



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Janet T. Mills
GOVERNOR

Bruce A. Van Note
COMMISSIONER

February 11, 2021
Subject: International Bridge
Rehabilitation
State WIN: 021736.00.00
Location: **Madawaska &
Edmundston, Canada**
Amendment No. 5

Dear Sir/Ms.:

In Amendment No. 1, the following question had been received but had an incorrect response:

Amendment No. 1 Response: The Contract Bid Book indicates hourly wage rates, and overtime requirements for State of Maine. Please confirm that Provincial conditions apply for forces working in New Brunswick.

Response: ~~Work done at any location on the project needs to adhere to U.S. Department of Labor regulations as the funding involves U.S. Federal Highway Administration funds. Work done in New Brunswick must adhere to Regulation 2007-34 of *The Employment Standards Act for the Province of New Brunswick* as well.~~

Corrected Response: Maine and U.S. Federal wage rates apply to workers working in the United States. New Brunswick wage rates apply to workers working in Canada in accordance with Regulation 2007-34 of *The Employment Standards Act for the Province of New Brunswick*.

The following questions have been received:

Question: Will a Canadian Company purchasing materials or services for this project from a US company be subject sales or other state or federal taxes? If so are these taxes refundable?

Response: MaineDOT and NBDTI are not able to provide answers to labor, immigration, insurance, or taxation questions regarding international work. MaineDOT and NBDTI strongly suggest contractors consult an attorney when preparing to bid.

Question: Through the design and information process, we understood the payroll rates, benefits and taxes would be based on which country the work was being conducted similar to Clair- Fort Kent International Bridge. The broad response to the Addendum 1 question indicates they are different, as it states that Maine Minimum Wage and Benefits would apply to work done by Canadian Employees working in Canada. Do we understand correctly? Please explain the differences.

Response: The response in Amendment 1 has been revised in this amendment. Maine and U.S. Federal wage rates apply to work in the United States. New Brunswick wage rates apply to work in Canada.

Question: The Maine Minimum Wage Rates (Bid Book Page 74) are significantly higher than NB minimum rates. Given this fact, do we understand that Maine Minimum Rates would apply to all work on this project? Regardless of employee nationality or international borders?

Response: Maine and U.S. Federal wage rates apply to workers working in the United States. New Brunswick wage rates apply to workers working in Canada. New Brunswick Provincial rates can be accessed on-line at <http://laws.gnb.ca/en/showfulldoc/cr/2007-34/20131213>. MaineDOT and NBDTI strongly suggest Contractors consult an attorney versed in labor and immigration laws when preparing to bid.

Question: Do these rates apply to the employees of the general contractor or all workers including subcontractor employees? Material Suppliers such as concrete truck drivers?

Response: Contract minimum wage rates shall apply to all employees of the general contractor, subcontractors, lower-tiered subcontractors and suppliers who are performing work on the jobsite. In general, employees of suppliers of materials, such as drivers of ready-mixed concrete trucks, are not subject to the minimum wage rates under this Contract, however, MaineDOT and NBDTI strongly suggest contractors consult an attorney versed in labor and immigration laws when preparing to bid.

Question: Are Canadian workers expected to be paid on a Maine State payroll system?

Response: Payrolls for work conducted in the U.S. shall be submitted through the Elation Systems automated labor compliance and prevailing wage reporting system.

Question: Can you itemize what is normally included in the Maine Minimum Benefits. (Provide list)

Response: MaineDOT and NBDTI are not able to provide answers to labor, immigration, insurance, or taxation questions regarding international work. MaineDOT and NBDTI strongly suggest Contractors consult an attorney when preparing to bid.

Question: Are state and US federal taxes expected to be paid by the Contractor for Canadian employees working in Canada on this project?

Response: It is our understanding that only Canadian taxes must be paid for work done in Canada. If a Canadian employee earns wages in the US, the US taxes are payable. However, foreign workers in either jurisdiction require special permits and approvals; it is advisable to consult Legal Counsel on this item.

Question: NB / Canada has different items associated with payroll burdens. How will these be addressed?

Response: MaineDOT and NBDTI are not able to provide answers to labor, immigration, insurance, or taxation questions regarding international work. MaineDOT and NBDTI strongly suggest Contractors consult an attorney when preparing to bid.

Question: How does a Canadian Company provide a certified payroll to the state of Maine given the differences in systems and currency exchange.

