



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES

25 Capitol Street

Concord, New Hampshire 03301

(603) 271-3201 | Office@das.nh.gov

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NOV 12 2025

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Charles M. Arlinghaus
Commissioner

Catherine A. Keane
Deputy Commissioner

Sheri L. Rockburn
Assistant Commissioner

October 28, 2025

Her Excellency, Governor Kelly A. Ayotte
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Administrative Services to exercise a renewal option (Contract #8003179) with Dennis K. Burke, Inc. (VC#174496), Taunton, MA, for supply and delivery of bulk quantities of biodiesel, diesel, and gasoline by increasing the price limitation by \$23,972,022.51 from \$35,804,575.50 to an amount up to and not to exceed \$59,776,598.01 and exercise the option to extend the contract for two years, effective upon Governor and Executive Council approval from December 1, 2025, through November 30, 2027. The original contract was approved by the Commissioner of the Department of Administrative Services December 1, 2022.

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

As previously stated, the original contract (Contract #8003179) was approved by the Commissioner of the Department of Administrative Services December 1, 2022.

The Department of Administrative Services (DAS) issued request for bid (RFB) 3068-26 on September 5, 2025, for supply and delivery of bulk quantities of biodiesel, diesel, and gasoline, with responses due on October 2, 2025. The bid reached one hundred eighty-eight vendors. Four bid responses were received with one bid being non-compliant. The bid award was based on lowest mark-up over index pricing per county for each fuel source and the intent for this bid was to result in a multi-award scenario.

Index pricing consists of two components: Oil Price Information System (OPIS) terminal pricing and vendor mark-up. OPIS is an independent, third-party monitoring system that collects and distributes fuel rack prices on a daily basis and is used by both the State and fuel providing vendors to establish a fair market price. Upon review of the bid results, it was determined that by awarding new contracts, the average mark-up per gallon of gasoline would increase by \$0.0961, from \$0.1122 to \$0.2083; the average mark-up per gallon of diesel fuel would increase by \$0.0469, from \$0.0472 to \$0.0941. The State then entered into negotiations with Dennis K.

Burke, Inc., the incumbent contractor. Through these negotiations, Dennis K. Burke, Inc. offered to extend the contract for two years at the current mark-up rates, which would result in an estimated cost savings to the State of approximately \$532,164.63 for the two-year extended contract term.

The requested price limitation of \$59,776,598.01, is calculated using the average annual consumption volume of fuel and includes an allowance of 10%, or \$2,179,274.77, for unanticipated needs and pricing increases.

Contract financials	
Current price limitation	\$35,804,575.50
Average annual spend (3 years)	\$10,896,373.87
Estimated extension spend (2 years)	\$21,792,747.74
Allowance (10%)	\$2,179,274.77
Price limitation increase	\$23,972,022.51
New requested price limitation	\$59,776,598.01

The Department of Administrative Services has determined that the vendor is in good standing with the Secretary of State's Office, has secured the required levels of insurance, and has provided evidence of authority to execute and be bound by the contract. Documents supporting these assertions are available at the agency, for review upon request.

Based on the foregoing, I am respectfully recommending approval of this contract amendment with Dennis K. Burke, Inc.

Respectfully submitted,



Charles M. Arlinghaus
Commissioner

Contract 8003179 Financials

Current price limitation	\$ 35,804,575.50	Special Notes: Based on the results and analysis of RFB 3068-26 for supply and delivery of bulk quantities of bio-diesel, diesel, and gasoline, it is in the State's best interest to extend the current contract with the incumbent vendor and cancel RFB 3068-26. The analysis conducted has determined an average mark-up over index price increase of \$0.1167 for conventional gasoline, \$0.0652 for reformulated gasoline, and \$0.0469 for diesel fuel. By exercising the extension provisions allowed in the current contract, there is a cost savings to the State of approximately \$532,164.63.
Contract balance	\$ 3,115,453.90	
Average annual spend	\$ 10,896,373.87	
Estimate extension spend (2 years)	\$ 21,792,747.73	
Allowance (10%)	\$ 2,179,274.77	
Requested limitation increase	\$ 23,972,022.51	
New requested price limitation	\$ 59,776,598.01	

