



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
25 Capitol Street - Room 100
Concord, New Hampshire 03301
(603) 271-3201 | Office@das.nh.gov

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MLC

Charles M. Arlinghaus
Commissioner

Catherine A. Keane
Deputy Commissioner

Sheri L. Rockburn
Assistant Commissioner

February 8, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Administrative Services to enter into a **Retroactive** contract with Potters Industries, LLC (VC#166473), Malvern, PA, in the amount of \$2,171,136 for glass spheres with the option to renew for an additional two one-year periods effective upon Governor and Council approval for the period February 1, 2023, through January 31, 2026.

Funding shall be provided through individual agency expenditures, none of which shall be permitted unless there are sufficient appropriated funds to cover the expenditure.

EXPLANATION

This request is **Retroactive** because of the October 19, 2022 change to contract oversight requirements contained in the updated Manual of Procedures Chapter 150 and subsequent internal approval procedures. The Department of Administrative Service, through the Bureau of Purchase and Property, issued a request for bid (RFB) 2707-23 on November 9, 2022, with responses due on November 21, 2022. This bid reached six vendors through the NIGP electronic sourcing platform with an additional three directly sourced. There were two compliant responses received with Potters Industries, LLC submitting the lowest compliant pricing for glass spheres.

The primary agency utilizing this contract is the State of New Hampshire Department of Transportation (DOT). After road paint is applied a layer of reflective glass beads is put down allowing for higher visibility for motorists on the roads of New Hampshire.

The previous contract (Contract #8002822) held by Potters Industries, LLC was not able to be extended as they could not hold their pricing. Potters Industries, LLC was \$27,144 lower than the next apparent low bidder. There is a 29.18% overall increase as indicated by the contractor's bid response to RFB 2707-23 as compared to expired contract pricing. In addition, the previous contract held by Potters Industries, LLC was a two-year term, and the new proposed term is for three years to accommodate delivery projections provide by DOT. It should be further noted this firm fixed contract request contains a provision for price reduction that can be exercised by the state if the market corrects. This provision is tied directly to the general trade and is administered throughout the contract.

| Contract financials | | | |
|--------------------------------|-------------|-------------------------------|-------------|
| New recommended contract spend | | Cost increase breakdown | |
| Estimated annual spend | \$723,712 | Expired contract annual spend | \$512,512 |
| Estimated term spend | \$2,171,136 | Expired contract term spend | \$1,537,536 |
| Recommended price limitation | \$2,171,136 | New recommended term spend | \$2,171,136 |
| | | Cost increase | \$633,600 |
| | | Increase % | 29.18% |

Based on the foregoing, I am respectfully recommending approval of the **Retroactive** contract with Potters Industries, LLC.

Respectfully submitted,



Charles M. Arlinghaus
Commissioner



Division of Procurement Support Services
Bureau of Purchase Property

Gary S. Lunetta
Director
(603) 271-2201

| | | | |
|-----------------|----------------------------------|----------------|-----------|
| Bid Description | Glass Spheres Supply and Deliver | Agency: | DAS |
| RFB# | 2707-23 | Requisition: # | NA |
| Agent Name | Lincoln Adams | Bid Closing: | 21-Nov-22 |

| Estimated Annual Quantity | UOM | Product Description: Glass Spheres - | Potters Industries, LLC | | Swarco Industries, LLC | | Expiring Contract | |
|--------------------------------------|------|---|-----------------------------|---------------------------------|-----------------------------|---------------------------------|-----------------------------|---------------------------------|
| | | | Delivered Unit Cost per lb. | Delivered Extended Cost per lb. | Delivered Unit Cost per lb. | Delivered Extended Cost per lb. | Delivered Unit Cost per lb. | Delivered Extended Cost per lb. |
| 220,000 | lbs. | Glass Spheres (bag 50-lbs) | \$ 0.51 | \$ 113,080.00 | \$ 0.52 | \$ 114,400.00 | \$ 0.36 | \$ 80,080.00 |
| 1,188,000 | lbs. | Glass Spheres (box 2,000-lbs) | \$ 0.51 | \$ 610,632.00 | \$ 0.52 | \$ 617,760.00 | \$ 0.36 | \$ 432,432.00 |
| | | | | \$ 723,712.00 | | \$ 732,760.00 | | \$ 512,512.00 |
| Estimated annual spend | | | | \$723,712.00 | Expiring contract annual | | | \$512,512.00 |
| Estimated term spend | | | | \$2,171,136.00 | Expiring contract term | | | \$1,537,536.00 |
| Add allowance for balance of product | | | | \$0.00 | Cost increase 29.18% or | | | \$633,600.00 |
| Recommended price limitation | | | | \$2,171,136.00 | Delta: new vs. expiring | | | 29.18% |

| Recommendation Summary | |
|------------------------------------|---|
| Statewide Contract or Amendment | Statewide Contract |
| Term of Contract | 3 years with option to extend for 2 additional years |
| Price Limitation | \$2,171,136.00 |
| Number of Solicitations Received | 2.00 |
| Number of Sourced Bidders | 3.00 |
| Number of NIGP Vendors Sourced | 6.00 |
| Number of non-responsive bidders | 7 |
| P-37 Checklist Complete | Yes |
| D&B Report Attached | No |
| Terms of Payment (P-card/ACH) | P-Card/ACH |
| FOB Delivered | YES |
| Expiring Contract Price Limitation | Price limitation was not implemented at previous contract inception |
| Total Cost increase (\$/%) | \$633,600 29.18% Delta |

Special Notes: Potters Industries, LLC was \$27,144 lower than the next apparent low bidder. There is a 29.18% overall increase as indicated by the contractor's bid response to RFB 2707-23 as compared to expiring contract pricing. In addition, the previous contract held by Potters Industries, LLC was a two year term, and the new proposed term is for three years to accommodate delivery projections provide by DOT. The above is represented as a 3 year term.

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|--|--|--|--|
| 1.1 State Agency Name Department of Administrative Services Bureau of Purchase and Property | | 1.2 State Agency Address 25 Capitol Street, Room 102 Concord, NH 03301 | |
| 1.3 Contractor Name Potters Industries, LLC | | 1.4 Contractor Address 3222 Phoenixville Pike, Suite 103, Malvern, PA, 19355 | |
| 1.5 Contractor Phone Number 800-552-3237 | 1.6 Account Number Various | 1.7 Completion Date January 31, 2026 | 1.8 Price Limitation \$2,171,136 |
| 1.9 Contracting Officer for State Agency Gary Lunetta | | 1.10 State Agency Telephone Number 603-271-3606 | |
| 1.11 Contractor Signature  Date: January 19, 2023 | | 1.12 Name and Title of Contractor Signatory Yvonne D. Harris, Contract Administrator | |
| 1.13 State Agency Signature  Date: 1/31/23 | | 1.14 Name and Title of State Agency Signatory Charles M. Arlinghaus, Commissioner | |
| 1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ | | | |
| 1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 2/1/2023 | | | |
| 1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____ | | | |

Contractor Initials 
 Date 1/19/2023

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

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

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

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

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

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

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

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

7. PERSONNEL.

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

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

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

Contractor Initials *JPH*
Date *1/19/2023*

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

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10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

10.2 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.

