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State of New Hampshire

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

Charles M. Arlinghaus
Commissioner

Catherine A. Keane
Deputy Commissioner

Sheri L. Rockburn
Assistant Commissioner

April 12, 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 Newport Sand & Gravel Co., Inc. (VC#154278), Newport, NH in the amount of $296,718.60 for concrete delivered and/or pumped with the option to renew for three additional years effective upon Governor and Council approval for the period February 1, 2023 through January 31, 2025.

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 and delays in receipt of executed documents from the vendor. The Department of Administrative Services, through the Bureau of Purchase and Property issued a request for bid (RFB) 2718-23 on December 21, 2022 with responses due on January 6, 2023. This bid reached 97 vendors through the NIGP electronic sourcing platform with an additional 11 directly sourced. There were 3 compliant responses to this RFB; Newport Sand & Gravel Co., Inc. is a compliant respondent. The Department of Administrative Services intends for this to be a multi-award contract to meet concrete supply demand statewide.

Upon approval, Newport Sand & Gravel Co., Inc. will provide a concrete delivery resource to enable the requesting agencies to maintain the State's infrastructure with respect to safe travel ways, dams, and the like throughout the State of New Hampshire.

The requested price limitation for this contract is $296,718.60, 10% of which is for undefined needs associated with the balance of products and an allowance for continued volatile market conditions impacting supply chains. An additional 10% was specifically requested by the Department of Environmental Services Dam Bureau for projected infrastructural repairs of viable locations of dams currently in disrepair (i.e., Tuftonboro's Copps Pond Dam).

Contract financials	
Estimated annual spend	$123,632.75
Estimated term spend (2 year)	$247,265.50
Add 20% for balance of product	$ 49,453.10
Recommended price limitation	$296,718.60

Based on the foregoing, I am respectfully recommending approval of the **Retroactive** contract with Newport Sand & Gravel Co., Inc.

Respectfully submitted,

Charles M. Arlinghaus
Commissioner

Bid Description	Concrete Delivered and/or Pumped	Agency	Statewide
RFB#	2718-23	Requisition#	N/A
Agent Name	Liz Moskalenko	Bid Closing	01/06/2023

Estimated Annual Quantity 50%	UOM	Product Description	Newport Sand & Gravel Co., Inc.		Expiring Contract	
			Unit Cost	Extended Cost	Unit Cost	Extended Cost
29	CY	NH Class A	$182.00	$5,278.00	$154.00	$4,466.00
494	CY	NH Class AA	$186.00	$91,884.00	$158.00	$78,052.00
2.5	CY	NH Class AAA	$197.75	$494.38	$169.25	$423.13
19.5	CY	NH Class B	$178.00	$3,471.00	$150.00	$2,925.00
7	CY	NH Class F	$141.00	$987.00	$113.00	$791.00
0.5	CY	NH Class T	$182.00	$91.00	$154.00	$77.00
95.5	CY	3/8 Aggregate Mix	$4.50	$429.75	$3.50	$334.25
133.5	CY	Mid-Range Water Reducer	$7.25	$967.88	$6.25	$834.38
54	CY	High-Range Water Reducer	$8.25	$445.50	$7.25	$391.50
13.5	CY	Fiber / Micro Fiber	$8.50	$114.75	$9.00	$121.50
13	CY	1% Non-Chloride Accelerator	$7.25	$94.25	$6.25	$81.25
10.5	CY	2% Non-Chloride Accelerator	$14.50	$152.25	$12.50	$131.25
16	Ea	min)	$925.00	$14,800.00	$825.00	$13,200.00
16	Ea	min)			$925.00	$14,800.00
18.5	Ea	37 Meter Pump Truck (4 hour				
0.5	Hr	Truck Overtime Rate (over) 4hrs	$120.00	$60.00	$205.00	$102.50
298.5	CY	Winter Service Rate	$8.00	$2,388.00	$7.00	$2,089.50
Light Load Charges						
1	CY		$150.00	$150.00	$150.00	$150.00
1.5	CY		$150.00	$225.00	$150.00	$225.00
2	CY		$150.00	$300.00	$150.00	$300.00
2.5	CY		$100.00	$250.00	$100.00	$250.00
3	CY		$100.00	$300.00	$100.00	$300.00
3.5	CY		$100.00	$350.00	$100.00	$350.00
4	CY		$100.00	$400.00	$100.00	$400.00
		Sub Total		**$123,632.75**		**$120,795.25**

	Estimated annual spend	$123,632.75	**Expiring contract annual** $120,795.25
	Estimated term spend (2 year)	$247,265.50	**Expiring contract term** $241,590.50

Add 20% allowance for balance of product line, volatile market conditions impacting supply chains, staffing issues and unforseen emergent situations. In addition NHDES Dam Bureaus Federal Infrastructure viable locations; dedicated to dam repairs	**$49,453.10**			**Cost increase X% or**	**$5,675.00**
Recommended price limitation	**$296,718.60**			**Delta: new vs. expiring**	**2.30%**

Recommendation Summary							
Statewide Contract or Amendment	Statewide Contracts - Multiple						
Term of Contracts	2 years						
Price Limitations							
Number of Solicitations Received	3						
Number of Sourced bidders	11						
Number of NIGP Vendors Sourced	97						
Number of non-responsive bidders	1						
P-37 Checklist Complete	Yes						
D&B Report Attached	No						
Method of Payment (P-card/ACH)	P-Card/ACH						
Expiring Contract Price Limitations							
Total Cost Increase ($/%)	$5,675.00		2%				Increase

Special Notes:	The forecasted spend amount is projected from the past usage by the Department of Transportation Highway Maintenance Division, Bridge Maintenance, Environmental Services (Dam Bureau), Department of Natural and Cultural Resources et al., being purchased over the course of the next two years based on historic purchases of the last expired contract purchases. Projected spend is based on the updated unit price after discount and by the projected quantity the Department of Transportation purchased. Projected spend data with the award, a further allowance of $49,453.10, or 20% of estimated term spend, for undefined needs associated with the balance product and as volatile market conditions continue to impact supply chains, staffing issues and unforseen emergent situations resulting in increased pricing for this requested contract; this 20% includes 10% projected specifically for NHDES Dam Bureaus Federal Infrastructure viable locations; dedicated to dam repairs.