Response: Payrolls for work conducted in the U.S. shall be submitted through the Elation Systems automated labor compliance and prevailing wage reporting system. Payrolls for work conducted in Canada are subject to audit by the New Brunswick Department of Transportation and Infrastructure. It is the responsibility of the Contractor to account for currency exchange rates.

Question: If employees paid on an NB / Canadian Payroll, how is the conversion from \$US to \$Can? What entity or Bank or web site determines currency the exchange rate?

Response: MaineDOT and NBDTI are not able to provide advice on how a Contractor pays their employees. All transactions with the Maine Department of Transportation, who is administering the project, are to be in US Dollars.

Question: Currency exchange rates change daily . This would be extremely complex. What currency exchange rate timing would be acceptable? Set rate for project? Monthly? Quarterly? Yearly?

Response: Maine DOT is administering the project, and invoicing and payment will be as per the State of Maine, Department of Transportation Standard Specifications. All transactions are in US dollars. For additional information on exchange rates, the Bank of Canada exchange rates would provide the exchange rates from other currencies to Canadian Dollars and the Federal Reserve Bank in the U.S. provides U.S. rates of exchange from other currencies to U.S. dollars.

Question: The response also states all work on the project need to adhere to US Department of Labor regulations. Does this mean Maine Workers Compensation needs to be paid for all labor on the project even the work by Canadian employees working on the Canadian side of the border? On the Clair- Fort Kent project the minimum wage and workers compensation and safety regulations were determined based on the country the work was being conducted. They were not based on the entire project. Please comment and confirm.

Response: MaineDOT and NBDTI are not able to provide answers to labor, immigration, insurance, or taxation questions regarding international work. MaineDOT and NBDTI strongly suggest Contractors consult an attorney when preparing to bid.

Question: We would strongly suggest that the payroll, minimum wage rates and benefits, workers compensation, Health and safety regulations be applied based on the country the work is being conducted. This is the method applied and accepted at Clair - Fort Kent bridge project and it worked smoothly and avoided the complications of related to difference rules of each jurisdiction.

Response: Understood.

Question: The Clair-Fort Kent Project Specifications were very clear on this issue. "The Contractor will be aware of, and comply with, the Occupational Health and Safety requirements of the jurisdiction in which they are working." We suggest that Health and Safety , Fair / minimum Wage and employment standards, payrolls and taxes all be determined by the jurisdiction the work is taking place.

Response: MaineDOT and NBDTI are not able to provide answers to labor, immigration, insurance, or taxation questions regarding international work. MaineDOT and NBDTI strongly suggest Contractors consult an attorney when preparing to bid.

Question: For work conducted in the Canada by a Canadian Contractor, would this work be subject to any Maine State or Federal taxes or payroll taxes? If so are any of these taxes refundable?

Response: It is our understanding that only Canadian taxes must be paid for work done in Canada. If a Canadian employee earns wages in the US, the US taxes are payable. However, foreign workers in either jurisdiction require special permits and approvals; it would be advisable to consult legal Counsel on this item. MaineDOT and NBDTI are not able to provide answers to labor, immigration, insurance, or taxation questions regarding international work. MaineDOT and NBDTI strongly suggest contractors consult an attorney when preparing to bid.

Question: In the Maine DOT letter responding to bidders on the Madawaska bridge project dated January 15, a number of responses were provided to various questions. On page two of the letter, in response to unnumbered question #6, the Department states: "Work done at any location on the project needs to adhere to U.S. Department of Labor regulations as the funding involves U.S. Federal Highway Administration Funds." The response goes on the state that work on the New Brunswick side of the project must also adhere to "The Employment Standards Act for the Province of New Brunswick." This response by the MDOT has raised questions by Canadian subcontractors who may be quoting various portions of the work on the New Brunswick side of the project, as well as questions by Cianbro as to how these regulations apply so we all have clear understanding. In order to understand the response, Cianbro reached out to experienced labor attorneys to get their counsel on the MDOT response. We have learned that neither the Davis-Bacon Act or the Fair Labor Standards Act are applicable as neither the DBA or FLSA applies to work in foreign countries. We are also told that nothing in the FHWA guidance manual authorizes a state agency to impose DBA prevailing wage requirements outside of the U.S. A possible exception to this may be if there was issued a special "Project Agreement" for Davis-Bacon purposes. I am not aware that such a special agreement is included in the bidding documents. Please confirm that the response previously provided is correct and how these Acts will be applied to Canadian workers working on Canadian soil.