10.3 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.

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

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

Contractor Initials

Date

[Handwritten Signature]
1/19/2025

this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

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

15. WORKERS' COMPENSATION.

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

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

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time

of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

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

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

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

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

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

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

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

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

EXHIBIT A
SPECIAL PROVISIONS

There are no special provisions of this contract.

Contractor Initials *JP*
Date *1/19/2023*

**EXHIBIT B:
SCOPE OF WORK**

1. EFFECTIVE DATE

The Contract term shall commence on February 1, 2023 or upon execution by the Governor and Council, whichever is later (the "Effective Date") and shall continue thereafter through January 31, 2026, a period of approximately three years.

The contract may be extended for an additional two (2) one-year extensions thereafter under the same terms, conditions and pricing structure upon the mutual agreement between the Contractor and the State with the approval of the Commissioner of the Department of Administrative Services. The maximum term of the contract (including extensions) shall not exceed five (5) years.

2. CONTRACT DOCUMENTS

This Contract consists of the following documents ("Contract Documents"):

- a. State of New Hampshire Terms and Conditions, General Provisions Form P-37
- b. EXHIBIT A Special Provisions
- c. EXHIBIT B Scope of Work
- d. EXHIBIT C Method of Payment
- e. EXHIBIT D RFB 2707-23
- f. EXHIBIT E Contractor's Bid Response

In the event of any conflict among the terms or provisions of the documents listed above, the following order of priority shall indicate which documents control: (1) Form Number P-37 as modified by EXHIBIT A, (2) EXHIBIT B "Scope of Work," (3) EXHIBIT C "Method of Payment," (4) EXHIBIT D "RFB 2707-23," and (5) EXHIBIT E "Contractor's Bid Response."

3. SCOPE OF WORK

Contractor shall provide: all labor, tools, transportation, materials, equipment and permits as necessary and required to perform services as described herein. Please see Exhibit A BUREAU OF TRAFFIC SPECIFICATION FOR GLASS BEADS FOR USE WITH TRAFFIC PAINTS.

**STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION BUREAU OF TRAFFIC
SPECIFICATION FOR GLASS BEADS FOR USE WITH TRAFFIC PAINTS**

4. GENERAL

Glass beads (sometimes referred to as "glass spheres") shall conform to latest version of AASHTO M247 Type 1 with moisture resistance and adherence coatings and any additional requirements included within this specification.

5. ADDITIONAL SPECIFIC PROPERTIES

Adherence Coated: The beads shall be coated with an adherence coating designed to interact and adhere to the film as well as be of such size, shape and character as to facilitate their embedment in the freshly applied binder film.

Crushing Resistance: Retained 0.425 mm. (No. 40) sieve 133 N (30 pounds) minimum.

Silica Content: The glass beads shall be manufactured from commercial grade soda lime glass cullet containing less than 0.1 weight percent crystalline silica. The glass beads shall contain no less than 60% amorphous silica. This is not free silica and does not cause silicosis.

Chemical Stability: Beads which show any tendency toward decomposition, including surface etching, when exposed to atmospheric conditions, moisture, dilute acids, or alkalis or paint film constituents, may, prior to acceptance, be required to demonstrate satisfactory reflectance behavior and maintenance under such tests.

Heavy Metals And Toxicity: Beads shall contain less than 200 parts per million total concentration of arsenic or lead as determined in accordance with Environmental Protection Agency testing methods 3052, 6010B, or 6010C. Manufacturer shall submit testing from independent testing laboratory certifying this requirement has been met.

6. TESTING AND SAMPLING METHODS

All testing and sampling methods shall conform to latest version of the AASHTO M247 and any additional information included within.

Roundness: The glass beads shall have a minimum of 80% true spheres as determined by AASHTO PP74.

Adherence Coating: AASHTO M247 – Adherence Coating Test – Referee Method

7. PACKAGING AND MARKING

The bagged beads shall be packed in 50-pound units, in a 5-ply multi-walled moisture-proof paper bag with a 1.5 mil. polyethylene middle layer. Bag dimensions (nominal): 13" x 3" x 25". Bags shall be palletized, suitable for lifting handling. Maximum of 4,000 pounds of beads per pallet.

The boxed beads shall be packaged in 2,000-pound containers. These containers shall be made of materials strong enough to withstand handling, transporting, and provide moisture protection. All containers shall be palletized, suitable for lift handling. Maximum of 2,000 pounds of beads per pallet. The 2,000-pound containers must be able to be stacked on each other at least two high.

Containers are to be guaranteed to furnish dry and undamaged beads.

Each package shall contain the following information:

- Name and address of manufacturer
- Shipping point
- Trademark or name
- The wording "glass beads"
- The specification number
- Number of kg. (lbs.) per container
- The lot or batch number
- Month and year of manufacture

8. SAMPLING AND INSPECTION

All delivered material shall conform to the certified pre-bid analysis. The New Hampshire Department of Transportation reserves the right to sample and inspect and arrange for testing on deliveries for specification compliance. Any material not conforming will be rejected and shall be removed at the Contractor's expense. Final acceptance and testing will be made at the point of application. If a material batch fails, the entire batch will be rejected.

Certificate of Compliance: Regardless of any testing that may be performed by NHDOT, each delivery and each batch within a delivery shall be accompanied by a Certificate of Compliance issued by the manufacturer for the material including certifications and quality control test results. At a minimum, test results shall include: Gradation, % Roundness, Refractive Index, and total concentration for both arsenic and lead per paragraph 2.4 above with a Statement of Compliance that the material meets the requirements of Section 1504 of MAP-21.

In as much as the performance of the spheres is of major importance, the failure of the spheres to meet the requirements shall be considered a major breach of any contract based upon these specifications. Failure of three (3) lab specification tests will be considered an Event of Default under paragraph 8 of the Contract Terms and Conditions and Failure to Deliver under paragraph 5 of the Contract Terms and Conditions.

9. BUILD AMERICA, BUY AMERICA

The materials supplied by this Contract are subject to use on Federally funded or reimbursed activities. Therefore, the materials are subject to compliance with the Build America, Buy America Act (BABA) and glass beads are considered "Construction Materials" under BABA. The beads shall be manufactured in the United States. This means the final manufacturing process and the immediately preceding manufacturing stage for the construction material must occur in the United States.

Certificate of Compliance: In addition to the Certificate of Compliance required under section 5, each delivery and each batch within a delivery shall be accompanied by a BABA Certificate of Compliance issued by the manufacturer for the construction material that identifies where the material was manufactured and attest specifically to compliance with BABA.

10. ABILITY TO PROVIDE

Contractor shall provide the State agencies and eligible participants with their entire requested amount of the items required in this Contract without any delay or substitution.

