

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

DATE: 9/9/19

CONTRACT #: 8002588

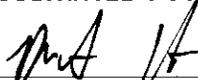
NIGP CODE: 405-1500

CONTRACT FOR: FUEL, Gasoline (Pedal Truck)

CONTRACTOR: Dennis K. Burke, Inc.

VENDOR CODE #: 174496

**SUBMITTED FOR ACCEPTANCE BY:**

  
\_\_\_\_\_  
RYAN AUBERT, PURCHASING AGENT  
BUREAU OF PURCHASE AND PROPERTY

DATE 9/9/19

**RECOMMENDED FOR ACCEPTANCE BY:**

  
\_\_\_\_\_  
PAUL RHODES, ADMINISTRATOR III  
BUREAU OF PURCHASE AND PROPERTY

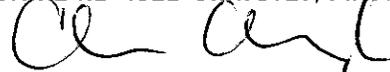
DATE 9/10/19

**APPROVED FOR ACCEPTANCE BY:**

  
\_\_\_\_\_  
GARY LUNETTA, DIRECTOR  
DIVISION OF PROCUREMENT & SUPPORT SERVICES

DATE 9/11/19

**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 9-11-19

STATE OF NEW HAMPSHIRE  
Department of Administrative Services  
Division of Procurement and Support Services  
Bureau of Purchase and Property  
State House Annex  
Concord, New Hampshire 03301

Date: 3/1/2020

NOTICE OF CONTRACT

COMMODITY: FUEL, GASOLINE (PEDAL TRUCK)

CONTRACT NO.: 8002588

NIGP: 405-1500

VENDOR: Dennis K. Burke, Inc.  
555 Constitution Drive  
Taunton, MA 02780

VENDOR #: 174496

CONTACT PERSON(S): **Contact:** Joe Cote  
**Tel. No.:** 617-884-7800  
**Fax No.:** # 617-249-0239  
**E-Mail:** [Joe.Cote@burkeoil.com](mailto:Joe.Cote@burkeoil.com)

EFFECTIVE FROM: March 1, 2020 through February 28, 2022

PRODUCTS & PRICING: **Index + markup:**  
Gasoline pricing shall be based upon the "**Unbranded Low Price**" as posted in the **Unleaded Regular 87 Octane** column of the Gasoline Prices Section of the Oil Price Daily, on the *Date of Delivery*.

INDEX REFERENCE:

CONVENTIONAL GASOLINE:  
REFORMULATED GASOLINE:

UNBRANDED Portland, ME LOW  
UNBRANDED Boston, MA LOW

MARK-UP:

CONVENTIONAL GASOLINE: \$0.7372/gallon  
REFORMULATED GASOLINE: \$0.8692/gallon

PAYMENT & TERMS: Payments shall be made via or ACH.

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

QUESTIONS: Direct any questions to Ryan Aubert, 603-271-0580 or [Ryan.Aubert@das.nh.gov](mailto:Ryan.Aubert@das.nh.gov)

### **INVOICING:**

Invoicing shall be done to the Agency Remit Account on the basis of each order completed. Invoices shall clearly indicate the quantity, description, packaging, date delivered, and contract price. Invoicing for eligible participants shall be in accordance with their individual requirements.

It will be the responsibility of the successful Vendor to see that all invoices are complete and priced accurately per the terms, conditions and format of this bid and any resulting contract. 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

### **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: THANKSGIVING IS ON A THURSDAY)**, invoices for those delivery dates will be calculated against the posted price on the **previous** business day.

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

The successful Vendor shall resolve all order and invoice discrepancies within five (5) business days from notification. Product returned due to quality issues, duplicate shipments, over-shipments, etc. shall be picked up by the successful Vendor within ten (10) business days of notification with no restocking or freight charges, and shall be replaced with specified products or the agency shall be refunded/credited for the full purchase price.

**Unauthorized substitutions for any products are not allowed.**

## **DELIVERY POLICY, PROCEDURES, REQUIREMENTS**

### **DELIVERY:**

1. State agencies shall contact the successful vendor and coordinate deliveries. All deliveries shall be made in accordance with the following requirements:
2. 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.
3. **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.
4. **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.

