



# State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES

25 Capitol Street – Room 100  
Concord, New Hampshire 03301  
(603) 271-3201 [Office@das.nh.gov](mailto:Office@das.nh.gov)

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MLC

Charles M. Arlinghaus  
Commissioner

Catherine A. Keane  
Deputy Commissioner

Sheri L. Rockburn  
Assistant Commissioner

August 2, 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 contract with Morton Salt, Inc., (VC#260689), Chicago, IL in the amount up to and not to exceed \$6,385,086.29 for rock and solar salt effective upon Governor and Executive Council approval for the period September 1, 2023, through August 31, 2024.

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

The Department of Administrative Services, through the Bureau of Purchase and Property issued Request for Bid 2616-23 on May 31, 2023, with responses due on June 20, 2023. There were 4 compliant responses received with Morton Salt, Inc. providing the lowest compliant response for their respective districts.

Upon approval, Morton Salt, Inc. will provide rock and solar salt to enable the requesting agencies to maintain the State's roadway infrastructure with respect to safe travel ways throughout the State of New Hampshire. This contract is intended to be multi award. Upon approval Morton Salt, Inc. will provide rock salt to District #1, #2, and solar salt to District #6 and upon approval Granite State Minerals, Inc. will provide rock salt to District #3 through #6, solar salt to District #4 and #5.

The following table represents the districts to be serviced under this contract by Morton Salt, Inc. as well as estimated quantities by product.

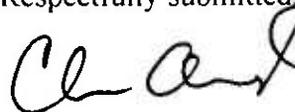
NH DOT District	Rock Salt	Solar Salt
District #1	38,900 tons	N/A
District #2	31,553 tons	N/A
District #6	N/A	1 ton

This contract reflects a projected annual spend of \$6,385,086.29 to provide rock and solar salt deliveries to agency locations based on the lowest bid statewide. This requested contract represents an annual savings of approximately \$96,000 (1% reduction) based on reductions in the fixed price per ton for the coming term. The estimated total contract term spend includes approximately 6,000 additional tons as compared to expiring contract.

Contract financials	
Expiring contract spend	\$6,478,704.07
Adjustment for projected quantity (6,000 Tons)	(\$93,617.78)
Recommended price limitation	\$6,385,086.29

Based on the foregoing, I am respectfully recommending approval of the contract with Morton Salt, Inc.

Respectfully submitted,



Charles M. Arlinghaus  
Commissioner



Division of Procurement Support Services  
Bureau of Purchase Property

Gary S. Lunetta  
Director  
(603) 271-2201

RFB Award Summary

Bid Description	Rock and Solar Salt	Agency	Statewide
RFB#	2616-23	Requisition#	N/A
Agent Name	Ryan Fuller	Bid Closing	June 20, 2023 @ 2:00pm

Qty.	UOM	Product Description	Granite State Minerals		Morton Salt		American Rock Salt		Cargill, Inc.		Previous Spend		
			Unit Cost	Extended Cost	Unit Cost	Extended Cost	Unit Cost	Extended Cost	Unit Cost	Extended Cost	Qty. (ton)	Unit Cost	Extended Cost
<b>SECTION 1: ROCK SALT COST PER TON DELIVERED</b>													
38900	TON	HWY DISTRICT 1 - LANCASTER	\$93.57	\$3,639,873.00	\$93.53	\$3,638,317.00	No Bid	\$ -	\$ 99.83	\$ 3,883,387.00	38900	\$ 94.57	\$ 3,678,773.00
31553	TON	HWY DISTRICT 2 - ENFIELD	\$88.50	\$2,792,440.50	\$87.05	\$2,746,688.65	\$88.50	\$2,792,440.50	\$ 89.12	\$ 2,812,003.36	25503	\$ 88.69	\$ 2,261,861.07
41900	TON	HWY DISTRICT 3 - GILFORD	\$82.00	\$3,435,800.00	\$94.65	\$3,965,835.00	No Bid	\$ -	No Bid	\$ -	31000	\$ 85.20	\$ 2,641,200.00
19550	TON	HIGHWAY DISTRICT 4 - SWANZEY	\$85.00	\$1,661,750.00	\$98.24	\$1,920,592.00	No Bid	\$ -	No Bid	\$ -	19550	\$ 85.20	\$ 1,665,660.00
49385	TON	HIGHWAY DISTRICT 5 - BEDFORD & CENTRAL TURNPIKES	\$76.90	\$3,797,706.50	\$94.60	\$4,671,821.00	No Bid	\$ -	No Bid	\$ -	33025	\$ 79.22	\$ 2,616,240.50
28250	TON	HIGHWAY DISTRICT 6 - DURHAM & EASTERN TURNPIKES	\$71.00	\$2,005,750.00	\$80.64	\$2,278,080.00	No Bid	\$ -	No Bid	\$ -	20650	\$ 72.81	\$ 1,503,526.50
<b>Sub Total: Section 1</b>				\$10,901,006.50		\$6,385,005.65		\$2,792,440.50		\$ 6,695,390.36			\$ 5,940,634.07
<b>SECTION 2: SOLAR SALT COST PER TON DELIVERED</b>													
1	TON	HWY DISTRICT 4 - SWANZEY	\$95.00	\$95.00	\$98.24	\$98.24	No Bid	\$ -	No Bid	\$ -	0	\$ 95.17	\$ -
89	TON	HWY DISTRICT 5 - BEDFORD & CENTRAL TURNPIKES	\$86.90	\$7,734.10	\$94.60	\$8,419.40	No Bid	\$ -	No Bid	\$ -	7960	\$ 89.19	\$ 709,952.40
1	TON	HWY DISTRICT 6 - DURHAM AND EASTERN TURNPIKES	\$81.00	\$81.00	\$80.64	\$80.64	No Bid	\$ -	No Bid	\$ -	6500	\$ 82.78	\$ 538,070.00
<b>Sub Total: Section 2</b>				\$7,829.10		\$80.64		\$ -		\$ -			\$ 538,070.00

<b>Contract Awarded</b>			
Estimated annual based on 2023 Qty.	\$6,382,513.15	Expiring contract annual spend	\$6,478,704.07
Adjustment for projected quantity (6,000 Tons)	\$93,617.78	Cost Savings (compared using 2023 Qty.)	\$96,190.92
Estimated annual spend based on 2024 Qty.	\$6,291,468.51	Cost Savings %	1%
Recommended price limitation	\$6,385,086.29		



Division of Procurement Support Services  
Bureau of Purchase Property

Gary S. Lunetta  
Director  
(603) 271-2201

RFB Award Summary

Recommendation Summary			
Statewide Contract or Amendment	Statewide		
Term of Contract	1 year		
Price Limitation	\$6,385,086.29		
Number of Solicitations Received	4		
Number of Sourced bidders	26		
Number of NIGP Vendors Sourced	0		
Number of non-responsive bidders	22		
P-37 Checklist Complete	Yes		
D&B Report Attached			
Method of Payment (P-card/ACH)	ACH		
FOB Delivered	Yes		
Expiring Contract Price Limitation	\$6,478,704.07		
Total Cost Savings (\$/%)	\$96,190.92	1%	Decrease

**Special Notes:** Morton Salt, Inc. was low bidder for rock salt in Districts 1 and 2, and solar salt in District 6. The contract represents an estimated annual spend of \$6,385,086.29 for rock and solar salt deliveries to agency locations based on the lowest bid statewide. The requested contract represents an annual savings of approximately \$96,000 based on fixed price per ton for the coming contract term. With the overall decrease due to fixed cost, the state was able to include an additional 6,000 tons compared to historical purchases.

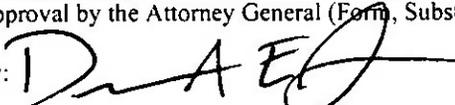
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**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 Morton Salt, Inc.		1.4 Contractor Address 444 West Lake Street Suite 3000 Chicago, IL 60606	
1.5 Contractor Phone Number 855-665-4540	1.6 Account Unit and Class  Various	1.7 Completion Date  August 31, 2024	1.8 Price Limitation  \$6,385,086.29
1.9 Contracting Officer for State Agency Gary Lunetta		1.10 State Agency Telephone Number 603-271-3606	
1.11 Contractor Signature   <small>Anthony Patton (Jul 6, 2023 14:29 EDT)</small>		1.12 Name and Title of Contractor Signatory Anthony T. Patton Director, Bulk Deicing US Government Sales	
1.13 State Agency Signature   Date: 7/10/23		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: 7/17/23			
1.17 Approval by the Governor and Executive Council (if applicable)  G&C Item number: _____ G&C Meeting Date: _____			

**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, 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.

3.3 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. 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 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, 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 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. 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.

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 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

**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 and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. 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 age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4 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 this Agreement and all rules, regulations and orders pertaining to 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 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

## 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) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar 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.

## 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) calendar 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) calendar 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. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

## 10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word "Property" shall mean all data, 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 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure 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 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, 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.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 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.** The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. 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 State's sovereign immunity, 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 any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. 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 any 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. WAIVER OF BREACH.** A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

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

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

**19. CHOICE OF LAW AND FORUM.**

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

**20. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**21. THIRD PARTIES.** This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

**22. 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.

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

**24. FURTHER ASSURANCES.** The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

**25. 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.

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

**EXHIBIT A**  
**SPECIAL PROVISIONS**

There are no special provisions of this contract.