11. WARRANTY REQUIREMENTS

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

12. ORDERING PROCEDURE

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

13. USAGE REPORTING

The Contractor shall submit a quarterly and annual usage report for analysis for each state agency or eligible participant. Reports are due no later than 30 days after each end of each calendar quarter Bureau of Procurement Services, Purchasing Agent Name and sent electronic to Lincoln.J.Adams@DAS.NH.Gov. At a minimum, the Report shall include:

- Contract Number
- Utilizing Agency and Eligible Participant
- Services/Products Purchased (showing the manufacturer, item, part number, and the final cost.)
- Recycling documentation with respect to content used in the manufacture, development and distribution process of goods and services sold. This report shall include but not be limited to:
 - Percentage of recycled materials contained within finished products
 - Percentage of waste recycled throughout the manufacturing process
 - Types and volume of packaging used for transport
 - Any associated material avoided and/or recycled as applicable under contract
 - A standardized reporting form will be provided after contract award
- Total Cost of all Services/Products Purchased. Ability to sort by agency/eligible participant.
- Preferred in Excel format

14. ACCOUNT COMMUNICATION & ESCALATION

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

15. RETURNED GOODS

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

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

16. DELIVERY

Contractor is responsible for Good(s) delivery until the goods are delivered and accepted by the State. Contractor shall securely and properly pack all shipments in accordance with accepted commercial practices. Delivered goods that do not conform to the specifications or are not in good conditions upon receipt shall be replaced promptly by the Contractor.

The Contractor shall delivery of any Good(s) ordered under this Contract within ten (10) business days from the placement of the order, or as otherwise may be specified in a purchase order issued by the State.

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

17. DELIVERY TIME:

All deliveries shall be made in accordance with the schedule listed herein. Weather and other factors can affect demand. The successful bidder must take these factors into account and adjustment to the schedule must be mutually agreed upon. See Exhibit "B" for schedule for CY 2023. Quantities, and distribution for subsequent year(s) will be similar but not necessarily the same.

All shipments to the primary delivery location shall be scheduled with the freight carriers to arrive between 6:00 AM and 12:00 noon on normal workday, following a minimum one-workday notice to the Delivery Contact. Deliveries that arrive outside of the delivery time will **NOT BE ALLOWED TO WAIT ON SITE** to be unloaded.

18. DELIVERY TIME, COMMUNICATION AND PENALTIES FOR REMOTE DELIVERY LOCATIONS ONLY:

The State of New Hampshire shall institute the following policy, procedures and penalties relative to the timely delivery of orders to the remote delivery locations (locations B, C, D, E and F).

Order, confirmation, and delivery to Remote Locations:

- Orders for spheres to be delivered to any of the remote locations shall be placed a minimum of 14 calendar days prior to the required delivery date. An alternative Remote Delivery Location within 50 miles of a listed location may be substituted at the time of order.
- All shipments shall be scheduled with the freight carriers to arrive between 6:00 AM and 7:00 AM on normal workday.
- The State shall place the remote order using email to the Contractor's "contract manager's" email address as stated in the bid solicitation submitted. If there is a change in contract manager, it shall be the Contractor's responsibility to notify the state Bureau of Traffic of the change via email and supply the name and email for the new contract manager.
- The Contractor shall have 24 hrs. from receipt of order to email confirmation they shall make complete delivery by the date stated on the order email or email confirmation they cannot meet the delivery date requested. If Contractor cannot meet the delivery date requested, the Contractor may offer a revised delivery date that they can make delivery for.
- If the State accepts this revised delivery date offered by the Contractor, it shall become the firm delivery date and firm delivery date policy applies.
- If the Contractor confirms that they will meet the delivery date requested on the order email, the stated delivery date shall become firm and the State will schedule staffing, lodging, travel and other logistics around the confirmed delivery date.

19. SHIPPING MANIFEST

Shipping manifests must accompany each delivery and must exhibit the batch number of the material delivered and Purchase Order Number.

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

20. DISTRIBUTION OF DELIVERIES

For Spheres/Beads

Beginning March 31, 2023 and ending June 09, 2023, in accordance with the following schedule:

1. 704,000 pounds' glass beads during FY 2023

- Deliver By:**
44,000 by March 31
44,000 by April 07
44,000 by April 14
44,000 by April 21
88,000 by April 28
88,000 by May 05
88,000 by May 12
88,000 by May 19
88,000 by May 26
44,000 by June 02
44,000 by June 09

Beginning July 7, 2023, and ending August 25, 2023, in accordance with the following schedule:

2. 704,000 pounds' glass beads during FY 2024

- Deliver By:**
88,000 by July 07
88,000 by July 14
88,000 by July 21
88,000 by July 28
88,000 by Aug 04
88,000 by Aug 11
88,000 by Aug 18
88,000 by Aug 25

Included in the deliveries listed above are up to 5 deliveries (44,000 pounds each) required to remote locations during this contract period. These loads may require 50-pound bags.

RAH
7/19/2023

Beginning March 29, 2024 and ending June 07, 2024, in accordance with the following schedule:

3. 704,000 pounds' glass beads during FY 2024

Deliver By:

44,000 by March 29
44,000 by April 05
44,000 by April 12
44,000 by April 19
88,000 by April 26
88,000 by May 03
88,000 by May 10
88,000 by May 17
88,000 by May 24
44,000 by May 31
44,000 by June 07

Beginning July 5, 2024, and ending August 23, 2024, in accordance with the following schedule:

4. 704,000 pounds' glass beads during FY 2025

Deliver By:

88,000 by July 05
88,000 by July 12
88,000 by July 19
88,000 by July 26
88,000 by Aug 02
88,000 by Aug 09
88,000 by Aug 16
88,000 by Aug 23

Included in the deliveries listed above are up to 5 deliveries (44,000 pounds each) required to remote locations during this contract period. These loads may require 50-pound bags.

Contractor Initials *JR*
Date *7/19/2023*

Beginning, March 31, 2025 and ending June 09, 2025, in accordance with the following schedule:

5. 704,000 pounds' glass beads during FY 2025

Deliver By:
44,000 by March 28
44,000 by April 04
44,000 by April 11
44,000 by April 18
88,000 by April 25
88,000 by May 02
88,000 by May 09
88,000 by May 16
88,000 by May 23
44,000 by May 30
44,000 by June 06

Beginning July 7, 2025, and ending August 25, 2025, in accordance with the following schedule:

6. 704,000 pounds' glass beads during FY 2026

Deliver By:
88,000 by July 04
88,000 by July 11
88,000 by July 18
88,000 by July 25
88,000 by Aug 01
88,000 by Aug 08
88,000 by Aug 15
88,000 by Aug 22

Included in the deliveries listed above are up to 5 deliveries (44,000 pounds each) required to remote locations during this contract period. These loads may require 50-pound bags.

*Note that this delivery schedule is based on anticipated order quantities and may be modified by the Agency during the contract period. Refer to paragraph ESTIMATED USAGE in the Bid Invitation.

Contractor Initials *YB*
Date *7/19/2023*

21. OBLIGATIONS AND LIABILITY OF THE CONTRACTOR

The Contractor shall provide all product/items strictly pursuant to, and in conformity with this contract which resulted from RFB 2707-23.

It is the responsibility of the Contractor to maintain this State Contract and New Hampshire Contractor Registration with up to date contact information.

Additionally, all updates i.e., telephone numbers, contact names, email addresses, W9, tax identification numbers are required to be current through a formal electronic submission to the Bureau of Purchase and Property at [https://das.nh.gov/purchasing/Contractorregistration/\(S\(q0fzcv55qhaeqs45jpyq5i45\)\)/welcome.aspx](https://das.nh.gov/purchasing/Contractorregistration/(S(q0fzcv55qhaeqs45jpyq5i45))/welcome.aspx)

The Contractor shall agree to hold the State of NH harmless from liability arising out of injuries or damage caused while performing this work. The Contractor shall agree that any damage to building(s), materials, equipment or other property during the performance of the service shall be repaired at its own expense, to the State's satisfaction.

22. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

The Contractor certifies, by signature of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or Agency.

23. CONFIDENTIALITY & CRIMINAL RECORD

If requested by the using agency, the Contractor and its employees, and Sub-Contractors (if any), shall be required to sign and submit a Confidential Nature of Department Records Form and a Criminal Authorization Records Form. These forms shall be submitted to the individual using agency.

Contractor Initials *YBA*
Date *7/19/23*

**EXHIBIT C
METHOD OF PAYMENT**

1. CONTRACT PRICE:

The Contractor shall provide the items specified in Exhibit B in the amount not to exceed the Price Limitation of \$2,171,136; this figure shall not be considered a guaranteed or minimum figure; however it shall be considered a maximum figure from the effective date through the expiration date as indicated in Form P-37 Block 1.7.

Special charges, surcharges (including credit card transaction fees), or fuel charges of any kind (by whatever name) may not be added on at any time. Unless otherwise specified in purchase orders, contractor shall delivery all goods/products F.O.B. DESTINATION, which means delivered to a State agency's receiving facility or other designated point as specified in this Contract or subsequent purchase orders without additional charge. No charge for packing, shipping, or for any other purpose will be allowed over and above the price specified in this Agreement. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.

Line Price decreases shall become effective immediately as they become available to the Contractor.

Updated Published Price List MUST be e-mailed to Lincoln.J.Adams@DAS.NH.Gov, or their designee.

2. PRICE ADJUSTMENTS

Contractor shall be permitted to request price increases annually, with any adjusted pricing taking effect on the anniversary date of this contract. Requests for price increases must be received in writing at Department of Administrative Services a minimum of 60 calendar days prior to the proposed effective date as listed above. Documentation of the increase from the manufacturer must accompany the request to support the amount (%) of the requested increase.

The annual increase for any item shall not exceed 3% and in no case shall it exceed the documented percentage of increase levied on the contractor by the manufacturer. Requests for price increases may only be based on increased manufacturer prices and not on fuel costs, regulatory charges, or any other type of surcharge or administrative cost.

The Bureau of Purchase and Property will monitor other information sources to confirm that contract prices are indeed following market trends in a fair and equitable manner. The State shall have the right to reject any pricing that fails to follow the above principles, and to rebid any part, or the entire contract, if deemed to be in its best interest.

3. PRICING STRUCTURE:

| <u>CONTAINER TYPE</u> | <u>UNIT OF MEASURE</u> | <u>UNIT PRICE/LB</u> |
|-----------------------|------------------------|----------------------|
| BAG (50-LBS) | POUNDS | \$0.514/LB |
| BOX (2,000-LBS) | POUNDS | \$0.514/LB |

4. CONTRACTOR'S BALANCE OF PRODUCT LINE ITEMS:

The items herein include the items most commonly purchased by State. During the term of this Contract, the State may purchase other items in relation to Glass Spheres from the Contractor's Balance of Product Line. All items ordered shall include all shipping/charges as specified above in "1. Contract Price".

5. MINIMUM ORDERS

There will be no minimum order whether in item quantity or dollar value associated with this Contract.

6. INVOICE

All invoices must list Contract Number, Purchase Order Number, Unit and Extension Prices and discounts allowed. A separate invoice shall be submitted for each order. Unless otherwise noted in this contract or purchase order, payment will not be due until thirty (30) days after all services have been completed, or all items have been delivered, inspected and accepted by the State or the invoice has been received at the agency business office, whichever is later.

Contractor shall be paid by Procurement Card when invoice is received.

The invoice shall be sent to the address of the ordering agency.

If the Contractor fails to deliver the order by the confirmed delivery date:

- The State will levy a late delivery penalty on the invoice for the order delivered after the confirmed delivery date.
- The penalty shall be equal to \$1,000.00 US dollars.
- The penalty value shall be deducted from the invoiced amount due the Contractor for that order (or a credit issued in the case of Procurement Card payment).
- Once it is determined that the order will not be made by the confirmation date, the Contractor shall notify the State agency personnel who placed the order via email to advise when delivery shall be made after the confirmed date. The Contractor shall also allow the State to change the delivery location of the late delivery if requested to any of the stated New Hampshire locations (A through F) at no charge to the State.

7. PAYMENT

Payments may be made via ACH or P-Card. Use the following link to enroll with the State Treasury for ACH payments: <https://www.nh.gov/treasury>

EXHIBIT D

RFB 2707-23 is incorporated here within.

Contractor Initials YD/AL
Date 7/19/2023

EXHIBIT E

Contractor's Bid Response is incorporated here within

Contractor Initials *J.B.A.*
Date *1/19/2023*

State of New Hampshire

Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that POTTERS INDUSTRIES, LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on February 19, 2013. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 687233

Certificate Number: 0005901377



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 28th day of November A.D. 2022.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan
Secretary of State

POTTERS INDUSTRIES, LLC
SECRETARY'S CERTIFICATE

I, Roger William Andersen II, being the Secretary of POTTERS INDUSTRIES, LLC, a Delaware limited liability company (the "Company"), HEREBY CERTIFY that:

1. I am the duly elected and acting Secretary of the Company and, as such, the keeper of the records of the Company. I am duly authorized to execute and deliver this Secretary's Certificate for and on behalf of the Company.

2. Set forth below is a true, correct and complete reproduction of Section 5.5(k) of the Company's Amended and Restated Limited Liability Company Operating Agreement, dated as of July 1, 2011:

"Unless prohibited by a resolution approved by the affirmative vote of a majority of the Directors present, an Officer elected or appointed by the Board may delegate in writing some or all of the duties and powers of such person's office to other persons. In addition, each officer of the Company shall have the power to sign and deliver in the name of the Company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the Company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by this Agreement or the Board to a particular officer or agent of the Company."

3. Pursuant to the authority granted in the aforementioned provision of the Company's Amended and Restated Limited Liability Company Operating Agreement, I have delegated to Yvonne Harris the authority to sign and submit bids and contracts for and on behalf of the Company.

4. The foregoing delegation remains in full force and effect and has not been revoked as of the date hereof.

IN WITNESS WHEREOF, I have executed and delivered this Secretary's Certificate as of December 29, 2022.



Roger William Andersen II, Secretary



STATE OF NEW HAMPSHIRE BID TRANSMITTAL LETTER

Date: November 21, 2022

Company Name: Potters Industries, LLC
Address: 3222 Phoenixville Pike, Suite 103
Malvern, PA 19355

To: Point of Contact: Lincoln Adams
Telephone: (603)-271-0580
Email: NH.Purchasing@das.nh.gov

RE: Bid Invitation Name: Glass Spheres
Bid Number: 2707-23
Bid Posted Date (on or by): November 10, 2022
Bid Closing Date and Time: November 21 @ 11:00 AM (EST)
Dear Lincoln Adams:

[Insert name of signor] Yvonne D. Harris, on behalf of Potters Industries, LLC [insert name of entity submitting bid (collectively referred to as "Vendor")] hereby submits an offer as contained in the written bid submitted herewith ("Bid") to the State of New Hampshire in response to BID:# 2707-23 for Glass Spheres Supply and Deliver at the price(s) quoted herein in complete accordance with the bid.