Bid Description	Concrete Delivered	Agency	Statewide
RFB#	2718-23 & 2726-23	Requisition#	N/A
Agent Name	Liz Moskalenko	Bid Closing	01/06/2023 and 01/13/2023

Estimated Annual Quantity	UOM	Product Description	Newport Sand & Gravel Co., Inc. RFB 2718-23		Expiring Contract		Estimated Annual Quantity	UOM	Product Description	Central NH Concrete Corp. RFB 2718-23		Expiring Contract		Estimated Annual Quantity	UOM	Product Description	Coleman Concrete Inc. RFB 2718-23		Expiring Contract	
			Unit Cost	Extended Cost	Unit Cost	Extended Cost				Unit Cost	Extended Cost	Unit Cost	Extended Cost				Unit Cost	Extended Cost	Unit Cost	Extended Cost
29	CY	NH Class A	$182.00	$5,278.00	$154.00	$4,466.00	0.6	CY	NH Class A	$170.00	$98.60	$118.00	$68.44	12	CY	NH Class A	$172.75	$2,003.90	$132.75	$1,539.90
494	CY	NH Class AA	$186.00	$91,884.00	$158.00	$78,052.00	9.9	CY	NH Class AA	$180.00	$1,778.40	$121.00	$1,195.48	198	CY	NH Class AA	$178.25	$34,827.00	$136.25	$26,923.00
2.5	CY	NH Class AAA	$197.75	$494.38	$169.25	$423.13	0.1	CY	NH Class AAA	$190.00	$9.50	$124.00	$6.20	1	CY	NH Class AAA	$181.75	$181.75	$146.50	$146.50
19.5	CY	NH Class B	$178.00	$3,471.00	$150.00	$2,925.00	0.4	CY	NH Class B	$165.00	$64.35	$115.00	$44.85	8	CY	NH Class B	$172.75	$1,347.45	$132.75	$1,035.45
7	CY	NH Class F	$141.00	$987.00	$113.00	$791.00	0.1	CY	NH Class F	$175.00	$24.50	$103.00	$14.42	3	CY	NH Class F	$133.00	$372.40	$99.75	$279.30
0.5	CY	NH Class T	$182.00	$91.00	$154.00	$77.00	0.0	CY	NH Class T	$170.00	$1.70	$118.00	$1.18	0	CY	NH Class T	$175.75	$35.15	$132.72	$26.54
95.5	CY	3/8 Aggregate Mix	$4.50	$429.75	$3.50	$334.25	1.9	CY	3/8 Aggregate Mix	$175.00	$334.25	$120.00	$229.20	38	CY	3/8 Aggregate Mix	$190.75	$7,286.65	$3.00	$114.60
133.5	CY	Mid-Range Water Reducer	$7.25	$967.88	$6.25	$834.38	2.7	CY	Mid-Range Water Reducer	$8.00	$21.36	$5.00	$13.35	53	CY	Mid-Range Water Reducer	$4.00	$213.60	$2.00	$106.80
54	CY	High-Range Water Reducer	$8.25	$445.50	$7.25	$391.50	1.1	CY	High-Range Water Reducer	$16.00	$17.28	$10.00	$10.80	22	CY	High-Range Water Reducer	$8.00	$172.80	$6.00	$129.60
13.5	CY	Fiber / Micro Fiber	$8.50	$114.75	$9.00	$121.50	0.3	CY	Fiber / Micro Fiber	$15.00	$4.05	$8.00	$2.16	5	CY	Fiber / Micro Fiber	$10.00	$54.00	$8.00	$43.20
13	CY	1% Non-Chloride Accelerator	$7.25	$94.25	$6.25	$81.25	0.3	CY	1% Non-Chloride Accelerator	$10.00	$2.60	$8.00	$2.08	5	CY	1% Non-Chloride Accelerator	$8.00	$41.60	$6.25	$32.50
10.5	CY	2% Non-Chloride Accelerator	$14.50	$152.25	$12.50	$131.25	0.2	CY	2% Non-Chloride Accelerator	$20.00	$4.20	$16.00	$3.36	4	CY	2% Non-Chloride Accelerator	$16.00	$67.20	$12.50	$52.50
16	Ea	20 Meter Pump Truck (4 hour min)	$925.00	$14,800.00	$825.00	$13,200.00	0.3	Ea	20 Meter Pump Truck (4 hour min)					6	Ea	20 Meter Pump Truck (4 hour min)	$1,175.00	$7,520.00	$875.00	$5,600.00
16	Ea	32 Meter Pump Truck (4 hour min)			$925.00	$14,800.00	0.3	Ea	32 Meter Pump Truck (4 hour min)					6	Ea	32 Meter Pump Truck (4 hour min)	$1,275.00	$8,160.00	$935.00	$5,984.00
18.5	Ea	37 Meter Pump Truck (4 hour min)					0.4	Ea	37 Meter Pump Truck (4 hour min)					7	Ea	37 Meter Pump Truck (4 hour min)	$1,300.00	$9,620.00	$1,000.00	$7,400.00
0.5	Hr	Truck Overtime Rate (over) 4hrs	$120.00	$60.00	$205.00	$102.50	0.1	Hr	Truck Overtime Rate (over) 4hrs	$150.00	$15.00			0	Hr	Truck Overtime Rate (over) 4hrs	$150.00	$30.00	$110.00	$22.00
298.5	CY	Winter Service Rate	$8.00	$2,388.00	$7.00	$2,089.50	8.0	CY	Winter Service Rate	$10.00	$59.70	$6.00	$35.82	119	CY	Winter Service Rate	$7.00	$835.80	$5.50	$656.70
Load Charges							Light Load Charges							Light Load Charges						
1	CY		$150.00	$150.00	$150.00	$150.00	1	CY		$300.00	$300.00	$125.00	$125.00	1	CY		$200.00	$200.00	$120.00	$120.00
1.5	CY		$150.00	$225.00	$150.00	$225.00	1.5	CY		$250.00	$375.00	$120.00	$180.00	1.5	CY		$200.00	$300.00	$0.00	$0.00
2	CY		$150.00	$300.00	$150.00	$300.00	2	CY		$200.00	$400.00	$115.00	$230.00	2	CY		$200.00	$400.00	$0.00	$0.00
2.5	CY		$100.00	$250.00	$100.00	$250.00	2.5	CY		$175.00	$437.50	$110.00	$275.00	2.5	CY		$200.00	$500.00	$0.00	$0.00
3	CY		$100.00	$300.00	$100.00	$300.00	3	CY		$150.00	$450.00	$105.00	$315.00	3	CY		$200.00	$600.00	$0.00	$0.00
3.5	CY		$100.00	$350.00	$100.00	$350.00	3.5	CY		$145.00	$507.50	$100.00	$350.00	3.5	CY		$200.00	$700.00	$0.00	$0.00
4	CY		$100.00	$400.00	$100.00	$400.00	4	CY		$140.00	$560.00	$95.00	$380.00	4	CY		$200.00	$800.00	$0.00	$0.00
		Sub Total		$123,632.75					Sub Total		$5,465.49					Sub Total		$76,269.30		