**EXHIBIT B**  
**SCOPE OF SERVICES**

**1. INTRODUCTION**

Morton Salt, Inc. (hereinafter referred to as the "Contractor") hereby agrees to provide the State of New Hampshire (hereinafter referred to as the "State"), Department of Administrative Services, with Morton Salt, Inc. Services in accordance with the bid submission in response to State Request for Bid #2616-23 and as described herein.

**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 Services
- d. EXHIBIT C Method of Payment
- e. EXHIBIT D RFB 2616-23
- f. EXHIBIT E Contractor's Bid Response

In the event of any conflict among the terms or provisions of the documents listed above, the following order of priority shall indicate which documents control: (1), Form Number P-37 as modified by EXHIBIT A "Special Provisions," (2) EXHIBIT B "Scope of Services," (3) EXHIBIT C "Method of Payment," (4) EXHIBIT D "RFB 2616-23," and (5) EXHIBIT E "Contractor's Bid Response."

**3. TERM OF CONTRACT**

The term of the contract shall commence on September 1, 2023, or upon approval of the Governor and Executive Council, whichever is later, through August 31, 2024, a period of approximately one (1) year.

The Contract may be extended for up to an additional four (4) years thereafter upon the same terms, conditions, and pricing structure with the approval of the Governor and Executive Council.

The maximum term of the Contract (including all extensions) cannot exceed five (5) years.

**4. SCOPE OF WORK**

**SPECIFICATION COMPLIANCE:**

Contractor'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.

**MINED ROCK SALT**

**SPECIFICATION COMPLIANCE (FOR STATE AGENCIES ONLY):**

Contractor 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.

**CHEMICAL COMPOSITION**

Total chlorides expressed as NaCl shall be a minimum of 95% except as provided in 'BONUSES, and LIQUIDATED DAMAGES.

**GRADING**

The sodium chloride shall conform to the following particle size distribution specifications as determined by laboratory sieves:

- Passing a 1/2" sieve 100%
- Passing a 3/8" sieve 95% - 100%
- Passing a No. 4 sieve 20% - 80%
- Passing a No 8 sieve 10% - 50%
- Passing a No 30 sieve 0% - 10%

**MOISTURE CONTENT**

Salt shall be in a free-flowing condition when received at the State of New Hampshire delivery location with a moisture content not to exceed one (1) percent.

**SOLAR SALT**

**CHEMICAL COMPOSITION**

Total chlorides expressed as NaCl shall be a minimum of 95% except as provided in 'BONUSES and LIQUIDATED DAMAGES sections.

**GRADING**

The sodium chloride shall conform to the following particle size distribution specifications as determined by laboratory sieves:

- Passing a 1/2" sieve 100%
- Maximum Passing a No. 4 sieve 75%
- Maximum Passing a No 8 sieve 40%
- Maximum Passing a No 16 sieve 10%

**MOISTURE CONTENT**

Salt shall be in a free-flowing condition when received at the State of New Hampshire delivery location with a moisture content not to exceed three (3) percent.

**GENERAL**

**BONUSES**

Delivered salt that has a lower than specified moisture content may be eligible for a bonus payment, as described in MOISTURE section below.

**LIQUIDATED DAMAGES**

Delivered salt that does not meet the required specifications, shall be subject to Liquidated Damage and or price adjustment.

The state reserves the right to accept or reject any salt or deliveries which do not conform to the NHDOT specifications for screen size, chemical quality or moisture content, or which are not delivered in good condition. Shipments that are rejected will be returned to the Contractor at no cost to the state. Contractor agrees to promptly replace all rejected deliveries of salt.

**ANTI-CAKING ADDITIVE**

Salt shall be loose and free of lumps and shall contain not less than 20 ppm of pure anti-caking agent. Contractors who are awarded contracts will be required to submit the appropriate Safety Data Sheets (SDS) to NHDOT, OTHER STATE AGENCIES and Eligible Participants as requested.

Anti-Cake Additive: Yellow Prussiate of Soda

**DELIVERY LIQUIDATED DAMAGES**

**INITIAL FILL**

Failure to complete the initial fill-up by October 23, 2023 for NHDOT sheds in Districts 1, 2, and 3 and by November 6, 2023 for NHDOT sheds in Districts 4, 5, 6, Central Turnpikes, and Eastern Turnpikes shall result in Liquidated Damages of ten (10) percent of the contracted price per ton of remaining tonnage not delivered by the delivery dates, an additional Liquidated Damage of five (5) percent shall be assessed every fifteen calendar (15) days for any remaining undelivered tonnage, as specified in TABLE 1 DELIVERY TABLE LIQUIDATED DAMAGES. Failure to complete the initial fill-up by December 18, 2023, shall be terms for default of the contract.

**TABLE 1 DELIVERY TABLE LIQUIDATED DAMAGES**

DATE	PERCENT (%) LIQUIDATED DAMAGE OF THE CONTRACTED PRICE Districts 1, 2, and 3
10/23/2023	10%
11/06/2023	15%
11/20/2023	20%
12/04/2023	25%

DATE	PERCENT (%) LIQUIDATED DAMAGE OF THE CONTRACTED PRICE Districts 4, 5, 6, Central Turnpike and Eastern Turnpike
11/06/2023	10%
11/20/2023	15%

12/04/2023	20%
12/18/2023	25%

**NORMAL DELIVERY**

If the primary Contractor doesn't deliver within FIVE (5) business days after an order has been placed there will be a 2% Liquidated Damage assessed to the remaining balance of what is owed per day unless a new delivery date has been agreed upon by NHDOT.

If the secondary Contractor doesn't deliver within TWENTY (20) business days after an order has been placed there will be a 2% Liquidated Damage assessed to the remaining balance of what is owed per day unless a new delivery date has been agreed upon by NHDOT.

**CHLORIDES**

Liquidated Damages will be assessed against the accumulated and mixed samples of each day's deliveries to each location for salt that does not meet the chemical composition of total chlorides as specified in TABLE 2 TOTAL CHLORIDE.

**TABLE 2 TOTAL CHLORIDE**

Percent (%) of Sodium Chloride	Percent (%) of Payment of Unit Price
95% - 100%	100%
94 - 95%	96%
93% - 94%	92%
Below 93%	Rejected

**MOISTURE**

Salt delivered under any resulting contract shall not exceed one (1) percent moisture for rock salt or three (3) percent for solar salt.

Rock salt that exceeds two and a half (2.5) percent moisture content and solar salt that exceeds five (5) percent moisture content will be subject to rejection at the delivery point unless the state elects to accept the salt due to supply emergencies or other extenuating circumstances.

**Visible moisture leakage from the delivery vehicle will be cause for immediate rejection of the load.**

Salt which exceeds the moisture content as specified will be subject to Liquidated Damages according to Table 3A - MOISTURE CONTENT FOR ROCK SALT or Table 3B – MOISTURE CONTENT FOR SOLAR SALT.

**TABLE 3A - MOISTURE CONTENT FOR ROCK SALT**

Moisture Content	District 1, 2, 3	District 4, 5, 6, Central Turnpike, Eastern Turnpike
	<u>Percent (%) of Payment of Unit Price</u>	<u>Percent (%) of Payment of Unit Price</u>

0.00 - 0.50%	102%	102%
0.51 - 0.75%	101%	101%
0.76 - 1.00%	100%	100%
1.01 - 1.50%	96%	98%
1.51 - 2.00%	92%	96%
2.01 - 2.50%	88%	94%
*Above 2.50%	* See below	* See below

**TABLE 3B - MOISTURE CONTENT FOR SOLAR SALT**

Moisture Content	District 4, 5, 6, Central Turnpike, Eastern Turnpike
	<u>Percent (%) of Payment of Unit Price</u>
0.00 - 1.00%	102%
1.01 - 2.00%	101%
2.01 - 3.00%	100%
3.01 - 4.00%	97%
4.01 - 5.00%	94%
*Above 5.00%	* See below

\*If the State of NH elects to accept salt exceeding these amounts, the price reduction of the unit price shall be as follows:

- Rock District 1-3 Percentage (%) of payment of unit price =  $100 - 10 (\text{moisture content in } \% - 1) = X\%$
- Rock District 4-6 Percentage (%) of payment of unit price =  $100 - 5 (\text{moisture content in } \% - 1) = x\%$
- Solar District 4-6 Percentage (%) of payment of unit price =  $100 - 5 (\text{moisture content in } \% - 3) = X\%$

Example: District 1-3 Rock salt with moisture content of 3.41%

% of Payment of unit price =  $100 - 10 (3.41-1)$

% of Payment of unit price = 75.9%

District 4-6 Rock salt with moisture content of 3.41%

% of Payment of unit price =  $100 - 5 (3.41-1)$

% of Payment of unit price = 87.95%

District 4-6 Solar salt with moisture content of 5.41%

% of Payment of unit price =  $100 - 5 (5.41-3)$

% of Payment of unit price = 87.95%

### **GRADATION**

- A penalty will be assessed for gradations that exceed the maximums specified in the Detailed Specifications for Mined Rock Salt and the Detailed Specifications for Solar Salt contained in this RFB.
- The price of the salt will be reduced by one (1) percent for each percent by which gradation exceeds the maximum allowed for the #30 sieve (rock salt) or #16 sieve (solar salt). Salt that does not meet the gradation specified for any of the sieve sizes may be cause for rejection at the discretion of the State.

### **STATEMENT OF PENALTIES / BONUSSES**

NHDOT shall submit an invoice or statement to the Contractor to recover all penalty price reductions. A summary of the NHDOT, laboratory test results will accompany the statement. Contractor shall make settlement for each penalty claim, to the entity asserting the penalty claim, within fifteen (15) days of receipt of each claim. Contractor will be disqualified to bid on other state procurements if there remains an outstanding penalty balance that is owed to NHDOT, unless waived by the State.