RFB 3068-26 Mark-Up Comparisons

	<u>Expiring Contract</u> <u>(Gasoline)</u>	<u>New Contract</u> <u>(Gasoline)</u>	<u>Delta</u> <u>Gasoline</u>	<u>Expiring Contract</u> <u>(Diesel)</u>	<u>New Contract</u> <u>(Diesel)</u>	<u>Delta</u> <u>Diesel</u>
Coos	\$ 0.1442	\$ 0.2552	\$ 0.1110	\$ 0.0592	\$ 0.1592	\$ 0.1000
Grafton	\$ 0.1442	\$ 0.2552	\$ 0.1110	\$ 0.0592	\$ 0.1592	\$ 0.1000
Carroll	\$ 0.1442	\$ 0.3160	\$ 0.1718	\$ 0.0592	\$ 0.0731	\$ 0.0139
Belknap	\$ 0.1442	\$ 0.1982	\$ 0.0540	\$ 0.0592	\$ 0.0990	\$ 0.0398
Sullivan	\$ 0.1442	\$ 0.2857	\$ 0.1415	\$ 0.0592	\$ 0.0853	\$ 0.0261
Cheshire	\$ 0.1442	\$ 0.2552	\$ 0.1110	\$ 0.0592	\$ 0.1592	\$ 0.1000
Merrimack	\$ 0.0642	\$ 0.1328	\$ 0.0686	\$ 0.0292	\$ 0.0512	\$ 0.0220
Hillsborough	\$ 0.0642	\$ 0.1355	\$ 0.0713	\$ 0.0292	\$ 0.0363	\$ 0.0071
Strafford	\$ 0.0642	\$ 0.1317	\$ 0.0675	\$ 0.0292	\$ 0.0556	\$ 0.0264
Rockingham	\$ 0.0642	\$ 0.1175	\$ 0.0533	\$ 0.0292	\$ 0.0628	\$ 0.0336

	<u>Average Mark-Up</u> <u>Increase</u>	<u>Estimated Annual</u> <u>Usage</u>	<u>Average Cost</u> <u>Avoidance</u>
Conventional Gasoline	\$ 0.1167	854,000	\$ 99,676.03
Reformulated Gasoline	\$ 0.0652	1,228,000	\$ 80,034.90
Diesel	\$ 0.0469	1,842,000	\$ 86,371.38
	Estimated Annual Savings		\$ 266,082.31
	Estimated Term Savings		\$ 532,164.63