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 Newport Sand & Gravel Co., Inc.		1.4 Contractor Address 8 Reeds Mill Rd, Newport, NH 03773	
1.5 Contractor Phone Number 800-622-4100	1.6 Account Number Various	1.7 Completion Date 01/31/2025	1.8 Price Limitation $296,718.60
1.9 Contracting Officer for State Agency Gary Lunetta		1.10 State Agency Telephone Number 603-271-3606	
1.11 Contractor Signature Deborah C Spear Date: 2/10/23		1.12 Name and Title of Contractor Signatory Deborah C. Spear, V.P.	
1.13 State Agency Signature Date: 3/14/23		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: 3/17/23	
1.17 Approval by the Governor and Executive Council *(if applicable)* G&C Item number:		G&C Meeting Date:	

Contractor Initials dw
Date 2/10/23

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 LWS
Date 2/10/23

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

Contractor Initials dcS
Date 2/10/23

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.

Contractor Initials dcs
Date 8/10/23

EXHIBIT A

SPECIAL PROVISIONS

There are no special provisions of this contract.

Contractor Initials dcs
Date 2/10/23

EXHIBIT B
SCOPE OF WORK

1. EFFECTIVE DATE

The Contract term shall commence on February 1, 2023 or upon execution by Governor and Council, whichever is later (the "Effective Date") and shall continue thereafter through January 31, 2025, a period of approximately two (2) years.

The contract may be extended for an additional three (3) years 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 2718-23
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) EXHIBIT A "Special Provisions," (2) Form Number P-37, (3) EXHIBIT B "Scope of Work," (4) EXHIBIT C "Method of Payment," (5) EXHIBIT D "RFB 2718-23," and (6) EXHIBIT E "Contractor's Bid Response."

3. SCOPE OF WORK

Contractor shall provide and supply all labor, tools, transportation, materials, product and permits as necessary and required to perform services as described herein.

Specifications must meet current standards as defined by the American Concrete Institute and the NHDOT Standard Specifications for Road and Bridge Construction. Concrete shall meet specification requirements as tested at the end of the truck chute. Concrete tested at the end of other conveyance systems shall be the responsibility of the Contractor. Any non-conforming materials will be rejected and removed at the Contractors expense.

Unless otherwise specified herein, all deliveries performed under awarded Contracts shall be performed between the hours of 7:30 A.M. and 4:00 P.M. for State business days, unless other arrangements are made in advance with the State. No premium charges shall be paid for any off-hour work.

The product(s) indicated in this bid are equivalent to the type and quality required. Your offer shall match or exceed the product(s) indicated and you shall demonstrate to the satisfaction of the purchasing Agency that they meet or exceed the minimum standards. Product(s) that do not meet the minimum standards shall not be accepted. Product literature and specifications may be enclosed.

Contractor Initials dcs
Date 2/10/23

The Contractor shall not commence delivery until a conference is held with each agency prior to delivery if required and requested by the State, at which time representatives of the Contractor and the State are present. The conference shall be arranged by the requesting agency.

If **sub-contractors** are to be utilized, please include information regarding the proposed sub-contractors including the name of the company, their address, contact person and three references for clients they are currently servicing. Approval by the State must be received prior to a sub-contractor starting any work.

4. 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.

5. 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.

6. 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.

7. USAGE REPORTING

The Contractor shall submit a quarterly 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 Elizabeth.A.Moskalenko@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

8. ACCOUNT COMMUNICATION & ESCELATION

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

Contractor Initials JWS
Date 2/10/23

agrees to escalate the concern to the Bureau of Purchase and Property prior to imposing any restriction or hold on the account in question.

9. 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.

10. 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.

11. OBLIGATIONS AND LIABILITY OF THE CONTRACTOR

The Contractor shall provide all product strictly pursuant to, and in conformity with this contract which resulted from RFB 2718-23.

It is the responsibility of the Contractor to maintain this State Contract and New Hampshire Vendor 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/vendorregistration/(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.

12. DEBARTMENT, 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.

Contractor Initials dcs
Date 2/10/23

EXHIBIT C
METHOD OF PAYMENT

1. **CONTRACT PRICE**
The Contractor shall provide the product specified in Exhibit B in the amount not to exceed the Price Limitation of $296,718.60; 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.

