

STATE OF NEW HAMPSHIRE PROPOSAL TRANSMITTAL LETTER

Date: _____

Company Name: _____

Address: _____

To: Point of Contact: **Karen Rantamaki**
Telephone: (603)-271-2698
Fax: (603) 271-7564
Email: prchweb@nh.gov

RE: **Proposal Invitation Name: Firm Electric Supply**
Proposal Number: PROPOSAL 2016-182
Proposal Opening Date and Time: October 20, 2015 @ 12:00 NOON (EST)

Dear **Ms. Rantamaki**:

[Insert name of signor] _____, on behalf of _____ [insert name of entity submitting Proposal (collectively referred to as "Vendor") hereby submits an offer as contained in the written Proposal submitted herewith ("Proposal") to the State of New Hampshire in response to PROPOSAL # 2016-182 for Firm Electric Supply Services Contract(s) at the price(s) quoted herein in complete accordance with the Proposal.

_____ is authorized to legally obligate _____
Print Signor Name Print Company Name

Vendor attests to the fact that:

1. The Vendor has reviewed and agreed to be bound by the terms of the Request for Proposal.
2. The Vendor has not altered any of the language or other provisions contained in the Proposal document.
3. The Proposal is effective for a period of 5 hours from the Opening date as indicated above.
4. The prices Vendor has quoted in the Proposal were established without collusion with other vendors.
5. The Vendor has read and fully understands this Request for Proposal.
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 proposaling 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 proposal, 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.

Authorized Signor's Signature _____ **Authorized Signor's Title** _____

NOTARY PUBLIC/JUSTICE OF THE PEACE

COUNTY: _____ **STATE:** _____ **ZIP:** _____

On the ____ day of _____, 2015, 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 thereof, I hereunto set my hand and official seal.

(Notary Public/Justice of the Peace)

My commission expires: _____ (Date)

**REQUEST FOR PROPOSAL FOR A CONTRACT(S) TO
PROVIDE FIRM ELECTRIC SUPPLY SERVICES FOR
THE STATE OF NEW HAMPSHIRE**

PURPOSE:

The purpose of this Request for Proposals (RFP) is to purchase firm electrical supply for certain electrical accounts for the State of New Hampshire (State), from a Competitive Electric Power Supplier (CEPS), certified as such with the New Hampshire Public Utilities Commission (NH-PUC). It is the intent of the State to enter into the **State of New Hampshire Power Supply Agreement** for a term of twelve, twenty-four, or thirty-six months. The State will commit a load consisting of: **524 (and 3)** accounts now serviced by the Local Distribution Company (LDC) listed in Attachment A with a combined annual usage of **92,167 (and 13,444)** MWh.

It is the intent of the State to receive electric supply offers from CEPS based only on the accounts included in this RFP.

GENERAL PROVISIONS:

This RFP does not commit the State of New Hampshire to award a contract, pay any costs incurred in preparing a response, or procure or contract for services. Furthermore the State's listed loads are intended to demonstrate usage history only; the indicated annual load is an approximation. Actual usage history may be obtained by submitting an Interval Data Request. Any resulting contracts from this RFP will be for kWh equivalent to the actual past twelve months, depending on contract term, with at least a 20-percent swing provision built in. Should the total combined usage for the listed accounts differ by more than 20-percent, the State agrees to purchase additional needed electricity at the market price as detailed herein for the duration of the contract. Any resulting contracts will explicitly state the number of kWh to be purchased.

CEPS responding to this request will bear all expenses incurred in the preparation of their responses. Furthermore, any cost to investigate usage profiles or provide oral or written clarification of their proposals shall be borne by the suppliers. The State of New Hampshire assumes no responsibility for these costs. All responding CEPS are instructed to submit one original and three copies of their bids. The State has published its "CURRENT FINANCIALS" posted on the NH Bureau of Administrative Services website: <http://admin.state.nh.us/accounting/reports.asp>. Any proposal stating "subject to credit approval," shall be deemed noncompliant. The State's credit worthiness must be based on the documents posted on the abovementioned website.

Qualification Statements (Phase I) must be submitted as directed per Proposal Format & Content Description, and Bid Submission must be received on the forms supplied (including all appendices). Qualification Statements must be typewritten and mailed or delivered in person; however, Bid Forms (Phase II) can be faxed or emailed. Qualification Statements must be signed to be considered. All proposals become the property of the State after the bid deadline.

The State of New Hampshire will cooperate with the suppliers to obtain load profiles, from the LDC, on the accounts listed in Attachment A. CEPS must submit Interval Data Requests to the Department of Administrative Services for signature and approval. It is then the responsibility of the CEPS to forward the request to the LDC. All costs incurred for the request of interval data are the responsibility of the CEPS. DAS will not pay any costs associated with these requests. Electronic copies of current electric bills for the accounts included in this RFP will be posted to DAS's FTP site. A password to access this site will be provided upon request.

If an award is made, the CEPS will be notified by the State's lock-in deadline. A contract will be transmitted via fax or email, signed by the appropriate State and CEPS parties. A final contract with original signatures will be submitted to the State within three business days of the contract award.

CONTRACT PERIOD/TERM:

The selected CEPS shall supply electricity to the State at an 'All Inclusive Fixed Price' starting on the LDC's next scheduled meter reading on or after November 1, 2015; at the bid pricing structure established from this RFP for a period of twelve, twenty-four, or thirty-six months as dictated by the **State of New Hampshire Power Supply Agreement** (Agreement). The contract may be extended for a period up to the length of the original period with terms and conditions agreed upon by both parties.

CONTRACTOR POINT OF CONTACT:

The Contractor shall assign a Contractor Point of Contact. The Contractor's selection of the Contractor Point of Contact shall be subject to the prior written approval of the State. The State's approval process may include, without limitation, review of the proposed Contractor Point of Contact resume, qualifications, references, and an interview. The State may require removal or reassignment of this Contractor Point of Contact who, in the sole judgment of the State, is unacceptable to the State or is not performing to the State's satisfaction.

The Contractor Point of Contact shall have full authority to make binding decisions under this Contract, and shall function as the Contractor's representative for administrative and management matters. The Contractor Point of Contact shall be available to promptly respond to inquiries from the State during Normal Business Hours. The Contractor Point of Contact shall work diligently and use his/her best efforts on the Contract. The Contractor Point of Contact shall be qualified to perform the obligations required of the position under this Contract.

The Contractor shall not change its assignment of this Contractor Point of Contact without providing the State with written notice. The replacement Contractor Point of Contact shall have comparable or greater skills than the Contractor Point of Contact replaced, and meet the requirements of this Contract.

INSURANCE:

Prior to award of this contract, the contractor shall furnish a Certificate of Insurance as evidence of existence of broad form comprehensive general liability (CGL) in minimum amount of not less than \$250,000.00 per claim, and \$1,000,000.00 per incident and no less than \$1,000,000 in excess/umbrella liability each occurrence.

