

STATE OF NEW HAMPSHIRE  
BUREAU OF PURCHASE AND PROPERTY  
STATE HOUSE ANNEX - ROOM 102  
25 CAPITOL ST  
CONCORD NH 03301-6398

DATE: DECEMBER 7, 2017

CONTRACT #: 8002259

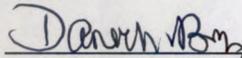
NIGP CODE: 405-1500/405-0900

CONTRACT FOR: FUEL, GASOLINE AND DIESEL (PREM. ON-ROAD), FIXED PRICE

CONTRACTOR: DENNIS K. BURKE, INC

VENDOR CODE #: 174496

**SUBMITTED FOR ACCEPTANCE BY:**

  
\_\_\_\_\_  
DANIELLE BISHOP, PURCHASING AGENT  
BUREAU OF PURCHASE AND PROPERTY

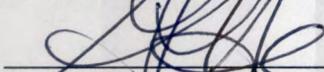
DATE 12/7/17

**RECOMMENDED FOR ACCEPTANCE BY:**

  
\_\_\_\_\_  
LORETTA RAZIN, PURCHASING MANAGER  
BUREAU OF PURCHASE AND PROPERTY

DATE 12/7/17

**APPROVED FOR ACCEPTANCE BY:**

  
\_\_\_\_\_  
GARY LUNETTA, ADMINISTRATOR IV  
BUREAU OF PURCHASE AND PROPERTY

DATE 12/7/17

**ACCEPTED FOR THE STATE OF NEW HAMPSHIRE UNDER THE AUTHORITY GRANTED TO ME BY NEW HAMPSHIRE REVISED STATUTES, ANNOTATED 21-I:14, XII.**

  
\_\_\_\_\_  
CHARLES M. ARLINGHAUS, COMMISSIONER  
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE 12/8/17

State of New Hampshire  
Division of Procurement and Support Services  
Bureau of Purchase and Property  
25 Capitol Street, State House Annex  
Concord, NH 03301-6398

Date: 11/29/17  
Bid No.: 2037-18  
Date of Bid Closing: 12/4/17  
Time of Bid Closing: 11:00 AM (EST)

PLEASE DIRECT ANY QUESTIONS REGARDING THIS BID TO: **Danielle Bishop: E-mail [Danielle.Bishop@NH.Gov](mailto:Danielle.Bishop@NH.Gov)**  
EMAIL YOUR BID TO: [PRCHWEB@NH.GOV](mailto:PRCHWEB@NH.GOV)

**BID INVITATION FOR CONTRACT: FUEL: GASOLINE, PREMIUM ON-ROAD DIESEL, AND B-5 BIODIESEL**

[Insert name of signor] Joseph Cote, on behalf of Dennis K. Burke, Inc. [insert name of entity submitting bid (collectively referred to as "Vendor")] hereby submits an offer as contained in the written bid submitted herewith ("Bid") to the State of New Hampshire in response to BID 2037-18 at the price(s) quoted herein in complete accordance with the bid.

Vendor attests to the fact that:

1. The Vendor has reviewed and agreed to be bound by the Bid.
2. The Vendor has not altered any of the language or other provisions contained in the Bid document.
3. The Bid is effective for a period of 180 days from the Bid Opening date as indicated above.
4. The prices Vendor has quoted in the Bid were established without collusion with other vendors.
5. The Vendor has read and fully understands this Bid.
6. Further, in accordance with RSA 21-I:11-c, the undersigned Vendor certifies that neither the Vendor nor any of its subsidiaries, affiliates or principal officers (principal officers refers to individuals with management responsibility for the entity or association):
  - a. Has, within the past 2 years, been convicted of, or pleaded guilty to, a violation of RSA 356:2, RSA 356:4, or any state or federal law or county or municipal ordinance prohibiting specified bidding practices, or involving antitrust violations, which has not been annulled;
  - b. Has been prohibited, either permanently or temporarily, from participating in any public works project pursuant to RSA 638:20;
  - c. Has previously provided false, deceptive, or fraudulent information on a vendor code number application form, or any other document submitted to the state of New Hampshire, which information was not corrected as of the time of the filing a bid, proposal, or quotation;
  - d. Is currently debarred from performing work on any project of the federal government or the government of any state;
  - e. Has, within the past 2 years, failed to cure a default on any contract with the federal government or the government of any state;
  - f. Is presently subject to any order of the department of labor, the department of employment security, or any other state department, agency, board, or commission, finding that the applicant is not in compliance with the requirements of the laws or rules that the department, agency, board, or commission is charged with implementing;
  - g. Is presently subject to any sanction or penalty finally issued by the department of labor, the department of employment security, or any other state department, agency, board, or commission, which sanction or penalty has not been fully discharged or fulfilled;
  - h. Is currently serving a sentence or is subject to a continuing or unfulfilled penalty for any crime or violation noted in this section;
  - i. Has failed or neglected to advise the division of any conviction, plea of guilty, or finding relative to any crime or violation noted in this section, or of any debarment, within 30 days of such conviction, plea, finding, or debarment; or
  - j. Has been placed on the debarred parties list described in RSA 21-I:11-c within the past year.

This document shall be signed by a person who is authorized to legally obligate the responding vendor. A signature on this document indicates that all State of New Hampshire terms and conditions are accepted by the responding vendor and that any and all other terms and conditions submitted by the responding vendor are null and void, even if such terms and conditions have terminology to the contrary. The responding vendor shall also be subject to State of New Hampshire terms and conditions as stated on the reverse of the purchase order.

Authorized Signor's Signature *Joe Cote* Authorized Signor's Title CFO

NOTARY PUBLIC/JUSTICE OF THE PEACE

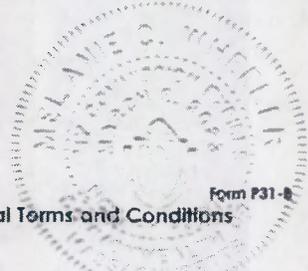
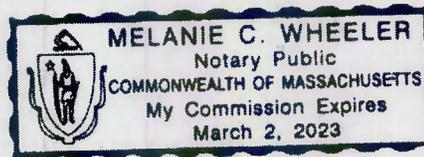
COUNTY: ESSEX STATE: MA ZIP: 01906

On the 4<sup>th</sup> day of DECEMBER, 2017, personally appeared before me, the above named JOSEPH COTE, in his/her capacity as authorized representative of DENNIS K. BURKE, known to me or satisfactorily proven, and took oath that the foregoing is true and accurate to the best of his/her knowledge and belief.

In witness thereof, I hereunto set my hand and official seal.

*Melanie Wheeler*  
(Notary Public/Justice of the Peace)

My commission expires: MARCH 2, 2023 (Date)



Unless specifically amended or deleted by the Division of Procurement and Support Services, the following General Terms and Conditions apply to this Bid and any resulting Purchase Order or Contract.

## GENERAL CONDITIONS AND INSTRUCTIONS:

**NATURE OF, AND ELIGIBILITY TO RESPOND.** This bid invitation is submitted in accordance with Chapter 21-1, and rules promulgated thereunder, and constitutes a firm and binding offer. A bid may not be withdrawn unless permission is obtained from the Bureau of Purchase and Property.

Bids may be issued only by the Bureau of Purchase and Property and are not transferable.

**SAMPLES AND DEMONSTRATIONS.** When samples are required they must be submitted free of costs and will not be returned. Items left for demonstration or evaluation purposes shall be delivered and installed free of charge and shall be removed at no cost to the State. Demonstration units shall not be offered to the State as new equipment.