On the anniversary date of this contract, the Contractor may request price adjustment, either upward or downward, keyed to the industry changes or general trade. Written notice of an impending price increase, including substantiation for it, must be submitted in writing to Bureau of Purchase & Property, 25 Capitol Street, Rm. 102, Concord, NH 03301, no less than thirty(30) days prior to the effective date of said price increase. The State reserves the right to reject any price increases it deems unreasonable. If parties to the contract cannot agree on renewal terms, it is hereby understood that the contract will be competitively bid.

Updated Published Price List MUST be e-mailed to Elizabeth.A.Moskalenko@DAS.NH.Gov, or their designee.

2. **PRICE ADJUSTMENTS**
Contractor shall be permitted to request once per annum during the term of the contract. Price increase for any product shall not be levied on pre-existing product for shipment, previously purchased (prior to market increase) mixed product. Price increase for any product shall not be in excess of current market value (Concrete and related products – ready mix concrete compiled through "The Construction Cost Index" produced through FHWA (NHCCI)).

Pricing shall not change from current market base price with only a tolerance of +/- $2.00 per cubic yard.

Contractor shall also pass on to the State any price decreases effective immediately as they become effective to the general trade or the Contractor's best/preferred customer.

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.

Contractor Initials dcs
Date 2/10/23

3. **PRICING STRUCTURE:**

Product Description	UOM	Unit Cost
NH Class A	Cubic Yard	$182.00
NH Class AA	Cubic Yard	$186.00
NH Class AAA	Cubic Yard	$197.75
NH Class B	Cubic Yard	$178.00
NH Class F	Cubic Yard	$141.00
NH Class T	Cubic Yard	$182.00
3/8 Aggregate Mix	Cubic Yard	$4.50
Mid-Range Water Reducer	Cubic Yard	$7.25
High-Range Water Reducer	Cubic Yard	$8.25
Fiber / Micro Fiber	Cubic Yard	$8.50
1% Non-Chloride Accelerator	Cubic Yard	$7.25
2% Non-Chloride Accelerator	Cubic Yard	$14.50
20 Meter Pump Truck (4 hour min)	Each	$925.00
32 Meter Pump Truck (4 hour min)	Each	
37 Meter Pump Truck (4 hour min)	Each	
Truck Overtime Rate	Each	$120.00
Winter Service Rate	Cubic Yard	$8.00
Light Load Charges		
1	Cubic Yard	$150.00
1.5	Cubic Yard	$150.00
2.	Cubic Yard	$150.00
2.5	Cubic Yard	$100.00
3	Cubic Yard	$100.00
3.5	Cubic Yard	$100.00
4	Cubic Yard	$100.00

Indicate Your Delivery Charge PerMile if Outside Normal Delivery Area _____ CY

All product shall meet requirements in conformance with the Code of Federal Regulations 23 CFR.635.411 (a) (2). and as defined in the latest version of the NHDOT Standard Specifications Sections: 500, 520 through Division 600 and 707 for Road and Bridge Construction, located at: www.nh.gov/dot/org/projectdevelopment/highwaydesign/specifications/index.htm

4. **CONTRACTOR'S BALANCE OF PRODUCT LINE ITEMS**

During the term of contract, the state may purchase other items in relation to Concrete – Delivered and/or Pumped from the successful Contractor's Balance of Product Line. Product purchased off balance of product line(s) must offer equal to or greater than the percentage offered for the assigned categories on the main offer section. All products ordered shall include all shipping/delivery charges as specified above in Pricing Structure unless delivery is outside the normal business delivery area.

5. **MINIMUM ORDERS**

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

Contractor Initials dcs
Date 2/10/23

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. Invoices shall be sent to the address of the ordering agency.

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**

Contractor Initials dcs
Date 2/10/23

EXHIBIT D

RFB 2718-23 is incorporated here within.

Contractor Initials dcs
Date 2/10/23

EXHIBIT E

Contractor's Bid Response is incorporated here within

Contractor Initials JCS
Date 2/10/23

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 NEWPORT SAND & GRAVEL CO., INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on February 24, 1959. 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: **14527**
Certificate Number: **0005874242**

IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 22nd day of September A.D. 2022.

David M. Scanlan
Secretary of State

CERTIFICATE of AUTHORITY

I, Shaun P. Carroll, Jr. (Certifying Officer Name), C.O.O. (Certifying Officer Title) of the Newport Sand & Gravel Co., Inc. (Grantee Name)

Do hereby certify that:

1. I am the duly elected C.O.O. (Certifying Officer Title);
2. The Newport Sand & Gravel Co., Inc. (Grantee Name) has agreed to enter into a contract with the State of New Hampshire Bureau of Purchase and Property.
3. The Newport Sand & Gravel Co., Inc. (Grantee Name) further authorized the Vice President (Officer Title) to execute any documents which may be necessary for this Contract
4. The authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
5. The following person has been appointed to and now occupies the office indicated in (3) above:

   Deborah C. Spear
   Officer Name (print)

   Vice President
   Officer Title (print)

6. I have hereunto set my hand as the

Shaun P. Carroll, Jr.	Shaun P. Carroll, Jr.
Certifying Officer Name (signature)	Certifying Officer Name (print)
2/22/2023	C.O.O.
Date Signed	Certifying Officer Title (print)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 2/10/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
THE ROWLEY AGENCY INC.
45 Constitution Avenue
P.O. Box 511
Concord NH 03302-0511

CONTACT NAME: Donna Bickford
PHONE (A/C, No, Ext): (603)224-2562 FAX (A/C, No): (603)224-8012
E-MAIL ADDRESS: dbickford@rowleyagency.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Firemen's Ins Co of Wash. DC	21784
INSURER B: Acadia Insurance Company	31325
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Newport Sand & Gravel Co., Inc.
Carroll Concrete Co., Inc.
P.O. Box 1000
Newport NH 03773-1000

COVERAGES CERTIFICATE NUMBER: 22-23 all lines REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X CG0001 04/13 GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:			CPA150093632	7/1/2022	7/1/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS X HIRED AUTOS SCHEDULED AUTOS X NON-OWNED AUTOS			CAA150093431	7/1/2022	7/1/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $ $
B	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 0			CUA007103431	7/1/2022	7/1/2023	EACH OCCURRENCE AGGREGATE Products/Completed Ops. Aggr.	$ 10,000,000 $ 10,000,000 $ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WPA007102933 3A STATES: NH VT CT MA RI	7/1/2022	7/1/2023	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
A	LEASED/RENTED EQUIPMENT			CPA150093632	7/1/2022	7/1/2023	LIMIT: DEDUCTIBLE:	$500,000 $2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Re: Concrete Delivered and/or Pumped- Various jobs through 1/31/2025
The State New Hampshire is included as an additional insured with respect to general liability when required by written contract with the named insured.