The CEPS shall, at its sole expense, obtain said insurance and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, both for the benefit of the State. The certificates shall contain a clause prohibiting cancellations or modifications of the policy for the duration of the contract.

The policies described above shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State.

PUBLIC DISCLOSURE:

Generally, all proposals (including all materials submitted in connection with them, such as attachments, exhibits and addenda) become public information upon the effective date of a resulting contract or purchase order. However, to the extent consistent with applicable state and federal laws and regulations, as determined by the State, including, but not limited to, RSA Chapter 91-A (the "Right-to-Know" Law), the State will attempt to maintain the confidentiality of portions of a proposal that are clearly and properly marked by a Vendor as confidential. Any and all information contained in or connected to a proposal that a Vendor considers confidential must be clearly designated in a manner that draws attention to the designation. The State shall have no obligation to maintain the confidentiality of any portion of a proposal or related material, which is not so marked. Marking an entire proposal, attachment or sections thereof confidential without taking into consideration the public's right to know will neither be accepted nor honored by the State. Notwithstanding any provision of this RFP to the contrary, pricing will be subject to public disclosure upon the effective date of all resulting contracts or purchase orders, regardless of whether or not marked as confidential. If a proposal results in a purchase order or contract, whether or not subject to approval by the Governor and Executive Council, all material contained in, made part of, or submitted with the contract or purchase order shall be subject to public disclosure.

If a request is made to the State by any person or entity to view or receive copies of any portion of a proposal and if disclosure is not prohibited under RSA 21-I: 13-a, Vendors acknowledge and agree that the State may disclose any and all portions of the proposal or related materials which is not marked as confidential. In the case of proposals or related materials that contain portions marked confidential, the State will assess what information it believes is subject to release; notify the Vendor that the request has been made; indicate what, if any, portions of the proposal or related material will not be released; and notify the Vendor of the date it plans to release the materials. The State is not obligated to comply with a Vendor's designation regarding confidentiality.

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

PROJECTED SCHEDULE OF EVENTS:

The process of soliciting qualification statements and bids, and ultimately selecting a CEPS for the State of New Hampshire, will be a two-phased process. The following schedule has been developed to ensure proper evaluation of the vendors' qualifications as required under RSA 21-I:17b.

PHASE I

Release of RFP	September 29, 2015
Deadline for receiving questions/Interval Data Requests	October 6, 2015 4:00 PM
Deadline for State's response/addendum	October 9, 2015 4:00 PM
Deadline for Qualification Statements	October 13, 2015 11:00 AM

PHASE II

Deadline for bid submissions	October 20, 2015 Noon
Deadline for State's lock-in	October 20, 2015 3:00 PM
Anticipated Start of contract term (next meter read after)	November 1, 2015
Anticipated end of contract term	October 31, 2016/17/18

INQUIRIES, REQUESTS FOR CLARIFICATIONS AND /OR SPECIFICATION CHANGES:

All questions regarding this RFP, including clarifications and proposed specification changes or modifications to the terms and conditions of the form contract P-37, must be submitted to Karen Rantamaki, Department of Administrative Services, at karen.rantamaki@nh.gov. All questions or request for modifications must be submitted in writing via e-mail no later than October 6, 2015 at 4:00 PM. Vendors must include complete contact information including the vendor's name, telephone number, fax number, and e-mail address. Any modifications will be issued in the form of a written addendum or addendums that will be posted on the State's website.

REGISTRATION REQUIREMENTS:

The following items **must** be included in the CEPS Qualification Statement (Phase I) in order to be approved to participate in Phase II of this RFP.

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION REGISTRATION: Prior to supplying a proposal under this RFP, the vendor must be duly registered as an authorized "Competitive Electric Power Supplier" (CEPS) with the New Hampshire Public Utilities Commission (PUC). The selected vendor must remain registered with the PUC through the duration of this contract indicating that they are approved to supply electrical power in the LDC territory corresponding to the accounts for which they are bidding. Due to the assignment listed in the State's terms and conditions, any qualification statements/bids received from aggregators/brokers will be rejected. The proper forms and information on PUC certification can be found at: <http://www.puc.state.nh.us/regulatory/rules/puc2000.pdf>

STATE OF NEW HAMPSHIRE VENDOR APPLICATION: Prior to award of a contract, the vendor must be duly registered as an authorized vendor to conduct business with the State of New Hampshire. Phase I submittals shall include documentation that the vendor has completed the Vendor Application and that a W-9 Form is on file with the New Hampshire Bureau of Purchase and Property. The following website contains information and the required forms: <http://admin.state.nh.us/purchasing/vendor.asp>

NEW HAMPSHIRE SECRETARY OF STATE REGISTRATION: Vendors must be listed as "in-good-standing" with the Secretary of State. Businesses are classified as 'domestic' (in-state) or 'foreign' (out-of-state). The following website has more information about the requirements and filing fees for both classifications: http://sos.nh.gov/Corp_Div.aspx

NEPOOL & ISO NEW ENGLAND: CEPS satisfying the abovementioned registration requirements must also meet all current requirements of NEPOOL, ISO New England, and the Local Distribution Company (LDC). Suppliers are also required to provide documentation of their ability to provide firm power to these accounts including system reserves for each account.

BID SUBMITTAL INSTRUCTIONS:

Each phase of the submittal process (Qualification Statements & Bid forms) may be hand delivered or mailed prior to the respective deadlines listed in the Project Schedule of Events to:

New Hampshire Department of Administrative Services
 Bureau of Purchase and Property
 Room 102, State House Annex
 25 Capitol Street
 Concord, NH 03301

(Phase II may be faxed to the attention of Karen Rantamaki at (603) 271-7564 or (603) 271-2700, or by email to prchweb@nh.gov. Submittals sent to any other fax or email address will not be accepted.)

PHASE I (due 10/13/15, 11:00 AM): Three copies and one original (marked as such) shall be delivered as a hard copy (no faxed or emailed formats will be accepted) in a sealed envelope, clearly labeled:
 FIRM ELECTRIC POWER SUPPLY OFFER IN RESPONSE TO RFP 2016-182

PHASE II (due 10/20/15, Noon): The final section Bid Forms may be sent via mail, fax, email, or hand-delivery for easy insertion into the binders previously received during Phase I. All must be clearly labeled:
 BID FORMS (PHASE II) IN RESPONSE TO RFP 2016-182

Should either of these submittals be received later than the designated dates and times listed herein, it will be deemed unacceptable and returned to the vendor.

PROPOSAL FORMAT & CONTENT DESCRIPTION: All proposals must follow the format outlined below in order to simplify the task of comparison for the evaluators. Three copies and one original (marked as such) shall be included. Each should be presented with section dividers labeled as indicated below. Phase II submissions will be inserted by DAS as part of Appendix I resulting in a complete package.