**BIDS.** Bids must be received at the Bureau of Purchase and Property before the date and time specified for the opening. Bids must be submitted on this bid form or exact copies and must be typed or clearly printed in ink. Corrections must be initialed. Bids are to be made less Federal Excise Tax and no charge for handling unless required by law.

**SPECIFICATIONS.** Vendors must submit on items as specified. Proposed changes must be submitted in writing and received at the Bureau of Purchase and Property at least five (5) business days prior to the bid opening. Vendors shall be notified in writing if any changes to the specifications are made.

**AWARD.** The award will be made to the responsible Vendor submitting a conforming bid meeting specifications at the lowest cost unless other criteria are noted in the bid. Unless otherwise noted, the award may be made by individual items.

If there is a discrepancy between the unit price and the extension, the unit price will prevail.

When identical low bids are received the award will be made in accordance with the Administrative Rules.

Discounts will not be considered in making award but may be offered on the Invoice for earlier payment and will be applicable on the date of completion of delivery or receipt of Invoice, whichever is later. On orders specifying split deliveries, discounts will apply on the basis of each delivery or receipt of Invoice, whichever is later.

**PATENT INFRINGEMENT.** Any responding vendor who has reason to believe that any other responding vendor will violate a patent should such responding vendor be awarded the contract shall set forth in writing, prior to the date and time of opening, the grounds for his belief and a detailed description of the patent.

**ASSIGNMENT PROVISION.** The responding vendor hereby agrees to assign all causes of action that it may acquire under the antitrust laws of New Hampshire and the United States as the result of conspiracies, combinations, or contracts in restraint of trade which materially affect the price of goods or services obtained by the state under this contract if so requested by the State of New Hampshire.

**FEDERAL FUNDS.** This Division of Plant and Property Management, under RSA 21-1:14, VIII shall assure the continuation or granting of federal funds or other assistance not otherwise provided for by law by following the Federal Procurement Standards.

**STATE'S OPTIONS:** The Bureau of Purchase and Property reserves the right to reject or accept all or any part of any bid, to determine what constitutes a conforming bid, to award the bid solely as it deems to be in the best interest of the State, and to waive irregularities that it considers not material to the bid.

**PUBLIC INFORMATION:** The responding vendor hereby acknowledges that all information relating to this bid and any resulting order (Including but not limited to fees, contracts, agreements and prices) are subject to these laws of the State of New Hampshire regarding public information.

**PERSONAL LIABILITY:** The responding vendor agrees that in the preparation of this bid or the execution of any resulting contract or order, representatives of the State of New Hampshire shall incur no liability of any kind.

**PROOF OF COMPLIANCE.** The responding vendor may be required to supply proof of compliance with proposal specifications. When requested, the responding vendor must immediately supply the Bureau of Purchase and Property with certified test results or certificates of compliance. Where none are available, the State may require independent laboratory testing. All costs for such testing certified test results or certificate of compliance shall be the responsibility of the responding vendor.

**FORM OF CONTRACT.** The terms and conditions set forth in any additional Terms and Conditions by the Bureau of Purchase and Property are part of the bid and will apply to any contract awarded the responding vendor unless specific exceptions are taken and accepted and will prevail over any contrary provisions in Terms and Conditions submitted by the responding vendor.

## CONTRACT TERMS AND CONDITIONS

1. The State of New Hampshire, acting through the Division of Procurement and Support Services, 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 list 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 delegee ("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, or both.

**9. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express failure of any Event of Default shall be deemed a waiver of any 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, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based 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.

**12.1 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 infringements 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 Toxic Substances in the Workplace known as the Workers Right to Know Act, the vendor shall provide Safety Data Sheets (277-A:4 Safety Data Sheets) for all products covered by said law.

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

**BID INVITATION FOR: FUEL: GASOLINE, PREMIUM ON-ROAD DIESEL AND B-5 BIODIESEL, SUPPLY & DELIVER**

**PURPOSE:**

The purpose of this bid invitation is to establish a contract(s) for supplying the State of New Hampshire agencies with the fuel indicated in the "Offer" section of this bid invitation to be ordered as needed during the term of the contract, in accordance with the requirements of this bid invitation and any resulting contract. Items ordered under any resulting contract shall be delivered FOB destination to the locations indicated in the "Delivery Locations" section of this bid invitation.

**INSTRUCTIONS TO VENDOR:**

**Read the entire bid invitation prior to filling it out.** Complete the pricing information in the "Offer" section (detailed information on how to fill out the pricing information can be found in the "Offer" section); complete the "Vendor Contact Information" section; and finally, fill out, sign, and notarize page 1 of the bid invitation.

**BID SUBMITTAL:**

All bids shall be submitted on this form or an exact copy; shall be typed or clearly printed in ink and shall be received on or before the date and time specified on page 1 of this bid under "Bid closing". Interested parties may submit a bid to the State of New Hampshire Bureau of Purchase and Property by **email to [PRCHWEB@NH.GOV](mailto:PRCHWEB@NH.GOV)**. All bids shall be clearly marked with bid number, date due and purchasing agent's name.

IF YOU ARE EXPERIENCING DIFFICULTIES EMAILING YOUR BID OR YOU WISH TO VERIFY THAT YOUR BID RESPONSE HAS BEEN RECEIVED, PLEASE CALL (603) 271-2201.

**REQUEST FOR CHANGES AND/OR CLARIFICATION:**

Any Questions shall be submitted by an individual authorized to commit their organization to the Terms and Conditions of this bid. Submissions shall clearly identify the bid Number, the Vendor's name and address and the name of the person submitting the question. Any questions, clarifications, and/or requested changes shall be received in writing at the Bureau of Purchase and Property no later than 4:00 PM as listed in the timeline below. Questions shall not be submitted to anyone other than the Purchasing Agent or his/her representative. Bidders that submit questions verbally or in writing to any other State entity or State personnel shall be found in violation of this part and may be found non-compliant.

Questions shall be submitted by E-mail to Danielle Bishop at the following address: [Danielle.Bishop@NH.Gov](mailto:Danielle.Bishop@NH.Gov).

**ADDENDA:**

In the event it becomes necessary to add to or revise any part of this bid prior to the scheduled submittal date, the NH Bureau of Purchase and Property shall post on our web site any Addenda. Before your submission and periodically prior to the RFB closing, **check the site for any addenda** or other materials that may have been issued affecting the bid. The web site address is <https://das.nh.gov/Purchasing/vendorresources.asp>.

**TIMELINE:**

The timeline below is provided as a general guideline and is subject to change. Unless stated otherwise, consider the dates below a "no later than" date.

11/29/2017	Bid Solicitation distributed on or by
11/30/2017	Last day for questions, clarifications, and/or requested changes to bid
12/4/2017	11:00 (EST) AM Bid Closing
12/5/2017	Estimated Award of contract

**GOVERNING TERMS AND CONDITIONS:**

A responding bid that has been completed and signed by your representative shall constitute your company's acceptance of all State of New Hampshire terms and conditions and shall legally obligate your company to these terms and conditions.

A signed response further signifies that from the time the bid is published (bid solicitation date and time) until a contract is awarded, no bidder shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who shall select, evaluate, or award the RFB.

Furthermore, a signed response signifies that any terms and/or conditions that may be or have been submitted by the Vendor are specifically null and void and are not a part of this bid invitation or any awarded purchase order, even if said terms and/or conditions contain language to the contrary.

## **PUBLIC DISCLOSURE OF BID OR PROPOSAL SUBMISSIONS:**

Generally, the full contents of any bid or proposal (including all materials submitted in connection with it, such as attachments, exhibits and addenda) become public information upon completion of final contract or purchase order negotiations with the selected vendor. Certain information concerning bids or proposals, including but not limited to pricing or scoring, is generally available to the public even before this time, in accordance with the provisions of RSA 21-G: 37.