CERTIFICATE HOLDER

State of NH-Dept of Administrative Servic
25 Capitol Street, Room 102
Concord, NH 03301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Donna Bickford/DTB

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STATE OF NEW HAMPSHIRE BID TRANSMITTAL LETTER

Date: 1/5/23

Company Name: Newport Sand + Gravel Co - DBA - Carroll Concrete
Address: 8 Reeds Mill Rd
Newport NH 03773

To: Point of Contact: Liz Moskalenko
Telephone: (603) 271- 3122
Email: NH.Purchasing@das.nh.gov

RE: Bid Invitation Name: Concrete (Delivered and/or Pumped)
Bid Number: 2718-23
Bid Posted Date (on or by): 12/21/2022
Bid Closing Date and Time: 01/06/2023 @ 11:00 AM (EST)

(Insert name of signor) Deborah Spear on behalf of Newport Sand + Gravel (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 #2718-23 for Concrete (Delivered and/or Pumped)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 Deborah C Spear **Authorized Signor's Title** V.P.

NOTARY PUBLIC/JUSTICE OF THE PEACE

COUNTY: Sullivan **STATE:** New Hampshire **ZIP:** 03773

On the 5th **day of** January, 2023 **personally appeared before me, the above named** Deborah Spear **in his/her capacity as authorized representative of** Carroll Concrete **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.

Dolores C Cortese
(Notary Public/Justice of the Peace)

DOLORES CORTESE NOTARY PUBLIC EXP. 01/23/2024 NEW HAMPSHIRE

My commission expires: _____ **(Date)**

Form P37-A

Contractor Initials DCS
Date 1/5/23

REQUEST FOR BID FOR
CONCRETE (DELIVERED AND/OR PUMPED)
FOR
THE STATE OF NEW HAMPSHIRE

PURPOSE:
The purpose of this bid invitation is to establish a contract for supply and delivery of Concrete (Delivered and/or Pumped) 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.

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 Liz Moskalenko at the following address:
Elizabeth.A.Moskalenko@DAS.NH.Gov

Submissions shall clearly identify the bid Number, 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

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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.

12/21/2022	Bid Solicitation distributed on or by
12/30/2022	Last day for questions, clarifications, and/or requested changes to bid
01/06/2023	11:00 AM (EST) Bid Closing
02/01/2023	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 awarded contract(s) shall commence February 1st, 2023 or upon execution by the Commissioner of the Department of Administrative Services and/or Governor and Council, whichever is later (the "effective date") and shall continue thereafter for a period of two (2) years.

The contract(s) may be extended for up to an additional three (3) years 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 and/or Governor and Council. The maximum term of the contract (including extensions) shall not exceed five (5) years.

CONTRACT AWARD:
Awards will be made to bidders responding to offers that meet the State's needs and noted specifications. The States intent is to award multiple vendors in order to meet the State's requirements. Awards shall be made to the responsible vendors meeting the criteria established in this RFB and awarded by; line-item pricing, as locations require, cost containment, and product delivery capabilities 90 (ninety) minute with a +/- tolerance (Engineering may extend this time limitation if the concrete workability (slump) allows for concrete to be placed without the addition of water in the batch. In hot weather or under conditions contributing to quick loss of workability, a time less than 90 (ninety) minutes may be required).

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The State reserves the right to purchase product from the most economical source of supply with consideration of product, price and transported distance.

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: **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.**
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.

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.

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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:
Prior to bid award, 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: Vendors shall have a completed a vendor application to be duly registered with the NH Bureau of Purchase and Property. 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/

- 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.

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BID PRICES:
Bid prices shall remain firm for one year and may be adjusted on the anniversary date of this contract per annum and shall be in US dollars and shall include delivery and all other costs required by this bid invitation. Special charges or surcharges (including credit card transaction fees of any kind (by whatever name) may not be added on at any time for the sole exception of deliveries outside the normal business delivery area. Any and all other 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 in a satisfactory time for unloading during work 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 ADJUSTMENTS:
The successful Vendors may request price increases once per annum during the term of the contract. Price increase for any product shall not be levied on pre-existing product for shipment, previously purchased (prior to market increase) mixed product. Price increase for any product shall not be in excess of current market value (Concrete and related products – ready mix concrete compiled through "The Construction Cost Index" produced through FHWA (NHCCI)).

Under no circumstances will the Vendor charge the State of New Hampshire prices for any product in excess of the prices being charged to the general trade or Vendors best/preferred customer at time of delivery. Written notice of an impending price increase, including substantiation for it, must be submitted in writing to Bureau of Purchase & Property, 25 Capitol Street, Rm. 102, Concord, NH 03301, no less than thirty (30) days prior to the effective date of said price increase. The State reserves the right to reject any price increases it deems unreasonable.

Pricing shall not change from current market base price with only a tolerance of +/- $2.00 per cubic yard.

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

Updated Published Price List MUST be e-mailed to Elizabeth.A.Moskalenko@DAS.NH.Gov .

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.

