENT NO. 14154**

<b>CFDA Title(s):</b> Boating Infrastructure Grant Program	<b>CFDA No(s):</b> 15.622
<b>Name of Federal Agency(s):</b> US Fish and Wildlife Service	
<b>Federal Award No(s):</b> FL-Y-F13AP00412	<b>Federal Award Year(s):</b> 2012
<b>Federal Award Name(s):</b> City of Key West - Garrison Bight Marina Transient Dock	
<b>CSFA Title(s):</b> N/A	<b>CSFA No(s):</b> N/A
<b>State Award No(s):</b> N/A	<b>State Award Year(s):</b> N/A
<b>State Award Name(s):</b> N/A	

This Agreement is entered into by and between the Florida Fish and Wildlife Conservation Commission, whose address is 620 South Meridian Street, Tallahassee, Florida 32399-1600, hereafter "Commission," and City of Key West, FEID # 59-6000346, whose address is 525 Angela Street, PO Box 1409, Key West, FL 33041, hereinafter "Grantee."

**WHEREAS**, the Commission and Grantee have partnered together to provide funding to the subrecipient, City of Key West, for the Garrison Bight Marina Transient Dock through the Boating Infrastructure Grant Program (BIGP), from the US Fish and Wildlife Service; and,

**WHEREAS**, Grantee has been awarded as a subrecipient for this BIGP Tier II project, FL-Y-F13AP00412, City of Key West - Garrison Bight Marine Transient Dock ; and,

**WHEREAS**, such benefits are for the ultimate good of the State of Florida, its resources, wildlife, and public welfare.

**NOW THEREFORE**, the Commission and the Grantee, for the considerations hereafter set forth, agree as follows:

- 1. PROJECT DESCRIPTION.** The Grantee shall provide the services and perform the specific responsibilities and obligations, as set forth in the Scope of Work, attached hereto as Attachment A and made a part hereof (hereafter, Scope of Work). The Scope of Work specifically identifies project tasks and accompanying deliverables. These deliverables must be submitted and approved by the Commission prior to any payment. The Commission will not accept any deliverable that does not comply with the specified required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable. If this agreement is the result of Grantee responses to the Commission's request for competitive or other grant proposals, the Grantee's response is hereby incorporated by reference.



2. **PERFORMANCE.** The Grantee shall perform the activities described in the Scope of Work in a proper and satisfactory manner. Unless otherwise provided for in the Scope of Work, any and all equipment, products or materials necessary or appropriate to perform under this Agreement shall be supplied by the Grantee. Grantee shall obtain all necessary local, state, and federal authorizations necessary to complete this project, and the Grantee shall be licensed as necessary to perform under this Agreement as may be required by law, rule, or regulation; the Grantee shall provide evidence of such compliance to the Commission upon request. The Grantee shall procure all supplies and pay all charges, fees, taxes and incidentals that may be required for the completion of this Agreement. By acceptance of this Agreement, the Grantee warrants that it has the capability in all respects to fully perform the requirements and the integrity and reliability that will assure good-faith performance as a responsible Grantee. Grantee shall immediately notify the Commission's Grant Manager in writing if its ability to perform under the Agreement is compromised in any manner during the term of the Agreement. The Commission shall take appropriate action, including potential termination of this Agreement pursuant to Paragraph nine (9) below, in the event the Grantee's ability to perform under this Agreement becomes compromised.

3. **AGREEMENT PERIOD.**

A. **Agreement Period and Commission's Limited Obligation to Pay.** This Agreement is made pursuant to a grant award and shall be effective upon execution by the last Party to sign, and shall remain in effect through 06/30/2035. However, as authorized by Rule 68-1.003, F.A.C., referenced grant programs may execute Agreements with a retroactive start date of no more than sixty (60) days, provided that approval is granted from the Executive Director or his/her designee and that it is in the best interest of the Commission and State to do so. Agreements executed under this grant award shall not precede a start date of 12/01/2014. For this agreement, the retroactive start date was approved. The Commission's Grant Manager shall confirm the specific start date of the Agreement by written notice to the Grantee. The Grantee shall not be eligible for reimbursement or compensation for grant activities performed prior to the start date of this Agreement nor after the end date of the Agreement. For this agreement, preaward costs may be eligible for reimbursement. Details of allowable expenses are included in Attachment A (Scope of Work). If necessary, by mutual agreement as evidenced in writing and lawfully executed by the Parties, an Amendment to this Agreement may be executed to lengthen the Agreement period.

4. **COMPENSATION AND PAYMENTS.**

A. **Compensation.** As consideration for the services rendered by the Grantee under the terms of this Agreement, the Commission shall pay the Grantee on a cost reimbursement basis in an amount not to exceed \$500,000.

B. **Payments.** The Commission shall pay the Grantee for satisfactory performance of the tasks identified in Attachment A, Scope of Work, as evidenced by the completed deliverables, upon submission of invoices, accompanied by supporting documentation sufficient to justify invoiced expenses or fees, and after acceptance of services and deliverables in writing by the Commission's Grant Manager identified in Paragraph eleven (11), below. Unless otherwise specified in the Scope of Work, invoices shall be due monthly, commencing from the start date of this Agreement. Invoices must be legible and must clearly reflect the Deliverables that were provided in accordance with the terms of the Agreement for the invoice period. Unless otherwise specified in the Scope of Work, a final invoice shall be submitted to the Commission no later than forty-five (45) days following the expiration date of this Agreement to assure the availability of funds for payment. Further, pursuant to Section 215.971(1)(d), F.S., the Commission may only reimburse the Grantee for allowable costs resulting from obligations incurred during the agreement period specified in Paragraph three (3).



- C. Invoices.** Each invoice shall include the Commission Agreement Number and the Grantee's Federal Employer Identification (FEID) Number. Invoices, with supporting documentation, may be submitted electronically to the attention of the Commission's Grant Manager identified in Paragraph eleven (11), below. If submitting hard copies, an original and two (2) copies of the invoice, plus all supporting documentation, shall be submitted. All bills for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Grantee acknowledges that the Commission's Grant Manager shall reject invoices lacking documentation necessary to justify invoiced expenses.
- D. Match.** Pursuant to grant program guidelines, the Grantee is required to contribute non-federal match towards this Agreement. If applicable, details regarding specific match requirements are included in Attachment A, Scope of Work.
- E. Travel Expenses.** If authorized in Attachment A, Scope of Work, travel expenses shall be reimbursed in accordance with Section 112.061, F.S.
- F. State Obligation to Pay.** The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation and authorization to spend by the Legislature. The Parties hereto understand that this Agreement is not a commitment to future appropriations, but is subject to appropriation and authority to spend provided by the Legislature. The Commission shall be the final authority as to the availability of funds for this Agreement, and as to what constitutes an "annual appropriation" of funds to complete this Agreement. If such funds are not appropriated or available for the Agreement purpose, such event will not constitute a default on behalf of the Commission or the State. The Commission's Grant Manager shall notify the Grantee in writing at the earliest possible time if funds are not appropriated or available.
- G. Non-Competitive Procurement and Rate of Payment.** Section 216.3475, F.S., requires that under non-competitive procurements, a Grantee may not receive a rate of payment in excess of the competitive prevailing rate for those services unless expressly authorized in the General Appropriations Act. If applicable, Grantee warrants, by execution of this Agreement, that the amount of non-competitive compensation provided in this Agreement is in compliance with Section 216.3475, F.S.
- H. Time Limits for Payment of Invoices.** Payments shall be made in accordance with Sections 215.422 and 287.0585, F.S., which govern time limits for payment of invoices. Section 215.422, F.S. provides that agencies have five (5) working days to inspect and approve Deliverables, or the Scope of Work specifies otherwise. If payment is not available within forty (40) days, measured from the latter of the date the invoice is received or the Deliverables are received, inspected and approved, a separate interest penalty set by the Department of Financial Services pursuant to Section 55.03(1), F.S., will be due and payable in addition to the invoice amount. Invoices returned to a vendor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the agency.
- I. Electronic Funds Transfer.** Grantee agrees to enroll in Electronic Funds Transfer (EFT), offered by the State's Chief Financial Officer, within thirty (30) days of the date the last Party has signed this Agreement. Copies of the Authorization form and a sample blank enrollment letter can be found on the vendor instruction page at:

[http://www.fldfs.com/aadir/direct\\_deposit\\_web/Vendors.htm](http://www.fldfs.com/aadir/direct_deposit_web/Vendors.htm)



Questions should be directed to the State of Florida's EFT Section at (850) 413-5517. Once enrolled, invoice payments will be made by EFT.

**J. Vendor Ombudsman.** A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a State agency, may be contacted at (850) 413-5516 or by calling the Chief Financial Officer's Hotline, (800) 342-2762.

**5. CERTIFICATIONS AND ASSURANCES.** Upon execution of this Agreement by the Grantee, the Grantee shall complete, sign and return to the Commission's Grant Manager a completed copy of the form entitled "Certifications and Assurances," attached hereto and incorporated as Attachment B. This includes: Debarment and Suspension Certification; Certification Against Lobbying; Certification Regarding Public Entity Crimes; and Certification Regarding the Scrutinized Companies List (applicable to agreements in excess of \$1 million); Attachment B, incorporated and made part of this Agreement.

**6. RETURN OR RECOUPMENT OF FUNDS.**

**A. Overpayment to Grantee.** Pursuant to Section 215.971(1)(e)&(f), F.S., the Grantee shall return to the Commission any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Agreement that were disbursed to Grantee by the Commission. In the event that the Grantee or its independent auditor discovers that overpayment has been made, the Grantee shall repay said overpayment within forty (40) calendar days without prior notification from the Commission. In the event that the Commission first discovers an overpayment has been made, the Commission will notify the Grantee in writing. Should repayment not be made in a timely manner, the Commission shall be entitled to charge interest at the lawful rate of interest established pursuant to Section 55.03(1), F.S., on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to the Commission's Grant Manager, and made payable to the "The Florida Fish and Wildlife Conservation Commission."

**B. Additional Costs or Monetary Loss Resulting from Grantee Non-Compliance.** If the Grantee's non-compliance with any provision of the Agreement results in additional cost or monetary loss to the Commission or the State of Florida to the extent allowed by Florida Law, the Commission can recoup that cost or loss from monies owed to the Grantee under this Agreement or any other agreement between Grantee and the Commission. In the event that the discovery of this cost or loss arises when no monies are available under this Agreement or any other agreement between the Grantee and the Commission, the Grantee will repay such cost or loss in full to the Commission within thirty (30) days of the date of notice of the amount owed, unless the Commission agrees, in writing, to an alternative timeframe. If the Grantee is unable to repay any cost or loss to the Commission, the Commission shall notify the State of Florida, Department of Financial Services, for resolution pursuant to Section 17.0415, F.S.

**7. COMMISSION EXEMPT FROM TAXES, PROPERTY EXEMPT FROM LIEN.** The Grantee recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Agreement.

If the Grant involves the improvement of real property titled to the State of Florida, then the following paragraph applies. The Grantee acknowledges that Property being improved is titled to the State of Florida, and is not subject to lien of any kind for any reason. The Grantee shall include notice of such exemptions in any subcontracts and purchase orders issued hereunder.



8. **MONITORING.** The Commission's Grant Manager shall actively monitor the Grantee's performance and compliance with the terms of this Agreement. The Commission reserves the right for any Commission staff to make scheduled or unscheduled, announced or unannounced monitoring visits. Specific monitoring terms, conditions, and schedules may be included in Attachment A, Scope of Work.
9. **TERMINATION.**
- A. **Commission Termination.** The Commission may unilaterally terminate this Agreement for convenience by providing the Grantee with thirty (30) calendar days of written notice of its intent to terminate. The Grantee shall not be entitled to recover any cancellation charges or lost profits. The Grantee may request termination of the Agreement for convenience.
- B. **Termination – Fraud or Willful Misconduct.** This Agreement shall terminate immediately in the event of fraud or willful misconduct. In the event of such termination, the Commission shall provide the Grantee with written notice of termination.
- C. **Termination – Other.** The Commission may terminate this Agreement if the Grantee fails to: 1.) comply with all terms and conditions of this Agreement; 2.) produce each deliverable within the time specified by the Agreement or extension; 3.) maintain adequate progress, thus endangering the performance of the Agreement; or, 4.) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences for default. The rights and remedies of the Commission in this clause are in addition to any other rights and remedies provided by law or under the Agreement. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- D. **Termination - Funds Unavailability.** In the event funds to finance this Agreement become unavailable or if federal or state funds upon which this Agreement is dependent are withdrawn or redirected, the Commission may terminate this Agreement upon no less than twenty-four (24) hours notice in writing to the Grantee. Said notice shall be delivered by certified mail, return receipt requested or in person with proof of delivery. The Commission shall be the final authority as to the availability of funds and will not reallocate funds appropriated for this Agreement to another program thus causing "lack of funds." In the event of termination of this Agreement under this provision, the Grantee will be compensated for any work satisfactorily completed and any non-cancellable obligations properly incurred prior to notification of termination.
- E. **Grantee Discontinuation of Activities upon Termination Notice.** Upon receipt of notice of termination, the Grantee shall, unless the notice directs otherwise, immediately discontinue all activities authorized hereunder. Upon termination of this Agreement, the Grantee shall promptly render to the Commission all property belonging to the Commission. For the purposes of this section, property belonging to the Commission shall include, but shall not be limited to, all books and records kept on behalf of the Commission.
10. **REMEDIES.**
- A. **Financial Consequences.** In accordance with Sections 215.971(1)(a)&(b), F.S., Attachment A, Scope of Work, contains clearly established tasks in quantifiable units of deliverables that must be received and accepted in writing by the agency before payment. Each deliverable specifies the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable. If the Grantee fails to produce each deliverable within the time frame specified by the Scope of Work, the budget amount allocated for that deliverable may be



deducted from the Grantee's payment. In addition, pursuant to Section 215.971(1)(c), the Commission shall apply any additional financial consequences, identified in the Scope of Work.

**B. Cumulative Remedies.** The rights and remedies of the Commission in this paragraph are in addition to any other rights and remedies provided by law or under the Agreement.

**11. NOTICES AND CORRESPONDENCE.** Any and all notices shall be delivered to the individuals identified below. In the event that either Party designates a different Grant Manager after the execution of this Agreement, the Party will provide written notice of the name, address, zip code, telephone and fax numbers, and email address of the newest Grant Manager, or an individual authorized to receive notice on behalf of that Party, to all other Parties as soon as possible, but not later than five (5) business days after the new Grant Manager has been named. A designation of a new Grant Manager shall not require a formal amendment to the Agreement.

**FOR THE COMMISSION:**

Grant Manager  
Patricia Harrell  
BIGP Administrator  
Boating and Waterways  
620 S Meridian Street, MS 1M  
Tallahassee, FL 32399  
850-617-9538  
850-488-9284  
Patricia.Harrell@MyFWC.com

**FOR THE GRANTEE:**

Grant Manager  
Carolyn Sheldon  
Senior Grants Administrator  
City of Key West  
525 Angela Street or PO Box 1409  
Key West, FL (33040 for St and 33041 for PO Box)  
305-809-3982  
305-293-6477  
CSheldon@CityofKeyWest-FL.com

**12. AMENDMENT.**

- A. Waiver or Modification.** No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and lawfully executed by the Parties.
- B. Change Orders.** The Commission may, at any time, by written order, make a change to this Agreement. Such changes are subject to the mutual agreement of both Parties as evidenced in writing. Any change which causes an increase or decrease in the Grantee's cost or time shall require an Amendment. Minor changes, such as those updating a Party's contact information, may be accomplished by a Modification.
- C. Renegotiation upon Change in Law or Regulation.** The Parties agree to renegotiate this Agreement if federal and/or state revisions of any applicable laws or regulations make changes in the Agreement necessary.

**13. INTELLECTUAL PROPERTY RIGHTS.**

- A. Grantee's Preexisting Intellectual Property (Proprietary) Rights.** Unless specifically addressed in the Attachment A, Scope of Work, intellectual property rights to the Grantee's preexisting property will remain with the Grantee.
- B. Proceeds Related to Intellectual Property Rights.** Proceeds derived from the sale, licensing, marketing or other authorization related to any intellectual property right created or otherwise developed by the Grantee under this Agreement for the Commission shall be handled in the manner specified by the applicable Florida State Statute and/or Federal program requirements.