### **PAYMENT OF BONUSSES / BILLING OF PENALTIES**

NHDOT will make payment of any bonuses awarded in the same time frame as any assessed Liquidated Damages. Any bonuses will be offset by Liquidated Damages due and will be shown on the Statement of Liquidated Damages (see Definitions). If during the same time frame, bonuses are awarded but no Liquidated Damages are assessed, a check made payable to the Contractor will be issued. A summary of the NHDOT laboratory test results will accompany the statement. Bonuses shall be awarded on the same notice cycle as the Liquidated Damages.

### **TESTING TIMEFRAME**

NHDOT, laboratory shall test all submitted samples within fifteen (15) calendar days of product delivery.

### **RESULTS AND NOTIFICATION**

With 21 days of delivery a copy of failed test results will be emailed to the stated contact at the respective contract Contractor. The Contractor shall review the results and keep the results for their records. If a Contractor wishes to dispute the supplied results, they will notify NHDOT immediately in writing as to their reason for dispute. If during the contract period there are changes in Contractor contacts who receive test results, it shall be the contract Contractor's responsibility to communicate those changes to the State of New Hampshire via NHDOT.

### **ACCESS TO TEST SAMPLES**

NHDOT shall keep a physical specimen of tested samples that the test results indicate a moisture content that exceeds 2.5 percent for rock salt and 5 percent for solar salt for a period of fifteen (15) calendar days starting from the date the tests are completed and Contractor notified of the results. This will allow reasonable time for the contracting Contractor to view all test results. If the contract Contractor desires to obtain a sample of the disputed batch tested independently from the state, it will be the contract Contractor's responsibility to acquire a

sample from the state within the fifteen (15) calendar day's allotted and have sample tested (at the Contractor's expense). Samples will be made available during standard state business hours.

**PRODUCT TESTING – ELIGIBLE PARTICIPANTS**

ELIGIBLE PARTICIPANTS who desire to test are responsible for establishing their own testing procedures. The process and any incurred cost associated with the process are the responsibility of the eligible participant.

**SPECIFICATION COMPLIANCE:**

Contractor'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.

**SOURCE SPECIFICATIONS:**

Contractor is required to provide the source of where the salt is being produced. If the source of the salt changes the Contractor is required to contact the purchasing agent prior to salt being delivered. The State has the right to reject any salt that comes from a different source without prior approval.

**STORAGE SPECIFICATIONS:**

Contractor is required to provide location and total storage capacity of each location of where the salt is to be stored at prior to being delivered to NHDOT. If the location of the salt storage changes at any time throughout the contract, or if deliveries come from a different location, the Contractor is required to contact the NHDOT Winter Maintenance Program Specialist prior to salt being delivered. Salt piles are required to be covered at all times while at the Contractor's storage areas, except during active loading of delivery vehicles. Salt that is not covered could be considered cause for rejection. NHDOT has the right to reject any salt that comes from a different storage area without prior approval.

**WARRANTY REQUIREMENTS:**

The successful Contractor shall be required to provide warranties on all equipment 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.

**OBLIGATIONS AND LIABILITY OF THE CONTRACTOR:**

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

The successful Contractor shall take full responsibility for the work to be performed pursuant to the Scope of Work included herein; for the protection of said work; and for preventing injuries to persons and damage to property and utilities on or about said work. The Contractor shall in no way be relieved of such responsibility by any authority of the State to give permission or issue orders relating to any part of the work, by any such permission given or orders issued, or by any failure of the State to give such permission or issue such orders.

The successful Contractor shall bear all losses accruing to the Contractor as a result of the amount, quality, or character of the work required, or because the nature or characteristics of the work location is different from what the Contractor estimated or expected, or due to delays or other complications caused by the weather, elements, or other natural causes.

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

### **NON-EXCLUSIVE CONTRACT**

Any resulting Contract from this RFB will be a non-exclusive Contract. The State reserves the right, at its discretion, to retain other Contractors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal.

### **Delivery Specifications**

#### **TRUCKING LOGISTICS & PRODUCT PROTECTION**

All truck deliveries shall be dumped at a salt delivery address, either inside or outside a storage building, as directed by State agency personnel or Eligible Participants employees at the delivery address. Contractor will make every effort to have delivery vehicles arrival times spread out so as not to exceed the capacity of the equipment used to pile the salt at the patrol sheds.

#### **SALT PROTECTION DURING TRANSPORT**

Deliveries of trucked solar or bulk mined rock salt shall be protected in transit by tight, waterproof coverings to avoid spillage. Said covering to be placed on load to prevent additional accumulation of moisture during transit and to insure the least possible moisture content upon delivery. Torn, ripped or permeable load covers are unacceptable and may be considered cause for rejection of load. Salt that has been contaminated with foreign matter will also be considered cause for rejection of load. Salt that is delivered without a NHDOT employee, inspecting the delivery may be considered cause for rejection of load:

#### **TRANSPORTATION COMPLIANCE**

The State of New Hampshire requires that all deliveries of salt be made in complete compliance with existing state, national, provincial laws, or regulations. Violation of any laws or regulations, including but not limited to weight limitations, shall be considered as grounds for disqualification of the supplier, hauler, or both. The State will not pay for the portion of any load delivered to the project exceeding the load within that vehicle's registered gross vehicle weight and any applicable tolerances. The truck will be required to discharge its entire load and payment will be made only for the portion within that vehicle's registered gross vehicle weight.

#### **DELIVERY - TIMES**

Truck deliveries for New Hampshire districts will be accepted only during the hours of 6:00 am to 4:00 pm Monday through Friday (except New Hampshire state holidays), unless otherwise arranged with the District Engineer or location contact prior to each delivery. Delivery times outside of the normal working hours noted above may require the Contractor to reimburse the NHDOT for the actual cost of the NHDOT personnel brought in for the delivery.

### **VEHICLE REGISTRATION AND DRIVER LICENSES**

Vehicles must have a current commercial vehicle registration and inspection as applicable under state law. All drivers must meet all licensing requirements of the State of New Hampshire, or applicable governmental jurisdiction.

### **NOTICE OF DELIVERY**

The Contractor must provide a minimum of one (1) business day notice to each NHDOT district office / location contact and the NHDOT Winter Maintenance Program Specialist prior to any delivery. Notice must include scheduled delivery date, estimated time and quantity of salt to be delivered. An end of day delivery summary is required to be sent via email to each NHDOT district office and to the NHDOT Winter Maintenance Program Specialist. This summary is to include the district delivered, shed Location, and quantity delivered for each day. Agreed changes to deliveries as per the SCHEDULE FOR BALANCE OF SEASON REQUIREMENTS are required to be done via email and must include the NHDOT Winter Maintenance Program Specialist.

### **STATE HOLIDAYS**

Unless otherwise arranged with the District Engineer or location contact in advance, deliveries will not be arranged or accepted on any official State of New Hampshire holiday. A list of state holidays is available at <https://das.nh.gov/hr/index.aspx>.

### **CONTRACTOR FAILURE TO DELIVER:**

If a Contractor fails to furnish road salt (rock or solar) in accordance with all requirements of this contract resulting from this Bid, the State may re-purchase the same item from another source without competitive bidding, and the original Contractor will be liable to the State for any excess cost.

### **WEIGH SLIPS**

All truck deliveries shall be accompanied by a weigh slip, which shall be left with a NHDOT employee at the delivery point of load. NHDOT employee will sign a copy of the weigh slip to acknowledge the receipt of the load. Contractor shall provide numbered weigh slips, which show the following information:

- Name and address of the Contractor
- Name and address of the owner of the scales
- Location of the scales
- Consignee and destination
- Date of delivery
- Order number
- Gross, tare and net weights
- Signature of scale operator
- Current vehicle registration number and/or other legible identification mark and signature of vehicle operator
- Space for signature of the department employee accepting the shipment

- The state reserves the right to weigh any truck at a designated location before or after delivery to any particular storage site.

**INSPECTIONS**

Each district location shall take a mixed sample from the day’s total deliveries. Said samples shall be representative of the gradation and moisture content of all salt delivered to a location on that day. Bonuses and/or Liquidated Damages, if any, will be assessed against the accumulated and mixed samples of each day’s delivery to each location (see BONUSSES and LIQUIDATED DAMAGES sections in this RFB).

NHDOT laboratory results will be included with a statement of assessed Liquidated Damage submitted to the Contractor by the State. **Contractor is strongly encouraged to sample and test their product prior to shipping product to the buyer so that any necessary corrective action may be taken to assure conformity to specifications.**

**PRODUCT SAMPLES**

Salt samples, if requested from the Contractor, shall be sent to the NHDOT Laboratory. Samples shall be received no later than five (5) business days after request is made to Contractor. A Certificate of Compliance for each shipment may also be required prior to award or at time of actual delivery during contract period.