5. **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.
6. **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.
7. 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.
8. **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.
9. 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.
10. The use of a private carrier to make deliveries **does not** relieve the successful vendor from the responsibility of meeting the delivery requirements stated herein.
11. Successful vendor may utilize other distributors for supply and/or delivery of 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.
12. Successful vendor guarantees to be the base supplier if necessitated by imposition of the State of federal allocation plans.
13. Successful vendor is responsible for replacement of any State property that is damaged by their employees.

**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
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

**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.



STATE OF NEW HAMPSHIRE  
Bureau of Purchase and Property  
BID # 2230-20  
9/04/2019 @ 10:00 AM  
Gasoline, Supply & Deliver

**Section A: Reformulated Gasoline**

<b>Vendor</b>	<b>Mark-Up</b>	<b>BAFO</b>
Dennis K. Burke	\$ 0.9492	\$ 0.8692

**Section B: Conventional Gasoline**

<b>Vendor</b>	<b>Mark-Up</b>	<b>BAFO</b>
Dennis K. Burke	\$ 0.8172	\$ 0.7372

No Bid

FerrellGas - Unable to provide gasoline at an affordable price.

Division of Procurement and Support Services  
Bureau of Purchase and Property  
25 Capitol Street, Room 102, State House Annex  
Concord, NH 03301-6398

Date: 08/19/19

Bid No.: 2230-20

Date of Bid Closing: 09/04/19

Time of Bid Closing: 10:00 AM (EST)

PLEASE DIRECT ANY QUESTIONS REGARDING THIS BID TO Ryan Aubert: E-mail [Ryan.Aubert@DAS.NH.Gov](mailto:Ryan.Aubert@DAS.NH.Gov)  
EMAIL YOUR BID TO: [NH.Purchasing@DAS.NH.Gov](mailto:NH.Purchasing@DAS.NH.Gov)

**BID INVITATION FOR CONTRACT:  
FUEL, GASOLINE, SUPPLY & DELIVER (PEDAL TRUCK)**

[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 2230-20 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 Closing 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 Chief Supply & Business Dev. Officer

NOTARY PUBLIC/JUSTICE OF THE PEACE

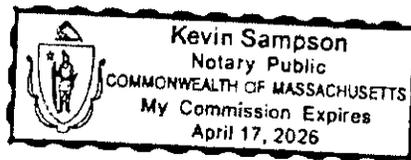
COUNTY: BRISTOL STATE: MA

ZIP: 02780

On the 3 day of SEPTEMBER, 2019, personally appeared before me, the above named Joe Cote, in his/her capacity as authorized representative of DKB, INC., 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 whereof, I hereunto set my hand and official seal.

*Kevin Sampson*  
(Notary Public/Justice of the Peace)



My commission expires: APRIL 17, 2026 (Date)

Form P31-B

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 constitute 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 closing. 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 closing. 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 closing, 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, SUPPLY & DELIVER (PEDAL TRUCK)**

### **PURPOSE:**

The purpose of this bid invitation is to establish a contract for supplying the State of New Hampshire agencies with the items 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 NH.Purchasing@DAS.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 Ryan Aubert at the following address: Ryan.Aubert@DAS.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, considered the dates below a "no later than" date.

08/19/2019	Bid Solicitation distributed on or by
08/28/2019	Last day for questions, clarifications, and/or requested changes to bid
09/04/2019	10:00 AM (EST) Bid Closing
03/01/2020	Implementation / Posting 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, addenda, and vendor presentations) 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 NH 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, NH 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 bidder as confidential. Any and all information contained in or connected to a bid or proposal that a bidder considers confidential shall be clearly designated in the following manner:

**If the bidder considers any portion of a submission confidential, they shall provide a separate copy of the full and complete document, fully redacting those portions by blacking them out and shall note on the applicable page or pages of the document that the redacted portion or portions are "confidential."** Use of any other term or method, such as stating that a document or portion thereof is "proprietary", "not for public use", or "for client's use only", is not acceptable. In addition to providing an additional fully redacted copy of the bid submission to the person listed as the point of contact on Page one (1) of this document, the identified information considered to be confidential **must** be accompanied by a separate letter stating the rationale for each item designated as confidential. In other words, the letter must specifically state why and under what legal authority each redaction has been made. Submissions which do not conform to these instructions by failing to include a redacted copy (if required), by failing to include a letter specifying the rationale for each redaction, by failing to designate redactions in the manner required by these instructions, or by including redactions which are contrary to these instructions or operative law may be rejected by the State as not conforming to the requirements of the bid or proposal. The State will generally assume that a bid or proposal submitted without an additional redacted copy contains no information which the bidder deems confidential. Bids and proposals which contain no redactions, as well as redacted versions of submissions that have been accepted by the State, may be released to the public, including by means of posting on State web sites.

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 bidder 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.

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 NH RSA 21-G:37 or any other applicable law or regulation, bidders 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 bidder that the request has been made; indicate what, if any, portions of the proposal or related material shall not be released; and notify the bidder of the date it plans to release the materials. The State is not obligated to comply with a bidder's designation regarding confidentiality. The State shall have no obligation to advise a bidder that an individual or entity is attempting to electronically access, or has been referred to, materials which have been made publicly available on the State's web sites.

By submitting a bid or proposal, the bidder 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 bidder.

Notwithstanding NH 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.

**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 commence March 1, 2020 or upon execution by the Commissioner of the Department of Administrative Services, whichever is later (the "effective date") and shall continue thereafter through February 28, 2021, a period of two (2) years.

The contract may be extended for an additional three (3) one-year extensions thereafter under the same terms, conditions and pricing structure upon the mutual agreement between the successful Vendor and the State with the approval of the Commissioner of the Department of Administrative Services. The maximum term of the contract (including extensions) shall not exceed five (5) years.

**CONTRACT AWARD:**

The award shall be made to the responsible Vendor meeting the criteria established in this RFB and providing the lowest total delivered price per section. The State reserves the right to reject any or all bids or any part thereof and add/delete items/locations to the contract. All awards shall be in the form of a State of New Hampshire Contract.

Successful Vendor 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.

**NOTIFICATION AND AWARD OF CONTRACT:**

Bid results shall not be given by telephone. For Vendors wishing to attend the bid closing, the names of the vendors submitting responses and pricing shall be made public. Other specific response information shall not be given out. Bid results shall be made public after final approval of the contract.

**Bid results may also be viewed on our website at <https://das.nh.gov/purchasing>**

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

**LIABILITY:**

The State shall not be held liable for any costs incurred by Vendors in the preparation of bids or for work performed prior to contract issuance.

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

**TERMINATION:**

The State of New Hampshire shall have the right to terminate the purchase contract at any time with written notice to the successful Vendor a thirty (30) day written notice.

**VENDOR CERTIFICATIONS:**

All Vendors shall be duly registered with the NH Bureau of Purchase and Property as State of New Hampshire vendors. All Vendors that are corporations, limited liability companies, or other limited liability business entities (this excludes sole proprietors and general partnerships) shall be duly registered with the New Hampshire Secretary of State to conduct business in the State of New Hampshire.

- **STATE OF NEW HAMPSHIRE VENDOR APPLICATION:** To be eligible for a contract award, a Vendor must 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: To be eligible for a contract award, a Vendor that is a corporation, limited liability company, or other limited liability business entity (this excludes sole proprietors and general partnerships) must be registered to conduct business in the State of New Hampshire **AND** in good standing with the NH Secretary of State. 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, any employee or approved subcontractor of the Vendor who will be accessing or working with records of the State of New Hampshire shall be required to sign a Confidentiality and Non-Disclosure Agreement and a Release of Criminal Record Authorization Form. These forms shall be returned to the designated State agency prior to commencing any work.
- CERTIFICATE OF INSURANCE: Prior to being awarded a contract the Vendor shall be required to submit proof of comprehensive general liability insurance coverage prior to performing any services for the State. The coverage shall insure 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 State of New Hampshire workers' compensation insurance to the extent required by RSA Chapter 281-A.