- C. **Commission Intellectual Property Rights.** Where activities supported by this Agreement produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representations and works of any similar nature, the Commission and the State of Florida have the unlimited, royalty-free, nonexclusive, irrevocable right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the Commission to do so. If this Agreement is supported by federal funds, the federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

#### 14. RELATIONSHIP OF THE PARTIES.

- A. **Independent Grantee.** The Grantee shall perform as an independent Grantee and not as an agent, representative, or employee of the Commission. The Grantee covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required. Each Party hereto covenants that there is no conflict of interest or any other prohibited relationship between the Grantee and the Commission.
- B. **Grantee Training and Qualifications.** Grantee agrees that all Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification.
- C. **Commission Security.** All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of the Commission. The Commission may conduct, and the Grantee shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Grantee. The Commission may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Commission's other requirements. Such refusal shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Commission, in coordination with the Grantee, may reject and bar from any facility for cause any of Grantee's employees, subcontractors, or agents.
- D. **Commission Rights to Assign or Transfer.** The Grantee agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to the Grantee.
- E. **Commission Rights to Undertake and Award Supplemental Agreements.** Grantee agrees that the Commission may undertake or award supplemental agreements for work related to the Agreement. The Grantee and its subcontractors shall cooperate with such other Grantees and the Commission in all such cases.

#### 15. SUBCONTRACTS.

- A. **Authority.** Grantee is permitted to subcontract work under this Agreement, therefore, the following terms and conditions apply. The Grantee shall ensure, and provide assurances to the Commission upon request, that any subcontractor selected for work under this Agreement has the necessary qualifications and abilities to perform in accordance with the terms and conditions of this Agreement. The Grantee must provide the Commission with the names of any subcontractor considered for work under this Agreement; the Commission in coordination with the Grantee reserves the right to reject any subcontractor. The Grantee agrees to be responsible for all work



performed and all expenses incurred with the project. Any subcontract arrangements must be evidenced by a written document available to the Commission upon request. The Grantee further agrees that the Commission shall not be liable to the extent allowed by law, to any subcontractor for any expenses or liabilities incurred under the subcontract and the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

- B. Grantee Payments to Subcontractor.** If subcontracting is permitted pursuant to Paragraph A, above, Grantee agrees to make payments to the subcontractor upon completion of work and submitted invoice in accordance with the contract between the Grantee and subcontractor. Failure to make payment pursuant to any subcontract will result in a penalty charged against Grantee and paid to the subcontractor in the amount of one-half of one (1) percent of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed fifteen (15) percent of the outstanding balance due.”
- C. Commission Right to Reject Subcontractor Employees.** The Commission in coordination with Grantee shall retain the right to reject any of the Grantee’s or subcontractor’s employees whose qualifications or performance, in the Commission’s judgment, are insufficient.
- D. Subcontractor as Independent Contractor.** If subcontracting is permitted pursuant to Paragraph A above, the Grantee agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State of Florida.

#### 16. MANDATORY DISCLOSURE.

- A. Disclosure of Interested State Employees.** This Agreement is subject to Chapter 112, F.S. Grantee shall provide the name of any officer, director, employee, or other agent who is affiliated with this project and an employee of the State of Florida.
- B. Prompt Disclosure of Litigation, Investigations, Arbitration, or Administrative Proceedings.** Throughout the term of the Agreement, the Grantee has a continuing duty to promptly disclose to the Commission’s Agreement Manager, upon occurrence, all civil or criminal litigation, investigations, arbitration, or administrative proceedings (Proceedings) relating to or affecting the Grantee’s ability to perform under this agreement. If the existence of such Proceeding causes the Commission concern that the Grantee’s ability or willingness to perform the Agreement is jeopardized, the Grantee may be required to provide the Commission with reasonable assurances to demonstrate that: a.) the Grantee will be able to perform the Agreement in accordance with its terms and conditions; and, b.) Grantee and/or its employees or agents have not and will not engage in conduct in performing services for the Commission which is similar in nature to the conduct alleged in such Proceeding.

#### 17. INSURANCE.

The Grantee warrants and represents that it is insured, or self-insured for liability insurance, in accordance with applicable state law and that such insurance or self-insurance offers protection applicable to the Grantee’s officers, employees, servants and agents while acting within the scope of their employment with the Grantee.

#### 18. PUBLIC ENTITY CRIMES.

- A. Convicted Vendor List.** Pursuant to Subsection 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may



not be awarded or perform work as a Grantee, supplier, subcontractor or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The State of Florida, Department of Management Services, Division of State Purchasing provides listings for convicted, suspended, discriminatory and federal excluded parties, as well as the vendor complaint list at:

[http://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)

- B. **Notice of Conviction of Public Entity Crime.** Any person must notify the Department of Management Services and the Commission within 30 days after conviction of a public entity crime applicable to that person or an affiliate of that person as defined in Section 287.133, F.S.
- C. **Certifications and Assurances.** Upon execution of this Agreement by the Grantee, the Grantee shall complete, sign and return to the Commission's Grant Manager a completed copy of the form entitled "Certifications and Assurances," attached hereto and incorporated as Attachment B. This includes the Certification Regarding Public Entity Crimes.

#### 19. VENDORS ON SCRUTINIZED COMPANIES LIST.

- A. **Scrutinized Companies.** If this Agreement is in the amount of one (1) million dollars or more, in executing this Agreement, the Grantee certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S., and is not engaged in business operations in Cuba or Syria.
- B. **False Certification – Termination.** Pursuant to Subsection 287.135(3)(b), F.S., the Commission may immediately terminate this Agreement for cause if the Grantee is found to have submitted a false certification or if, during the term of the Agreement, the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business operations in Cuba or Syria.
- C. **Cessation of Federal Authority.** In the event that federal law ceases to authorize the states to adopt and enforce the contracting prohibition identified in this paragraph, this provision shall be null and void to the extent no longer authorized.

20. **SPONSORSHIP.** As required by Section 286.25, F.S., if the Grantee is a nongovernmental organization which sponsors a program financed wholly or in part by state funds, including any funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Grantee's name) and the State of Florida, Fish and Wildlife Conservation Commission." If the sponsorship reference is in written material, the words "State of Florida, Fish and Wildlife Conservation Commission" shall appear in the same size letters or type as the name of the Grantee's organization. Additional sponsorship requirements may be specified in Attachment A, Scope of Work.

#### 21. PUBLIC RECORDS.

- A. This Agreement may be unilaterally canceled by the Commission for refusal by the Grantee to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S., and made or received by the Grantee in conjunction with this Agreement, unless exemption for such records is allowable under Florida law.



- B.** Pursuant to Section 119.0701, F.S., the Grantee shall comply with the following:
- a. Keep and maintain public records that ordinarily and necessarily would be required by the Commission in order to perform the service.
  - b. Provide the public with access to public records on the same terms and conditions that the Commission would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law.
  - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - d. Meet all requirements for retaining public records and transfer, at no cost, to the Commission all public records in possession of the Grantee upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the Commission.
- 22. SECURITY AND CONFIDENTIALITY.** The Grantee shall not divulge to third parties any clearly marked confidential information obtained by the Grantee or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Grant work. To ensure confidentiality, the Grantee shall take appropriate steps regarding its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Grant.
- 23. RECORD KEEPING REQUIREMENTS.**
- A. Grantee Responsibilities.** The Grantee shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement, in accordance with generally accepted accounting principles.
  - B. State Access to Grantee Books, Documents, Papers, and Records.** The Grantee shall allow the Commission, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or authorized representatives of the state or federal government to have access to any of the Grantee's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
  - C. Grantee Records Retention.** Unless otherwise specified in Attachment A, Scope of Work, these records shall be maintained for five (5) years following the close of this Agreement. The Grantee shall cooperate with the Commission to facilitate the duplication and transfer of such records upon the Commission's request.
  - D. Grantee Responsibility to Include Records Requirements – Subcontractors.** In the event any work is subcontracted under this Agreement, the Grantee shall include the aforementioned audit and record keeping requirements in all subsequent contracts.
  - E. Compliance with Federal Funding Accountability and Transparency.** Any federal funds awarded under this Agreement must comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006. The intent of the FFATA is to empower every American with the ability to hold the government accountable for each spending decision. The result is to reduce wasteful spending in the government. The FFATA legislation requires that information on



federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website: [www.USASpending.gov](http://www.USASpending.gov). Grant recipients awarded a new Federal grant greater than or equal to \$25,000 awarded on or after October 1, 2010 are subject to the FFATA. The Grantee agrees to provide the information necessary, over the life of this Agreement, for the Commission to comply with this requirement.

- 24. FEDERAL AND FLORIDA SINGLE AUDIT ACT REQUIREMENTS.** Pursuant to the FSAA (or Federal) Vendor / Recipient Determination Checklist, the Grantee has been determined to be a recipient of state financial assistance and/or a subrecipient of a federal award. Therefore, pursuant to Section 215.97, F.S. and/or OMB Circular A-133, the Grantee may be subject to the audit requirements of the Florida and/or Federal Single Audit Acts. If applicable, the Grantee shall comply with the audit requirements outlined in Attachment C, "Requirements of the Federal and Florida Single Audit Acts," attached hereto and made a part of the Agreement, as applicable.
- 25. NON-EXPENDABLE PROPERTY.**
- A. Non-Expendable Property Defined.** For the requirements of this section of the Agreement, "non-expendable property" is the same as "property" as defined in Section 273.02, F.S. (equipment, fixtures, and other tangible personal property of a non-consumable and non-expendable nature, with a value or cost of \$1,000 or more, and a normal expected life of one year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of \$25 or more; and uncirculated hardback-covered bound books, with a value or cost of \$250 or more).
- B. Title to Non-Expendable Property.** Title (ownership) to all non-expendable property acquired with funds from this Agreement shall be vested in the Commission and said property shall be transferred to the Commission upon completion or termination of the Agreement unless otherwise authorized in writing by the Commission or unless otherwise specifically provided for in Attachment A, Scope of Work.
- 26. FEDERAL FUNDS. This Agreement relies on federal funds, therefore, the following terms and conditions apply:**
- A. Prior Approval to Expend Federal Funds to Federal Agency or Employee.** The Grantee shall be responsible for complying with all federal grant requirements as provided in its grant, a copy of which is attached hereto and made a part hereof as Attachment D. It is understood and agreed that the Grantee is not authorized to expend any federal funds under this Agreement to a federal agency or employee without the prior written approval of the awarding federal agency.
- B. Compliance with Federal Laws, Rules and Regulations.** As applicable, the Grantee shall comply with all federal laws, rules, and regulations, including but not limited to:
- 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).
  - The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).
  - Sections 103 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction agreements awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other agreements which involve the employment of mechanics or laborers)



- 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).
- 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. 94-163, 89 Stat. 871).

- C. Compliance with Office of Management and Budget Circulars.** As applicable, Grantee shall comply with the following Office of Management and Budget Circulars:
- A-21 (2 CFR 220), Cost principles for Educational Institutions
  - A-87 (2 CFR 225), Cost Principles for State, Local, and Indian Tribal Governments
  - A-122 (2 CFR 230), Cost Principles for Non-Profit Organizations
  - A-133, Audit of States, Local Governments, and Non-Profit Organizations
  - A-102, Grants and Cooperative Agreements with State and Local Governments
  - A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Learning, Hospitals, and Other Non-Profit Organizations
- D. Certifications and Assurances – Drug-Free Workplace.** Pursuant to the Drug-Free Workplace Act of 1988, and its implementing regulations codified at 29 CFR Part 94, the Grantee will provide a drug-free workplace. Upon execution of this Agreement by the Grantee, the Grantee shall complete, sign and return to the Commission a completed copy of Attachment B, "Certifications and Assurances." This includes the Drug-Free Workplace Requirement Certification.
- E. Trafficking Victims Protection Act of 2000.** This federal award is subject to the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104(g), 2 CFR 175.15). As such, the awarding federal agency may unilaterally terminate this award without penalty for violations of this Act. If the Grantee is a private entity, the following provision applies to the federal award:
- You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not--
- a. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - b. Procure a commercial sex act during the period of time that the award is in effect; or
  - c. Use forced labor in the performance of the award or subawards under the award.

## 27. DEBARMENT AND SUSPENSION.

- A. Grantee Federal Certification.** In accordance with Federal Executive Order 12549, Debarment and Suspension, the Grantee shall agree and certify that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency; and, that the Grantee shall not knowingly enter into any lower tier agreement, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction.
- B. Grantee Commission Certification.** Upon execution of this Agreement by the Grantee, the Grantee shall complete, sign and return to the Commission a completed copy of Attachment B, Certifications and Assurances. This includes the Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

## 28. PROHIBITION AGAINST LOBBYING.



- A. Grantee Certification – Payments to Influence.** The Grantee certifies that no Federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding, renewal, amending or modifying of any Federal agreement, grant, or cooperative agreement. The Grantee shall submit Standard Form-LLL, "Disclosure Form to Report Lobbying". The Grantee shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly.
- B. Grantee – Refrain from Subcontracting with Certain Organizations.** Pursuant to the Lobbying Disclosure Act of 1995, the Grantee agrees to refrain from entering into any subcontracts under this Agreement with any organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subcontract.
- C. Prohibition against Using Agreement Funds for the Purpose of Lobbying.** In accordance with Section 216.347, F.S., the Grantee is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency. Upon request of the Commission's Inspector General, or other authorized State official, the Grantee shall provide any type of information the Inspector General deems relevant to the Grantee's integrity or responsibility.
- D. Grantee's Completion of Certifications and Assurances.** Upon execution of this Agreement by the Grantee, the Grantee shall complete, sign and return to the Commission a completed copy of Attachment B, "Certifications and Assurances." This includes the Certification Regarding Lobbying.

**29. AGREEMENT-RELATED PROCUREMENT.**

- A. PRIDE.** In accordance with Section 946.515(6), F.S., if a product or service required for the performance of this Agreement is certified by or is available from Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) and has been approved in accordance with Subsection 946.515(2), F.S., the following statement applies:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, under this contract shall be purchased from [PRIDE] In the same manner and under the same procedures set forth in subsections 946.515(2) and (4), F.S.; and for purposes of this contract the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned.

The above clause is not applicable to subcontractors unless otherwise required by law. Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

- B. Respect of Florida.** In accordance with Subsection 413.036(3), F.S., if a product or service required for the performance of this Agreement is on the procurement list established pursuant to Subsection 413.035(2), F.S., the following statement applies:



It is expressly understood and agreed that any articles that are the subject of, or required to carry out, under this contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, F.S., in the same manner and under the same procedures set forth in Subsections 413.036(1) and (2), F.S.; and for purposes of this agreement, the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the state agency insofar as dealings with such qualified nonprofit agency are concerned.

Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

- C. Procurement of Recycled Products or Materials.** The Grantee agrees to procure any recycled products or materials which are the subject of or are required to carry out this Agreement in accordance with Section 403.7065, F.S.

### 30. PURCHASE OR IMPROVEMENT OF REAL PROPERTY

This agreement is for the purchase or improvement of real property, therefore the following terms and conditions apply.

The Grantee shall comply with Section 287.05805, F.S. This section requires the Grantee to grant a security interest in the property to the State of Florida, the type and details of which are provided for in Attachment A, Scope of Work.

### 31. PROFESSIONAL SERVICES.

- A. Architectural, Engineering, Landscape Architectural, or Survey and Mapping.** If this Agreement is for the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services, and is therefore subject to Section 287.055, F.S., the following provision applies:

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract.

- B. Termination for Breach.** For the breach or violation of this provision, the Commission shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

- 32. INDEMNIFICATION.** If the Grantee is a state agency or subdivision, as defined in Subsection 768.28(2), F.S., pursuant to Subsection 768.28(19), F.S., neither Party indemnifies nor insures the other Party for the other Party's negligence. If the Grantee is not a state agency or subdivision as defined above, the Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully



indemnify, defend, and hold harmless the State and the Commission, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Grantee, its agents, employees, partners, or subcontractors, provided, however, that the Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Commission.

**33. NON-DISCRIMINATION.**

- A. Non-Discrimination in Performance.** No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Agreement.
- B. Discriminatory Vendor List.** In accordance with Section 287.134, F.S., an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. The Grantee has a continuing duty to disclose to the Commission whether they appear on the discriminatory vendor list.

**34. SEVERABILITY, CHOICE OF LAW, AND CHOICE OF VENUE.** This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida, to the exclusion of all other lawful venues.

**35. NO THIRD PARTY RIGHTS.** The Parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any person not a Party to this Agreement.

**36. JURY TRIAL WAIVER.** As part of the consideration for this Agreement, the Parties hereby waive trial by jury in any action or proceeding brought by any Party against any other Party pertaining to any matter whatsoever arising out of or in any way connected with this Agreement, or with the products or services provided under this Agreement, including but not limited to any claim by the Grantee of *quantum meruit*.

**37. PROHIBITION OF UNAUTHORIZED ALIENS.** In accordance with federal Executive Order 96-236, the Commission shall consider the employment by the Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement if the Grantee knowingly employs unauthorized aliens.