**DELIVERY LOCATIONS:**

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

**NHDOT FY 2024 INITIAL ROAD SALT FILL-UP REQUEST**

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
1 Lancaster	101	Pittsburg	2,500	0
	102	Columbia	1,800	0
	102D	Dixville	500	0
	103	Errol	1,900	0
	104	Groveton	1,500	0
	105	West Milan	2,100	0
	106	Milan	700	0
	107	Lancaster	1,600	0

	107W	Whitefield	1,400	0
	108	Jefferson	3,100	0
	109	Gorham	2,000	0
	109P	Pinkham Notch	900	0
	112T	Twin Mountain	1,500	0
	112	Carroll (Crawford Notch)	2,300	0
	113G	Glen	2,100	0
	114	Lisbon	1,100	0
	115	Lincoln	3,000	0
	116	Franconia (Rte. 18)	1,400	0
	124	Franconia (Butterhill)	3,100	0
	125	Littleton	3,800	0
	125M	Monroe	600	0
		<b>DOT DISTRICT 1 TOTAL:</b>	<b>38,900</b>	<b>0</b>

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
2 Enfield	201	Orford/Lyme	1,936	1,500
	202	Wentworth	1,761	0
	203	Rumney	1,433	0
	204	North Haverhill	2,134	0
	205	Canaan	1,600	1,500
	206	Bristol	1,533	1,500
	207	Lebanon	2,338	500
	210	Andover	1,702	0

	210A	Grafton	0	
	211	Franklin	1,336	0
	212	Cornish	858	0
	213	Sunapee	1,490	0
	214	New London	1,625	0
	215	Lempster	843	250
	215A	Unity	843	800
	216	Newbury	0	0
	224	Enfield	4,071	0
		<b>DISTRICT 2 TOTAL:</b>	<b>25,503</b>	<b>6,050</b>

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill-up
Central	815	South Nashua	1,660	0
Turnpikes	820	Merrimaack	3,300	0
-	825	Hooksett	3,000	2,400
<b>CENTRAL TURNPIKE TOTAL:</b>	<b>7,960</b>	<b>2,400</b>		

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
Eastern				
Turnpikes	830	Hampton	2,500	600
	835	Dover	1,450	0
	840	Rochester	2,550	500
		<b>EASTERN TURNPIKE TOTAL:</b>	<b>6,500</b>	<b>1,100</b>

<b>TOTAL OF HIGHWAY DISTRICTS AND TURNPIKES INITIAL 2024 FILL-UP =</b>	7,150	TONS		
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**DELIVERY TIME:**

The successful Contractor(s) will be required to accomplish delivery of any item ordered under the contract within five (5) business days. Orders must be delivered between the hours of 6:00 AM - 4:00 PM (EST).

Orders shall be delivered within FIVE (5) business days after notification to Contractor. Requested deliveries shall not be required to exceed 3,000 tons per week per district.

If the Contractor can't meet this the delivered within FIVE (5) business days after notification to Contractor. They must outreach agency representative and purchasing agent with a plan to resolve issue as soon as possible in writing.

The successful Contractor(s) shall deliver any emergency requested item ordered under the contract within 24 hours from the placement of the order. The State shall clearly define the item(s) as an emergency when placing the order.

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

**RETURNED GOODS:**

The successful 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 successful 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 of New Hampshire 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 successful Contractor.

Except as otherwise provided in this Scope of Services, all services performed under this Contract shall be performed between the hours of 8:00 A.M. and 4:00 P.M. unless other arrangements are made in advance with the State. Any deviation in work hours shall be pre-approved by the Contracting Officer. The State requires ten-day advance knowledge of said work schedules to provide security and access to respective work areas.

The Contractor shall not commence work until a conference is held with each State agency intending to utilize the Contractor's services, at which representatives of the Contractor and the State are present. The conference will be arranged by the State agency.

The State shall require correction of any defective work and the repair of any damages to any part of a building or its appurtenances caused by the Contractor or its employees, subcontractors, equipment or supplies. The Contractor shall correct, repair, or replace all defective work, as needed, to complete said work in satisfactory condition, and damages so caused in order to restore the building and its appurtenances to their previous condition. Upon failure of the Contractor to proceed promptly with the necessary corrections or repairs, the State may withhold any amount necessary to correct all defective work or repair all damages from payments to the Contractor.

The work staff shall consist of qualified persons completely familiar with the products and equipment that they will use. The Contracting Officer may require the Contractor to dismiss from the work such employees as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed to be contrary to the public interest or inconsistent with the best interest of security and the State.

Neither the Contractor nor its employees or subcontractors shall represent themselves as employees or agents of the State.

While on State property the Contractor, its employees, and its sub-contractors shall be subject to the authority and control of the State, but under no circumstances shall such persons be deemed to be employees of the State.

All personnel shall observe all regulations or special restrictions in effect at any State agency location at which services are to be provided.

The Contractor's personnel shall be allowed only in areas where services are to be provided. The use of State telephones by the Contractor, its employees, or its sub-contractors is prohibited.

If sub-contractors are to be utilized, Contractor shall provide 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.

## **5. 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 the end of each calendar quarter to the Bureau of Purchase and Property, Ryan Fuller, and sent electronic to [Christopher.R.Fuller@DAS.NH.GOV](mailto:Christopher.R.Fuller@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.
- **Format is to be Excel**

## **6. OBLIGATIONS AND LIABILITY OF THE CONTRACTOR**

The Contractor shall provide all commodities strictly pursuant to, and in conformity with, the specifications described in State RFB #2616-23, as described herein, and under the terms of this Contract.

It is the responsibility of the Contractor to maintain this contract and New Hampshire Contractor 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/Contractorregistration/\(S\(q0fzcv55qhaeqs45jpyq5i45\)\)/welcome.aspx](https://das.nh.gov/purchasing/Contractorregistration/(S(q0fzcv55qhaeqs45jpyq5i45))/welcome.aspx)

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

## **6. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS**

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

## **7. CONFIDENTIALITY & CRIMINAL RECORD**

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

**EXHIBIT C  
METHOD OF PAYMENT**

**1. CONTRACT PRICE**

The Contractor hereby agrees to provide rock salt delivery to Districts 1 and 2, and solar salt delivery to District 6 in complete compliance with the terms and conditions specified in Exhibit B for an amount up to and not to exceed a price of \$6,385,086.29; 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.

**2. PRICING STRUCTURE**

**ROCK SALT DELIVERIES**

<b>UOM</b>	<b>Product Description</b>	<b>Unit Cost</b>
TON	HWY DISTRICT 1 - LANCASTER	<b>\$93.53</b>
TON	HWY DISTRICT 2 - ENFIELD	<b>\$87.05</b>

**SOLAR SALT DELIVERIES**

<b>UOM</b>	<b>Product Description</b>	<b>Unit Cost</b>
TON	HWY DISTRICT 6 - DURHAM AND EASTERN TURNPIKES	<b>\$80.64</b>

**3. INVOICE**

**INVOICING:**

The Contractor shall submit a maximum of one invoice monthly on the last day of each calendar month.

Said invoice shall contain:

1. A single District or Central Turnpikes or Eastern Turnpikes
2. ALL deliveries by delivery location
3. Delivery date
4. Product (Rock or Solar)
5. Quantity
6. Contract price
7. Extended price

Additionally, the following backup information shall accompany the invoice.

1. Weight slip
2. Proof of delivery slip

Itemized invoices shall be submitted to the individual agency after the completion of the job/services and shall include a brief description of the work done along with the location of work.

Contractor shall be paid within 30 days after receipt of properly documented invoice and acceptance of the work to the State's satisfaction.

The invoice shall be sent to the address of the using agency under agreement.

**5. PAYMENT**

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

**EXHIBIT D**

RFB #2616-23 is incorporated herein.

**EXHIBIT E**

Contractor's bid is incorporated herein.

# 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 MORTON SALT, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on August 05, 2010. 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: 634412

Certificate Number: 0006265888



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 6th day of July A.D. 2023.

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

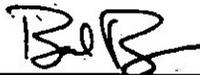
David M. Scanlan  
Secretary of State

## CERTIFICATION

The undersigned, being the Secretary of Morton Salt, Inc., a Delaware corporation (the "Company"), hereby certifies that:

- i. As of the date hereof, Mitchell Dascher is President, Highway & Chemical of the Company;
- ii. Pursuant to the bylaws of the Company and the corporate resolutions adopted by Board of Directors of the Company on August 13, 2021 appointing Mr. Dascher as an officer of the Company, Mr. Dascher is authorized to approve and execute (and to delegate his authority to execute) all bids, sales contracts and related documents for the sale of bulk deicing or ice control products by the Company, and the bylaws and said resolutions remain in full force and effect as of the date hereof; and
- iii. Mr. Dascher has delegated to Anthony Patton, Director, Bulk Deicing U.S. Government Sales of the Company, Mr. Dascher's authority to execute all bids, sales contracts and related documents for the sale of bulk deicing or ice control products by the Company, and a true and correct copy of the delegation of authority to Mr. Patton dated September 1, 2021 is attached as Exhibit A hereto and remains in full force and effect as of the date hereof.

DATED:



\_\_\_\_\_  
Brad Bacon  
Secretary  
Morton Salt, Inc.



**EXHIBIT A**

**DELEGATION OF AUTHORITY**

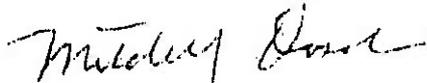
**TO: Anthony Patton**  
**Director, Bulk Deicing U.S. Government Sales**

Pursuant to the authority granted to me as an officer of Morton Salt, Inc. (the "Company") per the Bylaws of the Company and by the resolutions adopted by the Board of Directors of the Company on August 13, 2021;

You are hereby designated as a person authorized to execute all bids, sales contracts and related documents for the sale of bulk deicing or ice control products by the Company; being subject to any applicable limitations set forth in Company policies; and being in effect only for so long as you continue to hold your current title noted above, unless earlier superseded, withdrawn, amended or terminated.