To the extent consistent with applicable state and federal laws and regulations, as determined by the State, including, but not limited to, RSA Chapter 91-A (the "Right-to-Know" Law), the State shall, after final negotiations with the selected vendor are complete, attempt to maintain the confidentiality of portions of a bid or proposal that are clearly and properly marked by a Vendor as confidential. Any and all information contained in or connected to a bid or proposal that a Vendor considers confidential shall be clearly designated in the following manner:

1. If the Vendor considers a portion of a page of a submission confidential, it shall highlight those portions of the page in yellow and note "confidential" beside the highlighting. Use of any other term, such as "proprietary", "not for public use", or "for client's use only", is not acceptable.
2. If a Vendor considers one or more full pages of a submission confidential, it may either highlight and mark those pages as noted above or, in the alternative, place those pages in a separate envelope marked "confidential," clearly noting to which section or part of the bid or proposal the segregated materials pertain.

You shall also provide a letter to the person listed as the point of contact for this RFB or RFP, identifying the specific page number and section of the information you consider to be confidential information and provide your rationale for each designation.

The State shall have no obligation to maintain the confidentiality of any portion of a bid, proposal or related material, which is not marked in accordance with the foregoing provisions. It is specifically understood and agreed that the Vendor waives any claim of confidentiality as to any portion of a response to this RFB or RFP that is not marked as indicated above, and that unmarked (or improperly marked) submissions may be disseminated to any person, without limitation. Marking an entire bid, proposal, attachment or full sections thereof confidential without taking into consideration the public's right to know shall neither be accepted nor honored by the State. Bids or proposals submitted with markings not in conformity with the foregoing provisions of this request for submission, or submitted without an explanation of the Vendor's rationale for a confidentiality designation, may be deemed not to comply with the requirements of the bid or proposal (subject to correction and cure).

Notwithstanding any provision of this request for submission to the contrary, proposed pricing shall be subject to public disclosure REGARDLESS of whether or not marked as confidential.

If a request is made to the State by any person or entity to view or receive copies of any portion of a proposal and if disclosure is not prohibited under RSA 21-G:37 or any other applicable law or regulation, Vendors acknowledge and agree that the State may disclose any and all portions of the proposal or related materials which is not marked as confidential. In the case of bids, proposals or related materials that contain portions marked confidential, the State shall assess what information it believes is subject to release; notify the Vendor that the request has been made; indicate what, if any, portions of the proposal or related material shall not be released; and notify the Vendor of the date it plans to release the materials. The State is not obligated to comply with a Vendor's designation regarding confidentiality.

By submitting a bid or proposal, the Vendor agrees that unless it obtains and provides to the State, prior to the date specified in the notice described in the paragraph above, a court order valid and enforceable in the State of New Hampshire, at its sole expense, enjoining the release of the requested information, the State may release the information on the date specified in the notice without any liability to the Vendor.

Notwithstanding RSA 91-A:4, no information shall be available to the public, or to the members of the general court or its staff concerning specific responses to this bid invitation from the time this bid is published until the closing date for responses.

From the closing date of the bid until the award is made is considered "quiet time." Bidders may not discuss their bid or anything specifically pertaining to the bid with any State entity (other than personnel from the Bureau of Purchase and Property) including the requesting/customer agency(ies). If found in violation of this part, the bidder shall be found non-compliant and shall no longer be allowed to proceed in the award process.

**ELIGIBLE PARTICIPANTS:**

Political sub-divisions (counties, cities, towns, school districts, special district or precinct, or any other governmental organization), or any nonprofit agency under the provisions of section 501c of the federal internal revenue code, are eligible to participate under this contract whenever said sub-division or nonprofit agency so desires. These entities are autonomous and may participate at their sole discretion. In doing so, they are entitled to the prices established under the contract. However, they are solely responsible for their association with the successful Vendor. The State of New Hampshire assumes no liability between the successful Vendor and any of these entities.

**CONTRACT TERM:**

The term of the contract shall be from December 5, 2017 or the date of award, whichever is later, through November 30, 2018, a period of approximately one (1) year if awarded as index-based contract(s), upon approval of the Commissioner of the Department of Administrative Services. The contract term shall be for 12 months or 24 months if awarded as fixed price contract(s), as determined to be in the best interest of the State.

**TERMINATION:**

The State of New Hampshire shall have the right to terminate the purchase contract at any time by giving the successful Vendor a thirty (30) day written notice. **This condition applies to an index based award format only.**

**VENDOR CERTIFICATIONS:**

All Vendors shall be duly registered as a vendor authorized to conduct business in the State of New Hampshire.

- **STATE OF NEW HAMPSHIRE VENDOR APPLICATION:** Prior to bid award, Vendors shall have a completed Vendor Application Package on file with the NH Bureau of Purchase and Property. See the following website for information on obtaining and filing the required forms (no fee): <https://DAS.NH.Gov/Purchasing>
- **NEW HAMPSHIRE SECRETARY OF STATE REGISTRATION:** A bid award, in the form of a contract(s), shall **ONLY** be awarded to a Vendor who is registered to do business **AND** in good standing with the State of New Hampshire. Please visit the following website to find out more about the requirements for registration with the NH Secretary of State: <https://www.sos.nh.gov/corporate>.
- **CONFIDENTIALITY & CRIMINAL RECORD:** If Applicable, by the using agency, the Vendor shall have signed by each of employees or its approved sub-contractor(s), if any, working in the office or externally with the State of New Hampshire records a Confidentiality form and Criminal Record Authorization Form. These forms shall be returned to the individual using agency prior to the start of any work.

**CERTIFICATE OF INSURANCE:**

Prior to being awarded a contract the Vendor shall be required to submit proof of Comprehensive General Liability prior to performing any services for the State. The coverage shall have appropriate riders against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Coverage shall also include automobile liability and State of New Hampshire workers' compensation as defined by the State.

**CONTRACT AWARD:**

Award(s) will be made to the responsible Vendor(s) meeting the criteria established in this RFB and providing the lowest total delivered price for each county. There is the potential to award three (3) contracts per county (one gas, one diesel and one biodiesel) should the individual product category pricing be lower than combined pricing for the county. Contracts will be awarded to the Vendor(s) with the lowest total delivered **fixed price or index based** price per county as stated in the offer section of this solicitation, at the discretion of the State. This decision shall be made during the award process. The State reserves the right not to award locations with fixed prices or any product not deemed in the best interest of the State. The state shall be the sole determining factor in this decision process. The State reserves the right to reject any or all bids or any part thereof and add/delete locations to the contract price. If an award is made it shall be, in the form of a State of New Hampshire Contract(s).

Successful Vendor(s) shall not be allowed to require any other type of order, nor shall the successful Vendor be allowed to require the filling out or signing of any other document by State of New Hampshire personnel.

**BID RESULTS:**

Bid results may be viewed when available, once the award has been made, on our web site only at: <https://das.nh.gov/purchasing>.

For Vendors wishing to attend the bid Opening: **Names of the Vendors submitting responses and pricing shall be made public.**

### **BID PRICES:**

Bid prices must be per gallon, in US dollars not to exceed 4 decimal places, and must include delivery and all other costs required by this bid invitation. Bid prices should result in prices that are no higher than those charged to the bidder's best/preferred customer. Special charges, surcharges, or fuel charges of any kind (by whatever name) may not be added on at any time. Any and all charges must be built into your offered prices at the time of the bid. Vendors **are** allowed to pass on any discounts to the State of New Hampshire. Any invoices with pricing lower than the awarded bid price shall be considered a discount.