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 quarterly 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, Liz Moskalenko and sent electronic to Elizabeth.A.Moskalenko@DAS.NH.Gov. At a minimum, the Report shall include:

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- 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:
    - oPercentage of recycled materials contained within finished products
    - oPercentage of waste recycled throughout the manufacturing process
    - oTypes and volume of packaging used for transport
    - oAny associated material avoided and/or recycled as applicable under contract
    - oA 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 501c of the federal internal revenue code, are eligible to participate under this contract whenever said sub-division or nonprofit agency so desires. These entities are autonomous and may participate at their sole discretion. In doing so, they are entitled to the prices established under the contract. However, they are solely responsible for their association with the successful Vendor. The State of New Hampshire assumes no liability between the successful Vendor and any of these entities.

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.

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.

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.

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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 or 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(a0fzcv55ahaeas45jpya5i45))/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 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.
- Certificate of Vote/Authority: Each contract between the State and a business organization (not individual) must have attached to it evidence of authority of the individual executing the contract to bind the business organization. See: RSA 5:18-a. as of the date the individual signs the contract. The name of the business organization on the Certificate of Vote/Authority must match the name in the Certificate of Good Standing and the name of the contractor identified in the contract in P-37 Contract Form, block 1.3, Contractor Name. The Certificate of Vote/Authority must not be executed by the same individual executing the contract, unless the Certificate of Vote/Authority states that the individual is the sole shareholder, member, director, or officer of the business organization.

SPECIFICATION COMPLIANCE:

Vendor's offer shall meet or exceed the required specifications as written. The State of New Hampshire shall be the sole determining factor of what meets or exceeds the required specifications.

The products indicated in this bid are equivalent to the type and quality required. You may bid different product; however, your offer shall match or exceed the one(s) indicated and you shall demonstrate to the satisfaction of the purchasing Agency that they meet or exceed the minimum standards. Product that does not meet the minimum standards shall not be accepted. Product literature and specifications may be enclosed.

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.

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SCOPE OF WORK:
Vendor shall supply all labor, tools, transportation, materials, product and permits as necessary and required to perform services as described herein.

Specifications must meet current standards as defined by the American Concrete Institute and the NHDOT Standard Specifications for Road and Bridge Construction. Concrete shall meet specification requirements as tested at the end of the truck chute. Concrete tested at the end of other conveyance systems shall be the responsibility of the Contractor. Any non-conforming materials will be rejected and removed at the Vendors expense.

Unless otherwise specified herein, all deliveries performed under awarded Contracts shall be performed between the hours of 7:30 A.M. and 4:00 P.M. for State business days, unless other arrangements are made in advance with the State. No premium charges shall be paid for any off-hour work.

The product(s) indicated in this bid are equivalent to the type and quality required. Your offer shall match or exceed the product(s) indicated and you shall demonstrate to the satisfaction of the purchasing Agency that they meet or exceed the minimum standards. Product(s) that do not meet the minimum standards shall not be accepted. Product literature and specifications may be enclosed.

The Vendor shall not commence delivery until a conference is held with each agency prior to delivery if required and requested by the State, at which time representatives of the Vendor and the State are present. The conference shall be arranged by the requesting agency.

If **sub-contractors** are to be utilized, please include information regarding the proposed sub-contractors including the name of the company, their address, contact person and three references for clients they are currently servicing. Approval by the State must be received prior to a sub-contractor starting any work.

OBLIGATIONS AND LIABILITY OF THE VENDOR:
The successful Vendor shall perform all work and furnish all product, tools, equipment and safety devices necessary to perform the requested services and delivery 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 and deliveries to be performed, all product to be furnished pursuant to the Scope of Services included herein; shall be 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 order of product to be provided 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 order. 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 order, 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 or quality of required product of supply, or because the nature or characteristics of the delivery location is different from what the Vendor estimated or expected, or due to delays or other complications caused by weather, elements, or other natural causes.

The successful Vendor agrees that any injury or damage to any buildings, materials, equipment, or other appurtenances when caused by the Vendors employees or equipment resulting from the Vendors performance of the requested delivery shall be corrected, replaced, or repaired at the Vendors own expense so that such injury or damage to buildings, materials, equipment, or other property are satisfactorily rendered thereby or restored to their prior condition.

Upon failure of the Vendor to proceed promptly with the necessary corrections as noted above, the State may withhold any amount necessary to correct all damages from payments to the Vendor.

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

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

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

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

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

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

OFFER:
Vendor hereby offers to provide product to the State of New Hampshire as specified at the prices quoted below, in complete accordance with the general and detailed specifications included herewith. The items in each category include items most commonly purchased by State of New Hampshire agencies and shall be used for award purposes.

All product shall meet requirements in conformance with the Code of Federal Regulations 23 CFR 635.411 (a)(2). and as defined in the latest version of the NHDOT Standard Specifications Sections: 500, 520 through Division 600 and 707 for Road and Bridge Construction, located at:

www.nh.gov/dot/org/projectdevelopment/highwaydesign/specifications/index.htm

Product Description	UOM	Estimated Usage	Current Market Price per Cubic Yard
NH Class A	Cubic Yard	58	$ 182 –
NH Class AA	Cubic Yard	988	$ 186 –
NH Class AAA	Cubic Yard	5	$ 197.75
NH Class B	Cubic Yard	39	$ 178 –
NH Class F	Cubic Yard	14	$ 141 –
NH Class T	Cubic Yard	1	$ 182 –
3/8 Aggregate Mix	Cubic Yard	191	$ 4.50
Mid-Range Water Reducer	Cubic Yard	267	$ 7.25
High-Range Water Reducer	Cubic Yard	108	$ 8.25
Fiber / Micro Fiber	Cubic Yard	27	$ 8.50
1% Non-Chloride Accelerator	Cubic Yard	26	$ 7.25
2% Non-Chloride Accelerator	Cubic Yard	21	$ 14.50
20 Meter Pump Truck (4 hour min)	Each	37	$ 925 –
32 Meter Pump Truck (4 hour min)	Each	1	$ 1025 –
38 Meter Pump Truck (4 hour min)	Each	1	$ 1300 –
47 METER PUMP TRUCK (4 HOUR MIN)	EACH	1	1600 –

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OT APPLIES TO RENTALS OVER 4 HOURS

Truck Overtime Rate (Show Normal Operating Hrs. on attachment)	Per Hour	7 hours	$ MIXER OT 120-
Winter Service Rate (show temperature &/or date range: (11/1 to 3/31)	Cubic Yard	597 hours	$ 8-
Light Load Charges			
1.0	Cubic Yard	73	$ 150-
1.5	Cubic Yard	52	$ 150-
2.0	Cubic Yard	8	$ 150-
2.5	Cubic Yard	5	$ 100-
3.0	Cubic Yard	21	$ 100-
3.5	Cubic Yard	16	$ 100-
4.0	Cubic Yard	35	$ 100-

Discount Offered on Current Market Pricing _____%

THE FOLLOWING BALANCE OF PRODUCT IS ADDITIONAL INFORMATION: Not for consideration of award.