RFB 3068-26 Comparison Results

Indicates Lowest Mark-Up

County	ESTIMATED USAGE Conventional Gas	ESTIMATED USAGE Reformulated Gas	ESTIMATED USAGE Diesel	ESTIMATED USAGE B5 Biodiesel	OPIS Year Over Year Average Price Per Gallon		Mark-Up Over OPIS Index		INDEXED OFFER SECTION - MARKUP OVER OPIS COMBINED GASOLINE & DIESEL					INDEXED OFFER - MARKUP OVER OPIS
					Gasoline (Conventional and Reformulated)	Diesel	Expiring Contract Gasoline	Expiring Contract Diesel	CONVENTIONAL	PREMIUM	REFORMULATED	PREMIUM	PREMIUM B5	
					T/T GAS	T/T DIESEL	T/T GAS	T/T DIESEL	T/T BIODIESEL					
COOS OFFER / \$	187000		202000			\$ 0.1442	\$ 0.0592	\$ 0.2552	\$ 0.1592	\$ 0.2552	\$ 0.1592	\$ 0.4992	No Bid	
GRAFTON OFFER / \$	218000		299000			\$ 0.1442	\$ 0.0592	\$ 0.2552	\$ 0.1592	\$ 0.2552	\$ 0.1592	\$ 0.4992	No Bid	
CARROLL OFFER / \$	105000		128000			\$ 0.1442	\$ 0.0592	\$ 0.2552	\$ 0.1592	\$ 0.2552	\$ 0.1592	\$ 0.4992	No Bid	
BELKNAP OFFER / \$	179000		98000			\$ 0.1442	\$ 0.0592	\$ 0.2552	\$ 0.1592	\$ 0.1982	\$ 0.0990	\$ 0.4992	No Bid	
SULLIVAN OFFER / \$	75000		705000			\$ 0.1442	\$ 0.0592	\$ 0.2552	\$ 0.1592	\$ 0.0853	\$ 0.0853	\$ 0.4992	No Bid	
CHESHIRE OFFER / \$	90000		73000		\$ 2.2379	\$ 2.6892	\$ 0.1442	\$ 0.0592	\$ 0.2552	\$ 0.1592	\$ 0.2552	\$ 0.1592	\$ 0.4992	No Bid
MERRIMACK OFFER / \$		548000	291000			\$ 0.0642	\$ 0.0292			\$ 0.1242	\$ 0.1292	\$ 0.4992	No Bid	
HILLSBOROUGH OFFER / \$		210000	140000			\$ 0.0642	\$ 0.0292			\$ 0.1242	\$ 0.1292	\$ 0.4992	No Bid	
STRAFFORD OFFER / \$		140000	146000			\$ 0.0642	\$ 0.0292			\$ 0.1242	\$ 0.1292	\$ 0.4992	No Bid	
ROCKINGHAM OFFER / \$		330000	324500			\$ 0.0642	\$ 0.0292			\$ 0.1175	\$ 0.0628	\$ 0.5000	No Bid	



**FIRST AMENDMENT TO THE CONTRACT BETWEEN
DENNIS K. BURKE, INC.
AND
THE STATE OF NEW HAMPSHIRE,
DEPARTMENT OF ADMINISTRATIVE SERVICES,
FOR SUPPLY AND DELIVERY BIO-DIESEL, DIESEL, AND GASOLINE TRACTOR TRAILER
CONTRACT # 8003179**

This First Amendment (hereinafter referred to as the "Amendment"), dated this 14 day of October 2025, is by and between the State of New Hampshire, Department of Administrative Services (hereinafter referred to as "the State") and Dennis K. Burke, Inc. (hereinafter referred to as "the Contractor") for Supply and Delivery Bio-Diesel, Diesel, and Gasoline Tractor Trailer.

WHEREAS, pursuant to an agreement effective December 1, 2022, and set to expire November 30, 2025, (hereinafter referred to as "the Agreement"), the Contractor agreed to perform certain supply and delivery bio-diesel, diesel, and gasoline tractor trailer services for the State in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, pursuant to Section 17 of the Agreement, the Agreement may be amended by an instrument in writing executed by both parties;

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Amendment and the underlying Agreement, the parties do mutually agree as follows:

1. Delete in its entirety Form Number P-37, item 1.7 Completion Date and substitute the following:

1.7 November 30, 2027

2. Delete in its entirety Form Number P-37, item 1.8 Price Limitation and substitute the following:

1.8 \$59,776,598.01

Contract Financials	
Current spend limitation	\$35,804,575.50
Estimated contract extension spend	\$23,972,022.51
New requested price limitation	\$59,776,598.01

3. Amend Exhibit B, Payment Terms, the following payment terms for the period December 1, 2022, through November 30, 2027:
4. Amend Exhibit C, 1. Contract Price: Change to the following: \$59,776,598.01.
5. Amend Exhibit C, 6. Index Pricing Reference:

Type of Fuel	OPIS Index Pricing Explanation
Conventional Gasoline	Contractor Index Pricing for fuel based on the UNBRANDED Portland, ME LOW price as posted in the Unleaded Regular 87 Octane column of the Gasoline Prices section of the OPIS "Oil Price Daily" in effect on the date of delivery.