**38. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY).**

- A. Requirement to Use E-Verify.** Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires Commission contracts in excess of nominal value to expressly require the Grantee to: 1.) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Grantee during the contract term; and, 2.) include in all subcontracts under this Agreement, the requirement that subcontractors



performing work or providing services pursuant to this contract utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the subcontract.

- B. E-Verify Online.** E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States after the effective date of the required Memorandum of Understanding (MOU); the responsibilities and elections of federal contractors, however, may vary, as stated in Article II.D.1.c. of the MOU. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found online at [http://www.dhs.gov/files/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/files/programs/gc_1185221678150.shtm)
- C. Enrollment in E-Verify.** If the Grantee does not have an E-Verify MOU in effect, the Grantee must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Agreement.
- D. E-Verify Recordkeeping.** The Grantee further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Commission or other authorized state entity consistent with the terms of the Grantee's enrollment in the program. This includes maintaining a copy of proof of the Grantee's and subcontractors' enrollment in the E-Verify Program (which can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).
- E. Employment Eligibility Verification.** Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Agreement and the Commission may treat a failure to comply as a material breach of the Agreement.

- 39. FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE.** Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay the Grantee believes is excusable under this paragraph, Grantee shall notify the Commission's Grant Manager in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if the Grantee could reasonably foresee that a delay could occur as a result; or (2) within five (5) calendar days after the date Grantee first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. The Commission, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify the Grantee of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against the Commission. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from the Commission for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have



ceased to exist, the Grantee shall perform at no increased cost, unless the Commission determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the Commission or the State, in which case, the Commission may terminate the Agreement in whole or in part.

- 40. ENTIRE AGREEMENT.** This Agreement with all incorporated attachments and exhibits represents the entire Agreement of the Parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, and duly signed by each of the Parties hereto, unless otherwise provided herein. In the event of conflict, the following order of precedence shall prevail; this Agreement and its attachments, the terms of the solicitation and the Grantee's response to the solicitation.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed through their duly authorized signatories on the day and year last written below.

CITY OF KEY WEST

FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION

James K. Scholl  
SIGNATURE

Name: JAMES K. SCHOLL

Title: CITY MANAGER

Date: 07 JAN 2015

Eric Sutton  
SIGNATURE

Name: ERIC SUTTON

Title: ASSISTANT EXECUTIVE DIRECTOR

Date: 27 Jan 15

Approved as to form and legality by FWC Attorney:

Emily Norton  
SIGNATURE

Name: Emily Norton

Date: 10/6/14

Attachments in this Agreement include the following:

- Attachment A Scope of Work
- Attachment B Certifications and Assurances
- Attachment C Requirements of the Federal and Florida Single Audit Acts
- Attachment D Copy of Federal Grant Award - FL-Y-F13AP00412
- Attachment E 50 CFR Part 86 Boating Infrastructure Grant Program Final Rule
- Attachment F Progress Report Form
- Attachment G Certificate of Completion Form
- Attachment H Sample Invoice Form
- Attachment I Cost Reimbursement Contract Payment Requirement



## Attachment A – SCOPE OF WORK

<b>Project Name:</b>	City of Key West – BIGP, Tier II Garrison Bight Marina Transient Dock	<b>FWC Contract No.</b>	14154
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### INTRODUCTION AND BACKGROUND

The City Marina at Garrison Bight was built in the 1950's. To attract boaters, and especially transient boaters, the Marina transient docks and amenities must be renovated and updated. The bathhouse has exceeded its life expectancy, the utilities are not meeting the need and there area frequent power outages to the docks and slips, and the dockmaster's office is a leased trailer. The marina has experienced a 30 percent decline over the past few years in transient boater use mainly because of the deteriorating infrastructure.

### PURPOSE AND BENEFIT

The renovation of the bathhouse will included men and women restrooms and showers/dressing area, laundry facilities with a folding area, and a new dockmaster office to accommodate boaters during registration and provide a waiting area and lounge for the boaters. The building is being renovated with exterior access ways to increase the interior space available. The renovations to the utilities will upgrade the utility bollards from 350 amp to 600 amp service, increasing the number of slips that can accommodate 50 and 100 amp service.

### DELIVERABLES

1. Construct an approximate 2350 square foot building with restrooms, showers/dressing areas, laundry facility/folding area, and new dockmaster office with 1320 square feet of exterior covered access ways for a total 3670 square foot building footprint. The building includes an approximate 400 square foot work space and storage area.
2. Upgrade utilities for 250 slips of which 50 are for transient boaters (20%) applicable to this grant to include 600 amp service utility bollards at each slip.

### Tasks

The tasks include administration and project management of the project throughout the completion of the following tasks and the completion and close-out of this Agreement and the federal grant. Tasks associated with the construction of the transient docks and amenities include:

#### Deliverable No. 1

- Demolition and removal of the existing bathhouse
- Construction of the approximate 2350 square foot building with restrooms for men and women, shower/dressing areas for men and women, laundry facility/folding area, and new dockmaster office. The building footprint is a total of 3670 that includes 1320 square feet of exterior access ways and includes 400 square foot of work space and storage area.



## Attachment A – SCOPE OF WORK

<b>Project Name:</b>	City of Key West – BIGP, Tier II Garrison Bight Marina Transient Dock	<b>FWC Contract No.</b>	14154
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### Deliverable No. 2

- Current main electric lines and switch gear supplying the transient docks will be removed and replaced. Utility bollards will be upgraded from 350 amp to 600 amp service.

### Term of Agreement

The Term of the Agreement includes Phase I – Performance and Phase II – Management. All tasks and deliverables must be completed during Phase I of the Agreement that ends June 30, 2015. Phase II includes a 20-year period from the end of Phase I, or June 30, 2035, for which the Grantee provides that the Project and the real property associated with the Project shall remain in public ownership and managed for the purpose of recreational boating access for transient vessels 26' or larger with transient defined as a 10-day stay or less, in accordance with applicable Federal and State law.

### PERFORMANCE

All tasks and deliverables must be completed on or before the end date of Phase I – Performance on or before June 30, 2015.

**Commence Work** - The Grantee shall commence work on the Project within six (6) months of execution of this Agreement. Failure by the Grantee to begin work shall constitute a breach of the Agreement and result in termination of the Agreement by the Commission.

**Criteria for Evaluating Successful Completion** – The Grantee shall complete the project as described in this Scope of Work; the Boating Infrastructure Grant Program (BIGP), Tier II application; incorporated herein by reference; and the resulting BIGP grant award from the US Fish and Wildlife Service, F13AP00412, incorporated herein as Attachment D. Failure to complete the project in a satisfactory manner could result in financial consequences as specified herein.

**Phase II – Management** – Phase II – Management shall include the entire period of the Agreement for which the Grantee shall provide and be responsible for any and all costs associated with the ordinary and routine operations and maintenance of the Project, including any and all personnel, equipment or service and supplies costs beyond the costs approved for reimbursement in Phase I of this Agreement. Grantee shall ensure that facilities built pursuant to this Agreement must be substantial structures lasting at least 20 years and operated and maintained for their intended purpose during that period.

**Site Dedication** - The Grantee agrees that land owned by the Grantee that is developed with funds from this Agreement shall be dedicated for a minimum of twenty (20) years as a site for the use and benefit of the public. The dedication shall be recorded in public property records by the Grantee. Land under control other than by ownership by the Grantee (i.e. lease, management agreement, cooperative agreement, inter-local agreement or other similar instrument) and



## Attachment A – SCOPE OF WORK

<b>Project Name:</b>	City of Key West – BIGP, Tier II Garrison Bight Marina Transient Dock	<b>FWC Contract No.</b>	14154
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developed with funds from this Agreement shall be managed by the Grantee for a minimum period of twenty (20) years from the end date of Phase I as set forth herein. Title to all improvements shall be retained by the Grantee upon final payment by the Commission. Should the Grantee, within the 20-year period set forth above, convert all or any part of the Project to other than Commission approved uses, the Grantee shall replace the area, facilities, resource or site at its own expense with a Project acceptable to the Commission of comparable scope and quality. In the event the Project is converted to use for other purposes during this period and not replaced with a like Project acceptable to the Commission, the Grantee agrees to return to the Commission all funds tendered for the original Project.

**BIGP Rule** - The Grantee agrees to construct, operate and maintain the Project according to all provisions of Attachment E, Boating Infrastructure Grant Program Final Rule, 50 CFR Part 86, attached and made part of this Agreement. The Grantee further agrees to comply with all other applicable federal, state, and local rules and regulations in providing services to the Commission under this Agreement. The Grantee further agrees to include this provision in all subcontracts issued as a result of this Agreement.

**Permit Requirements** - The Grantee agrees to adhere to all permits requirements of the Project.

**Acknowledgement** - The Grantee, at its expense, shall acknowledge the Boating Infrastructure Grant Program as a funding source for the Project as described below. Any other form of acknowledgement must be approved by the Commission's Grant Manager. Such acknowledgement shall be maintained for the duration of the Agreement. Failure by the Grantee to maintain such acknowledgement shall be considered a breach of the Agreement.

- A. Upon completion of the purchase, the Grantee, at its expense, shall purchase, erect and maintain a permanent sign, not less than three (3) feet by four (4) feet in size, displaying the Sport Fish Restoration (U.S. Fish and Wildlife Service ) official logo and the Commission's logo.
- B. The Grantee shall provide a draft copy of the acknowledgement sign for approval by the Commission prior to displaying on site.

**Transient Dock Fees:** GRANTEE agrees that all fees derived from usage of the Project, during Phase II, will be used for the operation and maintenance of the City of Key West Garrison Bight Marina facilities.

**Site Inspection(s)** - The Grantee shall allow unencumbered access to the Project site to the Commission, its employees or agents for the duration of the Agreement for the purpose of site visit or inspection to verify the facility is being maintained, in operation and is open and available to the public. As part of the inspection, the Commission may request maintenance and use information from the Grantee to validate the condition of the facility.

**Project Progress Reports** - The Grantee shall submit to the Commission, on a quarterly basis, project progress reports outlining the progress of the Project during Phase I - Performance, identifying any problems that may have arisen, and actions taken to correct such problems. Such



## Attachment A – SCOPE OF WORK

<b>Project Name:</b>	City of Key West – BIGP, Tier II Garrison Bight Marina Transient Dock	<b>FWC Contract No.</b>	14154
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reports shall be submitted on the Project Progress Report Form attached hereto and made a part hereof as Attachment F. Reports are due to the Commission by the 15<sup>th</sup> of the month immediately following the reporting period until the Project is complete. The Grantee shall provide photographs with the progress documenting the reported progress. As part of the progress report, the Grantee will update and submit a spreadsheet based on budget items that will be provided to the Grantee upon full execution of the Agreement.

**Certification of Completion** - Upon completion both tasks, the Grant Manger shall sign a Certification of Completion form, provided by the Commission (Attachment G), which certifies Phase I of the Project was completed in accordance with the provisions herein. Final photographs shall be submitted with the Certification of Completion form.

### Financial Consequences

Failure of the Grantee to perform the tasks and provide the deliverable shall be considered non-compliance with the terms, and payment will not be processed until all deliverables and performance has been documented, reviewed and approved.

### Compensation and Payment

The total approved estimated project cost for the BIGP Project Phase I - Performance is \$1,700,000. The Commission agrees to reimburse the Grantee for an amount not to exceed \$500,000 for satisfactory completion by the Grantee of the Project Phase I – Performance. Total compensation includes a sum not to exceed \$55,000 for pre-award costs for engineering, design and permitting. The Grantee agrees to provide a minimum of \$1,200,000 toward completion of the BIGP Project, Phase I – Performance, and shall be responsible for any additional costs that exceed the total approved estimated project cost for the Project Phase I - Performance.

The Grantee may submit a request for reimbursement that includes an invoice in a format similar to Attachment H, Sample Invoice Form, and shall include the FWC Contract Number, the Grantee's Federal Employer Identification (FEID) Number, indicate the dates of service, and an itemized list of expenditures, and supporting documentation showing proof of payment for all project expenditures. An original and two (2) copies of the request for reimbursement shall be submitted. The Commission shall have up to 30 days to review and approve the invoice for payment. Any errors or insufficient supporting documentation will delay payment of the invoice when it is submitted and the 30 days to review by the Commission may begin again.

Invoices may be submitted no more frequently than quarterly or at the completion of the Project. Partial payments will be based on the percentage of completion of the tasks during that period, as clearly documented by the completed Partial Payment Request portion of the Sample Invoice Form and the supporting documentation submitted with the invoice. If partial payments are requested, they cannot exceed more than 90% of the total cost prior to the completion of the Project Phase I – Performance. The final payment request cannot be for less than 10% of the total cost.



**Attachment A – SCOPE OF WORK**

<b>Project Name:</b>	City of Key West – BIGP, Tier II Garrison Bight Marina Transient Dock	<b>FWC Contract No.</b>	14154
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The Grantee shall be reimbursed on a cost reimbursement basis in accordance with Comptroller Contract Payment Requirements as shown in the Department of Financial Services, Bureau of Accounting and Auditing, Voucher Processing Handbook, Chapter 4., C., I., attached hereto and made a part hereof as Attachment I.

Travel expenses are not approved expenditures under this Agreement.

The Commission shall have up to 45 days to inspect the Project. If there are deficiencies noted in the final Project inspection, these shall be corrected by the Grantee prior to final Project acceptance and payment by the Commission. The Commission shall restrict any or all payment of funds pending correction of such deficiencies.



**Attachment B  
CERTIFICATIONS AND ASSURANCES**

The Commission will not enter this Agreement unless Grantee completes the CERTIFICATIONS AND ASSURANCES contained in this Attachment. In performance of this Agreement, Grantee provides the following certifications and assurances:

- A. Debarment and Suspension Certification (2 CFR Part 1400)
- B. Certification Regarding Lobbying (31 U.S.C. 1352)
- C. Certification Regarding Public Entity Crimes (section 287.133, F.S.)
- D. Certification Regarding Drug-Free Workplace Requirements (41 U.S.C. 701 et. seq.) (as applicable to recipients and subrecipients of federal financial assistance)
- E. Certification Regarding the Scrutinized Companies List (section 287.135, F.S.) (as applicable)

**A. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTION.**

The undersigned Grantee certifies to the best of its knowledge and belief, that it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
- 2. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph A.2. of this certification; and/or
- 4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause of default.

If Grantee is unable to certify to any of the statements in this certification, Grantee shall attach an explanation to this Agreement.

**B. CERTIFICATION REGARDING LOBBYING – Certification for Contracts, Grants, Loans, and Cooperative Agreements.**

The undersigned Grantee certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an



employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employees of Congress, or employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the undersigned shall also complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that language of this certification be included in the documents for all subcontracts at all tiers (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all sub-recipients and contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Grant was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**C. CERTIFICATION REGARDING PUBLIC ENTITY CRIMES, SECTION 287.133, F.S.**

Grantee hereby certifies that neither it, nor any person or affiliate of Grantee, has been convicted of a Public Entity Crime as defined in section 287.133, F.S., nor placed on the convicted vendor list.

Grantee understands and agrees that it is required to inform the Commission immediately upon any change of circumstances regarding this status.

**D. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS  
(If Grantee is a Recipient of Subrecipient of Federal Financial Assistance)**

Pursuant to the Drug-Free Workplace Act of 1988, the undersigned attests and certifies that the Grantee (if not an individual) will provide a drug-free workplace by the following actions:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees concerning:
  - a. The dangers of drug abuse in the workplace.
  - b. The policy of maintaining a drug-free workplace.
  - c. Any available drug counseling, rehabilitation and employee assistance programs.
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy of the statement required by paragraph D.1. of this certification.
4. Notifying the employee in the statement required by paragraph D.1. of this certification that, as a condition of employment under the Agreement, the employee will:



- a. Abide by the terms of the statement.
  - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
5. Notifying the Commission in writing ten (10) calendar days after receiving notice under subparagraph 4.b. from an employee or otherwise receiving actual notice of such conviction. Provide such notice of convicted employees, including position title, to every Grant Manager on whose Grant activity the convicted employee was working. The notice shall include the identification number(s) of each affected Contract or Grant.
6. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph 4.b. herein, with respect to any employee who is so convicted:
- a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 as amended.
  - b. Requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local, health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of this entire certification.

If the Grantee is an individual, the Grantee certifies that:

1. As a condition of the grant, Grantee will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and,
2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, Grantee will report the conviction, in writing, within 10 calendar days of the conviction, to the Commission When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

**E. CERTIFICATION REGARDING the SCRUTINIZED COMPANIES LISTS, SECTION 287.135, F.S.**

If this Grant is in the amount of \$1 million or more, in accordance with the requirements of section 287.135, F.S., Grantee hereby certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, F.S. Grantee also hereby certifies that it is not engaged in business operations in Cuba or Syria.

