Please direct any questions regarding this bid to Jeff Haley: E-mail jeffrey.haley@das.nh.gov
Email your bid to: NH.Purchasing@DAS.NH.Gov

**BID INVITATION FOR CONTRACT: JANITORIAL SUPPLIES**

[Insert name of signor]_____________________________, on behalf of _____________________________ [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 2364-21 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 Bid was prepared independently from all other vendors and was 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 unfilled 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 __________________________  Authorized Signor’s Title __________________________

**NOTARY PUBLIC/JUSTICE OF THE PEACE**

COUNTY: __________________________ STATE: __________ ZIP: ________________

On the _____ day of _______________, 2020, personally appeared before me, the above named ____________________________, in his/her capacity as authorized representative of ____________________________, 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.

________________________________________________________
(Notary Public/Justice of the Peace)

My commission expires: __________________________ (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-I, 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 RSA 21-I:11-b and 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-I: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.
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 repurchase 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 delegatee ("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: JANITORIAL SUPPLIES

PURPOSE:
The purpose of this bid invitation is to establish a contract(s) 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. Review the pricing information and how to fill out the pricing information in the “Offer” section; complete the “Vendor Contact Information” section; and fill out, sign, and notarize page one, Transmittal Letter of the bid invitation.

BID SUBMITAL:
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 in the Timeline section herein 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.

Upon the public bid opening, the State may, at its sole option, invite several or all Bidders to Electronic Reverse Auction as detailed in Reverse Auction Process section below. The States reserves the right to select the qualified bidder based solely on the initial bid and is under no obligation to perform an Electronic Reverse Auction.

Should the State choose to execute their option to perform an Electronic Reverse Auction, final bid prices will be submitted through an Electronic Reverse Auction Event (the date and time of the Electronic Reverse Auction Event will be provided upon initial review and qualification of responses received).

AS THE STATE MAY NOT PERFORM AN ELECTRONIC REVERSE AUCTION, BIDDERS ARE ENCOURAGED TO PROVIDE THEIR MOST COMPETITIVE PRICES IN THEIR INITIAL BID.

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, clarifications or requested changes to the terms and conditions 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 to terms and conditions 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 Jeff Haley at the following address: Jeffrey.Haley@DAS.NH.Gov.

ADDENDA:
In the event it becomes necessary to add to or revise any part of this RFB 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/purchasing.aspx.

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.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>08/11/2020</td>
<td>Bid Solicitation distributed on or by</td>
</tr>
<tr>
<td>08/18/2020</td>
<td>Last day for questions, clarifications, and/or requested changes to bid</td>
</tr>
<tr>
<td>09/10/2020</td>
<td>10:30AM (EST) Bid Closing</td>
</tr>
</tbody>
</table>
GOVERNING TERMS AND CONDITIONS:

All material received in response to this bid shall become the property of the State and shall not be returned to the Vendor. Regardless of the Vendors selected, the State reserves the right to use any information presented in a bid response. The content of each Vendor’s bid shall become public information once a contract(s) has been awarded.

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 RFB is published 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.

The form P-37 Contract attached hereto shall be part of this RFB and the basis for the contract(s). The successful Vendor and the State, following notification, shall promptly execute this contract form, which is to be completed by incorporating the service requirements and price conditions established by the vendor’s offer.

CHAPTER ADM 600 PROCUREMENT AND PROPERTY RULES APPLY TO AND ARE MADE A PART HEREOF

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 that the bidder deems confidential. Bids and proposals that 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.

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Contractor Initials ________
Date ________
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, such entities shall be solely responsible for their association with the successful Vendor. The State of New Hampshire shall assume no liability as may arise from such an association between the successful Vendor and any such eligible participants.

**CONTRACT PARTICIPANTS:**
Apart from the State, it is likely that an unknown number of Participants (municipalities) will want to utilize the awarded contract(s). Participants will be required to complete a participating addendum, described below.

**PARTICIPATING ADDENDUM:**
Each Participant will complete a participating addendum supplied by the State of NH-Bureau of Purchase and Property (State). A copy of said addendum, after being executed by the Participant and the contracted vendor, will be maintained on file with the State.

- A Participating Addendum shall be executed by the contractor and the individual Participant desiring to use the contract.
- Additional Participants may be added with the consent of the contractor and the State through execution of Participating Addendums.
- A Participating Addendum allows for each Participant to add terms and conditions that may be unique to their origin.
• The Participant and the Contractor shall negotiate and agree upon any addition terms and conditions prior to the signing and execution of the Participating Addendum.

**CONTRACT TERM:**
The term of the contract shall commence November 1, 2020 or upon execution by the Commissioner of the Department of Administrative Services, whichever is later (the “effective date”) and shall continue thereafter for a period of three (3) years.