PHASE I: It is the intent of the State of New Hampshire to expedite the review process and allow a timely review of the actual offers made in Phase II of this RFP. Therefore, the following sections and content must be included within the Phase I submittal package. **All Phase I documents must be signed at the time of submittal. Failure to sign documents prior to the Phase II deadline will result in disqualification.**

Cover Page: entitled *Firm Electric Power Supply Offer in Response to RFP 2016-182*

Signed Transmittal Letter

Attach *General Provisions*

Attach *Additional Provisions*

Table of Contents

Section I – General Information

Company Profile & Contact Information

This section must include the legal name and address of the CEPS as well as any trade names under which it intends to operate. It must include all appropriate website addresses, telephone numbers, facsimile number, and email addresses. Furthermore, it should include the names, titles, and contact information of the principal officers; as well as the local point of contact (independent agents/brokers are unacceptable).

Corporate Resolution or Certificate of Authority

Current documentation identifying the corporate officer with the authority to sign contracts for the vendor must be provided. This person must sign any contracts that result from this RFP.

NHPUC Certification

Current documentation showing that the supplier is duly registered in good standing with the State of New Hampshire Public Utilities Commission must be provided.

State's Vendor Application

Documentation that an application has been submitted to the New Hampshire Bureau of Purchase and Property and that approval is forthcoming must be provided.

Secretary of State Classification

Documentation that the CEPS is in the process of becoming classified must be provided.

Contracts may only be issued to classified vendors; approval is required prior to the contract execution.

Financial Ranking

Documentation from Fitch Ratings, Standard & Poor's, Morgan Stanley, Capital International, or equivalent rating system stating financial ranking must be provided.

References

Please provide a minimum of three references of past customers (within the last year) including company name and address, contact name and phone number, and the service supplied to that company (similar service to that requested through this RFP).

Section II – Quality of Service

Statement of Generation Sources & Fuel Types

Where practical, all responding CEPS shall identify the location of the generating plants prepared to satisfy the required load stated herein, and what generation sources they use.

New Hampshire Environmental Disclosure Label

The CEPS shall submit information on the power sources and air emissions associated with its electric supply

Customer Complaints Disclosure

A listing disclosing any and all customer complaints filed with any state consumer protection agency, attorney general and/or licensing bureau, etc. shall be included in the proposal.

Section III – Reliability of Service

Documentation Meeting the Requirements of NEPOOL & ISO-NE

Responding CEPS must submit evidence of current membership in the New England Power Pool (NEPOOL) and some documentation that they are in good standing or meet the requirements of the Independent System Operators of New England (ISO-NE).

Documentation Meeting the Requirements of the LDC

Please provide documentation listing all physical assets (if any) or agreements that will supply electricity should the plants listed above fail to support the State's energy needs.

Contractor Point of Contact

Please provide information on the Contractor Point of Contact as described in this RFP. At a minimum, please provide name, title, phone and fax numbers, and email and mailing addresses. Supporting documentation showing that the Point of Contact meets the requirements stated earlier in this RFP should also be included.

Section IV – Coordination of Service

Electronic Transfers Documentation

Please provide certification of Electronic Data Interchange (EDI) testing completion from each LDC.

Sample of the Supplier's Customer Base

This sample should include customers who have electrical needs similar to the State's load listed in this RFP; specifically, the State would like to see experience with customers with a large number of individual electric accounts.

Appendix I – Addendums

Signed copies of all addendums

PHASE II: Upon evaluation of Phase I submissions, the selection committee will verify that all items listed above as Phase I requirements have been satisfied. Once the selection committee evaluates Phase I, CEPS will be notified of their eligibility for Phase II. All approved CEPS will be expected to submit, by the date and time listed under the Schedule of Events, a completed and signed Schedule of Rates.

CONTRACT PRICING FORMAT: The State understands that certain risks accompany market exposure and the buying format which is chosen. It is for this reason that the State must ask CEPS to respond to this RFP using two types of buying strategies and two targeted term lengths. They are:

BASE BID – LOW MARKET EXPOSURE – The CEPS's offer under this program shall be an **all-inclusive fixed price** for all required loads within the Respective Groups listed in Attachment A with the objective of providing cost certainty to State agencies for the duration of the term(s). CEPS must include offers for both Group A and or Group B for both the base bid and alternate, and all three term lengths listed or the bid offer will be deemed incomplete and will not be considered. The submitted electric supply offer shall be stated as \$/kWh (US dollars), with no distinction between on-peak and off-peak power. Furthermore, responses and the ultimate contract will be exempt from connection/service start-up fees, fuel surcharges, disconnect/switching fees, taxes, or misc. fees not stated here. Regulated charges **now imposed** by the FERC and/or ISO-NE, **with the exception of the 2015/16 Winter Reliability Program**, shall be included in the pricing offer. **The 2015/16 Winter Reliability Program Charges shall be billed as a direct pass through, with no mark-up, from the CEPS to the State. Do not include charges associated with the Winter Reliability Program in your pricing response to this RFP.**

ALTERNATE – LOW MARKET EXPOSURE WITH RENEWABLES– In accordance with the Governor’s endorsement of the *25x25 Initiative*, the State desires to develop a renewable power portfolio. Therefore, the requirement of this “Alternate” is for 25% of the load to be supplied through renewable sources (renewable energy certificates are acceptable) at an all-inclusive fixed price. Examples of renewable energy include wind, geothermal, hydrogen derived from biomass fuels or methane gas, ocean thermal, wave, current, or tidal energy, methane gas, biomass, solar and hydroelectric energy. The CEPS’s offer under this “Alternate” must be for the same terms and buying strategies as the base bid. The CEPS should be aware that the renewable power offered shall be above and beyond what is currently required for their Renewable Portfolio Standard.

CHANGES IN TARIFF OR LAW:

If any existing laws or tariffs are revised, or if any new laws or tariffs are enacted that effect electricity rates, the Vendor shall have the right to pass on the cost increase to the State without any additional mark up. Such additional amounts will be included in subsequent invoices to the State. Any decreases shall be passed onto the State. The State shall be notified in writing 30 days prior to any fee changes.

CONTRACT INVOICING:

Billing by the CEPS will be done either through the existing LDC billing method or through separate bills issued by the CEPS. In either instance, a separate invoice shall be required for each account number listed in Attachment A. If billed through the LDC, the CEPS shall be responsible for any cost incurred in the LDC billing statement to avoid late charges imposed in accordance with the LDC’s rules. If billed separately, all costs incurred with preparing statements shall be at the expense of the CEPS. Any statement shall be final unless adjusted or questioned by either party within one year of the issuance of the invoice.

SELECTION PROCESS:

The State of New Hampshire, Division of Purchase & Property will evaluate suppliers meeting or exceeding the certification and qualification criteria listed above.