Grantee understands that pursuant to section 287.135, F.S., the submission of a false certification may subject Grantee to civil penalties, attorney's fees, and/or costs.

If Grantee is unable to certify to any of the statements in this certification, Grantee shall attach an explanation to this Grant.

By signing below, Grantee certifies the representations outlined in parts A through E above are true and correct.

J.K. Schell City Manager  
(Signature and Title of Authorized Representative)

City of Key West 1-7-2015  
Grantee Date

PO Box 1409  
(Street)

Key West, FL 33040  
(City, State, ZIP Code)



**Attachment C**  
**AUDIT REQUIREMENTS**

The administration of resources awarded by the Florida Fish and Wildlife Conservation Commission (Commission) to the Contractor may be subject to audits and/or monitoring by the Commission as described in this attachment.

**MONITORING**

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), the Commission may conduct or arrange for monitoring of activities of the Contractor. Such monitoring procedures may include, but not be limited to, on-site visits by the Commission staff or contracted consultants, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Contract, the Contractor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Commission. The Contractor further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Florida Department of Financial Services or the Florida Auditor General.

**AUDITS****PART I: FEDERALLY FUNDED**

- A. This part is applicable if the Contractor is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.
- B. In the event that the Contractor expends \$500,000 or more in Federal awards in its fiscal year, the Contractor must have a single or program-specific audit conducted in accordance with the provisions of the Federal Single Audit Act of 1996 and OMB Circular A-133, as revised. EXHIBIT 1 to this Attachment indicates Federal resources awarded through the Commission by this Contract. In determining the Federal awards expended in its fiscal year, the Contractor shall consider all sources of Federal awards, including Federal resources received from the Commission. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Contractor conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.
- C. In connection with the audit requirements addressed in Part I, paragraph A. herein, the Contractor shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised. This includes, but is not limited to, preparation of financial statements, a schedule of expenditure of Federal awards, a summary schedule of prior audit findings, and a corrective action plan.
- D. Such audits shall cover the entire Contractor's organization for the organization's fiscal year. Compliance findings related to contracts with the Commission shall be based on the contract requirements, including any rules, regulations, or statutes referenced in the Contract. The financial statements shall disclose whether or not the matching requirement was met for each applicable contract. All questioned costs and liabilities due to the Commission shall be fully disclosed in the audit report with reference to the Commission contract involved. Additionally, the results from the Commission's annual financial monitoring reports must be included in the audit procedures and the OMB A-133 audit reports.



- E. If not otherwise disclosed as required by section .310(b)(2) of OMB Circular A-133, as revised, the schedule of expenditures of Federal awards shall identify expenditures by contract number for each contract with the Commission in effect during the audit period.
- F. If the Contractor expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Contractor expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (*i.e.*, the cost of such an audit must be paid from the Contractor's resources obtained from other-than Federal entities).
- G. A web site that provides links to several Federal Single Audit Act resources can be found at: <http://harvester.census.gov/sac/sainfo.html>

## **PART II: STATE FUNDED**

This part is applicable if the Contractor is a non-state entity as defined by Section 215.97, F.S., (the Florida Single Audit Act).

- A. In the event that the Contractor expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such Contractor, the Contractor must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; applicable rules of the Executive Office of the Governor and the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Attachment indicates state financial assistance awarded through the Commission by this Contract. In determining the state financial assistance expended in its fiscal year, the Contractor shall consider all sources of state financial assistance, including state financial assistance received from the Commission, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.
- B. In connection with the audit requirements addressed in Part II, paragraph A herein, the Contractor shall ensure that the audit complies with the requirements of section 215.97(7), F.S. This includes submission of a financial reporting package as defined by section 215.97(2)(d), F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- C. If the Contractor expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. In the event that the Contractor expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the non-state entity's resources (*i.e.*, the cost of such an audit must be paid from the Contractor's resources obtained from other-than State entities).
- D. Additional information regarding the Florida Single Audit Act can be found at: <https://apps.fldfs.com/fsaa/singleauditact.aspx>.

## **PART III: REPORT SUBMISSION**

- A. Copies of reporting packages, to include any management letter issued by the auditor, for audits conducted in accordance with OMB Circular A-133, as revised, and required by Part I of this



Attachment shall be submitted by or on behalf of the Contractor directly to each of the following at the address indicated:

1. The Commission at the following address:

**Chief Financial Officer  
Florida Fish and Wildlife Conservation Commission  
Bryant Building  
620 S. Meridian St.  
Tallahassee, FL 32399-1600**

2. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse):

**Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132**

3. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

**B.** Copies of audit reports for audits conducted in accordance with OMB Circular A-133, as revised, and required by Part I of this Attachment (in correspondence accompanying the audit report, indicate the date that the Contractor received the audit report); copies of the reporting package described in Section .320 (d), OMB Circular A-133, as revised, and any management letters issued by the auditor; copies of reports required by Part II of this Attachment must be sent to the Commission at the addresses listed in paragraph c.) below.

**C.** Copies of financial reporting packages required by Part II of this Attachment, including any management letters issued by the auditor, shall be submitted by or on behalf of the Contractor directly to each of the following:

1. The Commission at the following address:

**Chief Financial Officer  
Florida Fish and Wildlife Conservation Commission  
Bryant Building  
620 S. Meridian St.  
Tallahassee, FL 32399-1600**

- 2) The Auditor General's Office at the following address:

**Auditor General's Office  
G74 Claude Pepper Building  
111 West Madison Street  
Tallahassee, FL 32399-1450**

- D.** Any reports, management letter, or other information required to be submitted to the Commission pursuant to this Contract shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Contractors and sub-contractors, when submitting financial reporting packages to the Commission for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Contractor/sub-contractor in correspondence accompanying the reporting package.

*- End of Attachment C -*



**Exhibit 1  
FEDERAL AND STATE FUNDING DETAIL**

**FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:**

<b>Federal Program(s) Funds</b>		
<b>CFDA #</b>	<b>CFDA Title</b>	<b>Amount</b>
15.622	Boating Infrastructure Grant Program	\$500,000.00
	Total Federal Awards	\$500,000.00

**COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

<b>Federal Program(s) Compliance Requirements</b>	
<b>CFDA #</b>	<b>Compliance Requirements</b>
15.622	50 CFR Part 86 Boating Infrastructure Grant Program Final Rule

**STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:**

**MATCHING RESOURCES FOR FEDERAL PROGRAMS:**

<b>Matching Funds Provided by CFDA</b>		
<b>CFDA #</b>	<b>CFDA Title</b>	<b>Amount of Matching Funds</b>
	N/A	
	Total Matching Funds Associated with Federal Programs	

**SUBJECT TO SECTION 215.97, FLORIDA STATUTES:**

<b>State Project(s)</b>		
<b>CSFA #</b>	<b>CSFA Title</b>	<b>Amount</b>
	N/A	
	Total Federal Awards	

**COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

<b>State Project(s) Compliance Requirements</b>	
<b>CSFA #</b>	<b>Compliance Requirements</b>
	N/A

NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

*- End of EXHIBIT 1 -*





## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

1875 Century Boulevard  
Atlanta, Georgia 30345

**MAY 06 2014**

IN REPLY REFER TO:  
FWS/R4/WSFR

Mr. Nick Wiley, Executive Director  
Florida Fish and Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida 32399-1600

Dear Mr. ~~Wiley~~: *NICK*

Amendment No. 1 to the Grant Award for FL-Y-F13AP00412, "City of Key West – Garrison Bight Marina Transient Dock," has been approved effective April 15, 2014. The purpose of the amendment is to increase the duration of the grant to June 30, 2015 to allow time for completion of the goals and objectives of the grant. In addition, the requested change in scope regarding the number of proposed slips and size of the proposed building is approved as the change would not affect the points awarded. The Grant Award is approved for the period from March 1, 2012 to June 30, 2015, in the amount of \$900,000, of which, the Federal Share is \$500,000.

**Special Conditions to this Grant Award:**

**Annual Interim Fiscal and Project Performance Reports are due on June 29, 2014. Final Project Performance and Fiscal Reports are due on September 28, 2015.**

**For Failure to Report:** In accordance with the U.S. Fish and Wildlife Service Manual chapter 516 FW 2 *Performance Reporting for Grant and Cooperative Agreement Awards*, failure to submit reports by the required due dates may result in the following progressive actions pending receipt of the required report(s), including but not limited to:

- a) Notifying in writing that a Financial Status and/or Project Performance Report was not received;
- b) Withholding obligations and payments on the award;
- c) Withholding of future awards for the program
- d) Denying the use of Federal funds and all forms of matching funds
- e) Whole or partial suspension
- f) Termination of the current grant award; and,
- g) Other legal action as stated in the guidance.

**The Grant Approval Level** remains at the previously approved grant level. Your agency should track costs at the grant level and report them in the Final Financial Report.

Please use the new FBMS number FL-Y-F13AP00412 in any correspondence related to this Grant.

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**Integrated Pest Management:** The Wildlife and Sport Fish Restoration Program encourages all grantees to comply with all of their State laws, regulations, and policies regarding pest management, pesticide application, invasive species management, disease control, and best management practices when conducting pest management actions using funding associated with a Wildlife and Sport Fish Restoration Program grant. This includes compliance with the Federal Insecticide, Fungicide and Rodenticide Act as your State implements it. For further information, contact your State agency that manages pest control issues and/or visit the U.S. Fish and Wildlife Service Environmental Quality site at: <http://www.fws.gov/contaminants/Issues/IPM.cfm>.

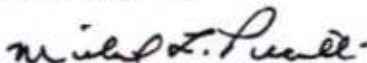
**Terms of Acceptance:**

Per [http://www.doi.gov/pam/programs/financial\\_assistance/TermsandConditions.cfm](http://www.doi.gov/pam/programs/financial_assistance/TermsandConditions.cfm), acceptance of a Federal Financial award from the Department of the Interior (DOI) carries with it the responsibility to be aware of and comply with the terms and conditions of the award. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application submitted to, and as approved by DOI and are subject to the terms and conditions incorporated either directly or by reference to the following: Program legislation/regulation, Assurances, Special Conditions and Code of Federal Regulations and other Regulatory Requirements, as applicable.

A copy of the Grant Award letter has been e-mailed to Mrs. Patricia Harrell, your Boating Infrastructure Grant Program Coordinator.

Please contact me at (404) 679-4154 or Mr. Scott White at (404) 679-7113, if you have any questions.

Sincerely yours,



Michael L. Piccirilli  
Chief-Wildlife and Sport Fish Restoration Program





# Federal Register

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Thursday,  
January 18, 2001

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## Part VII

## Department of the Interior

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Fish and Wildlife Service

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50 CFR Part 86  
Boating Infrastructure Grant Program;  
Final Rule



## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 86

RIN 1018-AF38

## Boating Infrastructure Grant Program

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This regulation provides for the uniform administration of the national Boating Infrastructure Grant Program and survey authorized by Section 7404 of the Sportfishing and Boating Safety Act of 1998. Through this program, the U.S. Fish and Wildlife Service will provide funds to States to install or upgrade tie-up facilities for transient recreational boats 26 feet or more in length.

**DATES:** This rule is effective on February 20, 2001.

**ADDRESSES:** The administrative record for this rule, including copies of comments received, is available for viewing Monday through Friday, 8 am to 4 pm, in the Division of Federal Aid, 4401 North Fairfax Drive, Room 140, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Steve Farrell, Project Officer, U.S. Fish and Wildlife Service, Division of Federal Aid, 4401 North Fairfax Drive, Suite 140, Arlington, Virginia 22203; telephone (703) 358-2156; fax (703) 358-1705; email <steve\_farrell@fws.gov>.

## SUPPLEMENTARY INFORMATION:

## Background

## Economic Status of Boating in the United States

Historically, coastal and inland waterways were the first highways along our shores and into the interior of the continent. Americans used boats almost exclusively for transportation of people and goods. Today we use more than 12 million recreational boats to cruise and fish. Recreational boating is now a significant economic activity in many areas of the country and in many respects exceeds that of waterborne commerce. Given the present demographic forces, we expect this rule to have a positive economic impact by adding facilities to accommodate larger cruising boats.

## Purpose of the Boating Infrastructure Grant Program

Recreational boats 26 feet or more in length, called "nontrailerable" boats, represent about 4 percent, or more than

600,000, of the recreational boats in the United States. Although we have approximately 12,000 marinas in the United States, Congress recognized that insufficient tie-up facilities exist for transient, nontrailerable boats for reasonable and convenient access from our navigable waters. These boaters are unable to enjoy many recreational, cultural, historic, scenic, and natural resources of the United States. We also have an insufficient quantity of marinas or commercial tie-up facilities along extended stretches of our coastlines and rivers that benefit transient, nontrailerable boats. In many parts of the country, the number of places to tie-up, moor, or anchor a cruising boat, especially during a storm, is limited. Basic features, such as tie-ups, fuel, utilities, and restrooms, are often nonexistent. As a result, Congress passed the Sport Fishing and Boating Safety Act of 1998 (16 U.S.C. 777g). Under the Act, the U.S. Fish and Wildlife Service conducts the Boating Infrastructure Grant (BIG) Program. The BIG Program will provide \$32 million to States and Territories over 4 years to construct, renovate, or maintain tie-up facilities for recreational boats 26 feet or more in length.

This program will:

- (a) Create dockage for transient recreational boats 26 feet or more in length for recreational opportunities and safe harbors;
- (b) Provide navigational aids for boaters to use these facilities;
- (c) Enhance access to recreational, historic, cultural, natural, and scenic resources;
- (d) Strengthen local ties to the boating community and its economic benefits;
- (e) Promote public/private partnerships and entrepreneurial opportunities;
- (f) Provide continuity of public access to the shore; and
- (g) Promote awareness of transient boating opportunities.

The Act also directs us to:

- (a) Develop a national framework or methodology to conduct a boat access needs assessment or survey to determine the adequacy of facilities for recreational boats of all sizes;
- (b) Encourage States to complete the boat access needs survey; and
- (c) Complete a comprehensive national assessment of boat access needs and facilities (the assessment will be a compilation of information from the States' surveys into a national report of boat access needs).

## Analysis of Public Comments and Changes Made to the Proposed Rule

On January 20, 2000, the U.S. Fish and Wildlife Service (Service) published a proposed rule in the *Federal Register* (65 FR 3331) and requested comments on the proposed rule and information collection for the national BIG Program. The Service received 13 written responses by the close of the comment period on March 20, 2000. The responses came from nongovernmental organizations, a private individual, and Federal and State employees and agencies.

We received a total of 170 comments from the 13 written responses covering the following areas: survey (74), criteria for selection (11), State plans (8), clarifications (3), suspected typographical errors (3), and comments of a general nature (71). We may not reflect these actual numbers in the list below due to combining similar comments or questions. We have addressed all of the comments in this section of the preamble and made any necessary changes to the proposed rule. As a result, some sections of the proposed rule were combined or eliminated. Comments pertaining to the proposed information collection are addressed under Substantive Comments, Issues 1 through 9.

The following is clarification or analysis and reporting of any substantial changes to the rule that the Service made in response to these comments. The Service also corrected other minor errors in the proposed rule, as described below.

## Minor Changes

In § 86.12(n), in response to a comment asking us to define "transient," we are adding the following definition, "Passing through or by a place, staying 10 days or less."

In § 86.13(d), we changed "seasonal" to "transient" to avoid confusing wording.

In § 86.13(f), in response to a suggestion, we added "docks" after the word "floating" to clarify.

In § 86.13, in response to suggestions, we added at paragraphs (o), (p), and (q), "dockside" to clarify where utilities are placed.

In § 86.13, in response to a suggestion, we added "(r) Debris deflection booms."

In § 86.13, in response to suggestions, we added "(s) Marine fueling stations."

In § 86.20(a)(1), in response to a suggestion, we added a second sentence as follows: "You must design new construction and renovations to last at least 20 years."

In § 86.20(e)(1), in response to a suggestion, we deleted from





subparagraph (vii) to end, as the activities listed in the proposed rule are not appropriate preconstruction activities.

In § 86.20, in response to a suggestion, we added a new item, "(f) Produce information and education materials such as charts, cruising guides, and brochures."

In § 86.21(d), in response to a suggestion, we changed the sentence to read: "Construct or renovate principal structures not expected to last at least 20 years."

In § 86.44(b), in response to a suggestion, we replaced " \* \* \* we will" with " \* \* \* The State must \* \* \*"

In § 86.54(f)(1)(i) in the proposed rule (now § 86.53(d)(1)(i)), in response to several comments, we changed the section to clarify that no State Tier One proposal may exceed \$100,000 in any given fiscal year.