Vendor attests to the fact that:

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

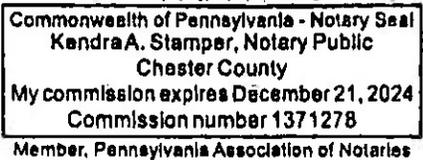
Authorized Signor's Signature [Signature] Authorized Signor's Title Contract Administrator

NOTARY PUBLIC/JUSTICE OF THE PEACE

COUNTY: Chester STATE: Pennsylvania ZIP: 19355

On the 21st day of November, 2022, personally appeared before me, the above named Yvonne D. Harris, in his/her capacity as authorized representative of Potters Industries, LLC 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.
Kendra A. Stamper
(Notary Public/Justice of the Peace)



My commission expires: _____ (Date)

Contractor Initials: [Signature]
Date: 11/21/2022

**REQUEST FOR BID FOR GLASS SPHERES SUPPLY AND DELIVER FOR
THE STATE OF NEW HAMPSHIRE**

PURPOSE:

The purpose of this bid invitation is to establish a contract for supply and delivery of Glass Spheres to the State of New Hampshire with product list and requirements indicated in the SCOPE OF WORK and OFFER sections of this bid invitation, in accordance with the requirements of this bid invitation and any resulting contract. Items ordered under any resulting contract shall be delivered FOB destination to the locations indicated in the "Delivery Locations" section of this bid invitation.

INSTRUCTIONS TO VENDOR:

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

BID SUBMITTAL:

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

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

BID INQUIRIES:

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

Questions shall be submitted by E-mail to Lincoln Adams at the following address:

Lincoln.J.Adams@DAS.NH.Gov

Submissions shall clearly identify the bid Number, the Vendor's name and address and the name of the person submitting the question.

BID DUE DATE:

All bid submissions shall be received at the Bureau of Purchase and Property no later than the date and time shown on the transmittal letter of this bid. Submissions received after the date and time specified shall be marked as "Late" and shall not be considered in the evaluation process.

All offers shall remain valid for a period of one hundred eighty (180) days from the bid due date. A vendor's disclosure or distribution of bids other than to DAS, Bureau of Purchase and Property may be grounds for disqualification.

ADDENDA:

In the event it becomes necessary to add to or revise any part of this bid prior to the scheduled submittal date, the NH Bureau of Purchase and Property shall post on our web site any Addenda. Before your submission and periodically prior to the RFB closing, Vendors are required to check the site for any addenda or other materials that may have been issued affecting the bid. The web site address is:

<https://apps.das.nh.gov/bidscontracts/bids.aspx>

TIMELINE:

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

| | |
|------------|---|
| 11/10/2022 | Bid Solicitation distributed on or by |
| 11/17/2022 | Last day for questions, clarifications, and/or requested changes to bid |
| 11/21/2022 | 1:30 PM (EST) Bid Closing |
| 2/01/2023 | Implementation of Contract |

TERMS OF SUBMISSION:

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

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

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

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

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

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

Complete bids shall be filled out on the original documents and format that are a part of this bid invitation. Vendors may submit additional paperwork with pricing, but all pricing shall be on the documents provided with this bid invitation and in the State's format.

CONTRACT TERM:

The term of the contract shall commence on February 1, 2023 or upon approval of the Governor and Executive Council, whichever is later, through January 31, 2026, a period of approximately three (3) years.

The contract may be extended for an additional two (2) one-year extensions thereafter under the same terms, conditions and pricing structure upon the mutual agreement between the successful Vendor and the State with the approval of the Commissioner of the Department of Administrative Services. The maximum term of the contract (including extensions) shall not exceed five (5) years.

CONTRACT AWARD:

The award shall be made to the Vendor meeting the criteria established in this RFB and providing the lowest cost in total. The State reserves the right to reject any or all bids or any part thereof and add/delete items/locations to the contract. All award(s) shall be, in the form of a State of New Hampshire Contract.

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

NOTIFICATION AND AWARD OF CONTRACT(S):

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

Bid results may also be viewed on our website at <https://apps.das.nh.gov/bidscontracts/bids.aspx>.

For Vendors wishing to attend the bid closing: **Names of the Vendors submitting responses and pricing shall be made public. In lieu of in person public bid openings the State shall conduct openings via electronic means until further notice.**

LIABILITY:

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

PUBLIC DISCLOSURE OF BID OR PROPOSAL SUBMISSIONS:

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

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

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

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

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

If a request is made to the State by any person or entity to view or receive copies of any portion of a proposal and if disclosure is not prohibited under NH RSA 21-G:37 or any other applicable law or regulation, bidders acknowledge and agree that the State may disclose any and all portions of the proposal or related materials

which is not marked as confidential. In the case of bids, proposals or related materials that contain portions marked confidential, the State shall assess what information it believes is subject to release; notify the bidder that the request has been made; indicate what, if any, portions of the proposal or related material shall not be released; and notify the bidder of the date it plans to release the materials. The State is not obligated to comply with a bidder's designation regarding confidentiality. The State shall have no obligation to advise a bidder that an individual or entity is attempting to electronically access, or has been referred to, materials which have been made publicly available on the State's web sites.

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

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

TERMINATION:

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

VENDOR CERTIFICATIONS:

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

STATE OF NEW HAMPSHIRE VENDOR APPLICATION: Prior to bid award, Vendors shall have a completed **VENDOR CERTIFICATIONS:**

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

- **STATE OF NEW HAMPSHIRE VENDOR APPLICATION:** To be eligible for a contract award, a Vendor must have a completed Vendor Application Package on file with the NH Bureau of Purchase and Property. See the following website for information on obtaining and filing the required forms (no fee): <https://DAS.NH.Gov/Purchasing>
- **NEW HAMPSHIRE SECRETARY OF STATE REGISTRATION:** To be eligible for a contract award, a Vendor that is a corporation, limited liability company, or other limited liability business entity (this excludes sole proprietors and general partnerships) must be registered to conduct business in the State of New Hampshire **AND** in good standing with the NH Secretary of State. Please visit the following website to find out more about the requirements for registration with the NH Secretary of State: <https://sos.nh.gov/corporation-division/>
- **CONFIDENTIALITY & CRIMINAL RECORD:** If Applicable, any employee or approved subcontractor of the Vendor who will be accessing or working with records of the State of New Hampshire shall be required to sign a Confidentiality and Non-Disclosure Agreement and a Release of Criminal Record Authorization Form. These forms shall be returned to the designated State agency prior to commencing any work.
- **CERTIFICATE OF INSURANCE:** Prior to being awarded a contract the Vendor shall be required to submit proof of comprehensive general liability insurance coverage prior to performing any services for the State. The coverage shall insure against all claims of bodily injury, death or property damage in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Coverage shall also include State of New Hampshire workers' compensation insurance to the extent required by RSA Chapter 281-A.

