

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

Rev. 8/23/2016

**NOTICE OF CONTRACT  
PRICE STRUCTURE UPDATE**

**COMMODITY:** PREMIUM ON ROAD - ULTRA LOW SULFUR DIESEL FUEL (Tractor Trailer Delivery)

**CONTRACT #:** 8001263

**NIGP CODE:** 405-0935

**CONTRACTOR:** DENNIS K. BURKE INC **VDR #:**174496  
(P) 800-289-2875 or 617-461-0103  
(F) 617-830-8828

CONTACT PERSON: Joe Cote  
E-MAIL ADDRESS: [Joe.Cote@Burkeoil.com](mailto:Joe.Cote@Burkeoil.com)

**CONTRACT PERIOD:** October 18, 2012 through June 30, 2014  
Extension 1: July 1, 2014 through November 1, 2015  
Extension 2: November 2, 2015 through October 31, 2016

**TERMS:** NET 30

**LOCATIONS/COVERAGE:** See attached sheet

**ORDERING:** Shall be placed directly to the Contractor.

**DELIVERY:** Not to exceed 48 hours after receipt of order; deliveries to be coordinated between agency and the Contractor.

**PRICING:** Upon completion of 2,700,000 gallons (85% guarantee plus 80,000 gallons per district) pricing shall adjust from being fixed at a total delivered price of \$3.15/gallon for all districts to a total delivered price of \$2.44/gallon. This price change occurred on June 8, 2015. Once 2,000,000 gallons are completed, pricing shall return to index + markup pricing as listed below. **This shall occur on August 23, 2016.**

"JOURNAL OF COMMERCE" price (Portsmouth N. H. prem ulsd low) on day of delivery plus mark-up (which includes transportation).

<b>DISTRICT 1</b>	<b>\$.0500</b>	<b>DISTRICT 2</b>	<b>\$.0500</b>
<b>DISTRICT 3</b>	<b>\$.0400</b>	<b>DISTRICT 4</b>	<b>\$.0500</b>
<b>DISTRICT 5</b>	<b>\$.0300</b>	<b>DISTRICT 6</b>	<b>\$.0300</b>

**QUESTIONS:** Danielle Bishop, Purchasing Agent  
(E) [Danielle.Bishop@nh.gov](mailto:Danielle.Bishop@nh.gov)  
(P) 603-271-3290

## ADDITIONAL CONTRACT DETAILS

### INVOICING:

It will be the responsibility of the Contractor to see that all invoices are complete and priced accurately per the terms, conditions and format of the contract. Inaccurate or incomplete invoices will be returned to the Contractor with a request for a new accurate and complete invoice. The State will make all efforts to pay all accurate and complete invoices within the payment term stated within this contract; however, errors within the original invoice will relieve the State of the original net-30 term time frame for payment.

Invoicing shall be done on the basis of each delivery per location. The Contractor shall render separate invoices for each delivery to the State department or agency to which delivery is made.

Invoices shall indicate all data stated below. **Combined Items 8 may be itemized by line or shown in total titled "Environmental Fees" and would be shown on each invoice.**

1. The quantity delivered
2. Description of product delivered
3. Date of delivery
4. Dip stick reading before and after delivery
  - Dip stick readings will be accurate within 1/8" inch per State of New Hampshire "Water Supply Pollution Control Commission Regulation Envoy-Wm 1401.11 Inventory Monitoring".
5. Tank I.D. number if available
6. Delivery location, agency and physical address
7. Contract price per gallon as stated in offer section
8. All applicable environmental fees see attached chart.

### INVOICING FOR DELIVERIES ON WEEKENDS OR HOLIDAYS:

When deliveries are required on weekends, **(between 12:01 am Saturday and 12:00 pm midnight Sunday)** invoices for those delivery dates will be calculated against the posted journal price on the **previous** Friday. If deliveries occur on a holiday that falls in the middle of the week **(EXAMPLE, THE FOURTH OF JULY WAS OBSERVED ON A WEDNESDAY IN 2001)**, invoices for those delivery dates will be calculated against the posted price on the **previous** business day.

### DELIVERY SLIPS:

- Delivery slips shall be left at each delivery location. Delivery slip shall indicate at minimum all data stated below.
- The quantity of product delivered
- Description of product delivered
- Date of delivery
- Tank I.D. number if available
- Delivery location, agency and physical address
- Delivery driver shall make reasonable effort to obtain signature by agency or interested party; if no one is available to sign, driver shall sign delivery slip to include date and time
- The Contractor may offer a cash discount for earlier payment on invoices

## PRODUCT SPECIFICATIONS, OPTIONS AND COMPLIANCE

### PRODUCT OPTIONS:

During the term of the contract, State agencies may order dyed or additive premium on road ultra low sulfur diesel fuel.