VENDOR'S BALANCE OF PRODUCT LINE ITEMS:
During the term of contract, the state may purchase other items in relation to Concrete – Delivered and/or Pumped from the successful Vendor's Balance of Product Line. Product purchased off balance of product line(s) must offer equal to or greater than the percentage offered for the assigned categories on the main offer section. All products ordered shall include all shipping/delivery charges as specified above in "Bid Prices" unless delivery is outside the normal business delivery area.

Balance of Products may include the following but are not limited to (Indicate below products offered with corresponding discount(s):

_____ _____%

_____ _____%

_____ _____%

_____ _____%

DELIVERY LOCATIONS:
Attach or provide location of your CURRENT published product pricing list(s) (with any delivery charges) along with a list of your facility locations/addresses and emergency operating hours (if applicable). As well, an approximate delivery coverage location map (see link below) showing radius wherein deliveries will be in compliance with Department of Transportation Specifications.

Any concrete that is not in place 1 1/2 hours after the cement has been added to the aggregates shall not be used unless otherwise permitted by the Engineer. The Engineer may extend this time limitation if the concrete workability (slump) stills allows for the concrete to be placed without the addition of water to the batch. In hot weather or under conditions contributing to quick loss of workability, a time less than 1 1/2 hours may be required.

INDICATE YOUR DELIVERY CHARGE PER MILE IF OUTSIDE NORMAL DELIVERY AREA $_____/mile

Please highlight NH District Map for approximate areas serviceable by your company and attach to your bid:
https://www.nh.gov/dot/org/operations/highwaymaintenance/documents/DistrictEngineersMap-August2015.pdf

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Approximate D5 and D6 Locations Expected to Deliver:
Check off which locations you will be able to provide (if entire District is applicable, please check the applicable district number).

District 5		District 6		
✓ Amherst	___ Litchfield	___ Atkinson	___ Hampton	___ Newington
___ Auburn	___ Londonderry	___ Brentwood	___ Hampton Falls	___ Newton
✓ Brookline	___ Merrimack	___ Danville	___ Kensington	___ Plaistow
___ Chester	✓ Milford	___ E Kingston	___ Kingston	___ Portsmouth
___ Derry	___ Nashua	___ Epping	___ Lee	___ Rye
___ Hebron	___ Pelham	___ Exeter	___ N Hampton	___ S Hampton
✓ Hollis	___ Salem	___ Fremont	___ New Castle	___ Sandown
	___ Windham	___ Greenland	___ New Market	___ Seabrook
		___ Hampstead	___ Newfields	___ Stratham

The State of New Hampshire reserves the right to add or to delete locations, as needed. This listing does not include any eligible participants.

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

Erik Palmer
Contact Person

603-863-1000 X6111
Local Telephone Number

Toll Free Telephone Number

epalmer@carrollconcrete.us
E-mail Address

Carrollconcrete.com
Company Website

Newport Sand + Gravel dba Carroll Concrete
Vendor Company Name

8 Reeds Mill Rd
Newport, NH
Vendor Address

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

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

Attachment A: Sample P-37 Form

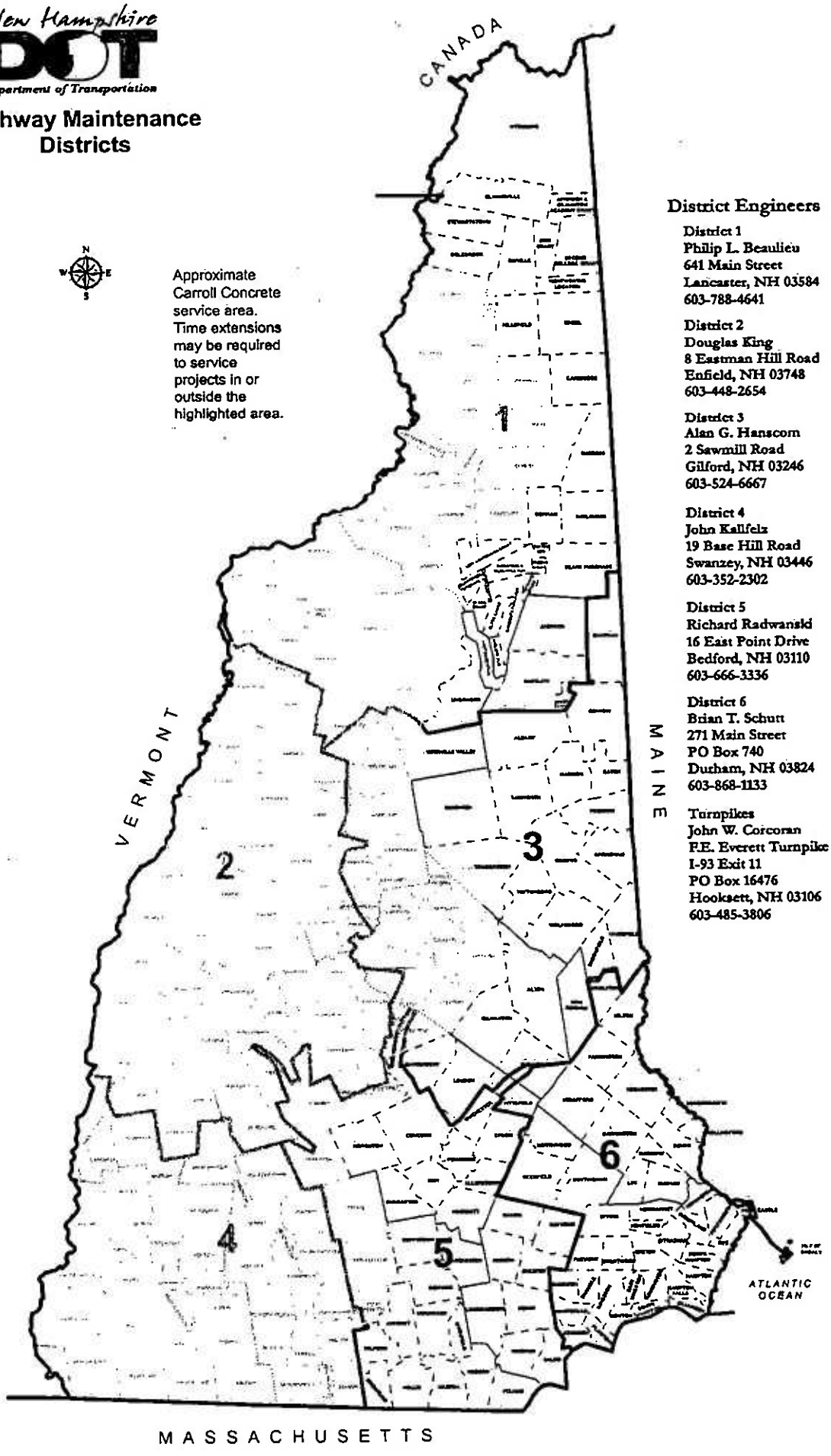
The Bid Opening is open to the public online at the following:

Microsoft Teams meeting
Join on your computer, mobile app or room device
Click here to join the meeting
Meeting ID: 269 086 115 585
Passcode: L8CikD
Download Teams | Join on the web
Or call in (audio only)
+1 603-931-4944,,460227884# United States, Concord
Phone Conference ID: 460 227 884#
Find a local number | Reset PIN

Contractor Initials dcs
Date 1/5/23

New Hampshire DOT
Department of Transportation

Highway Maintenance Districts



Approximate Carroll Concrete service area. Time extensions may be required to service projects in or outside the highlighted area.

District Engineers

District 1
Philip L. Beaulieu
641 Main Street
Lancaster, NH 03584
603-788-4641

District 2
Douglas King
8 Eastman Hill Road
Enfield, NH 03748
603-448-2654

District 3
Alan G. Hanscom
2 Sawmill Road
Gilford, NH 03246
603-524-6667

District 4
John Kallfelz
19 Base Hill Road
Swanzey, NH 03446
603-352-2302

District 5
Richard Radwanski
16 East Point Drive
Bedford, NH 03110
603-666-3336

District 6
Brian T. Schutt
271 Main Street
PO Box 740
Durham, NH 03824
603-868-1133

Turnpikes
John W. Corcoran
F.E. Everett Turnpike
I-93 Exit 11
PO Box 16476
Hooksett, NH 03106
603-485-3806

July 2015

Carroll CONCRETE

MAILNG AND PHYSICAL ADDRESS BY LOCATION

DIV. #	MAILING ADDRESS	PHYSICAL/SHIPPING ADDRESS
	NEWPORT OFFICE P.O. BOX 1000 NEWPORT, NH 03773	8A REEDS MILL ROAD NEWPORT, NH 03773
5	BRISTOL 14 CORLISS ROAD ALEXANDRIA, NH 03243	SAME
6	COLUMBIA TRI-COUNTY DRIVE NORTH STRATFORD, NH 03590	SAME
7	COVENTRY 2014 ALDER BROOK ROAD NEWPORT, VT 05855	2014 ALDER BROOK ROAD COVENTRY, VT 05825
8	ST. JOHNSBURY 809 PORTLAND STREET ST. JOHNSBURY, VT 05819-2081	SAME
10	GUILDHALL 389 BREAULT RD GUILDHALL, VT 05905	SAME
11	KEENE 40 OLD HOMESTEAD HWY N. SWANZEY, NH 03431	ROUTE #32 N. SWANZEY, NH 03431
12	PETERBOROUGH 399 JAFFREY ROAD PETERBOROUGH, NH 03458	SAME
13	CHARLESTOWN 368 SPRINGFIELD ROAD CHARLESTOWN, NH 03603	SAME
14	WEST LEBANON 301 PLAINFIELD ROAD W. LEBANON, NH 03784	SAME
15	NEWPORT P.O. BOX 1000 NEWPORT, NH 03773	187 SOUTH MAIN ST NEWPORT, NH 03773
16	BRADFORD 147 DEPOT STREET BRADFORD, VT 05033	SAME

Carroll CONCRETE

MAILNG AND PHYSICAL ADDRESS BY LOCATION

DIV. #	MAILING ADDRESS	PHYSICAL/SHIPPING ADDRESS
18	NEWPORT SUPPLY P.O. BOX 1000 NEWPORT, NH 03773	6 REEDS MILL ROAD NEWPORT, NH 03773
19	BRATTLEBORO 122 FORT BRIDGEMAN RD. VERNON, VT 05354	SAME
21	REDI-ROCK™ DIVISION P.O.BOX 1000 NEWPORT, NH 03773	53 ASPEN RD. NEWPORT, NH 03373
23	BERLIN NONE	379 GRANGER RD. – BERLIN BARRE, VT 05641
24	LITTLETON 526 RAILROAD STREET LITTLETON, NH 03561	SAME

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 Date:		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature Date:		1.14 Name and Title of State Agency Signatory	
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:	
1.17 Approval by the Governor and Executive Council *(if applicable)* G&C Item number:		G&C Meeting Date:	

Contractor Initials dS
Date 1/5/23

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.