BID PRICES: -

Bid prices shall remain firm for the entire contract period and shall be in US dollars and shall include delivery and all other costs required by this bid invitation. (Special charges, surcharges (including credit card transaction fees), or fuel charges of any kind (by whatever name) may not be added on at any time. Any and all charges shall be built into your bid price at the time of the bid. Unless otherwise specified, prices shall be F.O.B. DESTINATION, (included in the price bid), which means delivered to a state agency's receiving dock or other designated point as specified in this contract or subsequent purchase orders without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.

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

Price decreases shall become effective immediately as they become effective to the general trade

Updated Published Price List MUST be e-mailed to Lincoln.J.Adams@DAS.NH.Gov.

PRICE ADJUSTMENTS:

On the anniversary date of this contract the successful Vendor(s) may request price adjustment, either upward or downward, keyed to the industry changes or general trade and shall not be in excess of 3% capped. Written notice of an impending price increase, including substantiation for it, must be submitted in writing to Bureau of Purchase & Property, 25 Capitol Street, Rm. 102, Concord, NH 03301, no less than sixty (60) days prior to the effective date of said price increase. The State reserves the right to reject any price increases it deems unreasonable. If parties to the contract cannot agree on renewal terms, it is hereby understood that the contract will be completely bid.

AUDITS AND ACCOUNTING:

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

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

ESTIMATED USAGE:

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

USAGE REPORTING:

The successful Vendor shall be required to submit a quarterly and annual usage report for analysis for each state agency or eligible participant. Reports are due no later than 30 days after each end of each calendar quarter to The Bureau of Procurement & Support Services, Lincoln Adams and sent electronic to Lincoln.J.Adams@DAS.NH.Gov. At a minimum, the Report shall include:

- Contract Number
- Utilizing Agency and Eligible Participant
- Services/Products Purchased (showing the manufacturer, item, part number, and the final cost.)
- Recycling documentation with respect to content used in the manufacture, development and distribution; process of goods and services sold. This report shall include but not be limited to:
 - o Percentage of recycled materials contained within finished products
 - o Percentage of waste recycled throughout the manufacturing process
 - o Types and volume of packaging used for transport
 - o Any associated material avoided and/or recycled as applicable under contract
 - o A standardized reporting form will be provided after contract award
- Total Cost of all Services/Products Purchased. Ability to sort by agency/eligible participant.
- Preferred in Excel format

ESTABLISHMENT OF ACCOUNTS:

Each State of New Hampshire agency shall have its own individual customer account number. There may also be instances where divisions or bureaus within an agency will need their own individual customer account numbers. Should any State of New Hampshire agency place an order under the contract, the successful Vendor agrees to establish an account within three business days from the date the order is placed. However, there shall be no delay in any shipment; the agency shall receive the items ordered in accordance with the delivery time required under this bid invitation, as if an account already exists for the agency.

ELIGIBLE PARTICIPANTS:

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

PAYMENT:

Payment method (P-Card or ACH). Payments shall be made via ACH or Procurement Card (P-card = Credit Card) unless otherwise specified by the state of New Hampshire. Use the following link to enroll with the State Treasury for ACH payments: <https://www.nh.gov/treasury/state-vendors/index.htm> Eligible participants shall negotiate their own payment methods with the successful Vendor.

INVOICING:

Invoices shall be submitted to the corresponding State agency after completion of work/acceptance of delivery. Invoices shall clearly indicate the quantity, description, packaging, date delivered, and contract price. Invoicing for eligible participants shall be in accordance with their individual requirements.

TERMS OF PAYMENT:

Payment shall be made in full within thirty (30) days after receipt of the invoice and acceptance of the corresponding goods and/or services to the State's satisfaction.

PRODUCT SAMPLES:

Product sample is required as specified in paragraph PRODUCT SAMPLING & TESTING. Product sample shall be the exact quality, brand and style being quoted in this bid. Do Not Submit Sample with RFB Response. All samples shall be provided at no charge to the State of NH Bureau of Purchase and Property of the requesting Agency, and shall not be returned.

PRODUCT SAMPLING & TESTING:

A sample of the product material proposed for supply shall be submitted to and received by the Bureau of Traffic prior to the Bid Closing. The sample will be reserved for potential independent lab testing.

The samples shall be accompanied by a Transmittal Letter with contact phone and email, Safety Data Sheets, and signed/dated Certificates of Compliance with the specification in Exhibit A issued by the manufacturer for the material including certifications and certified analysis results. At a minimum, analysis results shall include: Gradation, % Roundness, Refractive Index, and total concentration for both arsenic and lead, as well as a Statement of Compliance that the material meets the requirements of Section 1504 of MAP-21 and is in compliance with the Build America, Buy America Act. Sample containers shall be marked with manufacturer name, product name and number and batch numbers consistent with production containers.

The product sample shall be contained in two one-quart cans, each with tamper-evident seals, and shall be sent by UPS, FedEx, or similar service, for tracking purposes to the following physical address:

ATTN: LEE BARONAS
NH DEPARTMENT OF TRANSPORTATION
TRAFFIC BUREAU
18 SMOKEY BEAR BLVD

CONCORD, NH 03302

The Bureau of Traffic will arrange for analysis of the sample to ensure specification compliance after bid closing, and prior to award of the contract. Failure of any of the specification requirements based on Independent laboratory testing may result in disqualification from award for that vendor. The disqualified vendor may request a copy of the test results in writing.

VENDOR RESPONSIBILITY:

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

All State of New Hampshire bid invitations and addenda to such bid invitations are advertised on our website at: <https://apps.das.nh.gov/bidscontracts/bids.aspx>.

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

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

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

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

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

It is the responsibility of the Vendor to maintain this any awarded contract and New Hampshire Vendor Registration with up to date contact information.

Contract specific contact information (Sales contact, Contractor contract manager, etc.) shall be sent to the State's Contracting Office listed in Box 1.9 of Form P-37.

Additionally, all updates i.e., telephone numbers, contact names, email addresses, W9, tax identification numbers are required to be current through a formal electronic submission to the Bureau of Purchase and Property at:

[https://das.nh.gov/purchasing/vendorregistration/\[S\(a0fzcv55qhaeqs45ipyq5i45\)\]/welcome.aspx](https://das.nh.gov/purchasing/vendorregistration/[S(a0fzcv55qhaeqs45ipyq5i45)]/welcome.aspx)

IF AWARDED A CONTRACT:

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

- Section 1.3 Contractor Name
- Section 1.4 Contractor Address
- Section 1.11 Contractor Signature
- Section 1.12 Name & Title of Contractor Signatory (if Vendor is not a sole proprietor)

- Provide certificate of insurance indicating the coverage amounts required by Section 14 of the Form Number P-37.
- Provide proof of sufficient workers' compensation insurance coverage or evidence of exemption from RSA Chapter 81-A.

- If the successful Vendor is a corporation, limited liability company, or other limited liability business entity, then provide a certificate of good standing issued by the NH Secretary of State or, for a newly incorporated, formed, or registered entity, a copy of the appropriate registration document certified by the NH Secretary of State.

SPECIFICATION COMPLIANCE:

Vendor's offers shall meet or exceed the required specifications as written. The State of New Hampshire shall be the sole determining factor of what meets or exceeds the required specifications. Any delivered material not conforming will be rejected and shall be removed by the Vendor at the Vendor's expense.