Per New Hampshire Statute RSA 21-I:17-b, the assessment of an electrical power competitive bid must be evaluated on three distinct criteria in addition to price. The criteria are: Quality of Service, Reliability of Service, and Coordination of Service. The responding CEPS **must** include information pertinent to these issues (as stated above) in Phase I submittals.

Furthermore, a completed and signed copy of the Transmittal Letter must be included in the Phase I submittal. All Addendums must be signed and submitted. The final document, Appendix A – Schedule of Rates, must be received as the Phase II submittal in order to fully evaluate the pricing structure. A selection committee consisting of the Director of the Plant & Property Division, the designated Purchasing Agent, and the State Energy Manager will rate responses using the point system below.

QUALIFICATION STATEMENTS – AWARD CRITERIA (Phase I)		
<u>Quality of Service</u> 0-15 points	<u>Reliability of Service</u> 0-15 points	<u>Coordination of Service</u> 0-15 points
PROPOSAL CHARACTERISTICS POINT STRUCTURE DETAILS		
15 points – Outstanding The proposal is satisfactory in all aspects and contains many significant desirable characteristics beyond the satisfactory level.		
12 points – Above Average The proposal is satisfactory in all aspects and contains one or more significant desirable characteristics beyond the satisfactory level.		
9 points – Average The proposal is satisfactory in all aspects.		
3 points – Below Average The proposal is deficient in several characteristics.		
POWER SUPPLY OFFER – AWARD CRITERIA (Phase II)		
<u>Unit Price (\$\$/kWh)</u>		10-55 points
55 points – the lowest cost offer		
40 points – the second lowest cost offer		
25 points – the third lowest cost offer		
10 points – all offers more costly than the third lowest cost offer		

Results of the evaluation of the Qualification Statements and Power Supply Offers will become public record only after an award of contract.

NON-COMMITMENT:

Notwithstanding any other provisions of this RFP to the contrary, the State does not commit to award any contracts. The State reserves the right; at any time, at its sole discretion, and without any obligation or liability to any vendor; to reject any and all bids or any portions thereof, to cancel this bid, and to solicit new bids under a new acquisition process.

PRIORITY OF DOCUMENTS:

In the case of any conflict among documents, the following is the order in which they shall prevail:

- (a) State of New Hampshire P-37 Terms and Conditions, General Provisions
- (b) Exhibit C, Special Provisions
- (c) Exhibit A, Scope of Services
- (d) (Exhibit B, Contract Price/Payment Terms
- (e) Attachment Account Information
- (f) Department of Administrative Services RFP 2016-182, Firm Electric Supply, including all addendums incorporated herewith.

Applicable provisions will continue in effect, to the extent necessary, after termination or expiration of any contracts for the purposes of final billing, billing adjustments and payments, and any indemnification obligations. The section headings used herein are for reference purposes only and will in no way affect the meaning of the provisions of this document.

AWARD:

It is the intent of the State of New Hampshire to award one or two contracts by the Groups indicated in Appendix A- Schedule of Rates and Attachment A - Accounts with the qualified supplier(s) who will assume responsibility for all aspects of the electrical supply for the accounts listed within this RFP. Pricing Offers (numbered 1 through 6 in Appendix A) will be scored individually. The State will choose the term length and renewable energy option that best meets the needs of the State. The State may choose to combine Groups A and B into one contract if it is in the best interest of the State. Joint venture and cooperative proposals will not be considered.

The State's purchasing agent will initiate the award of a contract by re-submitting to the selected supplier an executed State of New Hampshire contract including the State's standard signature sheet accompanied by an executed State of New Hampshire Power Supply Agreement.

The State reserves the right to cancel all or any parts of the RFP at any time. Cancellation of the RFP, in whole or in part, shall not bar the State from issuing another RFP for the same services.

In Accordance with ADM 604.03, no material changes can be made to the specifications and or terms and conditions after the vendor inquiry period. Any material modifications to the specifications and or terms and condition will result in bid rejection.

RFP RESULTS:

Beyond the selected supplier, results or notice of selection will not be given over the telephone. Suppliers are encouraged to visit the Purchase & Property website after the response date to monitor any postings listed there in reference to this RFP. http://www.admin.state.nh.us/purchasing/bids_posteddte.asp

EXHIBIT A - SERVICES
STATE OF NEW HAMPSHIRE POWER SUPPLY AGREEMENT

This Agreement is made as of _____, 2015 between The State of New Hampshire (“State”) and (“Contractor”) (the State and Vendor is each referred to herein as a “Party”, or collectively as the “Parties”), both of which enter into this Agreement making each Party legally bound to agree as follows, all subject to satisfaction of the contingency set forth in Section 1 below:

1. SCOPE OF AGREEMENT

Contractor is a Competitive Electric Power Supplier. The Contractor shall sell and provide to the State EPS to the Point of Delivery for the Accounts, and the State shall exclusively purchase (solely for consumption of all such Accounts) and cause to be received from the Contractor, all required EPS during the Term.

All transactions herein shall be made in accordance with this Agreement, RFP 2016-182, Exhibit A, B, and C, Attachment A all other Exhibits and Appendices hereto, in the priority listed in the RFP. During the Term of this Agreement, Contractor reserves the right to manage the State's load under applicable rules and regulations of ISO-NE, including, without limitation, the supplying and/or settling of such load. The State shall also agree to execute and deliver any documents or instruments requested by Contractor for submission to ISO-NE or the LDC in connection with such load management.

2. DEFINITIONS

- **Accounts** - The electricity accounts comprising _____ MWhs annually and listed in the Attachment A of RFP 2016-182.
- **Agreement** - This legally binding contract, made up of this Power Supply Agreement, the documents listed in Section 5.1 hereof, and/or existing or future Amendments mutually agreed upon by all Parties.
- **Annual Excess Usage Payment** – The payment determined annually as defined in Exhibit B, Section 1.2.
- **Annual Deficiency Usage Payment** – The payment determined annually as defined in Exhibit B, Section 1.2.
- **Annual Usage Adjustment Payment** – The payment determined annually as defined in Exhibit B, Section 1.2.
- **Business Meters** - The billing non-residential electric meters of the LDC located at the States’ facilities as listed in Attachment A.
- **Commission or PUC** – means NH Public Utilities Commission
- **Competitive Electric Power Supplier (CEPS)** - A certified (registered with the NH Public Utilities Commission as such) supplier approved to conduct business within the Local Distribution Company’s territory which the Business Meters are located.
- **Contract Price** - The unit cost, expressed in \$/kWh as set forth in the Contractor’s Schedule of Rates submitted as part of this Agreement. This shall include the energy costs and all Regulated Charges as defined within RFP 2016-182 and excludes all Distribution Charges and 2015/16 Winter Reliability Program Charges, which shall be passed –through to, and paid by, the State.
- **Contract Value** - means, as of the Early Termination Date, the product of (a) the Price as applicable through the Expiration Date, and (b) the volume of electricity, based on historical usage, which would have been delivered through the Expiration Date had the Agreement (in whole, or in part as to any affected Accounts) continued effective through the Expiration Date.
- **Deficient Usage** - Defined in Exhibit B, Section 1.2.
- **Distribution Services** – The delivery of EPS to the State by the LDC.
- **Distribution Tariff or Charges** - Those charges payable to the LDC by the State (outside of this contract) for the delivery of the EPS.
- **Early Termination Date** – Defined in Section 8.6 of the Special Provisions.