Response: The response in Amendment 1 has been revised in this amendment. Maine and U.S. Federal wage rates apply to workers working in the United States. New Brunswick wage rates apply to workers working in Canada in accordance with Regulation 2007-34 of "The Employment Standards Act for the Province of New Brunswick". The Contractor is advised to consult legal counsel for specific situations.

Question: Will the use of explosives be allowed for removal of the existing bridge superstructure?

Response: In-water blasting is prohibited per Special Provision 105 General Scope of Work (Environmental Requirements). No permissions are currently in place for the Contractor to use explosive demolition of the bridge superstructure.

Question: Will the use of explosives be allowed for removal of the existing bridge substructure?

Response: In-water blasting is prohibited per Special Provision 105 General Scope of Work (Environmental Requirements). No permissions are currently in place for the Contractor to use explosive demolition of the bridge substructure.

Question: Removing Existing Bridge Questions: The specifications do not appear to specifically exclude controlled demolition (explosives) for felling the bridge superstructure except on Canadian Northern Railroad property where explosives may not be used without approval of CN. Please confirm that this method is acceptable for the other three spans

Response: In-water blasting is prohibited per Special Provision 105 General Scope of Work (Environmental Requirements). No permissions are currently in place for the Contractor to use explosive demolition of the bridge superstructure.

Question: Please provide clarification regarding immigration and labor interpretation with respect to the US/CAN borders. Abutment 1 and Pier 1 are constructed on US “soil”. Is it correct, that a CAN employee, working for a CAN contractor is not permitted to work on these two elements?

Response: Canadian citizens can only access the work site from Canadian soil and may not exit the work site on US soil without reporting to the US Customs and Border Patrol (CBP) at the Land Port of Entry (LPOE). U.S. citizens can only access the work site from U.S. soil and may not exit the work site on Canadian soil without reporting to the Canadian Border Services Agency at the Port of Entry (POE). Illegal passage from one country to the other country by way of temporary trestles or any permanent installations of the new bridge superstructure will be discouraged through the use of Fences as per Section 607 of the Special Provisions. MaineDOT and NBDTI are not able to provide answers to labor, immigration, insurance, or taxation questions regarding international work. MaineDOT and NBDTI strongly suggest Contractors consult an attorney when preparing to bid.

Question: Please provide clarification regarding immigration and labor interpretation with respect to the US/CAN borders. Abutment 2 and Pier 5 are constructed on CAN “soil”. Is it correct, that a US employee, working for a US contractor is not permitted to work on these two elements?

Response: See previous response.

Question: Please provide clarification regarding immigration and labor interpretation with respect to the US/CAN borders. Can a CAN employee, working for a CAN contractor be permitted to construct river Piers 2, 3 and 4? Similar to Clair-Fort Kent?

Response: See previous response.

Question: Please provide clarification regarding immigration and labor interpretation with respect to the US/CAN borders. Can a US employee, working for a US contractor be permitted to construct river Piers 2, 3 and 4?

Response: See previous response.

Question: Please provide clarification regarding immigration and labor interpretation with respect to the US/CAN borders. Can a CAN employee, working for a CAN contractor be permitted to construct the superstructure (beam erection, formwork, rebar, concrete, rail, waterproof, pave) from Abutment 1 and Abutment 2?

Response: See previous response.

Question: Please provide clarification regarding immigration and labor interpretation with respect to the US/CAN borders. Can a US employee, working for a US contractor be permitted to construct the superstructure (beam erection, formwork, rebar, concrete, rail, waterproof, pave) from Abutment 1 to Abutment 2?

Response: See previous response.

Question: Special Provision Section 108 Payment (Steel Cost Adjustment) states that it covers Section 504, Structural Steel and Section 507, Railings. With the amount of other steel products on this project also subject to wide price fluctuations please consider expanding this special provision to include other steel products like rebar, stainless rebar, drilled shaft casings, permanent steel pier casing, etc.

Response: Special Provision Section 108 Payment (Steel Cost Adjustment) will only cover Section 504, Structural Steel and Section 507, Railings. The Departments of Transportation are not considering additional steel items.

Question: Reference pay item 504.702 – structural steel. Please confirm that the lateral bracing shown on sheet 90 of 160 is attached to the bottom flanges of the girders only. Lateral bracing is not required along the top flanges of the girders.

Response: Correct; lateral bracing is only attached to the bottom flanges.

Consider these changes and information prior to submitting your bid on **February 17, 2021**.

Sincerely,



George M. A. Macdougall P.E.
Contracts & Specifications Engineer