Effective Date: September 1, 2021

Signed:



Mitchell Dascher  
President, Highway & Chemical  
Morton Salt, Inc.



# CERTIFICATE OF LIABILITY INSURANCE

4/30/2024

DATE (MM/DD/YYYY)  
7/6/2023

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 have ADDITIONAL INSURED provisions or 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 Lockton Companies Three City Place Drive, Suite 900 St. Louis MO 63141-7081 (314) 432-0500	CONTACT NAME:	
	PHONE (A/C No. Ext):	FAX (A/C No.):
INSURED 1492657 Morton Salt, Inc. 444 West Lake Street, Suite 3000 Chicago IL 60606	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Starr Indemnity & Liability Company	NAIC # 38318
	INSURER B: HDI Specialty Insurance Company	16131
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 17558272 REVISION NUMBER: XXXXXXX

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
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	N	GLCD57177012S	4/30/2023	4/30/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 OTHER: \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	1000679547231	4/30/2023	4/30/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> RETENTION \$	N	N	CUCD5717802S	4/30/2023	4/30/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 OTHER: \$ XXXXXXXX
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	1000005331 (AOS) 1000005332 (Retro) 1000014082231 (OH Excess)	4/30/2023 4/30/2023 4/30/2023	4/30/2024 4/30/2024 4/30/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
THIS CERTIFICATE SUPERSEDES ALL PREVIOUSLY ISSUED CERTIFICATES FOR THIS HOLDER, APPLICABLE TO THE CARRIERS LISTED AND THE POLICY TERM(S) REFERENCED.  
State of New Hampshire is included as additional insured if required by written contract with respect to General Liability per the terms and conditions of the policy.

CERTIFICATE HOLDER	CANCELLATION - See Attachment
17558272 State of New Hampshire Department of Administrative Services Bureau of Purchasing and Property 25 Capitol Street Room 102 Concord NH 03301	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 

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POLICY NUMBER: GLCD57177012S

COMMERCIAL GENERAL LIABILITY  
CG 20 37 12 19

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
AS REQUIRED BY WRITTEN CONTRACT	AS BY WRITTEN CONTRACT
Information required to complete this Schedule, if not shown above, will be shown in the	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard". However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:** If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
  2. Available under the applicable limits of insurance;
- whichever is less.

This endorsement shall not increase the applicable limits of insurance.

**STATE OF NEW HAMPSHIRE**  
**DIVISION OF PROCUREMENT AND SUPPORT SERVICES**  
**BUREAU OF PURCHASE AND PROPERTY**  
**STATE HOUSE ANNEX**  
**25 CAPITOL STREET**  
**CONCORD, NEW HAMPSHIRE 03301-6398**

DATE OF CHANGE: June 19, 2023

**ADDENDUM # 01 TO BID INVITATION 2616-23**

**DATE OF BID CLOSING:** June 20, 2023

**TIME OF BID CLOSING:** 2:00 PM (EST)

**FOR:** Rock and Solar Salt

**Question #1:**

Will NH DAS provide a link for the electronic bid opening of the Rock and Solar salt bid due tomorrow at 2pm?

**State Response #1:**

There is a link to the Microsoft Teams meeting on the bottom of the bid document that can be used to access the bid opening. The meeting link is also provided below:

## Microsoft Teams meeting

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 210 105 836 665

Passcode: KdMf9r

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

**Join with a video conferencing device**

[nhgov@m.webex.com](mailto:nhgov@m.webex.com)

Video Conference ID: 118 925 659 0

[Alternate VTC instructions](#)

**Or call in (audio only)**

[+1 603-931-4944,585812243#](#) United States, Concord

Phone Conference ID: 585 812 243#

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

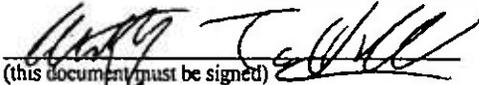
[Learn More](#) | [Meeting options](#)

**PURCHASING AGENT:**

**Email:** [NH.Purchasing@das.nh.gov](mailto:NH.Purchasing@das.nh.gov)

NOTE: ALL CHANGES TO BID SOLICITATION NOTED IN ADDENDUMS WILL SUPERSEDE PREVIOUSLY SUBMITTED DOCUMENTS AND MUST BE SUBMITTED WITH THE BID. ALL OTHER SPECIFICATIONS REMAIN UNCHANGED AND VALID.

BIDDER: Morton Salt, Inc. ADDRESS 444 West Lake Street .

BY  Chicago, IL 60606  
(this document must be signed)

Anthony T. Patton  
Director, Bulk Deicing US Government Sales TEL. NO. 855-665-4540  
(please type or print name)

Please visit: <https://das.nh.gov/purchasing/vendorresources.aspx> (click on "Bid and Proposals") for complete bid and addendums.

STATE OF NEW HAMPSHIRE TRANSMITTAL LETTER

Date: 6-19-2023

Company Name: Morton Salt, Inc.

Address: 444 West Lake Street, Suite 3000

Chicago, IL 60606

To: Point of Contact: **Andrea Olsson**  
Telephone: (603)-271-7272  
Email: NH.Purchasing@das.nh.gov

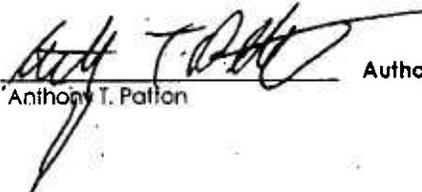
RE: Bid Invitation Name: Rock and Solar Salt  
Bid Number: 2616-23  
Bid Posted Date (on or by): May 31, 2023  
Bid Closing Date and Time: June 20, 2023, 2:00PM (EST)  
Dear Ms. Olsson:

(Insert name of signor) Anthony T. Patton, on behalf of Morton Salt, Inc. [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 # 2616-23 for Rock and Solar Salt 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.

This document shall be signed by a person who is authorized to legally obligate the responding vendor. A signature on this document indicates that all State of New Hampshire terms and conditions are accepted by the responding vendor and that any and all other terms and conditions submitted by the responding vendor are null and void, even if such terms and conditions have terminology to the contrary. The responding vendor shall also be subject to State of New Hampshire terms and conditions as stated on the reverse of the purchase order.

Authorized Signor's Signature  Authorized Signor's Title Director, Bulk Deicing US Government Sales

Anthony T. Patton

Contractor Initials AK  
Date 6-19-2023

**REQUEST FOR BID FOR ROCK AND SOLAR SALT  
FOR  
THE STATE OF NEW HAMPSHIRE**

**PURPOSE:**

The purpose of this bid invitation is to establish a contract(s) for supplying the State of New Hampshire agencies with the items indicated in the "Offer" section of this bid invitation to be ordered as needed during the term of the contract, in accordance with the requirements of this bid invitation and any resulting contract. Items ordered under any resulting contract shall be delivered FOB destination to the locations indicated in the "Delivery Locations" section of this bid invitation.

**INSTRUCTIONS TO VENDOR:**

Read the entire bid invitation prior to filling it out. 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, and signed 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 Andrea Olsson at the following address:

Andrea.I.Olsson@DAS.NH.Gov

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

**BID DUE DATE:**

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

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

**ADDENDA:**

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

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

**TIMELINE:**

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

05/31/2023	Bid Solicitation distributed on or by
06/15/2023	Last day for questions, clarifications, and/or requested changes to bid
06/20/2023	2:00 PM (EST) Bid Closing
09/01/2023	Implementation of Contract

**TERMS OF SUBMISSION:**

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

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

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

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

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

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

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

**CONTRACT TERM:**

The term of the contract shall commence September 1, 2023, or upon approval of the Governor and Executive Council, whichever is later (the "effective date") and shall continue thereafter for a period of one (1) year.

The contract may be extended for up to an additional four (4) 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.

**CONTRACT AWARD:**

Award shall be made to the responsible Vendor(s) meeting the criteria established in this RFB and providing the lowest unit cost per District, by product. Please note this the price offer sheet divides product into section i.e. section one rock salt and section two for solar salt The State reserves the right to reject any or all bids or any part thereof and add/delete items/locations to the contract. Award(s) shall be in the form of a State of New Hampshire Contract(s).

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

**NOTIFICATION AND AWARD OF CONTRACT(S):**

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

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

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

**LIABILITY:**

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

**PUBLIC DISCLOSURE OF BID OR PROPOSAL SUBMISSIONS:**

Generally, the full contents of any 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 proposals, including but not limited to scoring, is generally available to the public even before this time, in accordance with the provisions of NH RSA 21-G:37.

Confidential, commercial or financial information may be exempt from public disclosure under RSA 91-A:5, IV. 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. Marking or designating an entire proposal, attachment or section as confidential shall neither be accepted nor honored by the State. Marking an entire bid, proposal, attachment or full sections thereof confidential without taking into consideration the public's right to know shall neither be accepted nor honored by the State.

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

If a request is made to the State by any person or entity to view or receive copies of any portion of a proposal, the State will 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 be released; and notify the Bidder of the date it plans to release the materials. To halt the release of information by the State, a Bidder must initiate and provide to the State, prior to the date specified in the notice, a court action in the Superior Court of the State of New Hampshire, at its sole expense, seeking to enjoin the release of the requested information.

By submitting a proposal, Bidders acknowledge and agree that:

- The State may disclose any and all portions of the proposal or related materials which are not marked as confidential and/or which have not been specifically explained in the letter to the person identified as the point of contact for this RFB;

- The State is not obligated to comply with a Bidder's designations regarding confidentiality and must conduct an independent analysis to assess the confidentiality of the information submitted in your proposal; and
- The State may, unless otherwise prohibited by court order, release the information on the date specified in the notice described above without any liability to a Bidder.