The contract may be extended for an additional two (2) 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:**
Award shall be made to the responsible Vendor(s) meeting the criteria established in this RFB and providing the lowest cost per line item within each section. Upon the public bid opening, the State may, at its sole option, invite several or all Bidders to Electronic Reverse Auction as detailed in Reverse Auction Process section below. The States reserves the right to select the qualified bidder based solely on the initial bid and is under no obligation to perform an Electronic Reverse Auction. The State reserves the right to reject any or all bids or any part thereof and add/delete items/locations to the contract. Award(s) will be made by line item only. Award(s) shall be in the form of a State of New Hampshire Contract(s).

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(S):**
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 disclosed in accordance with RSA 210G:37. Other specific response information shall not be given out. Bid results shall be made public after final approval of the contract(s). In the case of an Electronic Reverse auction qualified suppliers will be notified and invited to participate in a pricing event.

Bid results may also be viewed on our website at [https://apps.das.nh.gov/bidscontracts/bids.aspx](https://apps.das.nh.gov/bidscontracts/bids.aspx).

**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.

**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](https://DAS.NH.Gov/Purchasing)

• 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.

**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

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.

**BID PRICES:**
Bid prices shall remain firm for the entire contract period, 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. Unless otherwise specified, prices shall be
F.O.B. DESTINATION, (included in the price bid), which means delivered to a state agency's receiving dock or
other designated point as specified in this contract or subsequent purchase orders without additional
charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading
during receiving hours.

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”.

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

**WARRANTY REQUIREMENTS:**
The successful Vendor shall be required to provide warranties on all equipment/items provided by the
Vendor for a period of not less than one (1) year or the manufacturer’s standard warranty period, whichever
is greater, commencing on the date that the equipment is received, inspected, and accepted by the State
of New Hampshire. The warranty shall cover 100% of repair or replacement costs, including all parts, shipping,
labor, travel, lodging, and expenses.

**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 to the entire State of New Hampshire.
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.

REVERSE AUCTION PROCESS:
In the event the State exercises its option to proceed with an Electronic Reverse Auction, qualified vendors will be invited to participate in the auction and notified accordingly after the public bid opening. Participating Vendors will be required to sign and return the EASiBuy, LLC (“EASi”) Supplier Agreement Terms and Conditions, which will be provided after bid the bid due date if the State exercises its option to proceed.

An Electronic Reverse Auction is an electronic procurement process in which qualified Bidders submit final price proposals online by a specified deadline (date and time) through an electronic platform provided by a third party. Bidders anonymously compete against each other to offer the lowest contract price by the close of the Electronic Reverse Auction Event, which will be managed and hosted by EASiBuy, LLC (EASi).

Bidders will be considered qualified by submitting a compliant response to the line items they wish to participate in. Responses must certify acceptance of all criteria set forth herein and include the detailed response required in each subsection of the Offer section of this RFB.

Reverse Auction Information shall be provided in the event the State exercises its option to proceed.

EASIBUY, LLC REPORTING AND FEES:
Should the State choose to exercise their option to perform an Electronic Reverse Auction, the Successful Vendor shall submit a monthly sales report to EASiBuy, LLC, and make associated payments, during the Term of this Contract. Successful Vendor represents and warrants it has entered into and will comply with its agreement with EASiBuy, LLC. This is a material representation of fact on which the State may rely.

The Awarded Vendor shall generate and submit to EASiBuy, LLC monthly volume sales reports detailing total dollars in sales generated by each Eligible Participant and a Transaction Fee percentage of the sales made to Eligible Participants in the relevant month. Successful Vendor represents and warrants it has entered into and will comply with its agreement with EASiBuy, LLC. This is a material representation of fact on which the State may rely.

EASIBUY, LLC FEES STRUCTURE (If applicable):
Should the State choose to exercise their option to perform an Electronic Reverse Auction, are represented by way of percentage of total contract spend. The table below depicts the percentage assessed by EASiBUY LLC and are paid direct. In accordance with the “Bid Prices” provision Herein, “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.”

<table>
<thead>
<tr>
<th>Contract Value Range</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>$500,000 - $4,999,999</td>
<td>0.70%</td>
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</tbody>
</table>

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 informational 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 be required to submit bi-monthly and annual usage report for analysis to determine contract compliance. At a minimum, the Report shall include:

- Contract Number
- Utilizing Agency and Eligible Participant
- Reports shall have two (2) separate sections related to items purchased:
  - All Fixed Price Products Purchased (showing the manufacturer, item, part number, list price and the final cost after discount.)
  - All Balance of Product Line Products Purchased (showing the manufacturer, item, part number, list price and the final cost after discount.)
- Recycling documentation with respect to content used in the manufacture, development and distribution process of goods and services sold. This report shall include but not be limited to:
  a. Percentage of recycled materials contained within finished products
  b. Percentage of waste recycled throughout the manufacturing process
  c. Types and volume of packaging used for transport
  d. Any associated material avoided and/or recycled as applicable under contract
  e. A standardized reporting form will be provided after contract award
- Total Cost of all Products Purchased

**ACCOUNT COMMUNICATION & ESCALATION:**
All communication regarding account details including but not limited to, shipping and receiving, invoice reconciliation, product availability, etc. shall be handled direct with the agency contact assigned. If for any reason a resolution cannot be met at an agency level the vendor agrees to escalate the concern to the Bureau of Purchase and Property prior to imposing any restriction or hold on the account in question.