Per Administrative Rule 606.01 (e) "if there is a discrepancy between the unit price and the extension price in a response to an RFP, RFB or RFQ, the unit price shall be binding upon the vendor".

### **FEES AND TAXES:**

Any and all relevant fees and taxes that are in place at the time of the bid offer will be included in the pricing offered by the vendor. This includes any environmental, superfund, transportation or excise tax or fees, which the vendor may be deemed responsible. The State will allow increases or require decreases in the posted markup and transportation cost equal to the value of the fee or tax if such increases or decreases occur after the award of the contract and are instituted by the State or federal government. No increases in the posted mark-up and transportation cost will be allowed without the prior written approval from the Administrator of the Bureau of Purchase and Property. The State of New Hampshire Department of Administrative services shall provide a Certificate of Exemption with respect to the States purchases to the awarded bidder in support of a claim for credit or payment under section 6427 of the Internal Revenue Code in the form attached hereto. The supplied exemption certificate shall not apply to those Political sub-divisions, school buses, qualified local buses or other qualified entities that choose to "participate" under the RSA 21-I provision. These entities are solely responsible for their association with the successful Vendor(s) and shall supply exemption certificates as applicable.

### **ESTIMATED USAGE:**

The annual quantity of Premium Diesel Fuel for the purposes of this bid is approximately 2,000,000 gallons. The annual quantity of Gasoline for the purposes of this bid is approximately 2,000,000 gallons. This figure does NOT include any eligible participant usage. The State reserves the right to make additions or deletions to the list of delivery locations and to adjust the quantity of fuel, as it may deem necessary during the contract (as long as the amount is not less than the guaranteed gallons).

**"Guaranteed gallons – 85% of annual"** - are quantities guaranteed for consumption during contract term.

"Guaranteed gallons – 85% of annual" **applies ONLY to fixed price contract awards** and shall not apply to any index based contract awards (see **"SOLICITATION PRICING FORMATS"** section beginning on page 16).

### **ABILITY TO PROVIDE:**

Successful Vendor shall be capable of providing all State of New Hampshire agencies and eligible participants with their entire requirements of the fuel products required in this bid invitation and any resulting contract without any delay or substitution. It is required that all Vendors be capable and willing to purchase the required fuel from several terminals. Should the vendors' primary source be unable to provide the requested fuel product for ANY reason, the vendor **MUST** obtain the requested product in the requested quantity from another source without delivery delay or additional cost to the state. The vendor will be held responsible for securing and maintaining product availability capable to support each State of New Hampshire agency fuel location awarded through this bid and eligible participants upon request.

### **SITE VISITATION:**

Prior to bidding, it is each Vendor's responsibility to become thoroughly familiar with the site of the intended delivery, to determine everything necessary to accomplish the delivery. **Call the contact person at the delivery location you wish to visit (see location sheet for contact information)** to make an appointment to view the site of the intended delivery. Failure of the Vendor to make a site visit does not relieve the Vendor of responsibility to fully understand what is necessary to accomplish a successful and complete delivery.

The State assumes no responsibility for understandings or representations concerning conditions made by its officers or employees prior to, and in the event, of the execution of a contract, unless such understandings or representations are specifically incorporated into this RFB. Verbal discussions pertaining to modifications or clarifications of this RFB shall not be considered part of this RFB unless confirmed in writing. For modifications or clarifications please refer to "Request for Changes and/or Clarification" on page 5 of this RFB. Any information provided by the vendor verbally shall not be considered part of that vendor's response unless confirmed in writing.

**ESTABLISHMENT OF ACCOUNTS:**

Each State of New Hampshire agency shall have its own individual customer account number. There may be instances where sub-sections of an agency shall need their own individual customer account number. Should any State of New Hampshire agency place an order under the contract, the successful Vendor agrees to establish an account within three business days from the date the order is placed. However, there shall be no delay in any shipment; the agency shall receive the fuel ordered in accordance with the delivery time required under the "Delivery Policy, Procedures, Requirements" section (page 14) of this bid invitation, as if an account already exists for them.

**ORDERING PROCEDURE:**

State agencies shall place their orders by electronic order entry, by e-mail, by FAX, or they may establish a standard delivery order. Eligible participants shall utilize their own individually established ordering procedures.

**MINIMUM ORDERS:**

There will be no minimum order whether in item quantity or dollar value associated with any contract resulting from this bid.

**INVOICING:**

Invoicing shall be done to the Agency Remit Account on the basis of each order completed, or other mutually agreed upon timeframe between the vendor and agency (example: monthly invoice). Invoices must be sent to the State department or agency to which the delivery is made. Vendor(s) may email invoices, however it is the vendor's responsibility to obtain the proper email address prior to submitting invoices via email. Invoicing for eligible participants shall be in accordance with their individual requirements.

It will be the responsibility of the successful Vendor(s) to see that all invoices are complete and priced accurately per the terms, conditions and format of this bid and any resulting contract(s). The State will make all efforts to pay all accurate and complete invoices within the payment term stated within this bid; however, errors within the original invoice will relieve the State of the original net-30 term time frame for payment.

Vendors **are** allowed to pass on any discounts to the State of New Hampshire. Any invoices with pricing lower than the contracted price shall be considered a discount.

**Invoices shall indicate all data stated below:**

1. The quantity delivered
2. Description of product delivered
3. Date of delivery
4. Dip stick reading before and after delivery
  - Dip stick readings shall be accurate within 1/8" inch per *State of New Hampshire Department of Environmental Services Oil and Remediation Program Rule "Env-Or 406.03"* or the most recent revision
5. Tank I.D. number (if available)
6. Delivery location, agency and physical address
7. Contract price per gallon as stated in offer section
8. All included applicable environmental fees (see attached chart)

**INVOICING FOR DELIVERIES ON WEEKENDS OR HOLIDAYS:**

When deliveries are required on weekends, **(between 12:01 am Saturday and 12:00 pm midnight Sunday)** invoices for those delivery dates will be calculated against the posted Oil Price Daily price on the **previous** Friday. If deliveries occur on a holiday that falls in the middle of the week **(EXAMPLE: THE FOURTH OF JULY WAS OBSERVED ON A TUESDAY IN 2017)**, invoices for those delivery dates will be calculated against the posted price on the **previous** business day. State of New Hampshire observed holidays:

NEW YEARS DAY	MARTIN LUTHER KING DAY	PRESIDENTS DAY	MEMORIAL DAY
INDEPENDENCE DAY	LABOR DAY	VETERAN'S DAY	THANKSGIVING DAY
DAY AFTER THANKSGIVING	CHRISTMAS DAY		

**RETURNED PRODUCT/INCORRECT INVOICES OR DELIVERIES:**

The successful Vendor(s) must resolve all order and invoice discrepancies within five (5) business days from notification. Errors within the original invoice will relieve the State of the original net-30 term time frame for payment. Product(s) returned due to quality issues, duplicate shipments, incorrect delivery locations, etc. must be pumped-out by the successful Vendor within ten (10) business days of notification with no additional charges, and must be replaced with specified products (if required) or the agency shall be refunded/credited for the full purchase price. **Unauthorized substitutions are not allowed.**

**PAYMENT:** Payments shall be made via ACH or Procurement Card (P-card = Visa Credit Card).

Use the following link to enroll with the State Treasury for ACH payments:

<https://www.nh.gov/treasury/state-vendors/index.htm>.

Eligible participants shall negotiate their own payment methods with awarded vendor(s).