**TERMINATION:**

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

**VENDOR CERTIFICATIONS:**

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

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

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

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

**BID PRICES:**

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

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

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

Updated Published Price List MUST be e-mailed to [Andrea.I.Olsson@DAS.NH.Gov](mailto:Andrea.I.Olsson@DAS.NH.Gov).

**AUDITS AND ACCOUNTING:**

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

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

**ESTIMATED USAGE:**

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

**USAGE REPORTING:**

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

[Andrea.I.Olsson@DAS.NH.Gov](mailto:Andrea.I.Olsson@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

**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:**

The successful bidder(s) shall submit a maximum of one invoice monthly on the last day of each calendar month.

Said invoice shall contain:

1. A single District or Central Turnpikes or Eastern Turnpikes
2. ALL deliveries by delivery location
3. Delivery date
4. Product (Rock or Solar)
5. Quantity
6. Contract price
7. Extended price

Additionally, the following backup information shall accompany the invoice.

1. Weight slip
2. Proof of delivery slip

**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.

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
- Complete the company information on the "Transmittal Letter" page, and sign under penalty of unsworn falsification in the space provided on that page.

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

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

Additionally, all updates i.e., telephone numbers, contact names, email addresses, W9, tax identification numbers are required to be current through a formal electronic submission to the Bureau of Purchase and Property at: <https://www.das.nh.gov/purchasing/vendorresources.aspx>

**IF AWARDED A CONTRACT:**

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

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

- Provide certificate of insurance indicating the coverage amounts required by Section 14 of the Form Number P-37.
- Provide proof of sufficient workers' compensation insurance coverage or evidence of exemption from RSA Chapter 81-A.
- If the successful Vendor is a corporation, limited liability company, or other limited liability business entity, then provide a certificate of good standing issued by the NH Secretary of State or, for a newly incorporated, formed, or registered entity, a copy of the appropriate registration document certified by the NH Secretary of State.

**SPECIFICATION COMPLIANCE:**

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

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

*The manufacturers and/or product numbers indicated are the only ones that are acceptable under this section.*

**SPECIFICATIONS:**

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

**MINED ROCK SALT**

**SPECIFICATION COMPLIANCE (FOR STATE AGENCIES ONLY):**

Bidder's offer must 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.

**CHEMICAL COMPOSITION**

Total chlorides expressed as NaCl shall be a minimum of 95% except as provided in 'BONUSES, and LIQUIDATED DAMAGES .

**GRADING**

The sodium chloride shall conform to the following particle size distribution specifications as determined by laboratory sieves:

- Passing a 1/2" sieve 100%
- Passing a 3/8" sieve 95% - 100%
- Passing a No. 4 sieve 20% - 80%
- Passing a No 8 sieve 10% - 50%
- Passing a No 30 sieve 0% - 10%

**MOISTURE CONTENT**

Salt shall be in a free-flowing condition when received at the State of New Hampshire delivery location with a moisture content not to exceed one (1) percent.

**SOLAR SALT**

**CHEMICAL COMPOSITION**

Total chlorides expressed as NaCl shall be a minimum of 95% except as provided in 'BONUSES and LIQUIDATED DAMAGES sections'.

**GRADING**

The sodium chloride shall conform to the following particle size distribution specifications as determined by laboratory sieves:

- Passing a 1/2" sieve 100%
- Maximum Passing a No. 4 sieve 75%
- Maximum Passing a No 8 sieve 40%
- Maximum Passing a No 16 sieve 10%

**MOISTURE CONTENT**

Salt shall be in a free-flowing condition when received at the State of New Hampshire delivery location with a moisture content not to exceed three (3) percent.

**GENERAL**

**BONUSES**

Delivered salt that has a lower than specified moisture content may be eligible for a bonus payment, as described in MOISTURE section below.

**LIQUIDATED DAMAGES**

Delivered salt that does not meet the required specifications, shall be subject to Liquidated Damage and or price adjustment.

The state reserves the right to accept or reject any salt or deliveries which do not conform to the NHDOT specifications for screen size, chemical quality or moisture content, or which are not delivered in good condition. Shipments that are rejected will be returned to the Vendor at no cost to the state. Vendor agrees to promptly replace all rejected deliveries of salt.

**ANTI-CAKING ADDITIVE**

Salt shall be loose and free of lumps and shall contain not less than 20 ppm of pure anti-caking agent. Bidders who are awarded contracts will be required to submit the appropriate Material Safety Data Sheets (MSDS) to NHDOT, OTHER STATE AGENCIES and Eligible Participants as requested.

(BIDDER TO COMPLETE) Anti-Cake Additive: Yellow Prussiate of Soda

**DELIVERY LIQUIDATED DAMAGES**

**INITIAL FILL**

Failure to complete the initial fill-up by October 23, 2023 for NHDOT sheds in Districts 1, 2, and 3 and by November 6, 2023 for NHDOT sheds in Districts 4, 5, 6, Central Turnpikes, and Eastern Turnpikes shall result in Liquidated Damages of ten (10) percent of the contracted price per ton of remaining tonnage not delivered by

Contractor Initials AP  
Date 6-19-2023

the delivery dates, an additional Liquidated Damage of five (5) percent shall be assessed every fifteen calendar (15) days for any remaining undelivered tonnage, as specified in TABLE 1 DELIVERY TABLE LIQUIDATED DAMAGES. Failure to complete the initial fill-up by December 18, 2023 shall be terms for default of the contract.

**TABLE 1 DELIVERY TABLE LIQUIDATED DAMAGES**

DATE	PERCENT (%) LIQUIDATED DAMAGE OF THE CONTRACTED PRICE Districts 1, 2, and 3
10/23/2023	10%
11/06/2023	15%
11/20/2023	20%
12/04/2023	25%

DATE	PERCENT (%) LIQUIDATED DAMAGE OF THE CONTRACTED PRICE Districts 4, 5, 6, Central Turnpike and Eastern Turnpike
11/06/2023	10%
11/20/2023	15%
12/04/2023	20%
12/18/2023	25%

**NORMAL DELIVERY**

If the primary vendor doesn't deliver within FIVE (5) business days after an order has been placed there will be a 2% Liquidated Damage assessed to the remaining balance of what is owed per day, unless a new delivery date has been agreed upon by NHDOT.

If the secondary vendor doesn't deliver within TWENTY (20) business days after an order has been placed there will be a 2% Liquidated Damage assessed to the remaining balance of what is owed per day, unless a new delivery date has been agreed upon by NHDOT.

**CHLORIDES**

Liquidated Damages will be assessed against the accumulated and mixed samples of each day's deliveries to each location for salt that does not meet the chemical composition of total chlorides as specified in TABLE 2 TOTAL CHLORIDE.

**TABLE 2 TOTAL CHLORIDE**

Percent (%) of Sodium Chloride	Percent (%) of Payment of Unit Bid Price
95% - 100%	100%
94 - 95%	96%
93% - 94%	92%
Below 93%	Rejected

**MOISTURE**

Salt delivered under any resulting contract shall not exceed one (1) percent moisture for rock salt or three (3) percent for solar salt.

Rock salt that exceeds two and a half (2.5) percent moisture content and solar salt that exceeds five (5) percent moisture content will be subject to rejection at the delivery point unless the state elects to accept the salt due to supply emergencies or other extenuating circumstances.

**Visible moisture leakage from the delivery vehicle will be cause for immediate rejection of the load.**

Salt which exceeds the moisture content as specified will be subject to Liquidated Damages according to Table 3A - MOISTURE CONTENT FOR ROCK SALT or Table 3B - MOISTURE CONTENT FOR SOLAR SALT.

**TABLE 3A - MOISTURE CONTENT FOR ROCK SALT**

Moisture Content	District 1, 2, 3	District 4, 5, 6, Central Turnpike, Eastern Turnpike
	<u>Percent (%) of Payment of Unit Bid Price</u>	<u>Percent (%) of Payment of Unit Bid Price</u>
0.00 - 0.50%	102%	102%
0.51 - 0.75%	101%	101%
0.76 - 1.00%	100%	100%
1.01 - 1.50%	96%*	98%
1.51 - 2.00%	92%	96%
2.01 - 2.50%	88%	94%
*Above 2.50%	* See below	* See below

**TABLE 3B - MOISTURE CONTENT FOR SOLAR SALT**

Moisture Content	District 4, 5, 6, Central Turnpike, Eastern Turnpike
	<u>Percent (%) of Payment of Unit Bid Price</u>
0.00 - 1.00%	102%
1.01 - 2.00%	101%
2.01 - 3.00%	100%
3.01 - 4.00%	97%
4.01 - 5.00%	94%
*Above 5.00%	* See below

\*If the State of NH elects to accept salt exceeding these amounts, the price reduction of the unit bid price shall be as follows:

- Rock District 1-3 Percentage (%) of payment of unit bid price = 100 - 10 (moisture content in % - 1) = X%

- Rock District 4-6 Percentage (%) of payment of unit bid price =  $100 - 5$  (moisture content in % - 1) = x%
- Solar District 4-6 Percentage (%) of payment of unit bid price =  $100 - 5$  (moisture content in % -3) = X%

Example: District 1-3.Rock salt with moisture content of 3.41%

% of Payment of unit bid price =  $100 - 10$  (3.41-1)

% of Payment of unit bid price = 75.9%

District 4-6 Rock salt with moisture content of 3.41%

% of Payment of unit bid price =  $100 - 5$  (3.41-1)

% of Payment of unit bid price = 87.95%

District 4-6 Solar salt with moisture content of 5.41%

% of Payment of unit bid price =  $100 - 5$  (5.41-3)

% of Payment of unit bid price = 87.95%

#### GRADATION

- A penalty will be assessed for gradations that exceed the maximums specified in the Detailed Specifications for Mined Rock Salt and the Detailed Specifications for Solar Salt contained in this RFB.
- The bid price of the salt will be reduced by one (1) percent for each percent by which gradation exceeds the maximum allowed for the #30 sieve (rock salt) or #16 sieve (solar salt). Salt that does not meet the gradation specified for any of the sieve sizes may be cause for rejection at the discretion of the State.