**RETURNED GOODS:**
The successful Vendor shall resolve all order and invoice discrepancies within five (5) business days from notification. Products 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.

Standard stock products ordered in error by the State of New Hampshire shall be returned for full credit within fifteen (15) business days of receipt. Products shall be in re-sellable condition (original container, unused) and there shall be no restocking fee charged for these products. The using agency shall be responsible for any freight charges to return these items to the successful Vendor.

**DELIVERY TIME:**
The successful Vendor(s) will be required to accomplish delivery of any item ordered under the contract within five (5) business days. Orders must be delivered between the hours of 7:30 AM - 2:30 PM (EST). The successful Vendor(s) shall deliver any emergency requested item ordered under the contract within 24 hours from the placement of the order. The State shall clearly define the item(s) as an emergency when placing 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.

**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](https://www.nh.gov/treasury/state-vendors/index.htm) Eligible participants shall negotiate their own payment methods with the successful Vendor.

**INVOICING:**
Invoicing shall be submitted 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.
TERMS OF PAYMENT:
Payment shall be made in full within thirty (30) days after receipt of the invoice and acceptance of the corresponding goods and/or services to the State’s satisfaction.

PRODUCT SAMPLES:
If applicable, product sample shall be the exact quality, brand and style being quoted in this bid. Vendors shall be contacted during the evaluation process if sample is required - Do Not Submit Sample with RFB Response. All samples shall be provided at no charge to the State of NH Bureau of Purchase and Property, and shall not be returned.

VENDOR’S BALANCE OF PRODUCT LINE ITEMS
Each section lists the items most commonly purchased by State of New Hampshire agencies, and will be used for award purposes. During the term of contract, the State may purchase other items which are closely related to the items specified in the line items awarded (ex: Can Liners, Paper Products, etc.) from the successful Vendor(s)’ Balance of Product Line. Vendors shall not offer balance of product line items for item types not within the category(ies) awarded. Balance of Product Line items under the “Miscellaneous” category are items similar to those listed in this category, i.e., mops, spray bottles, scrub brushes. All items ordered shall include all shipping/charges as specified above in “Bid Prices”.

Any item ordered from Balance of Product Line must not exceed Vendors’ preferred customer unit price basis.

Agencies ordering Balance of Product Items must request a quote from all vendors awarded a contract in the associated category. Balance of Product Items will be purchased from the vendor submitting the lowest quote meeting specifications.

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/vendorresources.aspx

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:
• Should the State choose to exercise their option to perform an Electronic Reverse Auction, provide final pricing information during the Electronic Reverse Auction 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.

IF AWARDED A CONTRACT:
The successful Vendor shall complete the following sections of the attached Agreement State of New Hampshire Form #P-37:

Section 1.3 Contractor Name
Section 1.4 Contractor Address
Section 1.11 Contractor Signature
Section 1.12 Name & Title of Contractor Signatory (if Vendor is not a sole proprietor)
The successful Vendor must:
- Provide certificate of insurance indicating the coverage amounts required by Section 14 of the Form Number P-37.
- Provide proof of sufficient workers' compensation insurance coverage or evidence of exemption from RSA Chapter 81-A.
- If the successful Vendor is a corporation, limited liability company, or other limited liability business entity, then provide a certificate of good standing issued by the NH Secretary of State or, for a newly incorporated, formed, or registered entity, a copy of the appropriate registration document certified by the NH Secretary of State.

CUSTOMER SUPPORT SERVICES:
The successful Vendor(s) shall provide sales support for the items and equipment specified in the contract. The Vendor shall have a central contact point, available during State business hours, for resolving customer support problems.

Pre-Sales Support shall include, but is not limited to:
- Product Quotes
- Product Research
- Product Recommendation
- Product Specifications
- Assistance to State Agencies in finding products that best meet their needs.

Post-Sales Support shall include but is not limited to:
- Delivery Information
- Product Return
- Invoice/Billing Issues
- Training on equipment and products when requested
- Facilitate Resolution of Product Problems

EQUIPMENT: The successful Vendor(s) will be responsible for replacing and servicing any and all equipment needed for their product line(s), i.e. soap dispensers, toilet paper dispensers, paper towel dispensers, etc., at no additional cost.