**BID PRICES:**

Bid prices shall be in US dollars and shall include delivery and all other costs required by this bid invitation. Special charges, surcharges (including credit card transaction fees), or fuel charges of any kind (by whatever name) may not be added on at any time. Any and all charges **shall be built into your bid price** at the time of the bid.

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 and shall supply exemption certificates as applicable.

**ABILITY TO PROVIDE:**

Successful Vendor shall be capable of providing each State of New Hampshire agencies and eligible participants with their entire requirements of the items required in this bid invitation and any resulting contract without any delay or substitution. Should a vendor's 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 Attachment: 2230-20 Delivery Locations and Estimated Usage)** 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.

**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.

**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 and in 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.

**ESTIMATED USAGE:**

The quantities indicated in the offer section of this bid invitation are an estimate only for the State of New Hampshire's annual requirements. These quantities are indicated for evaluation purposes only and shall not be considered minimum or guaranteed quantities, nor shall they be considered maximum quantities. These quantities **do not** include any eligible participant usage.

**USAGE REPORTING:**

The successful vendor shall submit consumption reports on a monthly basis to the Purchasing Agent. 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:

- Delivery Agency
- Physical location with Tank ID (if available)
- Date of delivery
- Gallons delivered
- Product type
- Total gallons delivered to date by location (with Tank ID), and product type

Reports shall be emailed to: Ryan Aubert – Purchasing Agent  
Bureau of Purchase and Property  
[Ryan.Aubert@das.NH.gov](mailto:Ryan.Aubert@das.NH.gov)

**ESTABLISHMENT OF ACCOUNTS:**

Each State of New Hampshire agency shall have its own individual customer account number. There shall 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 items ordered in accordance with the delivery time required under the "Delivery Time" section of this bid invitation, as if an account already exists for them.

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

The successful Vendor shall resolve all order and invoice discrepancies within five (5) business days from notification. Product returned due to quality issues, duplicate shipments, over-shipments, etc. shall be picked up by the successful Vendor within ten (10) business days of notification with no restocking or freight charges, and shall be replaced with specified products or the agency shall be refunded/credited for the full purchase price. Unauthorized substitutions for any products are not allowed.

**DELIVERY TIME:**

The successful Vendor shall be required to accomplish delivery of any item ordered under the contract within ten (10) business days from the placement of the order.

The use of a private carrier to make delivery **does not** relieve the successful Vendor from the responsibility of meeting the delivery requirement.

**INVOICING:**

Invoicing shall be done to the Agency Remit Account on the basis of each order completed. Invoices shall clearly indicate the quantity, description, packaging, date delivered, and contract price. Invoicing for eligible participants shall be in accordance with their individual requirements.

It will be the responsibility of the successful Vendor to see that all invoices are complete and priced accurately per the terms, conditions and format of this bid and any resulting contract. 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

**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: THANKSGIVING IS ON A THURSDAY)**, 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		

**PAYMENT:**

Payment method (P-Card or ACH). Payments shall be made via ACH or Procurement Card (P-card = Credit Card) unless otherwise specified by the state of New Hampshire. 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.

**VENDOR RESPONSIBILITY:**

The successful Vendor shall be solely responsible for meeting all terms and conditions specified in the bid and any resulting contract.

All State of New Hampshire bid invitations and addenda to such bid invitations are advertised on our website at: [https://das.nh.gov/purchasing/bids\\_posteddte.asp?sort=PostedDate\\_DESC](https://das.nh.gov/purchasing/bids_posteddte.asp?sort=PostedDate_DESC)

It is a prospective Vendor's responsibility to access our website to determine any bid invitation under which the Vendor desires to participate. It is also the Vendor's responsibility to access our website for any posted addenda.