#### Substantive Changes

*Issue 1.* Questions and comments on the survey included issues of respondent burden (how long to complete a section), unclear questions, issues of confidentiality, site-specific questions, and the value of answers to specific questions in determining national need.

*Response:* In response to all of the comments received on the technical aspects of the proposed survey, we completed significant revisions to the survey instrument. We considered all comments and redesigned the survey, improved guidance and questions, and decreased the time burden for completion. The revised survey began its approval process when it was published in the *Federal Register* (65 FR 63606) on October 24, 2000 for a 60-day public comment period. The survey will be ready for use during the FY 2001 grant cycle, and the Service will notify eligible applicants upon receiving OMB approval.

*Issue 2.* How can States pay for the survey?

*Response:* States can pay the costs for conducting the survey using Federal Aid in Sport Fish Restoration program funds, and credit expenditures toward the 15% minimum used for motor boat access (16 U.S.C. 777g (g)(4)).

*Issue 3.* Is the survey required?

*Response:* The Service does not require States to conduct surveys to receive funding under the national BIG program. However, the Service must produce a comprehensive national assessment of recreational boat access needs and facilities. The States, by conducting and forwarding their survey results to the Service, are ensuring that

their needs are known (16 U.S.C. 777g (g)(2)). States may use existing, recent survey results, approved by the appropriate Service Regional Office, to determine boating infrastructure needs (§ 86.113).

*Issue 4.* States completing a survey should receive ranking points.

*Response:* No "points" are assigned in the criteria for completing a survey; the only available points are outlined in § 86.60. States must use the survey results to develop a State plan for boating infrastructure. The plan (any plan certified by the Service Regional Office) is then eligible for 15 ranking points.

*Issue 5.* Can States add questions to the survey?

*Response:* States cannot add any questions to the survey. If OMB approves the final survey as written, we will reimburse States only for administering it as approved.

*Issue 6.* Typographical errors occur in the survey tables.

*Response:* We fixed typographical errors in both tables describing the type of participant in survey parts.

*Issue 7.* States should submit survey results electronically.

*Response:* The Service wants the results transmitted to the Service Regional Offices in a common electronic format, such as Microsoft Word, Word Perfect, Excel or Quattro Pro. We added a requirement regarding electronic transmission of results to § 86.111.

*Issue 8.* Clarify "boat service providers" as the term relates to public access.

*Response:* We changed § 86.102(b)(2)(i) and (ii) to include a phrase that specifies boat service providers "who allow public access."

*Issue 9.* What are the survey response rate requirements?

*Response:* We changed § 86.115 to read "plus or minus 10 percent." We also replaced the language that suggests a 70 percent response rate with language that says the State is responsible for selecting a statistically valid sample size.

*Issue 10.* In § 86.60, the points do not add up to 100, or no points are allowed for completing surveys.

*Response:* This section needed several minor editorial changes to make it clear and concise. Among these, we changed the point total to 105. The issue regarding awarding points for completing surveys is addressed in Issue 4.

*Issue 11.* According to § 86.54, why are proposals that are awarded less than 60 points when held to the criteria in § 86.60 automatically moved to Tier Two?

*Response:* We removed this "60 point" break when we revised the Tier One/Two break.

*Issue 12.* By awarding 15 points for a State plan, the Service is making State plans mandatory, penalizing all nonplan proposals.

*Response:* State plans are desirable under the Act (16 U.S.C. 777g (g)). They help set priorities and describe how a State will fulfill recreational boaters' needs. We can also use plans to help set national priorities in the comprehensive national assessment of recreational boat access needs and facilities described in the Act. The plan nonetheless is optional. The Act states, "A State may develop a plan for," and in the proposed rule, § 86.131 states "Plans are voluntary." However, the Service will award 15 criteria points to any acceptable plan, already existing and current, or a newly developed plan based on the OMB-approved survey or other recent approved survey results. The reason for the 15 criteria points is that projects coming from an accepted plan will establish priorities based on a formal needs assessment.

*Issue 13.* Add a statement to identify priorities in the State plan in § 86.60(b)(1).

*Response:* We added to § 86.60(b)(1), after the word "following" "priorities identified in" your State's program plan. We also agreed with the second thought presented in this comment and changed "construct and renovate" to "construct, renovate, and maintain."

*Issue 14.* Change the point values assigned to certain criteria.

*Response:* We are not making a change to the final rule as a result of this comment. We believe that we did a thorough job of stakeholder involvement when we assigned these point values.

*Issue 15.* A possible conflict exists in § 86.60(b)(4) about match funds.

*Response:* We have changed § 86.60(b)(4) to read "Include private, local, or other State funds in addition to the non-Federal match described in § 86.42."

*Issue 16.* Because of typographical errors in § 86.60(b)(4)(i), the percentage range was left out.

*Response:* In § 86.60(b)(4), we changed paragraph (i) to read "Twenty-six percent to thirty-five percent—5 points," paragraph (ii) to remove the word "above" at the end, and paragraph (iii) to insert the word "and" so it reads "Fifty percent and above—15 points."

*Issue 17.* Add the word "proposed" before "tie-up" to the second sentence in § 86.60(b)(5), and delete the word "access" from the same sentence.

*Response:* We do not believe this suggestion adds to the clarity of the





sentence. We are making no changes to the proposed rule as a result of this comment.

*Issue 18.* In § 86.60(b)(6), change the wording of the sentence to restrict the sites to those near population centers and raise the value of the points assigned.

*Response:* We believe this change would unnecessarily restrict State proposals. We believe the sentence is clear and the points are appropriate. The sentence remains unchanged.

*Issue 19.* In § 86.60(b)(7), substitute "enhanced opportunities" for "access."

*Response:* We are not changing this paragraph as a result of this comment because we believe the sentence is clear as written.

*Issue 20.* In § 86.60(b)(8), add "adjacent" before the word "community," and add "as the result of construction, renovation, or increased use," at the end of the first sentence.

*Response:* We believe this change would unnecessarily restrict the program criteria. The proposed sentence stands unchanged.

*Issue 21.* Allow Tier One dollars to finance State plans because not to do so creates an unfunded Federal mandate.

*Response:* The Act states that " \* \* \* a State may develop and submit to the Secretary a plan for \* \* \* ." not "must" (16 U.S.C. 777g-1 (c)). A mandate does not exist. However, States may do planning under other Sport Fish Restoration Act grant programs for purposes eligible under those programs and apply the resulting plan to the BIG Program.

*Issue 22.* Will the Service accept existing plans?

*Response:* The Service will accept any plan certified by the appropriate Service Regional Office that ensures that public boat access is and will be adequate to meet the needs of recreational boaters on your State's waters (§ 86.134).

*Issue 23.* What are the products of the National Assessment?

*Response:* The products of the Comprehensive National Assessment are listed in § 86.124.

*Issue 24.* Complying with the National Environmental Policy Act and the Endangered Species Act could cause up to 2 years of delay.

*Response:* All grantees must agree to and certify compliance with all applicable Federal laws. We use a certified "Assurances" statement. We are making no changes to the proposed rule as a result of this comment.

*Issue 25.* Can States use consultant fees, design, permitting, and construction administration costs as match for Tier One projects?

*Response:* Allowable matching and cost-sharing regulations are in 43 CFR

12.64; specific questions should be directed to the appropriate Service Regional Office.

*Issue 26.* Reduce match to where local governments or small marinas can compete for funds.

*Response:* In accordance with the Act, only States are eligible for funding under this grant program.

*Issue 27.* Are pre-award costs allowable?

*Response:* Only as described under § 86.20.

*Issue 28.* Who assumes the administrative burden after the program expires in 3 years?

*Response:* We discuss maintenance of approved projects in 50 CFR 80.17.

*Issue 29.* How much money can we charge the public to tie-up?

*Response:* The going rate in the locality determines the amount for the facility. We are making no change to the proposed rule as a result of this comment.

*Issue 30.* For projects in Tier Two that exceed available funding in Tier Two, what is the methodology for awarding funds other than what States request?

*Response:* There is none. We cannot exceed established spending levels. If a State requires funds from two or more different programs to obtain full funding, the State is responsible for securing the funds.

*Issue 31.* In § 86.20(a)(3), substitute "deep enough" for "6 feet of depth at the lowest tide \* \* \* ."

*Response:* We researched these depths before making this specification, and we are not making the recommended change.

*Issue 32.* In § 86.20(a)(5)(iii), delete the reference to "this program," so that the sentence reads: "You may use funds from the Clean Vessel Act Program."

*Response:* We encourage the construction of pumpout stations with either set of funds. We are making no changes to the proposed rule as a result of this comment.

*Issue 33.* In § 86.20(e)(1), add "contract documents."

*Response:* No contract should be prepared and awarded until after we sign a grant; therefore, contract documents are not allowed as a pre-agreement cost. We are making no changes to the proposed rule as a result of this comment.

*Issue 34.* In § 86.21(e) and (g), add note on one-time dredging to (e) and add dinghy docks to (g).

*Response:* We address one-time dredging in § 86.20, and dinghy docks are not for transient vessels more than 26 feet in length. We are making no changes to the proposed rule as a result of this comment.

*Issue 35.* In § 86.21, make the State plan eligible for funding under BIG.

*Response:* State plans are eligible activities under the Sport Fish Restoration Act (16 U.S.C. 777).

*Issue 36.* In accordance with § 86.30, must I allow the public to use grant-funded facilities?

*Response:* Yes, § 86.30 specifies that reasonable access must be allowed and explains what that means.

*Issue 37.* In regard to § 86.54, one responder commented that the criterion referenced in § 86.60 was developed for competitive Tier Two projects and was not meant for Tier One projects. Tier One project funding was developed for States meeting the requirements in §§ 86.13 and 86.20.

*Response:* We agree and will change § 86.54(f)(1)(ii) (now § 86.53(d)(1)(ii) in the final rule) to read " \* \* \* using the eligibility requirements in §§ 86.14 and 86.20." (Section 86.13 from the proposed rule has become § 86.14 in the final rule.)

*Issue 38.* In regard to § 86.55(f), why are two sets of \$100,000 proposals required? Why not require one \$200,000 proposal?

*Response:* Tier One proposals in the first grant cycle will be funded by 2 different fiscal years. To provide additional clarity, we replaced the second sentence in § 86.55(f) (now § 86.54(f)) with wording similar to the following: "We will fund one proposal for each fiscal year provided that each proposal meets the eligibility requirements in §§ 86.13 (now 86.14) and 86.20."

*Issue 39.* Sections 86.20 and 86.21 conflict in useful life of some outputs.

*Response:* We do not agree. Principal structures expected to last 20 years or more are different from navigational aids which may have a shorter lifespan. Only principal structures must be designed to last at least 20 years, therefore a conflict does not exist.

*Issue 40.* In regard to § 86.56, after the Service awards funds for a project, if it is found not to meet compliance requirements, where will these funds go?

*Response:* If a State cannot bring the project into compliance according to § 86.56 (now § 86.55), the funds may revert as required by the Act (16 U.S.C. 777c).

*Issue 41.* Regarding § 86.60(b), a respondent recommended considering construction in remote areas in the scoring priority and adding a statement to the Regulatory Flexibility Act section to give criteria points for remote sites.

*Response:* Section 86.60(b)(6) and (7) considers remote areas as they relate to significant links to prominent





destinations, way-points, and national, regional, and local significant areas. Therefore, we do not see the need to alter the present guidance.

**Issue 42.** In § 86.60(b)(8), how will we assess "significant positive economic impact?"

**Response:** States should assess the economic impact of projects using a cost/benefit analysis as described in the example in § 86.60(b)(8). States should address this issue, along with all the other criteria, in the grant proposal.

**Issue 43.** In § 86.82(b), replace the word "slippage" with "deviation."

**Response:** "Slippage" is the term used in 43 CFR 12.80(b)(2)(ii), which provides reporting requirements for assistance programs. We are making no changes to the proposed rule as a result of this comment.

**Issue 44.** In § 86.80, remove the requirement for quarterly reports.

**Response:** We are removing the requirement for quarterly reporting for Tier One projects only, according to 43 CFR 12.80, Monitoring and Reporting Program Performance.

**Issue 45.** In § 86.91, make States give credit to the Sport Fish Restoration Program for BIG grants.

**Response:** Credit to the Sport Fish Restoration Program remains optional. We have nothing on which to base making this issue mandatory. We are changing "may" in the last sentence to " \* \* \* are encouraged to \* \* \* \*".

**Issue 46.** Could priority for services at tie-up facilities be given to transient boats over 26 feet in length? If so, how would States enforce the priority?

**Response:** No. While we intend the program to benefit transient, nontrailerable boats, States must give equal public access to all boaters. Consequently, enforcement is unnecessary.

**Issue 47.** The Service Director should convene a nongovernmental advisory committee to provide expertise on "recreational boating facilities needs."

**Response:** Under the Federal Advisory Committee Act ( Pub. L. 92-463, 5 U.S.C. App.1), requirements for creating an advisory committee would significantly delay the distribution of the first cycle grant funds. However, opportunities may exist for the nongovernmental community to participate in the grant selection process, and the Service will investigate such opportunities.

**Issue 48.** Are maintenance and operation costs in remote areas eligible under § 86.20(4)?

**Response:** We cover maintenance under § 86.20(a); we specifically exclude operation and janitorial costs under § 86.21.

**Issue 49.** Provide sufficient time to rank and award proposals.

**Response:** We changed the application period for the first grant cycle to allow applicants 90 days to submit grant proposals to the appropriate Service Regional Office. This change occurs in § 86.50.

#### **Regulatory Planning and Review (E.O. 12866)**

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action according to the following:

(a) This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Program funds total \$8 million per year for 4 years, for a total of \$32 million. Program funds for surveys total \$1,050,000. States must match these amounts with 25 percent or \$2 million per year. State match totals \$8 million over 4 years. The program will not negatively affect an economic sector, productivity, jobs, and other units of government. The program will have a positive effect on these factors.

(b) This rule will not create inconsistencies with other agencies' actions. We will require the necessary Federal, State, and local reviews and permits before allowing construction of all facilities approved under the program. These reviews will ensure that this rule will not create inconsistencies with other agencies' actions.

(c) This rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule establishes a new grant program using existing funds that are otherwise available to State natural resource agencies under the Sport Fish Restoration Act (16 U.S.C. 777-777m). Recipients will voluntarily accept all stipulations prior to the Service awarding funds for facility construction. The program only obligates the recipient to maintain the facility. User fees are not mandatory and the program allows only enough charges to maintain the facility established by the grant.

(d) This rule will not raise novel legal or policy issues. This program will award funds to States to install facilities for transient nontrailerable boats. We will review all actions for compliance with the National Environmental Policy Act. This grant program is similar to past Federal Aid grant programs for construction of facilities.

#### **Regulatory Flexibility Act**

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Eight million dollars will be available annually for a 4-year period. The effects of these regulations occur to agencies in the States, Puerto Rico, Guam, the Virgin Islands, American Samoa, the District of Columbia, and the Northern Mariana Islands. These are not small entities under the Regulatory Flexibility Act. Some small entities, mainly marina operators, may receive grant funds. The program will place facilities where none exist now, in remote areas where no competition exists, and in populated areas where marinas have not previously installed them. Employment, investment, productivity, and innovation should all increase because the program will construct facilities to attract transient boaters. The result will be a net transfer of expenditures in the area. U.S.-based enterprises' ability to compete with foreign-based enterprises should not be affected by this rule.

#### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Regulatory Planning and Review and Regulatory Flexibility Act sections above.

#### **Unfunded Mandates Reform Act**

This regulation does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This regulation does not have a significant or unique effect on State, local, tribal governments, or the private sector. The rule establishes a grant program that States may participate in voluntarily. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not necessary.

#### **Takings (E.O. 12630)**

In compliance with Executive Order 12630, this regulation does not have significant takings implications. The rule provides standardized procedures for administering a Federal discretionary grant program.

#### **Federalism Assessment (E.O. 13132)**

In compliance with Executive Order 13132, this regulation does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Through this regulation,





eligible States will receive grants for construction, renovation, maintenance of boating facilities, and public information and education programs. Therefore, the rule is consistent with Executive Order 13132.

#### Civil Justice Reform (E.O. 12988)

In compliance with Executive Order 12988, the Office of the Solicitor has determined that this regulation does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

#### Paperwork Reduction Act

The information collection requirements contained in this regulation are only those necessary to fulfill applicable grant application requirements of 43 CFR Part 12; see 43 CFR 12.4 for information concerning OMB approval of those requirements. We have submitted the collections of information contained in this rule to the Office of Management and Budget for approval as required under 44 U.S.C. 3501 *et seq.* The Service will not collect this information until OMB has granted us approval. Additionally, no person may be required to respond to a collection of information unless it displays a currently valid OMB number.