6. All other provisions of the Agreement, approved by the Commissioner of the Department of Administrative Services on December 1, 2022, shall remain in full force and effect.

DENNIS K. BURKE, INC.

By: *Joseph Cote*

Joseph Cote
(Print Name)

Title: Chief Supply and Business Development Officer

Date: 10/14/2025

STATE OF NEW HAMPSHIRE

By: *Charles M. Arlinghaus*

Charles M. Arlinghaus
(Print Name)

Title: Commissioner
Department of Administrative Services

Date: 10.27.25

OFFICE OF THE ATTORNEY GENERAL

By: *Christen Lavers*

Christen Lavers
(Print Name)

Title: Sr. Assistant Attorney General

Date: 10/27/25

The foregoing contract was approved by the
Governor and Council of New Hampshire on

Signed: _____

(Print Name)

Title: _____

State of New Hampshire

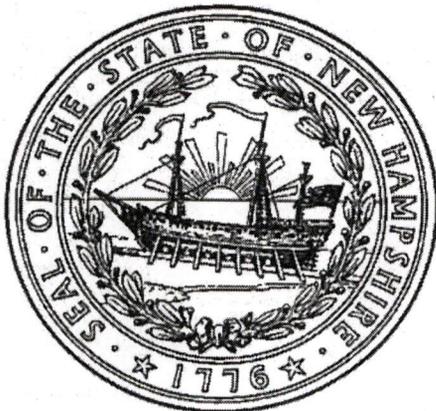
Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that DENNIS K. BURKE, INC. is a Massachusetts Profit Corporation registered to transact business in New Hampshire on November 17, 1981. 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: **9912**

Certificate Number: **0007316117**



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 21st day of October A.D. 2025.

A handwritten signature in black ink, appearing to read "D. Scanlan", is written over a faint circular stamp.

David M. Scanlan
Secretary of State



**Minutes of Meeting of the Board of Directors of
Dennis K. Burke Inc**

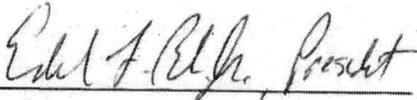
October 20, 2025

A meeting of the Board of Directors of Dennis K. Burke Inc. was held at the office of the Company in Taunton, MA on October 13, 2025. Edmund F. Burke, Jr. and Dan Hill were both present in Taunton.

The purpose of the meeting was to identify and confirm that the following individuals are authorized to sign and execute contracts, bonds, or other obligations on behalf of Dennis K. Burke Inc.:

Edmund F. Burke, Jr - President
Joseph Cote - Chief Supply and Business Development Officer
Dan Hill - Chief Operating Officer
Mark Pszeniczny - Sales Manager
Ryan Downey - Controller
Neal Finklestein - Tax Manager

It was voted that the above employees are authorized to act and sign on behalf of Dennis K. Burke Inc. There being no further business to discuss, motion was made and seconded to adjourn.


Edmund F. Burke, Jr. President

FLEETLINE
LUBRICANTS



Castrol



Kendall



BIOBLEND



555 CONSTITUTION DRIVE \ TAUNTON, MA 02780

1-800-BUY BURKE

1-800-289-2875

www.burkeoil.com



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
02/25/2025

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 Aon Risk Services Central, Inc. Chicago IL Office 200 East Randolph Chicago IL 60601 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105	
	E-MAIL ADDRESS:	
INSURED Dennis K. Burke, Inc. 555 Constitution Drive Taunton MA 02780 USA	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Zurich American Ins Co	NAIC # 16535
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES **CERTIFICATE NUMBER:** 570110991921 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	Limits shown are as requested	
							LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER			GLO463738614	04/01/2025	04/01/2026	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COM/OP AGG	\$4,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BAP 4637387-14	04/01/2025	04/01/2026	COMBINED SINGLE LIMIT (Ea accident)	\$2,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION						EACH OCCURRENCE	
							AGGREGATE	
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC463738514	04/01/2025	04/01/2026	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER 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)
 MCS-90 endorsement is included on the Auto Liability policy. A Waiver of Subrogation is granted in favor of Certificate Holder in accordance with the policy provisions of the Workers Compensation policy.