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.

Unless otherwise specified by the Bureau of Purchase and Property in this bid invitation document, all equipment/items offered by the Vendor shall be new (and of the current model year, if applicable); shall not be used, rebuilt, refurbished; shall not have been used as demonstration equipment, and shall not have been placed anywhere for evaluation purposes.

The manufacturer(s) and/or model(s) indicated in this bid are equivalent to the type and quality required. You may bid different make(s) and model(s); however, your offer shall match or exceed the one(s) indicated and you shall demonstrate to the satisfaction of the purchasing Agency that they meet or exceed the minimum standards. Items that do not meet the minimum standards shall not be accepted.

Product literature and specifications may be enclosed.

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

Disaster Recovery
Do you provide emergency preparedness plan to aid the State during an emergency or disaster recovery with specifics as to response time, availability of supplies and goods and services offered? Yes or No

If yes, please include hard copy and/or link to website for further information. This information is not
considered part of award criteria and is considered informational only.

**OFFER:**

See Attachment A: Bidder Workbook

Vendor hereby offers to furnish to State of New Hampshire agencies and institutions and to any political subdivision 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.

Vendors shall only bid can liners produced in North America.

All can liner boxes must be clearly labeled with the following specifications: Liner Size, Color, Thickness and Case Weight.

**PPE SECTION:**

The PPE section will be bid amongst contract holders on a quarterly basis throughout the term of this contract.

**DELIVERY LOCATIONS:**

Pricing shall include delivery within the entire State of New Hampshire.

**ATTACHMENTS:**

The following attachments are an integral part of this bid invitation:

Attachment A: Offer Section Bidder Workbook

**VENDOR CONTACT INFORMATION:**

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

<table>
<thead>
<tr>
<th>Contact Person</th>
<th>Local Telephone Number</th>
<th>Toll Free Telephone Number</th>
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</thead>
<tbody>
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<table>
<thead>
<tr>
<th>E-mail Address</th>
<th>Company Website</th>
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<table>
<thead>
<tr>
<th>Vendor Company Name</th>
<th>Vendor Address</th>
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**Note:** To be considered, bid shall be signed and notarized on front cover sheet in the space provided.
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

1. **IDENTIFICATION.**

<table>
<thead>
<tr>
<th>1.1 State Agency Name</th>
<th>1.2 State Agency Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.3 Contractor Name</td>
<td>1.4 Contractor Address</td>
</tr>
<tr>
<td>1.5 Contractor Phone Number</td>
<td>1.6 Account Number</td>
</tr>
<tr>
<td>1.7 Completion Date</td>
<td>1.8 Price Limitation</td>
</tr>
<tr>
<td>1.9 Contracting Officer for State Agency</td>
<td>1.10 State Agency Telephone Number</td>
</tr>
<tr>
<td>1.11 Contractor Signature</td>
<td>1.12 Name and Title of Contractor Signatory Date:</td>
</tr>
<tr>
<td>1.13 State Agency Signature</td>
<td>1.14 Name and Title of State Agency Signatory Date:</td>
</tr>
<tr>
<td>1.15 Approval by the N.H. Department of Administration, Division of Personnel <em>(if applicable)</em> By: Director, On:</td>
<td></td>
</tr>
<tr>
<td>1.16 Approval by the Attorney General (Form, Substance and Execution) <em>(if applicable)</em> By: On:</td>
<td></td>
</tr>
<tr>
<td>1.17 Approval by the Governor and Executive Council <em>(if applicable)</em> G&amp;C Item number: G&amp;C Meeting Date:</td>
<td></td>
</tr>
</tbody>
</table>
2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 (“Effective Date”).

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provide in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State’s representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer’s decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.
8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder (“Event of Default”):
8.1.1 failure to perform the Services satisfactorily or on schedule;
8.1.2 failure to submit any report required hereunder; and/or
8.1.3 failure to perform any other covenant, term or condition 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 Contractor 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 cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
8.2.2 give the Contractor 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 Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.
8.3. 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 of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default 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 Event of Default on the part of the Contractor.

9. TERMINATION.
9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.
9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State’s discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State’s discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.

10.1 As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

11. CONTRACTOR’S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers’ compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTACTS.
12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. “Change of Control” means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.
12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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
in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.
14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:
14.1.1 commercial general liability insurance 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 or excess; and
14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.
14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS’ COMPENSATION.
15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (“Workers’ Compensation”).
15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers’ Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers’ Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers’ Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers’ Compensation laws in connection with the performance of the Services under this Agreement.

16. 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 in blocks 1.2 and 1.4, herein.

17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and 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. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. 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 with respect to the subject matter hereof.