### NH DOT PREMIUM DIESEL PROGRAM – WINTER PREMIUM DIESEL TEMPERATURE PROTECTION:

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

#### ALL DOT FUEL DISTRIBUTION LOCATIONS:

- October 1 to December 14<sup>th</sup> - Ultra low sulfur additive premium winter diesel with temperature protection characteristics that meet or exceed + 8 °F cloud points.

#### ALL DOT FUEL DISTRIBUTION LOCATIONS:

- December 15<sup>th</sup> to March 14<sup>th</sup> - Ultra low sulfur additive premium winter diesel with temperature protection characteristics that meet or exceed -5°F cloud points

All other ordering agencies will specify their diesel fuel product need and requirements at time of order.

#### PRODUCT COMPLIANCE:

It is mutually agreed that if the fuel sold, furnished and delivered by the Contractor to the State of New Hampshire, does not conform to the standard specifications included in this contract, the State reserves the right to purchase said fuel elsewhere charging any additional cost to the said contract holder. The contract-holding vendor will be responsible for removing the non-conforming fuel. The State may request an analysis, from an approved laboratory, of the fuel delivered at no cost to the State

#### ADDITIVE PREMIUM ULTRA LOW DIESEL REQUIREMENTS

1. **In addition to the ultra low sulfur diesel specifications stated within**, this contract shall also require the following "premium" characteristics. These characteristics shall be adopted and included in the ultra low sulfur component of the premium ultra low diesel product premium ultra low diesel delivered
  - a) **Premium Ultra Low Diesel Fuel.** - All diesel fuels identified on retail dispensers, bills of lading, invoices, shipping papers, or other documentation with terms such as premium, super, supreme, plus, or premier must conform to the following requirements:
  - b) **Cetane Number.** - A minimum cetane number of 47.0 as determined by ASTM Standard Test Method D 613.
  - c) **Low Temperature Operability.** - A cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). **Low temperature operability is only applicable October 1 - March 31 of each year.**
  - d) **Thermal Stability.** - A minimum reflectance measurement of 80 % as determined by ASTM Standard Test Method D 6468 (180 min, 150 °C).
  - e) **Lubricity.** - A maximum wear scar diameter of 520 microns as determined by ASTM D 6079. If an enforcement jurisdiction's single test of more than 560 microns is determined, a second test shall be conducted. If the average of the two tests is more than 560 microns, the sample does not conform to the requirements of this part.
2. The Contractor, at their expense shall furnish, upon request for the state agency, an analysis from an approved laboratory of the fuel delivered to any state location.
3. The Contractor may utilize other distributors for supply and/or delivering Premium Ultra low sulfur diesel, Ultra low sulfur diesel or ultra low sulfur kerosene with prior written approval from the Administrator of the Bureau of Purchase and Property. Such approval will not warrant any increase in the State's purchasing price.
4. The Contractor guarantees to be the base supplier if necessitated by imposition of the State of federal allocation plans.
5. The Contractor is responsible for replacement of any State property that is damaged by the Contractor employees.

#### COMPLIANCE DOCUMENTATION – SULFUR CONTENT

In compliance with State of New Hampshire Department of Environmental Services RSA #ENV-A-1607.01 or most recent revision, the Contractor shall be required to supply a statement of compliance with regard to the sulfur content of the diesel fuel products delivered to the State of New Hampshire. The statement shall be on company letter head and read: "the sulfur content of the fuel as delivered does

not exceed the state or federal standard for that fuel" and signed by a duly authorized agent of that company. These documents shall be kept on file with the bid offers for the term of the contract. The state currently maintains a list of these documents on file and after the bid award process has been completed, the State will notify the Contractor to supply the required document if it is not previously on file.

#### **PRODUCT TESTING:**

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

#### **FEES AND TAXES:**

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

#### **DELIVERY:**

State agencies shall contact the Contractor and coordinate deliveries;