SPECIFICATIONS:

Complete specifications required are detailed in the **SCOPE OF WORK** section of this bid invitation. In responding to the bid invitation, the prospective Vendor shall address all requirements for information as outlined herein.

SCOPE OF WORK:

Vendor shall supply all labor, tools, transportation, materials, equipment and permits as necessary and required to perform services as described herein. Please see Exhibit A BUREAU OF TRAFFIC SPECIFICATION FOR GLASS BEADS FOR USE WITH TRAFFIC PAINTS.

WARRANTY REQUIREMENTS:

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

OBLIGATIONS AND LIABILITY OF THE VENDOR:

The successful Vendor shall perform all work and furnish all materials, tools, equipment and safety devices necessary to perform the requested services in the manner and within the time hereinafter specified. The Vendor shall provide said services to the satisfaction of the State and in accordance with the specifications and at the price set forth herein. All work to be performed and all equipment to be furnished pursuant to the Scope of Services included herein shall be performed and furnished in strict accordance with the specifications included herein; the terms of any contract awarded as a result of this solicitation, any associated contract drawings, and the directions of State representatives as may be given from time to time while the work is in progress.

The successful Vendor shall take full responsibility for the work to be performed pursuant to the Scope of Work included herein; for the protection of said work; and for preventing injuries to persons and damage to property and utilities on or about said work. The Vendor shall in no way be relieved of such responsibility by any authority of the State to give permission or issue orders relating to any part of the work, by any such permission given or orders issued, or by any failure of the State to give such permission or issue such orders. The successful Vendor shall bear all losses accruing to the Vendor as a result of the amount, quality, or character of the work required, or because the nature or characteristics of the work location is different from what the Vendor estimated or expected, or due to delays or other complications caused by the weather, elements, or other natural causes.

The successful Vendor agrees that any damage or injury to any buildings, materials, equipment, or other property resulting from the Vendor's performance of the requested services shall be repaired at the Vendor's own expense so that such buildings, materials, equipment, or other property are satisfactorily restored to their prior condition.

DELIVERY TIME:

All deliveries shall be made in accordance with the schedule listed herein. Weather and other factors can affect demand. The successful bidder must take these factors into account and adjustment to the schedule

must be mutually agreed upon. See Exhibit "B" for schedule for CY 2023. Quantities and distribution for subsequent year(s) will be similar but not necessarily the same.

All shipments to the primary delivery location shall be scheduled with the freight carriers to arrive between 6:00 AM and 12:00 noon on normal workday, following a minimum one-workday notice to the Delivery Contact. Deliveries that arrive outside of the delivery time will **NOT BE ALLOWED TO WAIT ON SITE** to be unloaded.

DELIVERY TIME, COMMUNICATION AND PENALTIES FOR REMOTE DELIVERY LOCATIONS ONLY:

The State of New Hampshire shall institute the following policy, procedures and penalties relative to the timely delivery of orders to the remote delivery locations (locations B, C, D, E and F).

Order, confirmation, and delivery to Remote Locations:

- Orders for spheres to be delivered to any of the remote locations shall be placed a minimum of 14 calendar days prior to the required delivery date. An alternative Remote Delivery Location within 50 miles of a listed location may be substituted at the time of order.
- All shipments shall be scheduled with the freight carriers to arrive between 6:00 AM and 7:00 AM on normal workday.
- The State shall place the remote order using email to the vendor's "contract manager's" email address as stated in the bid solicitation submitted. If there is a change in contract manager, it shall be the vendor's responsibility to notify the state Bureau of Traffic of the change via email and supply the name and email for the new contract manager.
- The vendor shall have 24 hrs. from receipt of order to email confirmation they shall make complete delivery by the date stated on the order email or email confirmation they cannot meet the delivery date requested. If vendor cannot meet the delivery date requested, the vendor may offer a revised delivery date that they can make delivery for.
- If the State accepts this revised delivery date offered by the vendor, it shall become the firm delivery date and firm delivery date policy applies.
- If the vendor confirms that they will meet the delivery date requested on the order email, the stated delivery date shall become firm and the State will schedule staffing, lodging, travel and other logistics around the confirmed delivery date.

If the vendor fails to deliver the order by the confirmed delivery date:

- The State will levy a late delivery penalty on the invoice for the order delivered after the confirmed delivery date.
- The penalty shall be equal to \$1,000.00 US dollars.
- The penalty value shall be deducted from the invoiced amount due the vendor for that order (or a credit issued in the case of Procurement Card payment).
- Once it is determined that the order will not be made by the confirmation date, the vendor shall notify the State agency personnel who placed the order via email to advise when delivery shall be made after the confirmed date. The vendor shall also allow the State to change the delivery location of the late delivery if requested to any of the stated New Hampshire locations (A through F) at no charge to the State.

SHIPPING MANIFESTS:

Shipping manifests must accompany each delivery and must exhibit the batch number of the material delivered and Purchase Order Number.

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

DELIVERY LOCATIONS:

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

| PRIMARY DELIVERY LOCATION | |
|---------------------------|---|
| Location A | NHDOT - Bureau of Traffic 18 Smokey Bear Blvd, Concord, NH 03302 |
| REMOTE DELIVERY LOCATIONS | |
| Location B | NHDOT - Littleton Patrol Shed (Traffic) 201 Dells Road, Littleton, NH 03561 |
| Location C | NHDOT-Gorham Patrol Shed (Traffic) 1 Marin Drive, Gorham, NH 03581 |
| Location D | NHDOT-Columbia Patrol Shed (Traffic) - 8 Grant Road, Columbia, NH 03576 |
| Location E | NHDOT-Swanzey Patrol Shed (Traffic) 19 Base Hill Road, Swanzey, NH 03446 |
| Location F | NHDOT-Glen Patrol Shed (Traffic) 88 Route 302, Bartlett, NH 03838 |

The delivery schedule is critical to the State of New Hampshire. The spheres shall be delivered per the delivery schedule listed with this bid invitation UNLESS OTHERWISE NOTIFIED IN WRITING BY THE NH DOT – BUREAU OF TRAFFIC

STATE DELIVERY / BILLING CONTACTS:

Eric Healey 603-419-0398 or Robert Havey 603 - 419-0597

ATTACHMENTS:

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

Attachment A: Sample P-37 Form

Note: To be considered, bid shall be signed and notarized on front cover sheet in the space provided. The Bid Opening is open to the public online at the following:

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 248 839 128 41

Passcode: SkBtmC

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

+1 603-931-4944-743901972# United States, Concord

Phone Conference ID: 743 901 972#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

EXHIBIT A

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
BUREAU OF TRAFFIC SPECIFICATION

FOR

GLASS BEADS FOR USE WITH TRAFFIC PAINTS

GENERAL

- 1.1 Glass beads (sometimes referred to as "glass spheres") shall conform to latest version of AASHTO M247 Type 1 with moisture resistance and adherence coatings and any additional requirements included within this specification.

ADDITIONAL SPECIFIC PROPERTIES

2.1 ADHERENCE COATED

The beads shall be coated with an adherence coating designed to interact and adhere to the film as well as be of such size, shape and character as to facilitate their embedment in the freshly applied binder film.