Please select payment method

Payments shall be made via ACH: \_\_\_\_\_ Yes \_\_\_\_\_ (Yes/No)

Payments shall be made via Procurement Card  
(Visa Credit Card). At no additional charge to the State \_\_\_\_\_ No \_\_\_\_\_ (Yes/No)

**AUDITS AND ACCOUNTING:**

The successful Vendor shall allow representatives of the State of New Hampshire to have complete access to all records for the purpose of determining compliance with the terms and conditions of this bid invitation, determining the award and for monitoring any resulting contract.

At intervals during the contract term, and prior to the termination of the contract, the successful Vendor may be required to provide a complete and accurate accounting of all products and quantities ordered by each agency and institution and by political sub-divisions and authorized non-profit organizations.

**CONTRACT CONSUMPTION – TRACKING / REPORTING:**

The successful bidder(s) shall submit consumption reports on a monthly basis to the Purchasing Agent and DOT – Fuel Distribution. The consumption report shall include transaction history for the previous month and in total since contract inception. The reports shall be received no later than the 10<sup>th</sup> day of the month for the previous month's activity. The report shall include the following data at a minimum:

- County
- Delivery Agency
- Physical location with Tank ID (if available)
- Date of delivery
- Gallons delivered
- Product type
- Total gallons delivered to date by product, delivery type (TT/PT) per county

Reports shall be emailed to: Brian Pike - Fuel Distribution Manager  
DOT – Bureau of Fuel Distribution  
Email: [Brian.Pike@dot.nh.gov](mailto:Brian.Pike@dot.nh.gov)

**AND:** Danielle Bishop – Purchasing Agent  
Bureau of Purchase and Property  
[Danielle.Bishop@nh.gov](mailto:Danielle.Bishop@nh.gov)

## PRODUCT TYPES, SPECIFICATIONS AND COMPLIANCE

### SPECIFICATION COMPLIANCE:

Vendor's offer shall meet or exceed the required specifications as written. The State of New Hampshire shall be the sole determining factor of what meets or exceeds the required specifications.

Successful bidder(s) at their sole expense shall furnish, upon request by a using agency, an analysis from an approved laboratory of the fuel delivered to any State location.

### PRODUCT TESTING:

The State reserves the right to test any product delivered to any of the fuel locations stated within this bid, or any locations added to the resulting contract over its term, for compliance to the product ordered or the specifications and standards herein. If the results of any such test performed determine that the product sold, furnished and delivered to any State location, does not meet the specifications of the product ordered or the specifications and standards established by the State of New Hampshire and/or the Federal Government, the vendor responsible for the error will be reported to the NH Department of Environmental Services and held responsible for removing the incorrect product from the delivery location, cleaning of the tank if necessary, delivering the correct product and paying all charges associated with the error including the testing procedure. While the error conditions exist, the State reserves the right to purchase said fuel elsewhere charging any additional cost to the original vendor. The vendor responsible for the error would also be subject to the relative "default" conditions as stated in the Terms and Conditions section of this bid.

### A. GASOLINE SPECIFICATIONS:

During the term of the contract, State agencies shall order **REFORMULATED UNLEADED REGULAR AND / OR CONVENTIONAL UNLEADED REGULAR GASOLINE.**

1. The minimum octane number of regular unleaded gasoline supplied under this contract shall be **87**.
2. Octane to be determined by the following method: 

$\frac{R \& M}{2}$	R = RESEARCH M = MOTOR METHOD
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3. Specifications for reformulated or conventional gasoline are attached hereto. Supplied product(s) will meet specifications as written, or the most recent revised ASTM specification.
4. **Reformulated unleaded regular gasoline** SHALL meet the attached specifications for reformulated unleaded regular fuel, Grades F2, 2F.
5. **Conventional unleaded regular gasoline** SHALL meet the attached specifications for conventional unleaded regular fuel, Grades A1, 1A.

### SPECIAL CONDITIONS

If at any time during this contract or any extension thereof, the State of New Hampshire is no longer required to purchase reformulated unleaded regular gasoline for the counties of **Merrimack, Strafford, Rockingham and Hillsborough**, the tank locations within those counties may revert to the purchase of conventional unleaded regular gasoline and the existing specifications and pricing format for conventional unleaded regular gasoline shall apply.

Reformulated (R) unleaded regular gasoline may be substituted for conventional unleaded regular gasoline for the locations requiring conventional (C) unleaded regular gasoline. Vendor(s) may offer pricing for Reformulated unleaded regular gasoline to be utilized in place of conventional unleaded regular gasoline (SEE **BID OFFER SECTION** on page 20).

**B. ULTRA LOW SULFUR DIESEL – PREMIUM ON-ROAD SPECIFICATIONS:**

During the term of the contract, State agencies shall order **ULTRA LOW SULFUR DIESEL - PREMIUM ON ROAD FUEL**. Bidder shall be required to utilize both specifications to produce the required product they are offering.

**SPECIFICATION - ULTRA LOW SULFUR DIESEL**

The Premium Ultra Low Sulfur #2 blend stock, i.e. premium ultra-low sulfur diesel fuel supplied shall meet ASTM D975-17, grade No. 2-D S15 specifications, or the most recent revised specification.

**SPECIFICATION - PREMIUM (ADDITIVE) ON ROAD FUEL REQUIREMENTS**

In addition to the ultra-low sulfur diesel specifications stated within, this bid shall also require the following "premium" characteristics. These characteristics shall be adopted and included in the ultra-low sulfur component of the premium ultra-low diesel delivered.

**Premium Ultra Low Diesel Fuel** - All diesel fuels identified on retail dispensers, bills of lading, invoices, shipping papers, or other documentation with terms such as premium, super, supreme, plus, or premier must conform to the following requirements:

1. **Cetane Number** - A minimum cetane number of 47.0 or as determined by the most recent ASTM Standard Test Method D613.
2. **Low Temperature Operability** - A cold flow performance measurement which meets the most recent ASTM D 975-17 tenth percentile minimum ambient air temperature charts and maps for New Hampshire by either the most recent ASTM Standard Test Method D 2500 (Cloud Point), or most recent ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1 through March 31 of each year.
3. **Thermal Stability** - A minimum reflectance measurement of 80% or as determined by the most recent ASTM Standard Test Method D6468 (180 min, 150 °C).
4. **Lubricity** - A maximum wear scar diameter of 520 microns or as determined by the most recent ASTM D6079.

**ULTRA LOW SULFUR DIESEL PREMIUM ON ROAD FUEL PROGRAM – TEMPURATURE PROTECTION (ALL DOT FUEL DISTRIBUTION LOCATIONS):**

The following cloud points will apply for all awarded locations as specified. These guidelines are the minimum protection cloud points required. All winter premium fuel deliveries shall meet or exceed the cloud point requirements as stated below unless superseded by requirements stated at time of order.

- October 1st to December 14<sup>th</sup> – **ULTRA LOW SULFUR DIESEL - PREMIUM ON ROAD FUEL** winter diesel with temperature protection characteristics that meet or exceed +8° F cloud points.
- December 15<sup>th</sup> to March 31<sup>st</sup> – **ULTRA LOW SULFUR DIESEL - PREMIUM ON ROAD FUEL** winter diesel with temperature protection characteristics that meet or exceed -5° F cloud points

**PRODUCT COMPLIANCE DOCUMENTATION – SULFUR CONTENT**

In compliance with State of New Hampshire Department of Environmental Services ENV-A-1607.01 or most recent revision, Awarded vendors shall be required to supply a statement of compliance with regard to the sulfur content of the diesel fuel products delivered to the State of New Hampshire. The Statement shall be on company letterhead and read: "**the sulfur content of the fuel as delivered does not exceed the state or federal standard for that fuel**" and signed by a duly authorized agent of that company. These documents shall be kept on file with the bid offers for the term of the contract. The state currently maintains a list of these documents on file and after the bid award process has been completed, the State will notify any awarded vendor to supply the required document if it is not previously on file.