The information collection requirement related to the surveys has a current OMB Approval Number 1018-0106 under the provisions of 44 U.S.C. 3501 *et seq.* In response to the comments received on the technical aspects of the proposed survey, we revised the survey improving the guidance, questions, and a lower time burden for completion.

#### What Intergovernmental Review Procedures Must I as a State follow?

Executive Order 12372, "Intergovernmental Review of Federal Programs," and 43 CFR Part 9, "Intergovernmental Review of Department of the Interior Programs and Activities," applies to the national BIG Program. Under the Order, you may design your own processes to review and comment on proposed Federal assistance under covered programs.

#### What Is My Responsibility as a State if I Participate in the Executive Order Process Having Single Points of Contact?

You should alert your Single Points of Contact (SPOC) to the prospective applications and receive any necessary instructions to provide material the SPOC requires. You must submit all required materials, if any, to the SPOC and show the date of this submittal (or the date of contact if the SPOC does not

require submittal) on the narrative. If you are from a State that chooses to exempt the grants, you need take no action regarding E.O. 12372.

#### Author

The principal author of this rule is Steve Farrell, Project Officer, U.S. Fish and Wildlife Service, Division of Federal Aid, 4401 North Fairfax Drive, Suite 140, Arlington, Virginia 22203.

#### Regulation Promulgation

Accordingly, the Service hereby establishes part 86, subchapter F of Chapter I, Title 50 Code of Federal Regulations, as set forth below:

#### List of Subjects in 50 CFR Part 86

Administrative practice and procedure, Boats and boating, Grant programs—recreation, Natural resources, Recreation and recreation areas, Reporting and record keeping requirements.

For the reasons set out in the preamble, we amend Subchapter F of Chapter I, Title 50 of the Code of Federal Regulations, by adding a new part 86 to read as follows.

### PART 86—BOATING INFRASTRUCTURE GRANT (BIG) PROGRAM

#### Subpart A—General Information About the Grant Program

##### Sec.

- 86.10 What does this regulation do?
- 86.11 What does the national BIG Program do?
- 86.12 Definitions of Terms Used in Part 86
- 86.13 What is boating infrastructure?
- 86.14 Who may apply for these grants?
- 86.15 How does the grant process work?
- 86.16 What are the information collection requirements?

#### Subpart B—Funding State Grant Proposals

- 86.20 What activities are eligible for funding?
- 86.21 What activities are ineligible for funding?

#### Subpart C—Public Use of the Facility

- 86.30 Must I allow the public to use the grant-funded facilities?
- 86.31 How much money may I charge the public to use tie-up facilities?

#### Subpart D—Funding Availability

- 86.40 How much money is available for grants?
- 86.41 How long will the money be available?
- 86.42 What are the match requirements?
- 86.43 May someone else supply the match?
- 86.44 What are my allowable costs?
- 86.45 When will I receive the funds?

#### Subpart E—How States Apply for Grants

- 86.50 When must I apply?
- 86.51 To whom must I apply?

86.52 What information must I include in my grant proposals?

86.53 What are funding tiers?

86.54 How must I submit proposals?

86.55 What are my compliance requirements with Federal laws, regulations, and policies?

#### Subpart F—How the Service Selects Projects To Receive Grants

- 86.60 What are the criteria used to select projects for grants?
- 86.61 What process does the Service use to select projects for grants?
- 86.62 What must I do after my project has been selected?
- 86.63 May I appeal if my project is not selected?

#### Subpart G—How States Manage Grants

- 86.70 What are my requirements to acquire, install, operate, and maintain real and personal property?
- 86.71 How will I be reimbursed?
- 86.72 Do any other Federal requirements apply to this program?
- 86.73 What if I do not spend all the money?
- 86.74 What if I need more money?

#### Subpart H—Reporting Requirements for the States

- 86.80 What are my reporting requirements for this grant program?
- 86.81 When are the reports due?
- 86.82 What must be in the reports?

#### Subpart I—State Use of Signs and Sport Fish Restoration Symbols

- 86.90 What are my responsibilities for information signs?
- 86.91 What are my program crediting responsibilities?
- 86.92 Who can use the SFR logo?
- 86.93 Where should I use the SFR logo?
- 86.94 What crediting language should I use?

#### Subpart J—Service Completion of the National Framework

- 86.100 What is the National Framework?
- 86.101 What is the Service schedule to adopt the National Framework?
- 86.102 How did the Service design the National Framework?

#### Subpart K—How States Will Complete a Boat Access Needs Survey (Survey)

- 86.110 What does the survey do?
- 86.111 Must I do a survey?
- 86.112 What are the advantages of doing a survey?
- 86.113 What if I have recently completed a survey?
- 86.114 Do I need to conduct a survey if I already have a plan for installing tie-up facilities?
- 86.115 How should I administer the survey?
- 86.116 May I change the questions in the survey?
- 86.117 [Reserved]
- 86.118 What does this survey include?

#### Subpart L—Completing the Comprehensive National Assessment

- 86.120 What is the Comprehensive National Assessment?
- 86.121 What does the Comprehensive National Assessment do?





- 86.122 Who completes the Comprehensive National Assessment?  
 86.123 Comprehensive National Assessment schedule.  
 86.124 What are the Comprehensive National Assessment products?

#### Subpart M—How States Will Complete the State Program Plans

- 86.130 What does the State program plan do?  
 86.131 Must I do a plan?  
 86.132 What are the advantages to doing a plan?  
 86.133 What are the plan standards?  
 86.134 What if I am already carrying out a plan?  
 86.135 [Reserved]  
 86.136 What must be in the plan?  
 86.137 What variables should I consider?

Authority: 16 U.S.C. 777g, 777g-1.

#### Subpart A—General Information About the Grant Program

##### § 86.10 What does this regulation do?

In this part, the terms "I," "you," "my," and "your" refer to the State agency seeking participation in the national Boating Infrastructure Grant (BIG) Program. "We" and "us" refers to the Fish and Wildlife Service. This part establishes your requirements under the Sportfishing and Boating Safety Act of 1998 to:

- (a) Participate in the national BIG Program,
- (b) Complete your boat access survey, and
- (c) Develop State plans to install tie-up facilities for transient nontrailerable recreational vessels.

##### § 86.11 What does the national BIG Program do?

This program provides funds for States to construct, renovate, and maintain tie-up facilities with features for transient boaters in vessels 26 feet or more in length, and to produce and distribute information and educational materials about the program.

##### § 86.12 Definitions of terms used in part 86.

For the purposes of this part, the following terms are defined:

*Construct* means engaging in activities that produce new capital improvements and increase the value or usefulness of existing property. These activities include building new tie-up facilities or replacing or expanding existing tie-up facilities.

*Grant* means financial assistance the Federal Government awards to an eligible applicant.

*Grant agreement* means a contractual agreement used to obligate Federal Aid funds for carrying out work covered by an approved grant proposal.

*Maintain* means engaging in activities that allow the facility to continue to function, such as repairing docks. These activities exclude routine janitorial activities.

*Navigable waters* means waters connected to or part of the jurisdictional waters of the United States that transient nontrailerable recreational vessels currently use or can use.

*Nontrailerable recreational vessels* mean motorized boats 26 feet or more in length manufactured for and operated primarily for pleasure, including vessels leased, rented, or chartered to another person for his or her pleasure.

*Project* means a specific plan or design.

*Proposal* means a description of one or more projects for which a State requests grant funds.

*Recreational waters* means navigable waters that vessels use for recreational purposes.

*Renovate* means to rehabilitate or repair a tie-up facility to restore it to its original intended purpose, or to expand its purpose to allow transient nontrailerable recreational vessels.

*States* means individual States within the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

*Survey instrument* means a tool developed by the Service and approved by OMB to assess the need for boating facilities.

*Tie-up facilities* mean facilities that transient nontrailerable recreational vessels occupy temporarily, not to exceed 10 consecutive days; for example, temporary shelter from a storm; a way station en route to a destination; a mooring feature for fishing; or a dock to visit a recreational, historic, cultural, natural, or scenic site.

*Transient* means passing through or by a place, staying 10 days or less.

*Water-body* means the lake, section of river, or specific area of the coast, such as a harbor or cove, where tie-up facilities or boat access sites are located.

##### § 86.13 What is boating infrastructure?

Boating infrastructure refers to features that provide stopover places for transient nontrailerable recreational vessels to tie up. These features include, but are not limited to:

- (a) Mooring buoys (permanently anchored floats designed to tie up nontrailerable recreational vessels);
- (b) Day-docks (tie-up facilities that do not allow overnight use);
- (c) Navigational aids (e.g., channel markers, buoys, and directional information);

(d) Transient slips (slips that boaters with nontrailerable recreational vessels occupy for no more than 10 consecutive days);

(e) Safe harbors (facilities protected from waves, wind, tides, ice, currents, etc., that provide a temporary safe anchorage point or harbor of refuge during storms);

(f) Floating docks and fixed piers;

(g) Floating and fixed breakwaters;

(h) Dinghy docks (floating or fixed platforms that boaters with nontrailerable recreational vessels use for a temporary tie-up of their small boats to reach the shore);

(i) Restrooms;

(j) Retaining walls;

(k) Bulkheads;

(l) Dockside utilities;

(m) Pumpout stations;

(n) Recycling and trash receptacles;

(o) Dockside electric service;

(p) Dockside water supplies;

(q) Dockside pay telephones;

(r) Debris deflection booms; and

(s) Marine fueling stations.

##### § 86.14 Who may apply for these grants?

You, with authority from your State Government. You must identify one key contact only and submit proposals through this person.

##### § 86.15 How does the grant process work?

To ensure that grants address the highest national priorities identified in the Act, we make funds available on a competitive basis. You must submit your proposals by the appropriate date as specified in § 86.50. You must address certain questions and criteria (listed in § 86.52) to be eligible and competitive. We will conduct a panel review of all proposals, and the Service Director will make the final grant awards. You may begin work on your project only after you receive a fully executed grant agreement.

##### § 86.16 What are the information collection requirements?

This part contains both routine information collection and survey requirements, as follows:

(a) The routine information collection requirements for grants applications and associated record keeping contained in this part are only those necessary to fulfill applicable requirements of 43 CFR part 12. These requirements include record keeping and reporting requirements. See 43 CFR 12.4 for information concerning OMB approval of those requirements.

(b) The revised information collection requirements related to the surveys will be submitted to OMB for approval as changed. They will not be imposed until





we receive OMB approval under the provisions of 44 U.S.C. 3501 *et seq.* The surveys are voluntary and are for States

to determine the adequacy, number, location, and quality of facilities that provide public access for all sizes of

recreational boats. The public's burden estimate for the survey is as follows:

Type of information	Number of respondents*	Average time required per response (minutes)	Annual burden hours
Boat owners: Part A .....	11,200	12	2,240
Boat owners: Part B .....	28,000	12	5,600
Boat Service Providers: Part C .....	8,400	20	2,800
Boat Service Providers: Part D .....	4,000	20	1,333

\* These numbers are not additive since some boaters will fill out both Parts A and B, and most of the providers will fill out both Parts C and D.

(c) Send comments regarding this collection of information to the Service Information Collection Clearance Officer, MS-222 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, and the Office of Management and Budget, Department of Interior, Desk Officer, 1849 C Street, NW., Washington, DC 20503. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must send your comments to OMB by the above referenced date.

#### Subpart B—Funding State Grant Proposals

##### § 86.20 What activities are eligible for funding?

Your project is eligible for funding if you propose to:

(a) Construct, renovate, and maintain either publicly or privately owned boating infrastructure tie-up facilities. To be eligible you must:

(1) Build these tie-up facilities on navigable waters, available to the public. You must design new construction and renovations to last at least 20 years;

(2) Design these tie-up facilities for temporary use for transient nontrailerable recreational vessels;

(3) Build these tie-up facilities in water deep enough for nontrailerable recreational vessels to navigate (a minimum of 6 feet of depth at the lowest tide or other measure of lowest fluctuation);

(4) Provide security, safety, and service for these boats; and,

(5) Install a pumpout station, if you construct a facility for overnight stays:

(i) If there is already a pumpout within a reasonable distance (generally within 2 miles) of the facility, you may not need one;

(ii) For facilities intended as day stops, we encourage you to install a pumpout; and,

(iii) You may use funds from the BIG program, or the Clean Vessel Act pumpout grant program also administered by us, to pay for a pumpout station.

(b) Do one-time dredging only, to give transient vessels safe channel depths between the tie-up facility and maintained channels or open water.

(c) Install navigational aids, limited to giving transient vessels safe passage between the tie-up facility and maintained channels or open water.

(d) Apply funds to grant administration.

(e) Fund preliminary costs:

(1) Preliminary costs may include any of the following activities completed before signing a grant agreement:

(i) Conducting appraisals;

(ii) Administering environmental reviews and permitting;

(iii) Conducting technical feasibility studies, for example, studies about environmental, economic, and construction engineering concerns;

(iv) Carrying out site surveys and engaging in site planning;

(v) Preparing cost estimates; and

(vi) Preparing working drawings, construction plans, and specifications.

(2) We will fund preliminary costs only if we approve the project.

(3) If the project is approved, the appropriate Service Regional Director must still approve preliminary costs.

(f) Produce information and education materials such as charts, cruising guides, and brochures.

##### § 86.21 What activities are ineligible for funding?

Your project is ineligible for funding if you propose to:

(a) Complete a project that does not provide public benefits, for instance, a project that is not open to the public for use;

(b) Involve law enforcement activities;

(c) Significantly degrade or destroy valuable natural resources or alter the cultural or historic nature of the area;

(d) Construct or renovate principal structures not expected to last at least 20 years;

(e) Do maintenance dredging;

(f) Fund operations or routine, custodial, and janitorial maintenance of the facility;

(g) Construct, renovate, or maintain boating infrastructure tie-up facilities for nontrailerable vessels, for example the following:

(1) Tie-up slips available for occupancy for more than 10 consecutive days by a single party;

(2) Dryland storage;

(3) Haul-out features; and

(4) Boating features for trailerable or "car-top" boats (boats less than 26 feet in length), such as launch ramps and carry-down walkways.

(h) Develop a State program plan to construct, renovate, and maintain boating infrastructure tie-up facilities; and

(i) Conduct surveys to determine boating access needs.

(1) You may conduct the survey with funds allocated to motorboat access to recreational waters under subsection (b)(1) of section 8 of the Federal Aid in Sport Fish Restoration Act of 1950, as amended (16 U.S.C. 777).

(2) You may combine surveys under one contractor where feasible if you can realize a cost or other savings.

#### Subpart C—Public Use of the Facility

##### § 86.30 Must I allow the public to use the grant-funded facilities?

(a) You must allow reasonable access to all recreational vessels for the useful life of the tie-up facilities. Accessible to the public means located where the public can reasonably reach the facility and where all boats typical to that facility can easily use it, charging equitable fees, and being open for reasonable periods. You must allow public access to the shore and basic features such as fuel and restrooms in facilities that have them. You must specify precise details of the public access in the contract with the facility





manager. We do not require public access to the remainder of a park or marina where the facility is found. Nor do we require any restrictions in that park or marina.

(b) You must comply with Americans with Disabilities Act requirements when you construct or renovate all tie-up facilities under this grant.

**§ 86.31 How much money may I charge the public to use tie-up facilities?**

You may charge the public only a reasonable fee, based on the prevailing rate in the area. You must determine a fee that does not pose an unreasonable, competitive amount, based on other publicly and privately owned tie-up facilities in the area. You must approve any proposed changes in fee structure by a sub-grantee.

**Subpart D—Funding Availability**

**§ 86.40 How much money is available for grants?**

There is \$32 million available for grants under the BIG program (\$8 million per year for fiscal years 2000–2003).

**§ 86.41 How long will the money be available?**

Under the Act, funding for the BIG program is provided for FY 2000–2003.

Each year's funds remain available for obligation for a total of three fiscal years (e.g. FY 2000 funds will remain available through FY 2002) (16 U.S.C. 777c(b)(3)(B)).

**§ 86.42 What are the match requirements?**

The Act authorizes the Secretary of the Interior (through the Director of the U.S. Fish and Wildlife Service (Service)) to award grants to States to pay up to 75 percent of the cost to construct, renovate, or maintain tie-up facilities for transient nontrailerable recreational vessels. You or a partner must pay the remaining project cost—at least a 25 percent match is required. Title 43 CFR 12.64 applies to cost sharing or matching requirements for Federal grants.