CERTIFICATE HOLDER State of New Hampshire Purchasing Department 25 Capitol St Room 102 Concord NH 03301 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Central, Inc.</i>

Holder Identifier : 570110991921 Certificate No. :

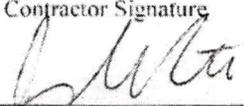
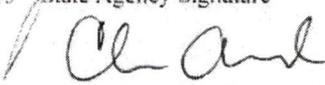
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

I. 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 Dennis K. Burke, Inc.		1.4 Contractor Address 555 Constitution Drive, P.O. Box 711 Taunton, MA. 02780	
1.5 Contractor Phone Number 800-289-2875	1.6 Account Number Various	1.7 Completion Date 11/30/2025	1.8 Price Limitation \$35,804,575.50
1.9 Contracting Officer for State Agency Gary Lunetta, Director, Division of Procurement and Support Services		1.10 State Agency Telephone Number 603-271-3606	
1.11 Contractor Signature  Date: 11/30/2022		1.12 Name and Title of Contractor Signatory Joseph Cole VPSupply.com	
1.13 State Agency Signature  Date: 12/1/22		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: _____			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials 
 Date 11/30/2022

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

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

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

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

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

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

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

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

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

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

7. PERSONNEL.

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

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

9. TERMINATION.

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

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

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

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

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

Contractor Initials *JP*

Date *11/30/27*

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

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT A
SPECIAL PROVISIONS**

There are no special provisions of this contract.

Contractor Initials
Date 11/30/13

**EXHIBIT B
SCOPE OF WORK**

1. EFFECTIVE DATE

- 1.1. The contract term shall commence on December 1, 2022, or upon execution by the Commissioner of the Department of Administrative Services, whichever is later (the "Effective Date") and shall continue thereafter through November 30, 2025, a period of approximately three (3) years.
- 1.2. The contract may be extended for an additional two (2) one-year extensions thereafter under the same terms, conditions, and pricing structure upon the mutual agreement between the Contractor and the State upon approval of the Governor and Executive Council.

2. CONTRACT DOCUMENTS

- 2.1. This contract consists of the following documents ("contract documents"):
 - 2.1.1. State of New Hampshire Terms and Conditions, General Provisions Form P-37
 - 2.1.2. EXHIBIT A Special Provisions
 - 2.1.3. EXHIBIT B Scope of Work
 - 2.1.4. EXHIBIT C Method of Payment
 - 2.1.5. EXHIBIT D RFB 2614-23
 - 2.1.6. EXHIBIT E Contractor's Bid Response
- 2.2. 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 Work," (3) EXHIBIT C "Method of Payment," (4) EXHIBIT D "RFB 2614-23," and (5) EXHIBIT E "Contractor's Bid Response."

3. SCOPE OF WORK

Contractor shall provide:

3.1. PRODUCT TESTING:

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

3.2. GASOLINE SPECIFICATIONS:

- 3.2.1. During the term of the contract, State agencies shall order REFORMULATED UNLEADED REGULAR AND / OR CONVENTIONAL UNLEADED REGULAR GASOLINE.
- 3.2.2. The minimum octane number of regular unleaded gasoline supplied under this contract shall be **87**.
- 3.2.3. Octane to be determined by the following method:
- | | |
|------------------|------------------|
| <u>R & M</u> | R = RESEARCH |
| 2 | M = MOTOR METHOD |
- 3.2.4. Specifications for reformulated or conventional gasoline are attached hereto. Supplied product(s) will meet specifications as written, or the most recent revised ASTM specification.
- 3.2.5. **Reformulated unleaded regular gasoline** shall meet the attached specifications (Appendix #1) for reformulated unleaded regular fuel, Grades F2, 2F.
- 3.2.6. **Conventional unleaded regular gasoline** shall meet the attached specifications (Appendix #1) for conventional unleaded regular fuel, Grades A1, 1A.