#### STATEMENT OF PENALTIES / BONUSES

NHDOT shall submit an invoice or statement to the Vendor to recover all penalty price reductions. A summary of the NHDOT, laboratory test results will accompany the statement. Vendor shall make settlement for each penalty claim, to the entity asserting the penalty claim, within fifteen (15) days of receipt of each claim. Vendor will be disqualified to bid on other state procurements if there remains an outstanding penalty balance that is owed to NHDOT, unless waived by the State.

#### PAYMENT OF BONUSES / BILLING OF PENALTIES

NHDOT will make payment of any bonuses awarded in the same time frame as any assessed Liquidated Damages. Any bonuses will be offset by Liquidated Damages due and will be shown on the Statement of Liquidated Damages (see Definitions). If during the same time frame, bonuses are awarded but no Liquidated Damages are assessed, a check made payable to the vendor will be issued. A summary of the NHDOT laboratory test results will accompany the statement. Bonuses shall be awarded on the same notice cycle as the Liquidated Damages.

#### TESTING TIMEFRAME

NHDOT, laboratory shall test all submitted samples within fifteen (15) calendar days of product delivery.

#### RESULTS AND NOTIFICATION

With 21 days of delivery a copy of failed test results will be emailed to the stated contact at the respective contract vendor. The vendor shall review the results and keep the results for their records. If a vendor wishes to dispute the supplied results, they will notify NHDOT immediately in writing as to their reason for dispute. If during the contract period there are changes in vendor contacts who receive test results, it shall be the contract vendor's responsibility to communicate those changes to the State of New Hampshire via NHDOT.

#### ACCESS TO TEST SAMPLES

NHDOT shall keep a physical specimen of tested samples that the test results indicate a moisture content that exceeds 2.5 percent for rock salt and 5 percent for solar salt for a period of fifteen (15) calendar days starting

from the date the tests are completed and vendor notified of the results. This will allow reasonable time for the contracting vendor to view all test results. If the contract vendor desires to obtain a sample of the disputed batch tested independently from the state, it will be the contract vendor's responsibility to acquire a sample from the state within the fifteen (15) calendar day's allotted and have sample tested (at the vendor's expense). Samples will be made available during standard state business hours.

**PRODUCT TESTING – ELIGIBLE PARTICIPANTS**

ELIGIBLE PARTICIPANTS who desire to test are responsible for establishing their own testing procedures. The process and any incurred cost associated with the process are the responsibility of the eligible participant.

**SPECIFICATION COMPLIANCE:**

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

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

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

**Source Specifications:**

Vendor is required to provide the source of where the salt is being produced. If the source of the salt changes the vendor is required to contact the purchasing agent prior to salt being delivered. The State has the right to reject any salt that comes from a different source without prior approval.

**Storage Specifications:**

Vendor is required to provide location and total storage capacity of each location of where the salt is to be stored at prior to being delivered to NHDOT. If the location of the salt storage changes at any time throughout the contract, or if deliveries come from a different location, the vendor is required to contact the NHDOT Winter Maintenance Program Specialist prior to salt being delivered. Salt piles are required to be covered at all times while at the vendor's storage areas, except during active loading of delivery vehicles. Salt that is not covered could be considered cause for rejection. NHDOT has the right to reject any salt that comes from a different storage area without prior approval.

**WARRANTY REQUIREMENTS:**

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

**OBLIGATIONS AND LIABILITY OF THE VENDOR:**

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

drawings, and the directions of State representatives as may be given from time to time while the work is in progress.

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

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

#### **NON-EXCLUSIVE CONTRACT**

Any resulting Contract from this RFB will be a non-exclusive Contract: The State reserves the right, at its discretion, to retain other Contractors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal.

#### **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 Specifications**

##### **TRUCKING LOGISTICS & PRODUCT PROTECTION**

All truck deliveries shall be dumped at a salt delivery address, either inside or outside a storage building, as directed by State agency personnel or Eligible Participants employees at the delivery address. Vendor will make every effort to have delivery vehicles arrival times spread out so as not to exceed the capacity of the equipment used to pile the salt at the patrol sheds.

##### **SALT PROTECTION DURING TRANSPORT**

Deliveries of trucked solar or bulk mined rock salt shall be protected in transit by tight, waterproof coverings to avoid spillage. Said covering to be placed on load to prevent additional accumulation of moisture during transit and to insure the least possible moisture content upon delivery. Torn, ripped or permeable load covers are unacceptable and may be considered cause for rejection of load. Salt that has been contaminated with foreign matter will also be considered cause for rejection of load. Salt that is delivered without a NHDOT employee, inspecting the delivery may be considered cause for rejection of load.

##### **TRANSPORTATION COMPLIANCE**

The State of New Hampshire requires that all deliveries of salt be made in complete compliance with existing state, national, provincial laws or regulations. Violation of any laws or regulations, including but not limited to weight limitations, shall be considered as grounds for disqualification of the supplier, hauler or both. The State will not pay for the portion of any load delivered to the project in excess of the load within that vehicle's registered gross vehicle weight and any applicable tolerances. The truck will be required to discharge its entire load and payment will be made only for the portion within that vehicles' registered gross vehicle weight.

##### **DELIVERY - TIMES**

Truck deliveries for New Hampshire districts will be accepted only during the hours of 6:00 am to 4:00 pm Monday through Friday (except New Hampshire state holidays), unless otherwise arranged with the District

Engineer or location contact prior to each delivery. Delivery times outside of the normal working hours noted above may require the Vendor to reimburse the NHDOT for the actual cost of the NHDOT personnel brought in for the delivery.

#### **VEHICLE REGISTRATION AND DRIVER LICENSES**

Vehicles must have a current commercial vehicle registration and inspection as applicable under state law. All drivers must meet all licensing requirements of the State of New Hampshire, or applicable governmental jurisdiction.

#### **NOTICE OF DELIVERY**

The Vendor must provide a minimum of one (1) business day notice to each NHDOT district office / location contact and the NHDOT Winter Maintenance Program Specialist prior to any delivery. Notice must include scheduled delivery date, estimated time and quantity of salt to be delivered. An end of day delivery summary is required to be sent via email to each NHDOT district office and to the NHDOT Winter Maintenance Program Specialist. This summary is to include the district delivered, shed location, and quantity delivered for each day. Agreed changes to deliveries as per the SCHEDULE FOR BALANCE OF SEASON REQUIREMENTS are required to be done via email and must include the NHDOT Winter Maintenance Program Specialist.

#### **STATE HOLIDAYS**

Unless otherwise arranged with the District Engineer or location contact in advance, deliveries will not be arranged or accepted on any official State of New Hampshire holiday. A list of state holidays is available at <https://das.nh.gov/hr/index.aspx>.

#### **VENDOR FAILURE TO DELIVER:**

If a Vendor fails to furnish road salt (rock or solar) in accordance with all requirements of this contract resulting from this Bid, the State may re-purchase the same item from another source without competitive bidding, and the original Vendor will be liable to the State for any excess cost.

#### **WEIGH SLIPS**

All truck deliveries shall be accompanied by a weigh slip, which shall be left with a NHDOT employee at the delivery point of load. NHDOT employee will sign a copy of the weigh slip to acknowledge the receipt of the load. Vendor shall provide numbered weigh slips, which show the following information:

- Name and address of the Vendor
- Name and address of the owner of the scales
- Location of the scales
- Consignee and destination
- Date of delivery
- Order number
- Gross, tare and net weights
- Signature of scale operator
- Current vehicle registration number and/or other legible identification mark and signature of vehicle operator
- Space for signature of the department employee accepting the shipment
- The state reserves the right to weigh any truck at a designated location before or after delivery to any particular storage site.

#### **INSPECTIONS**

Each district location shall take a mixed sample from the day's total deliveries. Said samples shall be representative of the gradation and moisture content of all salt delivered to a location on that day. Bonuses and/or Liquidated Damages, if any, will be assessed against the accumulated and mixed samples of each

day's delivery to each location (see BONUS and LIQUIDATED DAMAGES sections in this RFB).

NHDOT laboratory results will be included with a statement of assessed Liquidated Damage submitted to the Vendor by the State. **Vendor is strongly encouraged to sample and test their product prior to shipping product to the buyer so that any necessary corrective action may be taken to assure conformity to specifications.**

**PRODUCT SAMPLES**

Salt samples, if requested from the bidder, shall be sent to the NHDOT Laboratory. Samples shall be received no later than five (5) business days after request is made to bidder. A Certificate of Compliance for each shipment may also be required prior to award or at time of actual delivery during contract period.