**§ 86.43 May someone else supply the match?**

Third-party contribution, including property and in-kind services, is allowable, but must be necessary and reasonable to accomplish grant objectives. In-kind contributions must also represent the current market value of noncash contributions that the third party furnishes as part of the grant.

**§ 86.44 What are my allowable costs?**

(a) The State may spend grant funds to pay only costs that are necessary and

reasonable to accomplish the approved grant objectives. Grant costs must meet the applicable Federal cost principles in 43 CFR 12.62. You may purchase informational and program signs as allowable costs.

(b) If you include purposes other than those eligible under the Act, you must prorate the costs equitably according to Federal cost principles in 43 CFR 12.62 and 50 CFR 80.15.

**§ 86.45 When will I receive the funds?**

Once you sign the grant agreement, we will make the funds available.

**Subpart E—How States Apply for Grants**

**§ 86.50 When must I apply?**

(a) We will accept proposals between February 20, 2001, and May 18, 2001, for the first grant cycle; between July 1, 2001, and September 30, 2001, for the second grant cycle; and between July 1, 2002, and September 30, 2002, for the third grant cycle. This program starts fiscal year 2000 and ends fiscal year 2003. We will have \$16 million to award the first grant cycle, and \$8 million each cycle after that.

(b) The annual schedule follows:

Action	FY 2000–2001	FY 2002	FY 2003
We announce the beginning of the grant cycle.	February 20, 2001 .....	July 1, 2001 .....	July 1, 2002.
You submit your grant proposal by	May 18, 2001 .....	September 30, 2001 .....	September 30, 2002.
Regions submit the proposals to Washington by.	June 18, 2001 .....	October 31, 2001 .....	October 31, 2002.
We rank the proposals by .....	July 17, 2001 .....	November 30, 2001 .....	November 30, 2002.
The Director approves proposals by.	August 16, 2001 .....	December 31, 2001 .....	December 31, 2002.
Regions finalize their grant agreements by.	October 15, 2001 .....	February 28, 2002 .....	February 28, 2003.

**§ 86.51 To whom must I apply?**

You must submit your proposals to the appropriate regional office of the

U.S. Fish and Wildlife Service. See the chart below for the address you will need.

Region	State	Address	Telephone
1 .....	California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Commonwealth of the Northern Mariana Islands, and Guam.	Division of Federal Aid, U.S. Fish & Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, OR 97232–4181.	503–231–6128, Fax: 503–231–6996
2 .....	Arizona, New Mexico, Oklahoma, and Texas.	Division of Federal Aid, U.S. Fish & Wildlife Service, P.O. Box 1306, 625 Silver, SW, Suite 325, Albuquerque, NM 87102.	505–248–7450, Fax: 505–248–7471
3 .....	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Division of Federal Aid, U.S. Fish & Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111–4056.	612–713–5130, Fax: 612–713–5290
4 .....	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands.	Division of Federal Aid, U.S. Fish & Wildlife Service, 1875 Century Boulevard, Suite 324, Atlanta, Georgia 30345.	404–679–4159, Fax: 404–679–4160





Region	State	Address	Telephone
5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Division of Federal Aid, U.S. Fish & Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035-9589.	413-253-8200, Fax: 413-253-8487
6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Division of Federal Aid, U.S. Fish & Wildlife Service, Denver Federal Center, P.O. Box 25486, Lake Plaza North Building, 134 Union Boulevard, 4th Floor, Denver, Colorado 80225.	303-236-7392, Fax: 303-236-8192
7	Alaska	Division of Federal Aid, U.S. Fish & Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.	907-786-3435, Fax: 907-786-3575

**§ 86.52 What information must I include in my grant proposals?**

You must submit the following standard forms and narrative for all projects (Tier One and Tier Two) (see § 86.53):

(a) Standard Form 424 series as prescribed by the Office of Management and Budget. The SF 424 series consists of the Applications for Federal Assistance (SF 424), Budget Information—Non-Construction Programs (SF 424A), Assurances—Non-Construction Programs (SF 424B), Budget Information—Construction Programs (SF 424C), and Assurances—Construction Programs (SF 424D). Submit forms appropriate for either construction or nonconstruction projects. Forms are available from your appropriate Service Regional Office.

(b) Information requested under OMB Circular A-102 (Application Booklet for Federal Aid Grants—pending approval under the Paperwork Reduction Act).

**§ 86.53 What are funding tiers?**

(a) This grant program will consist of two tiers of funding.

(i) You may apply for one or both tiers.

(ii) The two tiers will allow all States some certainty of base level funding.

(b) Tier One funding will ensure broad geographical distribution to meet the needs of transient nontrailerable recreational vessels.

(c) Tier Two funding will allow States with large projects to compete with other States with large projects based on individual project merits.

(d) We describe the two tiers as follows:

(1) *Tier One Projects.*

(i) You may submit a proposal with an unlimited number of projects within this tier. However, your total request cannot exceed \$100,000 of Federal funds for any given fiscal year.

(ii) Tier One projects must meet the eligibility requirements in §§ 86.14 and 86.20.

(2) *Tier Two Projects.*

(i) While we expect available funds for Tier Two proposals to be between \$3 million and \$4 million per grant cycle, we have no dollar limit for Tier Two proposals. You may submit any number of projects, which we will score and rank separately according to the criteria in § 86.60.

(ii) Each project will compete nationally against every other project in Tier Two.

(iii) Tier Two projects must also meet the eligibility requirements in §§ 86.14 and 86.20.

**§ 86.54 How must I submit proposals?**

(a) You may apply for either Tier One funding or Tier Two funding or both.

(b) You may submit more than one project proposal within Tier One and Tier Two.

(c) You may submit one proposal that includes Tier One and Tier Two projects.

(d) If your proposal includes Tier One and Tier Two projects, you must describe Tier One projects separately from Tier Two projects.

(e) You must describe each project in Tier Two separately, so that the Service can rank and score each project in Tier Two separately.

(f) For the first grant cycle, which includes fiscal years 2000 and 2001, a State may submit one Tier One proposal not to exceed \$100,000 per fiscal year. States should submit proposals between February 20, 2001, and May 18, 2001. We will fund one Tier One proposal per State for each fiscal year provided that each proposal meets the eligibility requirements in §§ 86.14 and 86.20. Fiscal year 2000 funds are available only for Tier One proposals. Tier One proposals need not meet the criteria in § 86.60. We will fund Tier Two

proposals received between February 20, 2001, and May 18, 2001, that meet the criteria in §§ 86.14, 86.20, and 86.60 with fiscal year 2001 funds and the remainder of fiscal year 2000 funds.

(g) For the remaining grant cycles, you may submit only one proposal of Tier One projects per fiscal year.

(h) When we approve projects, the appropriate Service Regional Office will determine how many grant agreements are necessary.

**§ 86.55 What are my compliance requirements with Federal laws, regulations, and policies?**

(a) To receive Federal funds, you must agree to and certify compliance with all applicable Federal laws, regulations, and policies. You must submit an Assurance Statement, as described in 43 CFR part 12.51(c), that describes how you comply with Federal grant requirements; and

(b) You may have to provide additional documentation to comply with environmental and other laws, as defined in Fish and Wildlife Service Manual 523 FW 1 (available on the internet at <http://www.fws.gov/directives/523fw1.html>). The Service Regional Office Grant Administrator may request preliminary evidence at the grant proposal stage that the proposed project will meet these compliance requirements. Consult with the appropriate Service Regional Office for specific applicability.

**Subpart F—How the Service Selects Projects To Receive Grants**

**§ 86.60 What are the criteria used to select projects for grants?**

(a) We will rank all Tier Two proposals according to the criteria in paragraph (b) of this section and the attached chart, which sets forth points we will ascribe for various factors.

(b) We will consider proposals that:





- (1) Plan to construct, renovate, and maintain tie-up facilities for transient nontrailerable recreational vessels following priorities identified in your State's program plan (see Subpart M for State program plan information) that the Secretary of the Interior has approved under section 7404(c) of the Sportfishing and Boating Safety Act. 15 points.
- (2) Provide for public/private and public/public partnership efforts to develop, renovate, and maintain tie-up facilities. These partners must be other than the Service and lead State agency:
  - (i) One partner ..... 5 points.
  - (ii) Two partners ..... 10 points.
  - (iii) Three or more partners ..... 15 points.
- (3) Use innovative techniques to increase the availability of tie-up facilities for transient nontrailerable recreational vessels (includes education/information). 0-15 points.
- (4) Include private, local, or other State funds in addition to the non-Federal match, described in § 86.42:
  - (i) Twenty-six percent to thirty-five percent ..... 5 points.
  - (ii) Between thirty-six and forty-nine percent ..... 10 points.
  - (iii) Fifty percent and above ..... 15 points.
- (5) Are cost efficient. Proposals are cost efficient when the tie-up facility or access site's features add a high value compared with the funds from the proposal, for example, where you construct a small feature such as a transient mooring dock within an existing harbor that adds high value and opportunity to existing features (restrooms, utilities, etc.). A proposal that requires installing all of the above features would add less value for the cost. 0-10 points.
- (6) Provide a significant link to prominent destination way points such as those near metropolitan population centers, cultural or natural areas, or that provide safe harbors from storms. 10 points.
- (7) Provide access to recreational, historic, cultural, natural, or scenic opportunities of national, regional, or local significance. Projects that provide access to opportunities of national, regional, or local significance receive 5 points for each, for a maximum of 15 points
- (8) Provide significant positive economic impacts to a community. For example, a project that costs \$100,000 and attracts a number of boaters who altogether spend \$1 million a year in the community. 1-5 points.
- (9) Include multi-State efforts that result in coordinating location of tie-up facilities ..... 5 points.
- (10) Total possible points ..... 105 points.

Criteria	Points
(1) Construct Tie-up Facilities	15
(2) Provide Partnership Efforts	5-15
(3) Use Innovative Techniques	0-15
(4) Include Other Funding Sources	5-15
(5) Are Cost Efficient	0-10
(6) Provide Way Point Linkage	10
(7) Provide Access To Opportunities	5-15
(8) Provide Significant Economic Impacts	1-5
(9) Include Multi-State Efforts	5
(10) Total Possible Points	105

**§ 86.61 What process does the Service use to select projects for grants?**

The Service's Division of Federal Aid convenes a panel of professional staff to review, rank, and recommend funding to the Service Director. This panel will include representatives from the Service's Washington, DC, and Regional Offices. The Director may convene an advisory panel of nongovernmental organizations to advise and make recommendations to the Federal panel. The Service Director will select projects for grants by August 16, 2001, August 10, 2001, and August 10, 2002, for the three grant cycles.

**§ 86.62 What must I do after my project has been selected?**

After we approve your award, we will notify you to work with the appropriate Service Regional Office to fulfill the grant documentation requirements and finalize the grant agreement.

**§ 86.63 May I appeal if my project is not selected?**

If you have a difference of opinion over the eligibility of proposed activities or differences arising over the conduct of work, you may appeal to the Director. Final determination rests with the Secretary of the Interior (50 CFR 80.7).

**Subpart G—How States Manage Grants**

**§ 86.70 What are my requirements to acquire, install, operate, and maintain real and personal property?**

- (a) You will find applicable regulations for this subject in 43 CFR 12.71 and 12.72. If you have questions about applicability, contact the appropriate Service Regional Office.
- (b) You must ensure that the design and installation of tie-up facilities provide for substantial structures that will have a significant longevity, at least 20 years.
- (c) You must ensure that you operate, maintain, and use the tie-up facilities and features for the stated grant purpose. You must obtain prior written approval from the appropriate Service Regional Director before you can convert these tie-up facilities to other uses.

**§ 86.71 How will I be reimbursed?**

For details on how we will pay you, refer to 43 CFR 12.61.

**§ 86.72 Do any other Federal requirements apply to this program?**

For administrative requirements not covered under these specific guidelines, check 43 CFR 12, which generally applies to all Federal grant programs.

**§ 86.73 What if I do not spend all the money?**

Funds not obligated or expended after 3 fiscal years from the date of the award revert to the Secretary of Transportation for use in State recreational boating safety programs. (16 U.S.C. 777c(b)(3)(B), 16 U.S.C. 777c(b)(4))

**§ 86.74 What if I need more money?**

Funds for grants are available only on a competitive basis. Therefore, if you need more money, you must compete in the next grant cycle.

**Subpart H—Reporting Requirements for the States**

**§ 86.80 What are my reporting requirements for this grant program?**

- (a) For all projects, you must submit to the appropriate Service Regional Office an annual report and a final performance report and otherwise comply with 43 CFR 12.80.
- (b) For Tier Two projects, you must submit quarterly reports according to 43 CFR 12.80.

**§ 86.81 When are the reports due?**

- Reports are due as follows:
  - (a) Annual reports are due 90 days after the grant year ends;
  - (b) The final performance report is due 90 days after the expiration or termination of grant support;
  - (c) Tier Two quarterly reports are due January 31, April 30, July 31, and October 31 unless specified otherwise in the grant agreement; and
  - (d) The State must report certified percentage of completion data and other significant developments in accordance





with the grant agreement or 43 CFR 12.80.

**§ 86.82 What must be in the reports?**

The reports must include the following:

- (a) You must identify the actual accomplishments compared to the objectives established for the period;
- (b) You must identify the reasons for any slippage if established objectives were not met; and
- (c) You must identify any additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

**Subpart I—State Use of Signs and Sport Fish Restoration Symbols**

**§ 86.90 What are my responsibilities for information signs?**

You should install appropriate information signs at boating infrastructure tie-up facilities. You should ensure that this information is clearly visible, directing boaters to the facility. Information should show fees, restrictions, hours of operation, a contact name, and telephone number to report an inoperable facility.

**§ 86.91 What are my program crediting responsibilities?**

You should give public credit to the Federal Aid in Sport Fish Restoration (SFR) program as the source of funding for the BIG Program. You should recognize this program by using the SFR logo. You are encouraged to use the crediting logo identified in § 80.26 of this chapter to identify national BIG Program projects.

**§ 86.92 Who can use the SFR logo?**

The States may use the SFR logo and should encourage others to display it. Other people or organizations may use the logo for purposes related to the national BIG Program as authorized in § 80.26 of this chapter.

**§ 86.93 Where should I use the SFR logo?**

You should display the logo on tie-up facilities that you construct, acquire, develop, or maintain under these grants. You should also use the logo on printed material or other visual representations that relate to project accomplishments or education/information. Refer to § 85.47 of this chapter for logo colors.

**§ 86.94 What crediting language should I use?**

Suggested examples of language to use when crediting the national BIG Program follow:

- (a) Example 1: The Federal Aid in Sport Fish Restoration Program funded this facility thanks to your purchase of fishing equipment and motorboat fuels.

- (b) Example 2: The Federal Aid in Sport Fish Restoration Program is funding this construction thanks to your purchase of fishing equipment and motorboat fuels. And,

- (c) Example 3: The Federal Aid in Sport Fish Restoration Program funded this (pamphlet) thanks to your purchase of fishing equipment and motorboat fuels.

**Subpart J—Service Completion of the National Framework**

**§ 86.100 What is the National Framework?**

The National Framework is the survey, required by the Act, you must use to determine boating access needs in your State. Through a State survey, you must conduct a boating access needs assessment or data collection to determine the adequacy, number, location, and quality of tie-up facilities and boat access sites providing access to recreational waters for all sizes of recreational boats.

**§ 86.101 What is the Service schedule to adopt the National Framework?**

The Secretary of the Interior adopted the National Framework on September 28, 2000 via a notice in the *Federal Register* (Volume 65, Number 189, Page 58284).

**§ 86.102 How did the Service design the National Framework?**

The Framework divides the survey into two components: boater survey, and boat access provider survey.

- (a) The purpose of the boater survey component is to identify boat user preferences and concerns for existing and needed access available to the public.

- (1) The nontrailerable boat data set will fulfill informational needs for you to develop your State program plans as called for in the Act.

- (2) The boater survey will survey registered boat owners in your State for two types of boats:

- (i) Part A—for nontrailerable recreational vessels.

- (ii) Part B—for trailerable and "car-top" boats (less than 26 feet long).

- (b) The purpose of the boat access provider component is to identify boat access providers' ideas about current and needed facility and site locations and perceptions of boat user preferences and concerns regarding access. We developed these questions to guide interviews of boat access facility and site managers.

- (1) The nontrailerable boat data set will fulfill the informational needs for you to develop your State plans as called for in the Act.

- (2) The boat access provider survey will survey facility providers in your State for two types of boats:

- (i) Part C—a survey to all providers in your State who allow public access, including State agency and non-State entities (Federal and local government entities, corporate and private/commercial providers), and operate tie-up facilities for nontrailerable recreational vessels.

- (ii) Part D—a survey to all providers in your State who allow public access and operate boat access sites for boats less than 26 feet long.