3.3. SPECIAL CONDITIONS

- 3.3.1. If at any time during this contract or any extension thereof, the State is no longer required to purchase reformulated unleaded regular gasoline for the counties of **Merrimack, Strafford, Rockingham and Hillsborough**, the tank locations within those counties may revert to the purchase of conventional unleaded regular gasoline and the existing specifications and pricing format for conventional unleaded regular gasoline shall apply.
- 3.3.2. Reformulated (R) unleaded regular gasoline may be substituted for conventional unleaded regular gasoline for the locations requiring conventional (C) unleaded regular gasoline. Contractor may offer pricing for Reformulated unleaded regular gasoline to be utilized in place of conventional unleaded regular gasoline.

3.4. ULTRA LOW SULFUR DIESEL – PREMIUM ON-ROAD SPECIFICATIONS:

- 3.4.1. During the term of the contract, State agencies shall order **ULTRA LOW SULFUR DIESEL - PREMIUM ON ROAD FUEL**. Contractor shall be required to utilize both specifications to produce the required product they are offering.

3.5. SPECIFICATION - ULTRA LOW SULFUR DIESEL

- 3.5.1. The Premium Ultra Low Sulfur #2 blend stock, i.e., premium ultra-low sulfur diesel fuel supplied shall meet ASTM D975-17, grade No. 2-D S15 specifications, or the most recent revised specification.

3.6. SPECIFICATION - PREMIUM (ADDITIVE) ON ROAD FUEL REQUIREMENTS

- 3.6.1. In addition to the ultra-low sulfur diesel specifications stated herein shall also require the following "premium" characteristics. These characteristics shall be adopted and included in the ultra-low sulfur component of the premium ultra-low diesel delivered.
- 3.6.1.1. **Premium Ultra Low Diesel Fuel** - All diesel fuels identified on retail dispensers, bills of lading, invoices, shipping papers, or other documentation with terms such as

premium, super, supreme, plus, or premier must conform to the following requirements:

- 3.6.1.1.1. **Cetane Number** - A minimum cetane number of 45.0 or as determined by the most recent ASTM Standard Test Method D613.
- 3.6.1.1.2. **Low Temperature Operability** - A cold flow performance measurement which meets the most recent ASTM D 975-17 tenth percentile minimum ambient air temperature charts and maps for New Hampshire by either the most recent ASTM Standard Test Method D 2500 (Cloud Point), or most recent ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1 through March 31 of each year.
- 3.6.1.1.3. **Thermal Stability** - A minimum reflectance measurement of 80% or as determined by the most recent ASTM Standard Test Method D6468 (180 min, 150 °C).
- 3.6.1.1.4. **Lubricity** - A maximum wear scar diameter of 520 microns or as determined by the most recent ASTM D6079.

3.7. ULTRA LOW SULFUR DIESEL PREMIUM ON ROAD FUEL PROGRAM – TEMPERATURE PROTECTION (ALL DOT FUEL DISTRIBUTION LOCATIONS):

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

3.7.1.1. October 1st to December 14th – **ULTRA LOW SULFUR DIESEL - PREMIUM ON ROAD FUEL** winter diesel with temperature protection characteristics that meet or exceed +8° F cloud points.