**C. BIODIESEL FUEL (B-5) - PREMIUM, SPECIFICATIONS:**

Pursuant to RSA 228:24-a, II NHDOT Fuel Distribution Locations are "required to purchase diesel fuel containing at least 5 percent biodiesel except if such fuel is unavailable or more costly than 100 percent petroleum diesel."

Should the delivered price of B5 biodiesel be less costly than 100 % petroleum diesel, NHDOT Fuel Distribution locations shall order from the awarded vendor for Premium B5 biodiesel.

**B5 BIODIESEL BLEND STOCK REQUIREMENTS:**

It is required that B5 Biodiesel product supplied be formulated utilizing "premium ultra-low sulfur #2" blend stock on a year round basis, see **Premium Ultra Low Diesel Fuel** above for premium diesel base stock specifications. Below are the guidelines for the minimum protection cloud points required, all fuel delivered shall meet or exceed the cloud point requirements as stated below unless superseded by requirements stated at time of order, and each delivery must be accompanied by documentation of compliance with these requirements.

1. Biodiesel (B100) and the petroleum diesel blend stock **must** meet their respective ASTM specifications **before** blending. Successful vendor(s) must provide documentation for B5 blends that the biodiesel portion of that blend meets the most current version of ASTM D6751-15ce1.
2. The B100 Biodiesel supplied shall be SME (Soy Methyl Ester)
3. The B5 Biodiesel product supplied shall meet D975-17 specification, or the most recent revised specification.
4. Cetane Number - A minimum cetane number of 47.0 or as determined by the most recent ASTM Standard Test Method D613.
5. Low Temperature Operability - A cold flow performance measurement which meets the most recent ASTM D 975-17 tenth percentile minimum ambient air temperature charts and maps for New Hampshire by either the most recent ASTM Standard Test Method D 2500 (Cloud Point), or most recent ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1 through March 31 of each year.
  - a. It shall be the bidders' responsibility to manage and deliver B5 Biodiesel fuel product that meets the cloud point protection as stated in "**SEASONAL CLOUD POINT REQUIREMENTS**" throughout the contract period.

**SEASONAL CLOUD POINT REQUIREMENTS:**

- *October 1<sup>st</sup> to December 14<sup>th</sup> - "B5 fuel delivered" with a required cloud point that meets or exceed + 8<sup>o</sup> F cloud point.*
- *December 15<sup>th</sup> to March 31<sup>st</sup> - "B5 fuel delivered" with a required cloud point that meets or exceed - 5<sup>o</sup> F cloud point.*
- *April 1<sup>st</sup> to September 30<sup>th</sup> - "B5 fuel delivered" with a required cloud point that meets or exceed +20 F cloud point.*

## DELIVERY POLICY, PROCEDURES, REQUIREMENTS

### DELIVERY:

State agencies shall contact the successful vendor(s) and coordinate deliveries. All deliveries shall be made in accordance with the following requirements:

1. Deliveries **shall be made within 48 hours after receipt** of order, regardless of method of delivery. Weekends and holidays are NOT exempt from the stated delivery schedule and it is understood that bidders are a 365-day delivery operation. The use of a private carrier to make delivery does not relieve the successful bidder from the responsibility of meeting the delivery requirement. Requesting agency and contractor may pre-arrange deliveries beyond the 48 hour requirement to suit delivery needs, at the mutual agreement of contractor and requesting agency.
2. **DIPPING TANKS** - State agencies require all vendors to have their delivery personnel dip tanks before and after deliveries and note said readings on delivery slips. Dip stick readings will be accurate within 1/8" inch per State of New Hampshire Department of Environmental Services Oil and Remediation Program Rule "Env-Or 406.03" or the most recent revision.
3. **DELIVERY SLIP / BOL** - All deliveries shall include a bill of lading and delivery slip. Delivery Slip and BOL Requirements are stated further within the delivery policy of this solicitation. Failure to leave delivery documentation at each delivery site may result in delayed payment(s) for said deliveries.
4. **SPILLS/ OVERFILLS** - Most underground tanks are equipped with 4" tight fill adapters. Delivery trucks should be equipped with appropriate hardware to seal delivery-lines to prevent over-fills and/or spills. Should a spill occur during delivery, or should vendor deliver the wrong product to tank(s), the vendor assumes all responsibility and liability for the spill, clean-up and/or cleaning of tank and the delivery driver shall report the incident to onsite agency personnel immediately.
5. **OVERFILLS** - Delivery personnel shall unload product at a reasonable pace and rate to allow the flapper valve to perform its function. Over filling of the tank will require the vendor to return to the site, pump out the overfill and clean out the manhole. All costs associated with correcting the overfill will be the vendors sole responsibility. Violations of this requirement shall be reported to the State of New Hampshire Department of Environmental Services.
6. The requesting agency will do everything possible to prevent over ordering, although if a tank is unable to take the full amount ordered, the ordering agency will attempt to place the fuel at another location where said vendor has a contract at no additional cost to the State.
7. **EMERGENCIES** - Bidder further agrees to deliver in less time **in case of emergencies** to the best of its ability. If delivery requirements are not met, the buyer reserves the right to purchase elsewhere, charging any additional costs back to the original vendor.
8. The State reserves the right to make additions or deletions to the list of delivery points and to increase or decrease the estimated quantity of fuel, as it may deem necessary, during the contract period.
9. The use of a private carrier to make deliveries **does not** relieve the successful vendor(s) from the responsibility of meeting the delivery requirements stated herein.
10. Successful vendor(s) may utilize other distributors for supply and/or delivering Premium Ultra Low Sulfur Diesel or Gasoline, with prior written approval from the Administrator of the Bureau of Purchase and Property. Such approval will not warrant any increase in the State's purchasing price.
11. Successful vendor(s) guarantees to be the base supplier if necessitated by imposition of the State of federal allocation plans.
12. Successful vendor(s) is responsible for replacement of any State property that is damaged by their employees.

### DELIVERY - TANK CONTAMINATION:

If a vendor delivers a fuel product to the wrong tank and that delivery causes contamination between 2 different products (IE diesel fuel and gasoline etc.), the vendor shall take the following steps to correct the situation:

1. The vendor that delivered the product to the wrong tank shall contact the agency owning the fuel tank to convey the situation as soon as the vendor becomes aware of the situation
2. The Vendor shall then pump out the total contents of the contaminated tank, both existing product and the newly delivered product

3. It shall be the vendors responsibility and cost to properly dispose of the contaminated fuel
4. The vendor shall clean the tank
5. The vendor shall replace the total volume of the product pumped out charging the state for only the original volume requested to be delivered
6. The vendor shall be physically and financially responsible for the pumping, cleaning and replacing of the fuel product
7. The vendor shall work without delay to remedy the error so the fuel tank may be put back in service ASAP.

**DELIVERY - SAFETY REQUIREMENTS AND PROCEDURES:**

**All fuel delivery personnel will adopt the following safety procedures when making deliveries to any State site:**

1. Exercise caution when maneuvering to avoid damage to containment walls
2. Inspect tank, fittings and liquid level indicator prior to filling
3. Place drip pans under all hose fittings prior to loading or unloading
4. Block truck wheels before starting to load or unload
5. Remain with the vehicle while loading or unloading
6. Drain loading or unloading line to storage tank when loading or unloading is complete
7. Verify that all drain valves are closed before disconnecting loading or unloading lines
8. Inspect vehicle before departure to be sure all loading or unloading lines have been disconnected & closed
9. Immediately report any leakage or spillage to the onsite personnel.
10. In a case where the leak, spill or overfill takes place at a **DOT fuel distribution location**, in addition to reporting the incident to onsite personnel, delivery personnel will contact said agency immediately @ 603-271-6862 (24/7/365).
11. Delivery personnel will shut off all electrical devices (cellular phones, pagers, etc.) while unloading product.
12. Delivery personnel shall clean the manhole of any product they may have spilled during delivery.