**Subpart K—How States Will Complete Access Needs Surveys**

**§ 86.110 What does the State survey do?**

The State survey determines the status of boating access facilities for all recreational boats in your State and your future boater access needs.

**§ 86.111 Must I do a survey?**

The Act does not require surveys. They are voluntary. However, if you do a survey, you must complete it following the National Framework to receive funds. You must transmit the results to the Service Regional Offices in a common electronic format, such as Microsoft Word, Word Perfect, Excel or Quattro Pro.

**§ 86.112 What are the advantages of doing a survey?**

Surveys provide the information necessary to fully understand the needs of boaters in your State. Surveys allow you to develop a meaningful plan to provide better access to boaters. Use surveys to complete the plan.

**§ 86.113 What if I have recently completed a boat access survey?**

If the recent survey substantially answers the provisions in § 86.118, the appropriate Service Regional Office will determine if it is sufficient to meet the needs of the program. If the Regional Office determines that the survey is not sufficient, you must complete that portion(s) or an entire new survey to receive credit for completing a recent survey.

**§ 86.114 Do I need to conduct a survey if I already have a plan for installing tie-up facilities?**

You need not conduct the survey if the appropriate Secretary of the Interior certifies that you have developed and are carrying out a State program plan, as described in Subpart M of this chapter, that ensures that public boat access exists and is adequate to meet the needs of recreational boaters on your waters.





**§ 86.115 How should I administer the survey?**

Use a consultant or university specializing in administration of such surveys. Use sample sizes large enough to achieve statistical accuracy so the estimate is within plus or minus 10 percent of the true number.

(a) You may use a telephone, mail, or other type of survey for a sample population of boaters within the State. Costs for telephone and mail surveys are roughly similar. However, response rates for mail surveys are generally lower.

(b) For boat access providers, we prefer that you survey all State agency and non-State providers, but you may survey a sample population.

(c) You may develop your own methodology to collect data, which may include telephone, mail, fax, or other inventory means. We do not expect you to use automated, electronic, mechanical, or similar means of information collection.

(d) Data collected are unique to each respondent. Data collection should use standard survey method criteria to gather information from each respondent.

**§ 86.116 May I change the questions in the survey?**

You must not change the questions because we need information that is comparable nationwide. We have developed a survey instrument for completing the surveys. We are seeking approval from OMB on the survey questions and the OMB approval does not extend to additional questions.

**§ 86.117 Reserved for survey approval schedule.****§ 86.118 What does this survey instrument include?**

(a) We divided this survey into four parts. Part A being for transient nontrailerable boat owners. Part B is for trailerable or "car-top" boat owners. Part C is for State agency and non-State providers of facilities for nontrailerable recreational vessels in the State. Part D is for State and non-State providers of access sites for trailerable or "car-top" boats.

(b) Follow these instructions to complete Part A—BOAT OWNER SURVEY FOR TIE-UP FACILITIES FOR NONTRAILERABLE RECREATIONAL VESSELS:

(1) If the boater owns a nontrailerable recreational vessel, ask the boater to fill out Part A;

(2) If the boater owns more than one boat 26 feet or more in length, ask the boater to provide information for the boat he or she uses most often;

(3) If the boater owns at least one boat more than and at least one boat less than 26 feet in length, ask the boater to fill out both Parts A and B; and,

(4) You should use a sample size large enough to achieve statistical accuracy so the estimate is within 10 percent of the true number.

(c) Follow these instructions to complete Part B—BOAT OWNER SURVEY FOR TRAILERABLE OR "CAR-TOP" BOAT ACCESS SITES:

(1) If the boater owns a boat less than 26 feet long, ask the boater to fill out Part B;

(2) If the boater owns more than one boat less than 26 feet long, ask the boater to provide information for the boat he or she uses most;

(3) If the boater owns at least one boat more than and at least one boat less than 26 feet in length, ask the boater to complete both Parts A and B; and,

(4) You should use a sample size large enough to achieve statistical accuracy so the estimate is within 10 percent of the true number.

(d) Parts C and D are surveys for providers of tie-up facilities and boat access sites. Part C is for State agency and non-State providers of facilities for nontrailerable recreational vessels in the State. Part D is for State and non-State providers of boat access sites for boats less than 26 feet in length.

(e) Follow these instructions to complete Part C—STATE AGENCY AND NON-STATE PROVIDER SURVEY FOR TIE-UP FACILITIES:

(1) Ask State agency and non-State providers of tie-up facilities for nontrailerable recreational vessels to fill out Part C.

(2) If more than one State agency manages these facilities, send this survey to all of those agencies.

(3) If the State agency or non-State provider awards grants to others who provide facilities, ask these grantees to respond for these facilities instead of the State agency or non-State provider.

(4) If a State agency or non-State provider operates facilities and sites for both nontrailerable and trailerable boats, ask the provider to fill out both Parts C and D.

(5) Ask State agency and non-State providers to identify all tie-up facilities.

(6) For all questions, if you need additional space, make copies of the appropriate page.

(f) Follow these instructions to complete Part D—STATE AGENCY AND NON-STATE PROVIDER SURVEY FOR TRAILERABLE BOAT ACCESS SITES:

(1) Ask State agency and non-State providers of access sites for boats less than 26 feet long to fill out Part D.

(2) Non-State providers include the Federal Government, local government, corporations, private owners, and others.

(3) If more than one State agency manages these sites, send this survey to all of them.

(4) If the State agency or non-State provider awards grants to others who provide sites, ask these grantees to respond for these sites instead of the State agency or non-State provider.

(5) If a State agency or non-State provider operates facilities and sites for both nontrailerable and trailerable boats, ask the provider to fill out both Parts C and D.

(6) We prefer that the State agency or non-State provider identify all boat access sites and water-bodies, but if he or she has many sites and water-bodies, the provider may group the information together rather than identify each site individually.

(7) For all questions, if you need additional space, make copies of the appropriate page.

**Subpart L—Completing the Comprehensive National Assessment****§ 86.120 What is the Comprehensive National Assessment?**

The Comprehensive National Assessment is a national report integrating the results of State boat access needs and facility surveys.

**§ 86.121 What does the Comprehensive National Assessment do?**

The Comprehensive National Assessment determines nationwide the adequacy, number, location, and quality of public tie-up facilities and boat access sites for all sizes of recreational boats.

**§ 86.122 Who completes the Comprehensive National Assessment?**

The Service completes the Assessment. We will develop standards in consultation with the States.

**§ 86.123 Comprehensive National Assessment schedule.**

Using the results from the State surveys, the Service will compile the results and produce the Comprehensive National Assessment by September 30, 2003.

**§ 86.124 What are the Comprehensive National Assessment products?**

The Comprehensive National Assessment products are:

(a) A single report, including the following information:

(1) A national summary of all the information gathered in the State surveys.





(2) A table of States showing the results of the information gathered.

(3) One-page individual State summaries of the information.

(4) Appendices that include the survey questions, and names, addresses, and telephone numbers of State contacts.

(5) An introduction, background, methodology, results, and findings.

(6) Information on the following:

(i) Boater trends, such as what types of boats they own, where they boat, and how often they boat.

(ii) Boater needs, such as where facilities and sites are now found, where boaters need new facilities and boat access sites, and what changes of features boaters need at these facilities and sites. And

(iii) Condition of facilities.

(b) Summary report abstracting important information from the final national report. And

(c) A key findings fact sheet suitable for widespread distribution.

#### **Subpart M—How States Will Complete the State Program Plans**

##### **§ 86.130 What does the State program plan do?**

The State program plan identifies the construction, renovation, and maintenance of tie-up facilities needed to meet nontrailerable recreational vessel user needs in the State.

##### **§ 86.131 Must I do a plan?**

The Act does not require plans. Plans are voluntary. However, if you do a plan, you must complete it following these regulations.

##### **§ 86.132 What are the advantages to doing a plan?**

Plans provide the information necessary to fully understand the needs of boaters operating nontrailerable recreational vessels in your State. The plan will make you more competitive when you submit grants under this program. We will give you 15 points for having an approved plan.

##### **§ 86.133 What are the plan standards?**

You must base State program plans on a recent, completed survey following the National Framework.

##### **§ 86.134 What if I am already carrying out a plan?**

You need not develop a program plan if we certify that you have developed and are carrying out a plan that ensures public boat access is and will be adequate to meet the needs of recreational boaters on your waters.

##### **§ 86.135 Reserved for plan approval schedule.**

##### **§ 86.136 What must be in the plan?**

The plan must:

(a) Identify current boat use and patterns of use.

(b) Identify current tie-up facilities and features open to the public and their condition.

(c) Identify boat access user needs and preferences and their desired locations. Include repair, replacement, and expansion needs and new tie-up facilities and features needed.

(d) Identify factors that inhibit boating in specific areas, such as lack of facilities, or conditions attached that inhibit full use of facilities. Identify strategies to overcome these problems.

(e) Include information about the longevity of current tie-up facilities.

##### **§ 86.137 What variables should I consider?**

You should consider the following variables:

- (a) Location of population centers,
- (b) Boat-based recreation demand,
- (c) Cost of development,
- (d) Local support and commitment to maintenance,
- (e) Water-body size,
- (f) Nature of the fishery and other resources,
- (g) Geographic distribution of existing tie-up facilities,
- (h) How to balance the need for new tie-up facilities with the cost to maintain and improve existing facilities.

Dated: December 8, 2000.

**Kenneth L. Smith,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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BILLING CODE 4310-55-P





**SUBRECIPIENT vs. VENDOR DETERMINATION  
FOR CONTRACTUAL SERVICES FUNDED (wholly or in part) BY FEDERAL AWARDS TO FWC**

Contractor/Grantee City of Key West

FWC Project Title City of Key West, BIGP Tier II, Garrison Bight Marina Transient Facilities

Federal Agency/Program Boating Infrastructure Grant Program (BIGP)

CFDA No.: 15.622 Federal Award FWC Grant No. L9865 (By Accounting)

*Based on Federal guidelines in OMB Circular A-133, as revised, Subpart B, .210*

(a) **General** Federal funds expended as a subrecipient would be subject to audit under the requirements of OMB Circular A-133, as revised. Payment received by a vendor for goods and services provided would not be considered Federal awards and would not be subject to audit. The guidance in sections (b) and (c) below should be considered in determining whether or not payments constitute a Federal award to a subrecipient or constitute payment to a vendor for goods and services.

(b) **Characteristics of a subrecipient are when the organization receiving the contract (check all that apply):**

- (1) determines who is eligible to receive specific Federal financial assistance;
- (2) has its performance measured against whether the objectives of the Federal program funding the services are met;
- (3) has responsibility for programmatic decision-making;
- (4) has responsibility for adherence to applicable Federal program compliance requirements;
- (5) uses the Federal funds to carry out a program of the organization instead of providing goods or services for a program of the pass-through entity.

(c) **Characteristics of a vendor are when the organization receiving the contract (check all that apply):**

- (1) provides the goods and services within normal business operations;
- (2) provides similar goods and services to many different purchasers;
- (3) operates in a competitive environment;
- (4) provides goods or services that are ancillary to the operation of the Federal program;
- (5) is not subject to compliance requirements of the Federal program funding the services.

(d) **Use of judgment in making the determination.** There may be unusual circumstances or exceptions to the characteristics listed above. In making the determination of whether a sub-recipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present, and judgment should be used in determining whether the entity is a subrecipient or a vendor.

(e) **For-profit subrecipient.** Since A-133, B. 210 does not apply to for-profit sub-recipients; FWC is responsible for establishing any necessary requirements to ensure compliance by for-profit sub-recipients. The purchase order with the for-profit subrecipient should describe applicable compliance requirements and the subrecipient's responsibilities. Methods to ensure compliance for Federal pass-through awards to for-profit sub-recipients may include pre-award audits, monitoring during the period of performance, and post-award audits.

(f) **Compliance responsibility for vendors.** In most cases, FWC's compliance responsibility for vendors is to ensure that the procurement, receipt, and payment for services comply with the laws, regulations, and provisions of the agreement. Program compliance requirements do not normally pass through to vendors.

**Recipient**     **Vendor**    **Determining characteristics:** Grant program from the US Fish and Wildlife Service to fund facilities for transient vessels, 26' or larger, with transient defined as a 10-day stay or less.

\_\_\_\_\_  
Contract Manager (Originator)

\_\_\_\_\_  
Date



**BOATING INFRASTRUCTURE GRANT PROGRAM  
PROJECT PROGRESS REPORT**

Mail to Grant Manager at 620 South Meridian Street, MS 1M, Tallahassee, FL 32399-1600  
or email to BIGP@MyFWC.com .

FWC Contract # \_\_\_\_\_ Reporting Period (Quarter/Year): \_\_\_\_\_

(Due 15 days after the end of quarter)

Grantee: \_\_\_\_\_

Project Title: \_\_\_\_\_

Checklist:  Progress photographs  Spreadsheet

Final photographs  Draft acknowledgement

1. Describe progress of project, including percent completed for each task in the Scope of Work:

2. Is project currently on schedule for completion by Phase I due date? YES  NO

Anticipated Phase I completion date: \_\_\_\_\_

(If project is not on schedule, please explain any problems encountered and/or possible delays)

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Phone





**FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION**  
**BOATING INFRASTRUCTURE GRANT PROGRAM**

**CERTIFICATION OF COMPLETION STATEMENT**

I, \_\_\_\_\_  
(Print Name and Title)

representing \_\_\_\_\_  
(GRANTEE)

do hereby certify that the Boating Infrastructure Grant Program project funded by FWC Contract No. \_\_\_\_\_ has been completed in compliance with all terms and conditions of said Agreement; that all amounts payable for materials, labor and other charges against the project have been paid; and that no liens have been attached against the project.

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

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

WARNING: "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083." § 837.06, Florida Statutes.

**CERTIFICATE BY COMMISSION**

I certify: That, to the best of my knowledge and belief, the work on the above-named project has been satisfactorily completed under the terms of the Agreement.

Division: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**ATTACHMENT H**

Florida Fish and Wildlife Conservation Commission  
 Boating Infrastructure Grant Program  
 620 South Meridian Street  
 Tallahassee, Florida 32399-1600

**INVOICE**

Date: \_\_\_\_\_

FWC Contract #: \_\_\_\_\_

Remit payment to:

- Grantee:
- Address:
- City, State:
- Zip:

FEID #:

**GRANT AWARD**

Cost Item	TOTAL COST	Allowable Costs	Applicant Share	Other	BIGP Grant
Administration					
Land structures, right-of-ways, appraisals, etc.					0
Relocation expenses & payments					0
Architectural & engineering fees					0
Other architectural & engineering	0	0	0	0	0
Project inspection fees					0
Site work					0
Demolition, Removal, Relocation, and Renovation	0	0	0	0	0
Construction					
Miscellaneous: Public meetings and participation per permit req.					0
<b>Sub-total</b>					
Contingencies (allowed at the time of this grant)					0
<b>TOTAL</b>					
PERCENTAGE		35%	19.79%	75.71%	4.5%



**PROJECT COSTS**

Cost Item	TOTAL COST	Applicant Share	Other	BIGP Grant
Administration			0	0
Land structures, right-of-ways, appraisals, etc.			0	0
Relocation expenses & payments	0	0	0	0
Architectural & engineering fees				0
Other architectural & engineering				0
Project inspection fees				0
te work		0		0
Demolition, Removal, Relocation, and Renovation	0	0	0	0
Construction				
Miscellaneous: Public meetings and participation per permit req.				
<b>Sub-total</b>				
Contingencies (allowed at the time of this grant)	0	0	0	0
<b>TOTAL</b>				

PERCENTAGE

TOTAL COSTS: \$ \_\_\_\_\_  
 Grantee (+ Other) Matching Funds \$ \_\_\_\_\_  
 AMOUNT FOR REIMBURSEMENT \$ \_\_\_\_\_

I hereby certify that the above costs are true and valid costs incurred as of this date in accordance with the project Agreement, and that the matching funds, in-kind or cash, were utilized toward the project in this Agreement.

Signed: \_\_\_\_\_  
 Project Manager

Date: \_\_\_\_\_



## ATTACHMENT I

## COST REIMBURSEMENT CONTRACT PAYMENT REQUIREMENTS

Pursuant to the February, 2011 *Reference Guide for State Expenditures* published by the Department of Financial Services, invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). In addition, supporting documentation must be provided for each amount for which reimbursement is being claimed indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved contract budget should be reimbursed.

Listed below are examples of types of supporting documentation:

- (1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- (2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.  
  
Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.
- (3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.
- (4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.
- (5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.
- (6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports. Additionally, the invoice or submitted documentation must evidence the completion of all tasks required to be performed for the deliverable and must show that the provider met the minimum performance standards established in the agreement.