**DELIVERY LOCATIONS:**

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

**NHDOT FY 2024 INITIAL ROAD SALT FILL-UP REQUEST**

**NHDOT District I Salt Order -FY 2024**

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
I Lancaster	101	Pittsburg	2,500	0
	102	Columbia	1,800	0
	102D	Dixville	500	0
	103	Errol	1,900	0
	104	Groveton	1,500	0
	105	West Milan	2,100	0
	106	Milan	700	0
	107	Lancaster	1,600	0
	107W	Whitefield	1,400	0
	108	Jefferson	3,100	0
	109	Gorham	2,000	0
	109P	Pinkham Notch	900	0
	112T	Twin Mountain	1,500	0
	112	Carroll (Crawford Notch)	2,300	0
	113G	Glen	2,100	0
	114	Lisbon	1,100	0
	115	Lincoln	3,000	0
	116	Franconia (Rte. 18)	1,400	0
	124	Franconia (Butterhill)	3,100	0
	125	Littleton	3,800	0
	125M	Monroe	600	0
		<b>DOT DISTRICT 1 TOTAL:</b>	<b>38,900</b>	<b>0</b>

NHDOT District 2 Salt Order -FY 2024

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
2 Enfield	201	Orford/Lyme	1,936	1,500
	202	Wentworth	1,761	0
	203	Rumney	1,433	0
	204	North Haverhill	2,134	0
	205	Canaan	1,600	1,500
	206	Bristol	1,533	1,500
	207	Lebanon	2,338	500
	210	Andover	1,702	0
	210A	Grafton	0	
	211	Franklin	1,336	0
	212	Comish	858	0
	213	Sunapee	1,490	0
	214	New London	1,625	0
	215	Lempster	843	250
	215A	Unity	843	800
	216	Newbury	0	0
224	Enfield	4,071	0	
		<b>DISTRICT 2 TOTAL:</b>	<b>25,503</b>	<b>6,050</b>

Contractor Initials *WK*  
 Date *6-19-2023*

NHDOT District 3 Salt Order -FY 2024

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
3 Gilford	301	Conway	2,100	1,500
	302	Tamworth	1,600	250
	303	Freedom	1,400	900
	304	Ashland	0	0
	305	Moultonborough	1,300	900
	307	Ossipee	0	400
	309	Meredith	1,900	400
	311	Tuftonboro	1,000	400
	312	Wakefield	1,900	550
	313	Belmont	1,600	1,150
	314	Belmont	3,000	1,000
	315	Alton	2,100	800
	316	Loudon	1,300	400
	324	New Hampton	5,000	1,000
	325	Thornton	6,800	1,250
		<b>DISTRICT 3 TOTAL:</b>	<b>31,000</b>	<b>10,900</b>

Contractor Initials *WK*  
 Date 6-19-2023

NHDOT District 4 Salt Order -FY2024

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
4 Swanzey	401	Charlestown/Walpole	1,350	0
	403	Alstead/Marlow	1,750	0
	404	Hillsboro	1,500	0
	405	Westmoreland/Chesterfield	1,300	0
	406	Swanzey	1,250	0
	407	Nelson	1,500	0
	408	Hancock	1,750	0
	409	Greenfield	1,450	0
	410	Winchester	1,250	0
	411	Troy/Marlborough	1,300	0
	412	Marlborough	1,400	0
	413	Rindge	1,400	0
	414	Temple	1,150	0
	415	Greenville	1,200	0
		<b>DISTRICT 4 TOTAL:</b>	<b>19,550</b>	<b>0</b>

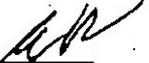
Contractor Initials *[Signature]*  
 Date 6-19-2025

NHDOT District 5 Salt Order -FY 2024

District	Section	Princlpal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
5 Bedford	501	Warner	1,230	0
	503	Chichester	1,740	1000
	504	Henniker	1,380	500
	505	Bow/Concord	1,120	0
	506	Allentown	695	500
	507	Goffstown/New Boston	1,735	500
	508	Hooksett	1,130	500
	509	Candia	2,105	0
	510	Milford	1,845	500
	511	Bedford	1,385	0
	512	Londonderry	745	1000
	513	Raymond/Chester	1,850	0
	514	Salem	1,575	0
	515	Hollis	1,210	0
	516	Londonderry	1,000	500
	525	Canterbury	3,230	1000
	526	Warner	3,915	0
	527	Manchester	2,695	0
	528	Derry	2,440	0
		<b>DISTRICT 5 TOTAL:</b>	<b>33,025</b>	<b>6,000</b>

NHDOT District 6 Salt Order -FY 2024

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
6 Durham	601	Milton	1,650	0
	602	Strafford	1,400	0
	603	Gonic	1,500	0
	604	Northwood	1,600	0
	605	Lee	1,600	0
	606	Dover	1,300	0
	607	Exeter	2,100	0
	608	Epping	1,900	0
	609	Newfields	1,800	0
	610	Rye	2,000	0
	611	South Kingston	1,700	0
	612	North Hampton	2,100	0
	613	South Kingston		
		<b>DOT DISTRICT 6 TOTAL:</b>	<b>20,650</b>	<b>0</b>

Contractor Initials   
 Date 6-19-2023

NHDOT TURNPIKES SALT ORDER - FY 2024

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
Central	815	South Nashua	1,660	0
Turnpikes	820	Merrimack	3,300	0
	825	Hooksett	3,000	2,400
<b>CENTRAL TURNPIKE TOTAL:</b>			<b>7,960</b>	<b>2,400</b>

District	Section	Principal Storage Point	Approx. Annual Tonnage	FY2024 Initial Fill up
Eastern				
Turnpikes	830	Hampton	2,500	600
	835	Dover	1,450	0
	840	Rochester	2,550	500
<b>EASTERN TURNPIKE TOTAL:</b>			<b>6,500</b>	<b>1,100</b>

<b>TOTAL OF HIGHWAY DISTRICTS AND TURNPIKES INITIAL 2024 FILL-UP =</b>	<b>26,450</b>	<b>TONS</b>
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**DELIVERY TIME:**

The successful Vendor(s) will be required to accomplish delivery of any item ordered under the contract within five (5) business days. Orders must be delivered between the hours of 7:30 AM - 2:30 PM (EST). Orders shall be **delivered within FIVE (5) business days after notification to Vendor.** Requested deliveries shall not be required to exceed 3,000 tons per week per district.

If the vendor can't meet this the delivered within FIVE (5) business days after notification to Vendor. They must outreach agency representative and purchasing agent with a plan to resolve issue as soon as possible in writing.

The successful Vendor(s) shall deliver any **emergency requested** item ordered under the contract **within 24 hours** from the placement of the order. The State shall clearly define the item(s) as an emergency when placing the order.

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

**RETURNED GOODS:**

Contractor Initials WT  
 Date 6-19-2023

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

Standard stock products ordered in error by the State of New Hampshire shall be returned for full credit within fifteen (15) business days of receipt. Products shall be in re-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 successful Vendor.

**OFFER:**

The bidder offers to sell to the state of New Hampshire the commodities or services indicated at the price or prices quoted and in compliance with the requirements and specifications of the bid.

**Please see Attachment 1 Offer Sheet**

**VENDOR'S BALANCE OF PRODUCT LINE ITEMS**

The items in the Offer Section include the items most commonly purchased by State of New Hampshire agencies, and shall be used for award purposes. During the term of contract, the State may purchase other items that relate to the product/categories represented herein from the successful Vendor's Balance of Product Line. All items ordered shall include all shipping/charges as specified above in "Bid Prices".

**VENDOR CONTACT INFORMATION:**

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

<u>Jean Szatkowski</u>	<u>313-488-1891</u>	<u>855-665-4540</u>
Contact Person	Local Telephone Number	Toll Free Telephone Number
<u>bids@mortonsalt.com</u>	<u>www.mortonsalt.com</u>	
E-mail Address	Company Website	
<u>Morton Salt, Inc.</u>	<u>444 West Lake Street, Chicago, IL 60606</u>	
Vendor Company Name	Vendor Address	

If required, please see NH District Map for clarifications.

**<https://www.nh.gov/dot/org/operations/highwaymaintenance/documents/DistrictEngineersMap-August2015.pdf>**

**ATTACHMENTS:**

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

- Attachment A: Sample P-37 Form
- Attachment 1: Price Offer Sheet
- Attachment 2: Sample Daily Delivery Report
- Attachment 3: Sample Completed Delivery Report
- Attachment 4: Quarterly Usage Report for Bureau of Purchase & Property

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: 210 105 836 665

Passcode: KdMf9r

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

**Join with a video conferencing device**

nhgov@m.webex.com

Video Conference ID: 118 925 659 0

[Alternate VTC instructions](#)

**Or call in (audio only)**

[+1 603-931-4944,585812243#](#) United States, Concord

Phone Conference ID: 585 812 243#

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

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

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# ATTACHMENT A

## SAMPLE FORM TO BE COMPLETED UPON AWARD

FORM NUMBER P-37 (version 2/23/2023)

**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 Unit and Class	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 <i>(if applicable)</i>  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By: _____ On: _____			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i>  G&C Item number: _____ G&C Meeting Date: _____			

**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, 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.

3.3 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. 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 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, 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 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. 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.

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 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

**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 and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. 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 age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4 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 this Agreement and all rules, regulations and orders pertaining to 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 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

**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) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar 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.

## 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) calendar 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) calendar 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. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

## 10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word "Property" shall mean all data, 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 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure 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 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, 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.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 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. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. 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 State's sovereign immunity, 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 any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. 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 any 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. **WAIVER OF BREACH.** A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

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

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

#### 19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

20. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. **THIRD PARTIES.** This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. **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.

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

24. **FURTHER ASSURANCES.** The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

25. **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.

26. **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.