**DELIVERY SLIPS:**

Delivery slips shall be left at each delivery location. Delivery slip shall indicate all data stated below, at a minimum:

1. The quantity of product delivered
2. Description of product delivered
3. Date of delivery
4. Tank I.D. number (if available)
5. Delivery location, agency and physical address
6. Delivery driver shall make reasonable effort to obtain signature by agency or interested party; if no one is available to sign, driver shall sign delivery slip **to include date and time**
7. Dip reading both before and after delivery, measured in inches
8. Inches of water in tank before after delivery
9. Drivers signature
10. Truck Number
11. Bill of lading #
12. Consignee name and address

**BILL OF LADING:**

The Bill of Lading (BOL) included with the delivery slip shall provide the following information, at a minimum:

1. The quantity of product delivered in gallons, (GROSS & NET)
2. Driver Name
3. Bill of Lading Number
4. Description of product lifted
  - For On-Road Premium Ultra Low Sulfur Diesel description shall include terminology that signifies the product lifted is "premium"
5. Product temperature
6. Product gravity
7. If drop is a split load, hand written information indicating where the remaining fuel went
8. Product code equating to the description of the product lifted.
9. Date of product lifted
10. Terminal name, address and telephone
11. Carrier name lifting product from terminal
12. Consignee name and address

**SOLICITATION PRICING FORMATS: APPLIES TO ALL PRODUCT CATEGORIES**

**INDEX BASED FORMAT** - consists of 2 components:

**Index:** Price of the product, on the date of delivery, as provided by the OPIS "Oil Price Daily" posting. See "Index Pricing Reference" Section below for Oil Price Daily posting per product.

**Mark-up:** Cost added to index to cover vendor's costs and profit. Mark-up shall be based per gallon and is not to exceed 4 places to the right of decimal (example \$0.0125).

1. Bidder(s) shall offer a mark-up price per gallon for the county they are bidding on that shall remain firm for the contract term specified, unless the State exercises the lock price option.
2. The mark-up price shall be based on the "ESTIMATED" volume stated for the product being bid and price shall **include** all taxes, fees, delivery cost and all other charges.
3. Thereafter, bidder(s) will base their pricing during the term of the contract on the "Oil Price Daily" price on the date of delivery, plus mark-up.
4. Mark-up prices bid by the successful bidder(s) shall remain firm for the product category for the term of the contract and any extension thereof and shall include delivery and all other charges, unless the State exercises the lock price option.
5. Fuel price postings may increase or decrease during the term of the contract in accordance with the "Oil Price Daily" postings. Mark-up prices offered by the bidder shall be added to the index price posted for the **date of delivery** to achieve the **total** price per gallon for the product delivered.

**INDEX PRICING REFERENCE:**

**A. REFORMULATED GASOLINE:**

Bidder(s) must offer mark-ups for gasoline fuel based on the **UNBRANDED Boston, MA LOW** price as posted in the Unleaded Regular 87 Octane column of the Gasoline Prices section of the OPIS "Oil Price Daily," in effect on the date of delivery. See enclosed sample dated 11/03/17 (\$1.7805 was the low post for **Boston, MA**).

**B. CONVENTIONAL GASOLINE:**

Bidder(s) must offer mark-ups for gasoline fuel based on the **UNBRANDED Portland, ME LOW** price as posted in the Unleaded Regular 87 Octane column of the Gasoline Prices section of the OPIS "Oil Price Daily," in effect on the date of delivery. See enclosed sample dated 11/03/17 (\$1.8075 was the low post for **Portland, ME**).

**C. ADDITIVE PREMIUM ULTRA LOW SULFUR DIESEL (ON-ROAD):**

Bidder(s) must offer mark-ups for diesel fuel based on the **Portsmouth, NH ULSD PREM. LOW** price as posted in the Daily Petroleum Prices section of the OPIS "Oil Price Daily", in effect on the date of delivery. See enclosed sample dated 11/03/17 (\$1.9728 was the low post for **ULSD PREM**).

**D. BIÖDIESEL, B5**

Bidder(s) must offer mark-ups for biodiesel based on the Unbranded B5 Biodiesel Low Rack posting from the **Binghamton/Vestal NY OPIS Biodiesel Racks "OPIS Gross Wholesale B5 SME Biodiesel Prices"** listed under the "ULS2P" column. See enclosed sample dated 11/03/17 (\$1.9750 was the low post for **ULS2P**).

**INDEX BASED PRICING VERIFICATION:**

Agencies shall verify pricing from "Oil Price Daily" through the Bureau of Purchase and Property. Please contact Danielle Bishop at (603)271-3290 or [danielle.bishop@nh.gov](mailto:danielle.bishop@nh.gov) for assistance.

**STATE OPTION FOR CONTRACT CONVERSION FROM INDEX BASED FORMAT TO "LOCK" FIXED PRICE**

At any point during the term of any contract(s) issued from this solicitation & in the States opinion, if the market is in a favorable position, the State **may** choose to "lock" a fixed price per gallon for an amount of gallons that is approximate to the usage over a certain period of time (ex. 12 months diesel usage). If this option is exercised the following parameters shall apply:

**THE STATE SHALL, HAVE, BE OR PROVIDE**

1. The State shall provide awarded vendor(s) with a lock price or range at its discretion.
2. The state may change the "lock" price or range in accordance with budget limitations OR anticipated market direction at its discretion.
3. Any change in the States "lock" price range would be communicated via email on a "contract fixed price lock option document".
4. If the state should exercise the lock option, it would lock for a minimum usage over the period of one (1) year starting on the date of the lock.
5. The fixed price lock agreement shall commence on deliveries effective the date both parties (state and vendor) sign the contract fixed price lock option document.
6. If or when the market provides the "lock" price, the vendor shall email the offer to Danielle Bishop, Purchasing Agent, at [Danielle.Bishop@nh.gov](mailto:Danielle.Bishop@nh.gov).
7. At this point, the State may choose to accept or reject the "Lock" price tendered. The State may also choose to change the "lock" price, or range, if a downward price trend is anticipated in the market.
8. The time frame window provided for a State decision to "Lock" or "Pass" is **6 business hours** starting from the time the email offer is received by the State via email. The clock in the computer receiving the email shall prevail as official time.

Offers tendered by the vendor that are received after 12:00 noon EST shall have the 6 hour window extended to the next business day (excluding weekends) for the time difference to equal 6 hours total. The vendor would be required to guarantee the fixed price agreed to for a minimum usage over the period of one (1) year.

9. The established basis of **business hours** shall be from 8:00 AM EST to 4:00 PM EST Monday through Friday, non-state holidays, (see page 9 for State observed holidays).

**THE VENDOR SHALL, HAVE, BE OR PROVIDE**

1. Upon notification of the State's chosen "Lock" price or range, the vendor shall follow market trends and direction and notify the State when or if the "Lock" price or range is available.
2. A performance bond shall be required for 25% of the guaranteed volume (**see performance bond requirements in FIXED PRICE section below**).
3. The vendor will incorporate all costs including fuel purchase, delivery, taxes, fees, margin and the performance bond cost for the guaranteed gallons into the "Lock" price.