1. All Deliveries will be made **within 48 hours after receipt** of order, regardless of method of delivery (tank wagon or motor transport). Weekends and holidays are NOT exempt from the stated delivery schedule and it's understood that the Contractor are a 365-day delivery operation. The use of a private carrier to make delivery does not relieve the Contractor from the responsibility of meeting the delivery requirement.
2. **DIPPING TANKS** - State agencies require all Contractors to have their delivery personnel dip tanks before and after deliveries and note said readings on delivery slips. Dip stick readings will be accurate within 1/8" inch per State of New Hampshire "*Water Supply Pollution Control Commission Regulation Env-Wm 1401.11 Inventory Monitoring*".
3. **DELIVERY SLIP / BOL** - All deliveries including tanker loads shall include a bill of lading and / or documentation to identify the type product left at each delivery. Delivery and load slips must be left at each delivery site. Failure to leave delivery documentation at each delivery site may result in delayed payments for said deliveries.
4. **SPILLS/ OVERFILLS** - Most underground tanks are equipped with 4" tight fill adapters. (Exception: above ground skid tanks.) Delivery trucks should be equipped with appropriate hardware to seal

delivery-lines to prevent over-fills and/or spills. If a spill should occur during delivery or Contractor should deliver the wrong product to tanks, the Contractor assumes all responsibility and liability for spill, clean - up and/or cleaning of tank and the delivery driver will report the incident to onsite agency personnel immediately.

5. **OVERFILLS** - Delivery personnel shall unload product at a reasonable pace and rate to allow the flapper valve to perform its function. Over filling of the tank will require the Contractor to return to the site, pump out the overfill and clean out the manhole. All cost associated with correcting the overfill will be the Contractors sole responsibility. Violations of this requirement shall be reported to the State of New Hampshire Department of Environmental Services.
6. The State of New Hampshire will do everything possible to prevent over ordering, although if a tank is unable to take the full amount ordered, the ordering "agency" will attempt to place the fuel at another location where said Contractor has a contract at no additional cost to the State.
7. **EMERGENCIES** – The Contractor further agrees to deliver in less time **in case of emergencies** to the best of his ability. If delivery requirements are not met, the buyer reserves the right to purchase elsewhere, charging any additional costs back to the original Contractor.
8. The State reserves the right to make additions or deletions to the list of delivery points and to increase or decrease the estimated quantity of diesel fuel, as it may deem necessary, during the contract period.
9. The use of a private carrier to make delivery **does not** relieve the Contractor from the responsibility of meeting the delivery requirement.

#### **DELIVERY – TANK CONTAMINATION:**

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

1. The Contractor that delivered the product to the wrong tank shall contact the agency owning the fuel tank to convey the situation as soon as the Contractor becomes aware of the situation.
2. The Contractor shall then pump out the total contents of the contaminated tank, both existing product and the newly delivered product.
3. It shall be the Contractors responsibility and cost to properly dispose of the contaminated fuel
4. The Contractor shall clean the tank
5. The Contractor shall replace the total volume of the product pumped out charging the state for only the original volume requested to be delivered.
6. The Contractor shall be physically and financially responsible for the pumping, cleaning and replacing of the fuel product
7. the Contractor shall work without delay to remedy the error so the fuel tank may be put back in service ASAP by the state agency

#### **DELIVERY- SAFETY REQUIREMENTS AND PROCEDURES:**

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

1. Exercise caution when maneuvering to avoid damage to containment walls
2. Inspect tank, fittings and liquid level indicator prior to filling

3. Place drip pans under all hose fittings prior to loading or unloading
4. Block truck wheels before starting to load or unload
5. Remain with the vehicle while loading or unloading
6. Drain loading or unloading line to storage tank when loading or unloading is complete
7. Verify that all drain valves are closed before disconnecting loading or unloading lines
8. Inspect vehicle before departure to be sure all loading or unloading lines have been disconnected and vent valves are closed
9. Immediately report any leakage or spillage to the onsite personnel.
10. In a case where the leak, spill or overfill takes place at a **DOT fuel distribution location**, in addition to reporting the incident to onsite personnel, delivery personnel will contact said agency immediately @ 603-271-2056
11. Delivery personal will shut off all electrical devices (cellular phones, pagers etc) while unloading product.
12. Delivery personal shall clean the manhole of any product they may have spilled during delivery.

**DELIVERY – “WILL CALL” OR “AUTOMATIC”:**

There are locations stated on the attached location sheets that require “will call”, “automatic delivery” and some are left blank. If nothing is stated, it shall be assumed they are “will call” locations. Agencies wishing to change location delivery status from “will call” to automatic delivery shall contact the account Contractor and request the change, agencies shall also provide the necessary **previous delivery history** data if it is not available under the past “will call” format

**AUTOMATIC DELIVERY REQUIREMENTS – STATE AGENCY RESPONSIBILITIES**

1. To assist in a smooth delivery operation (**especially at the beginning of a new contract with a new delivery company**), the ordering **Agency** shall provide the Contractor with the previous delivery history data. (1 year worth of consumption is preferable) so the Contractor may provide the delivery service in an accurate and efficient manner. This history data is available by request from the previous contract Contractor.
2. Agencies should monitor their fuel tank consumption for the first 3 months of a new contract to be sure they do not run out while the “automatic delivery” program builds a consumption history