2.2 CRUSHING RESISTANCE

Retained 0.425 mm. (No. 40) sieve 133 N (30 pounds) minimum.

2.3 SILICA CONTENT

The glass beads shall be manufactured from commercial grade soda lime glass cullet containing less than 0.1 weight percent crystalline silica. The glass beads shall contain no less than 60% amorphous silica. This is not free silica and does not cause silicosis.

2.4 CHEMICAL STABILITY

Beads which show any tendency toward decomposition, including surface etching, when exposed to atmospheric conditions, moisture, dilute acids, or alkalis or paint film constituents, may, prior to acceptance, be required to demonstrate satisfactory reflectance behavior and maintenance under such tests.

2.4 HEAVY METALS AND TOXICITY

Beads shall contain less than 200 parts per million total concentration of arsenic or lead as determined in accordance with Environmental Protection Agency testing methods 3052, 6010B, or 6010C. Manufacturer shall submit testing from independent testing laboratory certifying this requirement has been met.

TESTING AND SAMPLING METHODS

All testing and sampling methods shall conform to latest version of the AASHTO M247 and any additional information included within.

3.1 Roundness: The glass beads shall have a minimum of 80% true spheres as determined by AASHTO PP74.

3.2 Adherence Coating: AASHTO M247 – Adherence Coating Test – Referee Method

PACKAGING AND MARKING

4.1 The bagged beads shall be packed in 50-pound units, in a 5-ply multi-walled moisture-proof paper bag with a 1.5 mil. polyethylene middle layer. Bag dimensions (nominal): 13" x 3" x 25". Bags shall be palletized, suitable for lifting handling. Maximum of 4,000 pounds of beads per pallet.

4.2 The boxed beads shall be packaged in 2,000-pound containers. These containers shall be made of materials strong enough to withstand handling, transporting, and provide moisture protection. All containers shall be palletized, suitable for lift handling. Maximum of 2,000 pounds of beads per pallet. The 2,000-pound containers must be able to be stacked on each other at least two high.

4.3 Containers are to be guaranteed to furnish dry and undamaged beads.

4.4 Each package shall contain the following information:

- Name and address of manufacturer
- Shipping point
- Trademark or name
- The wording "glass beads"
- The specification number
- Number of kg. (lbs.) per container
- The lot or batch number
- Month and year of manufacture

SAMPLING AND INSPECTION

5.1. All delivered material shall conform to the certified pre-bid analysis. The New Hampshire Department of Transportation reserves the right to sample and inspect and arrange for testing on deliveries for specification compliance. Any material not conforming will be rejected and shall be removed at the vendor's expense. Final acceptance and testing will be made at the point of application. If a material batch fails, the entire batch will be rejected.

5.2. Certificate of Compliance: Regardless of any testing that may be performed by NHDOT, each delivery and each batch within a delivery shall be accompanied by a Certificate of Compliance issued by the manufacturer for the material including certifications and quality control test results. At a minimum, test results shall include: Gradation, % Roundness, Refractive Index, and total concentration for both arsenic and lead per paragraph 2.4 above with a Statement of Compliance that the material meets the requirements of Section 1504 of MAP-21.

5.3. In as much as the performance of the spheres is of major importance, the failure of the spheres to meet the requirements shall be considered a major breach of any contract based upon these specifications. Failure of three (3) lab specification tests will be considered an Event of Default under paragraph 8 of the Contract Terms and Conditions and Failure to Deliver under paragraph 5 of the Contract Terms and Conditions.

BUILD AMERICA, BUY AMERICA

- 6.1. The materials supplied by this Contract are subject to use on Federally funded or reimbursed activities. Therefore, the materials are subject to compliance with the Build America, Buy America Act (BABA) and glass beads are considered "Construction Materials" under BABA. The beads shall be manufactured in the United States. This means the final manufacturing process and the immediately preceding manufacturing stage for the construction material must occur in the United States.
- 6.2. Certificate of Compliance: In addition to the Certificate of Compliance required under section 5, each delivery and each batch within a delivery shall be accompanied by a BABA Certificate of Compliance issued by the manufacturer for the construction material that identifies where the material was manufactured and attest specifically to compliance with BABA.

Exhibit B
STATE OF NEW HAMPSHIRE DELIVERY SCHEDULE

DISTRIBUTION OF DELIVERIES
For Spheres/Beads
2023

| State Fiscal Year | Due Date (dēliver ōn ōr bēforē) | Quantity* (pōunds) | Fiscal Year Total* (pounds) | Contract Total* (pounds) |
|-----------------------|------------------------------------|-----------------------|--------------------------------|-----------------------------|
| FY 2023 | March 31, 2023 | 44,000 | | |
| | April 07 | 44,000 | | |
| | April 14 | 44,000 | | |
| | April 21 | 44,000 | | |
| | April 28 | 88,000 | | |
| | May 05 | 88,000 | | |
| | May 12 | 88,000 | | |
| | May 19 | 88,000 | | |
| | May 26 | 88,000 | | |
| | June 02 | 44,000 | | |
| | June 09, 2023 | 44,000 | | |
| | FY 2023 Total | | | 704,000 |
| FY 2024 | July 07, 2023 | 88,000 | | |
| | July 14 | 88,000 | | |
| | July 21 | 88,000 | | |
| | July 28 | 88,000 | | |
| | August 04 | 88,000 | | |
| | August 11 | 88,000 | | |
| | August 18 | 88,000 | | |
| | August 25, 2023 | 88,000 | | |
| FY 2024 Total | | | 704,000 | |
| Contract Total | | | | 1,408,000 |

Included in the deliveries listed above are up to 5 deliveries (44,000 pounds each) required to remote locations during this contract period. These loads shall be delivered in 50-pound bags.

*Note that this delivery schedule is based on anticipated order quantities and may be modified by the Agency during the contract period. Refer to paragraph ESTIMATED USAGE in the Bid Invitation.

ATTACHMENT A
SAMPLE FORM TO BE COMPLETED UPON AWARD

FORM NUMBER P-37 (version 12/11/2019)

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

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

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|---|--------------------|---|----------------------|
| 1.1 State Agency Name | | 1.2 State Agency Address | |
| 1.3 Contractor Name | | 1.4 Contractor Address | |
| 1.5 Contractor Phone Number | 1.6 Account Number | 1.7 Completion Date | 1.8 Price Limitation |
| 1.9 Contracting Officer for State Agency | | 1.10 State Agency Telephone Number | |
| 1.11 Contractor Signature <div style="text-align: right;">Date:</div> | | 1.12 Name and Title of Contractor Signatory | |
| 1.13 State Agency Signature <div style="text-align: right;">Date:</div> | | 1.14 Name and Title of State Agency Signatory | |
| 1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i> By: _____ Director, On: _____ | | | |
| 1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i> By: _____ On: _____ | | | |
| 1.17 Approval by the Governor and Executive Council <i>(if applicable)</i> G&C Item number: _____ G&C Meeting Date: _____ | | | |

Contractor Initials JPH
 Date 11/21/2022

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

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

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

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

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

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

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

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

7. PERSONNEL.

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

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

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

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a

greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing, in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

10.2 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.

10.3 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.

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

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

15. WORKERS' COMPENSATION.

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

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

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

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

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

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

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

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

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

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

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.