**FIXED PRICE FORMAT:** Offers shall be **PER GALLON** and shall not exceed **4 places** to the right of the decimal (example .0125). Contract(s) will be awarded as stated in the "Contract Award" section of this solicitation. The following criteria shall apply;

1. Fixed price offers shall be for the volume usage over 12 months, and/or 24 months. If a contract is awarded by fixed price the State reserves the right to award the contract for 12 months, or 24 months.
2. If a fixed price contract is awarded for the 24 month option, the State reserves the right to use future volume at the same fixed price.
3. If at any time the fixed price usage volume has been depleted the State, at its discretion, may purchase fuel from the "rack" plus a negotiated markup and transportation price, **or** negotiate a new fixed price for a volume of gasoline and/or diesel.

**GUARANTEED USAGE**

The quantities indicated in the offer section of this bid invitation are the State of New Hampshire's estimated annual requirements. The State of New Hampshire will guarantee a maximum of 85% of the quantities indicated in the total volumes by county, as stated in the offer section of this solicitation.

**LOCATION ADDITIONS / DELETIONS DURING CONTRACT TERM**

1. In the case of a location deletion during the term of the contract and any extension, the locations guaranteed volume would be consumed under the contract.
2. In the case of a location addition during the term of the contract and any extension, the bidders guaranteed volume established before the added location would be honored and the added location may be added at the fixed price applicable to the product and county.

**REQUIREMENT – PERFORMANCE BOND**

1. If a fixed price award is made, a performance bond shall be required for 25% of the guaranteed volume (**Bond value shall be the total of all offered fixed price X guaranteed gallons**) of the contract awarded as stated by county and category in the location section stated within this solicitation. The state shall notify the apparent low bidders of their awarded volumes. The completed performance bond shall be received at the Bureau of purchase and property within 10 days after the award of the contract. The cost of the performance bond shall be the bidder's sole responsibility. If awarded bidder fails to provide proof of bond as indicated below, the awarded bidder will be considered in default of the contract.
2. If the State chooses to award a fixed price contract based on 24 months, a 25% performance bond is required for 12 months' worth of fuel usage and the bond must be renewable for the following 12 months of usage. Proof of bond must be provided within 10 days after the first 12 month bond has expired.
3. In addition to the other required documents, Bidders shall supply a letter from their chosen bond company, insurance company or other bond source on the bond source letterhead that states the bond source will supply a bond in the value of the bidders awarded value in dollars should the State award a fixed price contract, or choose to convert to fixed price in the future.
4. The bond letter and this document (signed) shall be submitted with the vendor's response to RFB 2037-18.
5. The bonding source shall utilize a value of the fixed or "lock" price (ex., \$2.15 US per gallon) of diesel, reformulated or conventional gasoline. The value per gallon shall be multiplied by the "guaranteed" sub-total quantity (85% of annual) per section per county for all counties and sections awarded.

6. **BOND VALUE EXAMPLE**

COOS COUNTY CATEGORY B	151,300
CARROLL COUNTY CATEGORY B	89,250
GRAFTON COUNTY CATEGORY B	185,300
<b>TOTAL</b>	425,850 GALLONS x \$2.15 x 25.00% = \$228,894.38

**FIXED PRICE & DEFAULT PRICING ONCE GUARANTEED "LOCK" GALLONS ARE DEPLETED – STATES OPTION**

*(Only Applicable if Contract is initially awarded based on Fixed/Lock Price)*

1. In order to effectively utilize all the guaranteed gallons contracted for, the state reserves the right to transfer any quantity of guaranteed gallons from one county to another as long as the 2 counties affected are under the same contract.
2. If there is a price per gallon difference between the 2 counties. The State shall pay the higher of the 2 contract prices for the guaranteed gallons transferred.
3. Bidder(s) is required to guarantee up to 30% "carry forward" on the guaranteed volumes.
4. The State of New Hampshire will grant a contract extension to the vendor(s) for the period required to utilize any "carry forward" quantities at the end of the initial contract period.
5. In the event that a vendor delivers a load of fuel at the end of the contract via automatic delivery or requested by the agency and the delivered gallons exceed the balance of the guaranteed gallons for that county, the State will pay the contracted price for the load.
6. Any deliveries made following the exhaustion of the guaranteed gallons for a county (unless #1 above applies) shall be priced and paid as described below.

**DEFAULT PRICING ONCE GUARANTEED GALLONS ARE DEPLETED (STATE OPTION):**

1. The state shall use the same "Index Based Format" as specified under the Solicitation Pricing Format section beginning on page 16.
2. The index price reference shall be as provided in the "Index Based Format" section, by product type.
3. The mark-up shall be, at a maximum, the mark-up prices offered in response to this RFB by the successful vendor(s) for the county and product.

**BID OFFER SECTION**

**OFFER:**

Vendor hereby offers to furnish to State of New Hampshire agencies and institutions and to any political sub-division and authorized non-profit organization wishing to participate, Premium On-Road Diesel and/or Gasoline, in accordance with all of the requirements of this bid invitation at the prices provided in the attached **RFB 2037-18 Offer Sheet** for the entire contract term and any extension.

The attached offer section has been divided into ten (10) counties with each county having up to two (2) options for the specified products: fixed price OR index based price. This bid contains all the locations requiring Diesel and/or Gasoline delivery at the time this bid was assembled.

**BID OFFER FORMAT – DECIMAL PLACES:**

Offer prices are to be PER GALLON and must include delivery and all other costs required by this bid invitation. Special charges, surcharges, or fuel charges of any kind (by whatever name) may not be added on at any time. Offered price per gallon shall not exceed **4 places** to the right of the decimal (example .0125). Bidders shall round up to four places to accommodate the current state 5 digit OPC fee.

**BIDDER OPPORTUNITY/STATE LOCATIONS:**

**Attachment B** is the current State of New Hampshire agency/institution locations which, if you are awarded a contract, you are expected to service. The State of New Hampshire reserves the right to add locations to this list at the contract prices or to delete locations, as needed. This listing **does not** include any eligible participants.

1. Locations are listed individually but grouped and awarded by county and fuel type, as listed in the *DELIVERY LOCATIONS* attachment.
2. Bidders may bid on as many counties as they feel they can service effectively. Bidders must have the capability to deliver to all locations within a county if bidding on that county.
3. Although Belknap, Sullivan, Grafton, Cheshire, Coos, and Carroll counties do not require Reformulated Gasoline, vendor(s) may offer pricing for reformulated gasoline in these counties. One (1) award for gasoline will be made per county (i.e. there will not be awards for conventional and reformulated gasoline in the same county).

**ADDITIONAL INFORMATION:**

Vendor(s) shall provide terminal locations they expect to use throughout the term of the contract and the product codes with associated descriptions belonging to such terminals.

**VENDOR CONTACT INFORMATION:**

The following information is for this office to be able to contact a person knowledgeable of your bid response, and who can answer questions regarding it:

<u>Joseph Cote</u> Contact Person	<u>617-884-7800</u> Local Telephone Number	<u>800-289-2875</u> Toll Free Telephone Number
<u>617-249-0239</u> Fax Number	<u>joe.cote@burkoil.com</u> E-mail Address	<u>www.burkeoil.com</u> Company Website
<u>Dennis K. Burke, Inc.</u> Vendor Company Name		<u>019187053</u> DUNS #
<u>555 Constitution Drive      Taunton, MA 02780</u> Vendor Address		

**ATTACHMENTS:**

- The following attachments are an integral part of this bid invitation:
- RFB 2037-18 OFFER SECTION and DELIVERY LOCATIONS
  - Gasoline Specifications
  - OPIS Pricing Reference Samples
  - Sample Tax Exempt Certificate – FUELS

**Note: To be considered, bid shall be signed and notarized on front cover sheet in the space provided.**