The website is updated several times per day; it is the responsibility of the prospective Vendor to access the website frequently to ensure that no bidding opportunity or addendum is overlooked.

It is the prospective Vendor's responsibility to forward a signed copy of any addendum requiring the Vendor's signature to the Bureau of Purchase and Property with the bid response.

In preparation of a bid response, the prospective Vendor shall:

- Provide pricing information as indicated in the "Offer" section; and
- Provide all other information required for the bid response (if applicable); and
- Complete the "Vendor Contact Information" section; and
- Add applicable prospective Vendor information to the "Transmittal Letter" form, and sign the form in the space provided. The Transmittal Letter form must be signed under oath and acknowledged by a notary public or justice of the peace in order for the bid response to be considered.



## DELIVERY POLICY, PROCEDURES, REQUIREMENTS

### DELIVERY:

State agencies shall contact the successful vendor 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 from the responsibility of meeting the delivery requirements stated herein.
10. Successful vendor may utilize other distributors for supply and/or delivery of 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 guarantees to be the base supplier if necessitated by imposition of the State of federal allocation plans.
12. Successful vendor is responsible for replacement of any State property that is damaged by their employees.

**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
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

**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 vendor's 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 adapt 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.

**BID OFFER SECTION**

**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 DELIVERY LOCATIONS:**

**Attachment: 2230-20 Delivery Locations and Estimated Usage** is the current State of New Hampshire agency/institution locations which, if you are awarded a contract, you are expected to service. 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 section as listed in Attachment: 2230-20 Delivery Locations and Estimated Usage.
2. This bid contains all the locations requiring Pedal Truck Gasoline delivery at the time this bid was assembled.
3. Bidders may bid on as many sections as they feel they can service effectively. Bidders must have the capability to deliver to all locations within a section if bidding on that 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, in accordance with all of the requirements of this bid invitation at the following prices for the entire contract term and any extension.

SECTION	UNIT	INDEX BASED MARK-UP over OPIS (NOT to exceed 4 decimal places)
A: REFORMULATED GASOLINE	GALLON (DELIVERED)	\$ .9492
B: CONVENTIONAL GASOLINE	GALLON (DELIVERED)	\$ .8172

**VENDOR CONTACT INFORMATION:**

Please provide contact information below for a person knowledgeable of and who can answer questions regarding, this bid response.

<u>Patrick Healey</u> Contact Person	<u>1(800)289-2875</u> Local Telephone Number	<u>1(800)289-2875</u> Toll Free Telephone Number
<u>bids@burkeoil.com</u> E-mail Address	<u>www.burkeoil.com</u> Company Website	<u>019189053</u> DUNS #
<u>555 Constitution Drive, Taunton, MA 02780</u> Vendor Address		

**If required, please see NH District Map for clarifications.**

<https://www.nh.gov/dot/org/operations/highwaymaintenance/documents/DistrictEngineersMap-August2015.pdf>

**ATTACHMENTS:**

- The following attachments are an integral part of this bid invitation:
- 2230-20 Delivery Locations and Estimated Usage
  - OPIS Price Reference Sample
  - Gasoline Specifications
  - Sample Fuel Tax Exempt Certificate

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

Current Contract # 8002277

Contract DESCRIPTION Name: Fuel, Gasoline (Pedal Truck)

Current Expire: 2/29/20

Projected New Term: 3/1/20-2/28/21

NEW Bid # 2230-20

### Contract Solicitation Checklist

	Completed	Comments/Notes	
		Yes	No
1	X		
2	X		AG, Corrections, DNCR, F&G
3	X		No
4	X		No
5	X		No
6	X		No. Current market projection proves viability of yearly bid.
7	X		Estimated Usage
8	X		

What is the total spend associated with this contract? Be able to show spend from NH First, P-Card, and current vendor reported spend (Auditor may have already performed this process and in folder).  
 o Contract term \$ 91,433.68

Identify who the primary using agencies on this contract? Identify the points of contact for each and consult their guidance regarding current contract operation and performance. Evaluate all aspects of this contract focusing on Scope of Service, Payment terms, reporting, delivery timeframes, dispute resolution, price escalation, performance of the contractor, etc. to help you write new bid specs or justify extension

Contract and solicitation content/clarifications  
 o Were there any amendments to the contract? Why? Incorporate into new specification or justification.  
 o Were there any addendums during the past solicitation cycle? Why? Incorporate into new bid or justification.  
 o Were any NO-Bids received? Why?