Contractor Initials _____

Date _____

Early Termination Fee – Defined in Section 8.6 of the Special Provisions.

- **Electric Power Supply ("EPS")** - the delivery of full requirements electric power supply including energy, capacity and ancillary services. The expected quantity of EPS is stated on Exhibit B Contract Price/Payment Terms.
- **Excess Usage** - Defined in Exhibit B, Section 1.2.
- **Expiration Date** - Defined in Section 3.1 hereof.
- **FERC** – The Federal Energy Regulatory Commission.
- **Firm Power** – Power or power producing capacity intended to be available at ALL times during the term covered by this agreement, except as prevented by Force Majeure or the other Party's default under this agreement.
- **Holdover Period** – Defined in Section 3.1 hereof.
- **Holdover Price** - means the price for electricity delivered to the State by Contractor during the Holdover Period, which shall be equal to the Day-Ahead Locational Marginal Price for the applicable congestion zone (adjusted to a per kWh basis) covering the Account(s), plus a retail adder of \$0.03 per kWh.
- **ISO-NE** - Independent System Operator of New England, Inc. or its successor.
- **kWh** - Kilowatt hour, a unit of energy equal to 1 kilowatt (kW) of power used for one hour.
- **Law** - any law; rule; regulation; ordinance; statute; judicial decision; administrative order; ISO operating guideline or protocol; LDC or ISO-NE tariff; market rule; operating protocols; nodal or zonal definitions; rule of a public utilities commission, public service commission, or similar state commission or agency having jurisdiction over Utilities and the electricity distribution system of the State in which the Accounts are located.
- **Local Distribution Company ("LDC or Utility")** - the local electricity distribution company owning and /or controlling and maintaining the distribution system required for delivery of electricity to the Accounts.
- **LDC Delivery Charges** - means those recurring and non-recurring charges payable to the LDC in connection with transmission and distribution of electricity pursuant to this Agreement including, without limitation, all charges allowed or required by the New Hampshire Public Utilities Commission, NEPOOL, or any other governmental or regulatory authority or any third party. Examples of non-recurring LDC Delivery Charges include those arising from a move-in or switch, such as: special meter reads; service connection, disconnection, or reconnection fees; and meter tampering charges.
- **Market Value** - means, as of the Early Termination Date, the product of the: (a) the volume of electricity that would have been delivered through the Expiration Date had the Agreement (in whole, or in part as to any affected Accounts) continued effective through the Expiration Date; and (b) the lower of (i) the actual price(s) (or forecasted, if necessary) of wholesale electric service to Contractor under the CPS Agreement or (ii) the market price(s) at which such electricity are commercially available to Contractor. In determining Market Value, Contractor may consider, among other things, settlement prices of applicable NYMEX power futures contracts, quotations from leading dealers in energy swap contracts and other bona fide offers from parties participating in the wholesale and/or retail power markets, which may include Contractor and/or its affiliates, all as commercially available to Contractor and all as adjusted for a term ending on the Expiration Date, and accounting for any differences in transmission costs and volume, and applicable retail pricing adjustments.
- **NEPOOL** - The New England Power Pool or its successor.
- **Pass-Through Charges** – means (a) LDC Delivery Charges, (b) 2015/16 Winter Reliability Program Charges, and (c) costs and charges arising from a change in Law under Exhibit B, Section 1.4.
- **Point of Delivery** - The point(s) of interconnection between the NEPOOL Pool Transmission Facilities (PTF) and the non-PTF facilities of the LDC in the NEPOOL zone in which each Business Meter is located.
- **Price** - The unit price, expressed in \$/kWh, as set forth in Exhibit B, Contract Price/Payment Terms included as part of this Agreement.
- **Schedule of Rates** - The information set forth in Appendix A.
- **Start Date** – Defined in Section 3.1 hereof.
- **Taxes** - Any and all *ad valorem*, energy, transmission, utility, gross receipts, sales, use, consumption, excise,

Contractor Initials _____
Date _____

transaction, and other taxes, including new taxes which become applicable to this Agreement after the commencement of the Term, governmental charges, fees, or assessments, or increases therein, other than taxes based on Contractor's income or taxes levied on Contractor's real or personal property.

- **Term** - The duration, beginning on the Start Date and ending on the Expiration Date, during which Contractor delivers EPS to the State under this Agreement, as set forth in accordance with Section 3.1 and/or adjusted pursuant of Section 3.2. The Term shall include any Holdover Period.
- **Weighted Average LMP** - The weighted-average of the Day-Ahead Locational Marginal Price for the applicable congestion zone (adjusted to a per kWh basis). The usage of the State's Accounts shall be used to determine such weighting.

3. TERM

3.1 START / END DATE: This Agreement, and all obligations of the Parties hereunder, shall become effective as of the date hereof. Contractor's EPS in respect of each Account shall begin on the first meter-read date of the first such Account on or after November 1, 2015 ('Start Date') and, subject to the remainder of this Section 3.1, shall expire on the first meter-read date of the last such Account on or after October 31, 2026/2017/2018 ("Expiration Date"). If there is no mutual agreement to extend beyond the Expiration Date and the State has not actively switched service for the Accounts to another Competitive Electric Power Supplier or to the LDC, this Agreement shall remain effective after the Expiration Date on a month-to-month basis (the "Holdover Period") until this Agreement is terminated.

3.2 TERM ADJUSTMENTS: The delivery of EPS pursuant to this Agreement will begin on the Start Date and will end on the Expiration Date, subject to the Section 3.1 and provided that all requirements of this Agreement are met. Contractor shall use commercially reasonable efforts to promptly enroll the Accounts with the LDC in accordance with the intended Start Date, and the State will reasonably cooperate with Contractor's efforts to perform such enrollment. Contractor will not be held liable to the State for delay or failure in enrolling any Account if such delay or failure was due to any cause beyond Contractor's sole control.

3.3 TRANSFER OF OWNERSHIP: The Contractor shall be responsible to deliver the EPS, in compliance with the requirements of ISO-NE and NEPOOL, from the NEPOOL Transmission Facility (PTF) to the non-PTF "Point of Delivery" for distribution to the State. The distribution beyond the "Point of Delivery" shall be the responsibility of the LDC under the LDC's applicable tariffs. With respect to each Account, ownership of, and risk of loss with respect to the EPS will transfer to State at the Point of Delivery.

