

**STATE OF NEW HAMPSHIRE
BUREAU OF PURCHASE AND PROPERTY
25 CAPITOL STREET
CONCORD NEW HAMPSHIRE 03301-6398**

**CONTRACT FOR THE PURCHASE OF:
EMERGENCY VEHICLE LIGHTING AND SIRENS**

Agreement by and between **WHELEN ENGINEERING COMPANY** of CHESTER CT, hereinafter called the Contractor, and the State of New of Hampshire, by its Director of Plant and Property Management.

Contractor agrees to sell to the State of New Hampshire, products stated above, at their "most favored customer pricing" by applying their most competitive discount rate and under the terms and conditions set forth herein:

- (1) **CONTRACT TERM.** The initial contract is to cover the period from May 01, 2005 through April 30, 2007. Thereafter, the contract will automatically renew on annual basis, unless either party gives written notice of cancellation.
- (2) **TRANSPORTATION CHARGES.** The price or prices shall include all transportation charges. Freight charges will be allowed for special order parts and supplies.
- (3) **DELIVERY.** Deliveries are to be made to any State of New Hampshire state agency location or may be picked up at vendor's authorized distributor location by state employees. Contract number and employee name must be indicated on all orders.
- (4) **INVOICING.** Invoices are to be submitted to the billing address on each order. All invoices must include contract number, date of delivery or pick up, itemized list of all items, pricing and any discounts applied.
- (5) **PAYMENT TERMS.** Terms of payment are Net/30 days from date of invoice. Contractor may offer discount for earlier payments.
- (6) **AUDIT.** It shall be the responsibility of the Department of Administrative Services to audit annually, to the extent deemed necessary, all purchases under this contract. It shall be the responsibility of the contractor to make available at his place of business, upon demand, all price lists and other records pertaining to purchases under this contract for the purposes of audit.
- (7) **TAXES.** The state is exempt from all sales and Federal Excise taxes. Exemption certificates will be furnished upon request. Please invoice less any of these taxes.
- (8) **DISCOUNTS.** Contractor agrees to extend the following discounts to the State of New Hampshire Agencies:

46% Off - Orders Direct to Whelan for Parts and Accessories – Discount shall be off manufacturer's most current retail price list.

40% Off - Orders Placed through Distributors (see next page) for Parts and Accessories – Discount shall be off manufacturer's most current retail price list.

30% Off - NH Municipalities (cities and towns) for Parts and Accessories – Discount shall be off manufacturer's most current retail price list.

AUTHORIZED DISTRIBUTORS. The vendors indicated below shall be the factory authorized distributors and warranty centers for agencies who may require parts with installation. Payments will be made direct to the distributors. The named distributors are in addition to the Whelan Engineering Company location in Chester CT, which may still be used for parts and supply orders - no installation.

<u>Ossipee Mountain Electronics</u>	<u>PO Box 950</u>	<u>Moultonborough NH 03254</u>
<u>Howard P. Fairfield Inc.</u>	<u>94 Sheep Davis Rd</u>	<u>Pembroke NH 03275</u>
<u>Adamson Industries</u>	<u>314 So Broadway</u>	<u>Lawrence MA 01843</u>

Authorized Distributor shall be required to provide a written quotation to using agency prior to any work. Price will be based on stated discount off Whelan's most current price list and must include all miscellaneous connectors, wires, plugs and all other items necessary to complete installation of equipment on vehicle.

The State of New Hampshire reserves the right to competitively bid all purchases for equipment and installation which are over \$5,000.00.

WHELEN

WHELAN CONTACT INFORMATION:

REMITTANCE ADDRESS :

WHELEN ENGINEERING COMPANY

[SAME]

NAME OF COMPANY

ROUTE 145 WINTHROP ROAD

ADDRESS

CHESTER, CT 06412
STATE ZIP

860 526 9504 860 526 4078
TEL. NO. FAX NO.

CRAIG SZYMANSKI, BID ANALYST:

SEE ENCLOSED LETTER DATED APRIL 27, 2005

NOTE OUR COMPANY SPELLING: WHELEN

AUTHORIZED SIGNATURE

This document must be signed by a person duly authorized to legally oblige the vendor. A signature on this document indicates that all State of New Hampshire terms and conditions are accepted by the vendor. SEE LETTER OF 4/27/05

CRAIG SZYMANSKI, BID ANALYST

Please Print Name and title

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FOR STATE OF NEW HAMPSHIRE:

SUBMITTED BY:

Bonny J. John, Purchasing Agent
Bureau of Purchase and Property

ENDORSED BY:

Robert D. Stowell, Administrator
Bureau of Purchase and Property

RECOMMENDED BY:

Michael P. Connor, Director
Div of Plant and Property Management

APPROVED BY:

Donald S. Hill, Commissioner
Department of Administrative Services

Date: 5/19/05

CONTRACT TERMS AND CONDITIONS

1. The State of New Hampshire, acting through the Division of Plant and Property Management, engages the firm or individual ("the Vendor") to perform the services and/or sale of goods, described in the attached State documents, if any, and the Vendor's bid or quotation, both of which are incorporated herein by reference.