2 years. Historical repetition. Decrease to 1 year as per new fuel process.

What was the past contract term? What was the rational for this timeframe and does it make sense in the current market? Should you increase/decrease term

Have there been any changes in the market over the past term? How might those changes alter your recommendation for renewal? Where were these changes brought to light?

Is this contract a candidate for a Group Purchasing Organization (GPO) such as NASPO? What is the benefit for your recommendation?

How was the past contract awarded? Does this award make sense under current market conditions?  
 Can an estimated usage or frequency of service be defined/forecasted accurately? If so eliminate the estimated contract value in its entirety

9	Does the market condition dictate the need to allow price escalation on this contract? Is there a fixed benchmark that can be used and is recognized by all participants? (i.e. USDA Consumer Price Index, London Metals Exchange, OPIS, etc.) If no benchmark exists provide a historical assessment of price changes over the past contract term and make recommendation for a "cap". All escalation allowances shall have a maximum cap of 6% annually or 3% semiannually unless justification and benchmarks are provided as shown below.	X		Benchmark exists. Mark-up over index from OPIS daily distribution is the market standard.
10	Review the Audits and accounting and usage reporting provisions of the contract. Does it capture the information necessary based upon the product or service? Alter to reflect the necessary information, delivery method, and frequency in which the information is to be compiled	X		Yes
11	Review the current payment method. Is this contract a candidate for mandatory P-Card payment?			I'm not sure what qualifies a contract for mandatory P-card payment.
12	Have the agency contacts reviewed and made changes to the specifications? Have there been any industry/technology changes in the market?	X		All locations have been contacted and confirmed.
13	Is the offer list complete? Does it reflect all frequently ordered products and services? Does the current vendors reporting support this? If "balance of product line" is allowed explain what percentage of total spend equates to this category	X		All locations have been contacted and confirmed.
14	Is this contract necessary for disaster recovery or support efforts under ESF?	X		
15	Review all existing supporting documents and attachments for accuracy and clarity. Are the documents relevant and necessary for a new contract solicitation?	X		Yes
16	Evaluate other States, towns, municipalities, government entities for similar contracts (GovWin). <ul style="list-style-type: none"> <li>o Are solicitations and contract documents available?</li> <li>o What was the approach taken by these groups and how does this change/reaffirm your recommended approach?</li> </ul>	X	X	I viewed Vermont, Massachusetts, and Maine's contracts.
17	Are there resources available to aid in the creation of a new solicitation or resulting contract? <ul style="list-style-type: none"> <li>o Have you researched IBIS world?</li> <li>o Does GovWin have any similar contracts posted?</li> <li>o What other resources are available? (industry publication, global financial market reports, State/Governmental oversights, etc.)</li> </ul>	X	X	X

18	Do you have enough information to support your recommendation? If not or if you are recommending an extension, perform an RFI to support your findings or to compile the additional information necessary to complete the contract process.	X		
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Sample Clause;

The successful Vendor(s) may request price increases during the term of the contract on a semiannual basis, however price increase for any product shall not be in excess of percentages as reported by the London Metals Exchange (LME) or other industry index's as determined by the State. Written notice of an impending price increase, including substantiation for it, must be submitted in writing to Bureau of Purchase & Property, 25 Capitol Street, Rm. 102, Concord, NH 03301, no less than thirty (30) days prior to the effective date of said price increase. The State reserves the right to reject any price increases it deems unreasonable.

Updated Published Price List MUST be e-mailed to Purchasing Agent@das.NH.Gov

Price decreases shall become effective immediately as they become effective to the general trade or the Vendor's best/preferred customer