3.4 ADDING AND/OR DELETING ACCOUNTS: Subject to the Contractor's written consent and Section 4.2 below, the State may add to, and/or delete, Accounts from EPS under this Agreement. In order to do so, the State shall provide Contractor at least thirty (30) days' advance written notice prior to the intended start or end month. If Contractor so consents, the Parties will execute an amended Attachment A indicating the Accounts added and/or deleted.

4. MISCELLANEOUS

4.1 WARRANTIES: Contractor warrants (a) it has good title to all electricity delivered, (b) it has the right to sell the electricity to the State, and (c) the electricity will be free from all liens, encumbrances and all applicable Taxes that are imposed prior to passage of title. CONTRACTOR EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING THE QUALITY OF ELECTRICITY DELIVERED TO

Contractor Initials _____

Date _____

THE STATE PURSUANT TO THIS AGREEMENT, WHETHER WRITTEN, ORALLY EXPRESSED, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4.2 LIMITATION ON LIABILITY: Unless otherwise expressly provided herein the following shall apply: Any liability (including liability for indemnity) under this Agreement will be limited to direct actual damages as the sole and exclusive remedy. Neither Party will be liable for consequential, incidental, special, punitive, exemplary or indirect damages, including lost profits or other business interruption damages, whether in tort or contract, under any indemnity provisions or otherwise in connection with this Agreement. 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.

5. STATEMENT OF CONFIRMATION

5.1 AGREEMENT TO TERMS AND CONDITIONS: The Parties, indicated by the signatures below, affirm that they have read this Agreement in its entirety and agree to the terms and conditions contained herein. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement. The priority of documentation is as follows:

This Agreement consists of the following documents in order of precedence:

- (a) State of New Hampshire P-37 Terms and Conditions, General Provisions
- (b) Exhibit C, Special Provisions
- (c) Exhibit A, Scope of Services
- (d) Exhibit B, Contract Price/Payment Terms
- (e) Attachment A, Account Information
- (f) Department of Administrative Services RFP 2016-182, Firm Electric Supply, including all addendums incorporated here within.

Except to the extent otherwise explicitly provided in this Agreement, no amendment to this Agreement, including the Schedule of Rates, will be valid or allowed, except by way of an amendment executed by both Parties.

Contractor Initials _____
Date _____

State of New Hampshire P-37 Terms and Conditions, General Provisions

Subject: **Firm Electric Supply**

1.0 AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Administrative Services		1.2 State Agency Address 25 Capitol Street Concord, NH 03301	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone #	1.6 Account Number Multiple	1.7 Completion Date October 31, 0, 2016/17/18	1.8 Price Limitation \$XXX
1.9 Contract(s)ing Officer for State Agency Karen L. Rantamaki		1.10 State Agency Telephone Number (603) 271-2698	
1.11 Contractor Signature		1.12 Name and Title of Contractor Signatory	
1.13 Acknowledgement: State of _____, County of _____ On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature		1.15 Name and Title of State Agency Signatory Vicki V. Quiram, Commissioner Department of Administrative Services	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (<i>if applicable</i>) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: _____ On: _____			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

2. EMPLOYMENT OF VENDOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages Vendor identified in block 1.3 ("Vendor") to perform, and the Vendor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A 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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

3.2 If the Vendor commences the Services prior to the Effective Date, all Services performed by the Vendor prior to the Effective Date shall be performed at the sole risk of the Vendor, and in the event that this Agreement does not become effective, the State shall have no liability to the Vendor, including without limitation, any obligation to pay the Vendor for any costs incurred or Services performed. Vendor shall 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, and 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 terminate this Agreement immediately upon giving the Vendor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT(S) PRICE/PRICE LIMITATION/ PAYMENT.

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

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

5.3 The State reserves the right to offset from any amounts otherwise payable to the Vendor 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 VENDOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Vendor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Vendor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Vendor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Vendor 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 If this Agreement is funded in any part by monies of the United States, the Vendor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Vendor further agrees to permit the State or United States access to any of the Vendor'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 Vendor shall at its own expense provide all personnel necessary to perform the Services. The Vendor 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 Vendor shall not hire, and shall not permit any subvendor 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 Contract(s)ing 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 Contract(s)ing 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 Vendor 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 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;

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(s) 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;

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

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

9. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.

9.1 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.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Vendor shall deliver to the Contract(s)ing 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(s) 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 A.

11. VENDOR'S RELATION TO THE STATE. In the performance of this Agreement the Vendor is in all respects an independent Vendor, 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 or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACT(S)S. The Vendor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontract(s)ed by the Vendor without the prior written consent of the State.

13. INDEMNIFICATION. The Vendor 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 or 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 in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Vendor shall, at its sole expense, obtain and maintain in force, and shall require any subvendor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance 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 Vendor shall furnish to the Contract(s)ing Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Vendor shall also furnish to the Contract(s)ing 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 fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contract(s)ing Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Vendor agrees, certifies and warrants that the Vendor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Vendor is subject to the requirements of N.H. RSA chapter 281-A, Vendor shall maintain, and require any subVendor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Vendor shall furnish the Contract(s)ing 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 Vendor, or any subVendor or employee of Vendor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. 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 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 Vendor.

17. 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.

18. 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.

19. 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. 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.

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 provisions set forth in the attached EXHIBIT C 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 relating hereto.

Contractor Initials_____

Date_____

EXHIBIT B – CONTRACT PRICE/PAYMENT TERMS
STATE OF NEW HAMPSHIRE POWER SUPPLY AGREEMENT

PRICING –SCHEDULE OF RATES:

1.1 CONTRACT PRICE The State shall purchase approximately _____ MWh of electricity on an annual basis. Electricity or EPS shall be purchased for the accounts listed in Attachment A for an all-inclusive fixed price of \$0.0xxx per kWh with no distinction between on-peak and off-peak power. For EPS, each month the State shall pay Contractor (directly or through LDC billing) the sum of: (a) the product of electricity usage for the Accounts during the billing cycle and the fixed unit cost of \$0.0xxx per kWh; and (b) any Pass-Through Charges.

The Contract Price shall include physical line losses associated with the delivery of energy to the State on the NEPOOL Transmission Facilities (PTF) and on the transmission and distribution system of the LDC. The monthly payment by the State, as described above and in Section 2 below, shall constitute complete payment for the EPS supplied by the Contractor during the billing period stated on the State’s monthly bill.

In addition to the fixed cost per kWh listed above, the Contractor shall have the right to pass through with no additional mark up the 2015-2016 winter reliability charges. Such additional amounts shall be included in subsequent invoices to the State.

In addition to the unit price for electricity listed above the State shall pay the Contractor the Holdover Price during any Holdover Period.

Further, the Parties shall settle the Annual Usage Adjustment Payment as further described below in section 1.2, if any, on December 15 each year after the first year of EPS hereunder.