2. COMPLIANCE BY VENDOR WITH LAWS AND REGULATIONS. In connection with the performance of this agreement, the Vendor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which shall impose any obligation or duty upon the Vendor, including, but not limited to civil rights and equal opportunity laws.

3. TERM. The contract, and all obligations of the parties thereunder, shall become effective on a specified date and shall be completed in their entirety prior to a specified date. Any work undertaken by the Vendor prior to the effective date shall be at his sole risk and, in the event that the contract shall not become effective, the State shall be under no obligation to reimburse the Vendor for any such work.

4. CONTRACT PRICE. The contract price, a payment schedule and a maximum limitation of price shall be as specified by the bid invitation and the Vendor's bid. All payments shall be conditioned upon receipt, and approval by the State, of appropriate vouchers and upon satisfactory performance by the Vendor, as determined by the State. The payment by the State of the Contract Price shall constitute complete reimbursement to the Vendor for all expenses of any nature incurred by the Vendor in the performance by the Vendor and complete payment for the Services. The State shall have no other liability to the Vendor.

5. DELIVERY. If the vendor fails to furnish items and/or services in accordance with all requirements, including delivery, the state may re-purchase similar items from any other source without competitive bidding, and the original vendor may be liable to the state for any excess costs.

If a vendor is unable to complete delivery by the date specified, he must contact the using agency. However, the agency is not required to accept a delay to the original delivery date. All deliveries are subject to inspection and receiving procedure rules as established by the State of New Hampshire. Deliveries are not considered accepted until compliance with these rules has been established. State personnel signatures on shipping documents shall signify only the receipt of shipments. All deliveries shall be FOB Destination.

6. INVOICING. All invoices must be in triplicate showing Order Number, Unit and Extension Prices and discounts allowed. A separate invoice shall be submitted for each order. Unless otherwise noted on the invitation to bid or purchase order, payment will not be due until thirty (30) days after all services have been completed, or all items have been delivered, inspected and accepted or the invoice has been received at the agency business office, whichever is later.

7. PERSONNEL.

7.1. The Vendor shall disclose in writing the names of all owners (5% or more), directors, officers, employees, agents or subcontractors who are also officials or employees of the State of New Hampshire. Any change in this information shall be reported in writing within fifteen (15) days of their occurrence.

7.2. The person signing this agreement on behalf of the State, or his or her delegate ("Contracting Officer") shall be the State's representative for purposes of this agreement. In the event of any dispute concerning the interpretation of this agreement, the Contracting Officer's decision shall be final.

8. EVENT OF DEFAULT; REMEDIES.

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

- 8.1.1.** failure to deliver the goods or services satisfactorily or on schedule; or
- 8.1.2.** failure to submit any report required hereunder; or
- 8.1.3.** failure to perform any of the other covenants and conditions of this agreement.

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

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

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

8.2.3. set off against any other obligation the State may owe to the Vendor any damages the State suffers by reason of any Event of Default; and

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

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

10. VENDOR'S RELATION TO THE STATE. In the performance of this agreement the Vendor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Vendor nor any of its officers, employees, agents or members shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

11. ASSIGNMENT AND SUBCONTRACTS. The Vendor shall not assign, or otherwise transfer any interest in this agreement without the prior written consent of the State. No work required by this contract shall be subcontracted without the prior written consent of the State.

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

12.2 PATENT PROTECTION. The seller agrees to indemnify and defend the State of New Hampshire from all claims and losses resulting from alleged and actual patent infringement and further agrees to hold the State of New Hampshire harmless from any liability arising under RSA 382-A:2-312(3). (Uniform Commercial Code).

13. TOXIC SUBSTANCES. In compliance with RSA 277-A known as the Workers Right to Know Act, the vendor shall provide Material Safety Data Sheets with the delivery of any products covered by said law.

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

15. AMENDMENT. This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto.

16. CONSTRUCTION OF AGREEMENT AND TERMS. This agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

17. ADDITIONAL PROVISIONS. The additional provisions (if any) have been set forth in Exhibit "A" hereto.

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