1.2 ANNUAL ADJUSTMENT FOR USAGE: If, for all Accounts (with usage netted and after Attachment A has been adjusted to take into consideration any added and/or deleted Accounts), actual annual kWhs of usage (beginning with the month November 2015) exceeds 120% of the annual contract amount (the excess usage above 120% being referred to as the “Excess Usage”), then the State will pay Contractor for all Excess Usage a per unit price equal to 125% of the Weighted Average LMP for such annual period (the “Annual Excess Usage Payment”). Such payment shall be settled on or before December 15 of each year following the annual period.

If, for all Accounts (with usage netted and after Attachment A has been adjusted to take into consideration any added and/or deleted Accounts), actual annual kWhs of usage (beginning with the month November 2015) falls below 80% of the annual contract amount (the deficient usage below 80% being referred to as the “Deficient Usage”), then the State will pay Contractor for all Deficient Usage a per unit price equal to the positive difference, if any, between (a) the Price minus (b) 75% multiplied by the Weighted Average LMP for such annual period (the “Annual Deficiency Usage Payment”). Such payment shall be on or before December 15 of each year following the annual period. Further, such payment shall be in addition to the State paying Contractor the Price for all actual usage of the Accounts.

The Annual Excess Usage Payment and the Annual Deficiency Usage Payment shall be referred to as the “Annual Usage Adjustment Payment” hereunder.

1.3 DISTRIBUTION SERVICES AND TARIFFS: The State shall be responsible for all LDC Delivery Charges. LDC Delivery Charges are not included in the Price.

Contractor Initials _____

Date _____

1.4 CHANGES IN LAW: If any existing Laws are revised, or if there is a change to the way such Laws are interpreted by the LDC, ISO-NE, NEPOOL, FERC, or other state or governmental agency or court having jurisdiction, or if any new Laws are enacted that effect electricity costs, the Contractor shall have the right to pass on the cost increase to the State without any additional mark-up as a Pass-Through Charge. Such additional amount(s) will be included in subsequent invoices to the State. Any decreases in amount(s) shall be passed onto the State. A “change”, as used above, also includes, without limitation, any amendment, modification, nullification, suspension, repeal, or finding of unconstitutionality or unlawfulness. The State shall be notified in writing at least thirty (30) days prior to Contractor imposing an increase in Pass-Through Charges resulting from such change in Law. The State shall have no right to terminate this Agreement based on any such change in Law.

2. BILLING, PAYMENT, AND REPORTING REQUIREMENTS

2.1 METERING: Metering of EPS sold to the State pursuant to this Agreement shall be the responsibility of the LDC in accordance with the LDC's terms and conditions applicable to delivery of the EPS. Electricity usage for the Accounts shall be the usage reported by the LDC or, without such reported usage, usage estimated by the Contractor. The State shall execute any documentation required by the Contractor to obtain information from the LDC regarding the State and/or the Accounts.

The Contractor and the LDC will participate in electronic data transfer if necessary to provide information for monthly billing.

The State shall pay the LDC by ACH within 30 days of receipt of a properly documented invoice.

2.2 BILLING: The billing of Contractor's charges will take place either through the LDC or directly by the CEPS for each account number listed in Attachment A. If billed through the LDC, the Contractor shall be responsible for the cost, if any, of such LDC billing services. The State shall attempt to pay the LDC by the due date indicated on the LDC billing statement to avoid late charges imposed in accordance with the LDC's rules. If billed directly by the CEPS, the CEPS will be responsible for all costs associated with preparing and delivering statement. Regardless of billing method, statements for multiple account numbers shall not be combined. The State expects to receive individual statements for each electric account number. If it is determined that the State has overpaid Contractor any amount(s), Contractor shall promptly refund such amount to State or provide a credit for such amount on State's next invoice. Any statement shall be final unless adjusted or questioned by either party within one (1) year after the issuance of the invoice.

2.3 REPORTING: Contractor shall make a reasonable effort to supply the State with a monthly report providing actual reported usage. The report shall be available either via web access or electronically to the State Energy Manager within thirty (30) days of the end of the billing cycle being monitored. The report shall include: all enrolled electric account numbers and kWh purchased for each account for the period covered by the report. It may also include kWh purchased year to-date for each account, total kWh year-to-date, projected kWh year-to-date based on full contract amount, and total cost year-to-date.

Contractor Initials _____

Date _____

**EXHIBIT C – SPECIAL PROVISIONS
STATE OF NEW HAMPSHIRE POWER SUPPLY AGREEMENT**

The following will replace the corresponding provisions in the P-37, General Terms and Conditions:

1. Replace **3. EFFECTIVE DATE/COMPLETION OF SERVICES** with the following:

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Commissioner of Administrative Services, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Commissioner of Administrative Services approves this Agreement (“Effective Date”). The State shall give such notice of whether to proceed on or before 5:00 p.m., Concord, NH time, on October 20, 2015. Notwithstanding any provision to the contrary in this Agreement, if no such approval is given by such time, this Agreement shall terminate automatically and neither party will have any liability whatsoever to the other.

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

2. Replace Section **4. CONDITIONAL NATURE OF AGREEMENT** with the following:

4. APPROPRIATIONS. 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, and 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 terminate this Agreement immediately upon giving the Contractor notice of such termination,

3. Replace Section **5. CONTRACTPRICE/PRICE LIMITATION/PAYMENT** with the following:

5.1 The Contract Price, method of payment, and terms of payment are identified and more particularly described in Exhibit B - Contract Price/Payment Terms.

5.2 Except as otherwise expressly provided in this Agreement, 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 that the Contract Price.

4. Replace Section **8. EVENT OF DEFAULT/REMEDIES** with the following:

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts by a Party shall constitute an event of default hereunder (“Event of Default”):

8.1.1 material failure by Contractor to provide EPS satisfactorily or on schedule;

8.1.2 failure by Contractor to submit any material report required hereunder;

8.1.3 failure by either party to perform any other material covenant, term of condition of this Agreement;

8.1.4 failure by the State to pay any amount due hereunder by the applicable due date; and /or

8.1.5 failure by the State to accept EPS with respect to one or more Accounts.

8.2 Upon the occurrence of any Event of Default, the non-defaulting Party may take any one, or more, or all, of the following actions in addition to Section 8.6 below and subject to Section 8.5 below:

8.2.1 give the other Party 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

Contractor Initials_____

Date_____

- Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the defaulting party notice of termination;
- 8.2.2 give the other Party written notice specifying the Event of Default and suspending all payments or services, **as applicable, to be made under this Agreement;**
- 8.2.3 set off against any other obligations, if any, the non-defaulting Party may owe to the defaulting Party any *damages the non-defaulting Party suffers by reason of any Event of Default*; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.
- 8.3 If in the judgment of the State the Contractor's default is not substantial to require termination at that time, and the Contractor is not curing the default, and the default is capable of being cured by another resource without unduly interfering with Contractor's continued performance, the State may at its discretion provide or procure services reasonably necessary to cure the default, and Contractor shall reimburse the State for the reasonable cost of such services. Contractor must cooperate with the State and resources in any such efforts to cure the default.
- 8.4 No remedy conferred under the Agreement is intended to be exclusive of any other remedy, and each remedy is cumulative and in addition to every other remedy in the Contract. The State's election of any or more remedies shall not constitute a waiver of its right to pursue other available remedies.
- 8.5 The Contractor's and the State's monetary liability to each other shall not exceed the total Contract Value of the Effective Date. This limitation shall be subject to Section 4.2 of Exhibit A, but not include the Contractor's indemnification obligations under Section 13 of these Special Provisions and the following:
- (a) death, bodily injury or damage to real or personal property;
 - (b) misappropriation or infringement of any intellectual property including but not limited to any patent or copyright or any unauthorized use of any trade secret;
 - (c) third party losses accruing to the other Party's third party vendors, subcontractor, materials, laborers or another person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the Agreement;
 - (d) personal injury;
 - (e) disclosure of confidential information; and
 - (f) failure to meet any applicable statutes, regulations codes, or guidelines.
- 8.6 If the State terminates this Agreement when Contractor is not subject to an Event of Default, (the date of any such event being an "Early Termination Date"), Contractor may, at its sole option, terminate their Agreement, pursue all rights and remedies available to the Contractor as set forth herein, and pursue those available to the Contractor both in law and in equity. Without limiting all damages to which Contractor may be entitled to recover, the State shall, in any such case, pay Contractor the positive difference between Contract Value and Market Value, subject to Section 8.5 above (the "Early Termination Fee"). The Early Termination Fee shall be paid to Contractor within twenty (20) business days after the date on which the Contractor advises the State of the amount due. This provision shall not apply if the State's appropriation is reduced or eliminated as provided in Section 4 of these Special Provisions.
- 8.7 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 the Agreement.

5. Delete Section 10. **TERMINATION.**

5. Replace Section **12 ASSIGNMENT/DELEGATION/SUBCONTRACTS** with the following:

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services, which consent shall not be unreasonably withheld. The State shall not assign or otherwise transfer any interest in this Agreement without the prior written consent of the Contractor, which consent shall not be unreasonably withheld.

The assignment or transfer of any rights under this Agreement shall be effective when the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement, which consent shall not be unreasonably withheld. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Any assignment in violation of this Section shall be void.

Contractor Initials _____
Date _____

In the event the Contractor should change ownership for any reason whatsoever, the State shall have the option of continuing under the contract with the Contractor or its successors or assigns for the full remaining term of the Contract; continuing under the Contract with the Contractor or its successors for such period of time as determined necessary by the State; or immediately terminating the Agreement without penalties, fees or legal action including, but not limited to the Early Termination under Section 8.6 of these Special Provisions.

6. Replace Section **13. INDEMNIFICATION** with the following:

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all third party claims, liabilities or penalties asserted against or suffered by the State, its officers and employees on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the negligent acts or omissions of the Contractor with respect to the distribution or consumption of electricity before the Point of Delivery.

7. Replace Section **14. INSURANCE** with the following:

14.INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$1,000,000 per incident and no less than \$1,000,000 in excess/umbrella liability each occurrence.

14.2 The policy described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire⁴ 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 renewals(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and or incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

8. Replace **16. WAIVER OF BREACH** with the following:

16. WAIVER OF BREACH. No failure by a Party 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 other Party.

9. Add the following section:

25. FORCE MAJEURE. A "Force Majeure" event or circumstance shall be one in which a Party is prevented from performing and in not within the reasonable control of either party or the result of the negligence of either Party including, but not limited to, acts of God; strikes; black outs; riots; acts of wear; civil disturbance; sabotage; facility failure; curtailment, disruption, or interruption of distribution, transmission, or supply; declaration of emergency by the Utility or ISO; regulatory or legislative action; action or restraint by court order of governmental authority; epidemics; acts of Government; fire; nuclear accidents; earthquakes; unusually severe weather. If either Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations under this Agreement, such Party shall give notice and provide full details of the event to the other Party in writing as soon as practicable after the occurrence of the event. During such Force Majeure period, the obligations of the Parties (other than the obligation to make payments then

Contractor Initials _____
Date _____

due or becoming due with respect to performance prior to the event) will be suspended to the extent required by disaster or emergency. The Party claiming Force Majeure will make all reasonable attempts to remedy the effects of the Force Majeure and continue performance under this Agreement with all reasonable dispatch;; provided, however, that no provision of this Agreement shall be interpreted to require Contractor to deliver, or the State to receive, electricity at any point other than Point of Delivery. Force Majeure shall not include either Party's decision to shut down, sell or relocate its facilities.

Contractor Initials _____
Date _____

APPENDIX A to the State of New Hampshire Power Supply Agreement
Schedule of Rates

CONTRACT RATE: This Appendix represents the legally binding rate structure, which the Vendor, _____, has agreed to sell the Electric Power Supply (EPS) to the State of New Hampshire for a contract price equal to the "per kWh" price structure below. This agreement is subject to all terms contained in the State of New Hampshire Power Supply Agreement.

SCHEDULE OF RATES: _____ agrees to sell at an All Inclusive Fixed Price, and the State of New Hampshire agrees to purchase the EPS for its accounts listed in Groups A and or B on Attachment A of RFP 2016-182. The Contract Rate shall be multiplied by the metered required portion of the EPS on a monthly basis and billed to the State in a fashion described in Exhibit B.

ESTIMATED USAGE: The annual quantities (kWh) of EPS included in this offer sheet, Appendix A Schedule of Rates are estimates only, based on 12 months of past history. These quantities are indicated for informational purposes only.

REQUESTED OFFERS: _____ respectfully submits this Schedule of Rates for all accounts listed within Attachment A of RFP 2016-182; based on a term of 12, 24, or 36 months; additionally submitted is a renewable energy option as requested.

This schedule of rates is duly submitted as part of the Exhibit B – State of New Hampshire Power Supply Agreement. Please note that it is the understanding of _____ that the State of New Hampshire will select the Option and Term that best fit its needs and a final contract reflecting those choices may be executed for the EPS purchase in whole or a portion there of.

PRICING OFFER

(All offers based on annual usage of 92,167,000 kWh for Group A and 13,444,000 kWh for Group B)

Base Offer					
(1) Group A		(2) Group B		(3) Groups A+B Combined	
12-month		12-month		12-month	
24-month		24-month		24-month	
36-month		36-month		36-month	
Alternate Offer – 25% Renewable Power					
(4) Group A		(5) Group B		(6) Groups A+B Combined	
12-month		12-month		12-month	
24-month		24-month		24-month	
36-month		36-month		36-month	

Respectfully Submitted: _____
 Representing: _____
 Date: _____
 Signature: _____