3.7.1.2. December 15th to March 31st – **ULTRA LOW SULFUR DIESEL - PREMIUM ON ROAD FUEL** winter diesel with temperature protection characteristics that meet or exceed - 5° F cloud points

3.8. PRODUCT COMPLIANCE DOCUMENTATION – SULFUR CONTENT

3.8.1. In compliance with State of New Hampshire Department of Environmental Services ENV-A-1607.01 or most recent revision, Contractor shall be required to supply a statement of compliance with regard to the sulfur content of the diesel fuel products delivered to the State. The Statement shall be on company letterhead and read: "**the sulfur content of the fuel as delivered does not exceed the state or federal standard for that fuel**" and signed by a duly authorized agent of that company. These documents shall be kept on file for the term of the contract. The State currently maintains a list of these documents on file and the State will notify the Contractor to supply the required document if it is not previously on file.

3.9. LOCATION ADDITIONS / DELETIONS DURING CONTRACT TERM

3.9.1. In the case of a location deletion during the term of the contract and any extension, the locations guaranteed volume would be consumed under the contract.

3.9.2. In the case of a location addition during the term of the contract and any extension, the Contractor guaranteed volume established before the added location would be

honored and the added location may be added at the fixed price applicable to the product and county.

3.10. PRICING FORMAT:

3.10.1. **INDEX BASED FORMAT** - consists of 2 components:

3.10.1.1. **Index:** Price of the product, on the date of delivery, as provided by the OPIS "Oil Price Daily" posting. See "Index Pricing Reference" Section below for Oil Price Daily posting per product.

3.10.1.2. **Mark-up:** Cost added to index to cover Contractor's costs and profit. Mark-up shall be based per gallon and is not to exceed 4 places to the right of decimal (example \$0.0125).

3.10.1.2.1. The Contractor mark-up per gallon for the respective counties shall remain firm for the duration of the contract term specified unless the State exercises the lock price option.

3.10.1.2.2. Contractor mark-up prices shall remain firm for the product category for the term of the contract and any extension thereof and shall include delivery and all other charges unless the State exercises the lock price option.

3.10.1.2.3. Fuel price postings may increase or decrease during the term of the contract in accordance with the "Oil Price Daily" postings. Mark-up prices offered by the Contractor shall be added to the index price posted for the **date of delivery** to achieve the **total** price per gallon for the product delivered.

3.11. INDEX BASED PRICING VERIFICATION:

3.11.1. Agencies shall verify pricing from "Oil Price Daily" through the Bureau of Purchase and Property. Please contact Ryan Godin at (603)271-3146 or Ryan.M.Godin1@das.nh.gov for assistance.

3.12. STATE OPTION FOR CONTRACT CONVERSION FROM INDEX BASED FORMAT TO "LOCK" FIXED PRICE

3.12.1. At any point during the term of this contract at the State's option, if the market is in a favorable position, the State **may** choose to "lock" a fixed price per gallon for a number of gallons that is approximate to the usage over a certain period of time (e.g., 12 months diesel usage). If this option is exercised the following parameters shall apply:

3.12.1.1. THE STATE SHALL:

3.12.1.1.1. The State shall provide Contractor with a lock price or range at its discretion.

3.12.1.1.2. The State may change the "lock" price or range in accordance with budget limitations or anticipated market direction at its discretion.

3.12.1.1.3. Any change in the State's "lock" price range would be communicated via email.

3.12.1.1.4. If the State should exercise the lock option, it would lock for a minimum usage over a period of time as determined by the State, starting on the date of the lock.

3.12.1.1.5. The fixed price lock agreement shall commence on deliveries effective the following business day after confirmation of fixed price lock agreement.

- 3.12.1.1.6. If or when the market provides the "lock" price, the Contractor shall email the offer to Ryan Godin, Purchasing Agent, at ryan.m.godin@e.gos.nh.gov with copy to Fuel Distribution Manager, at prian.lpike@dol.nh.gov and all assigned designees.
- 3.12.1.1.7. The State may choose to accept or reject the "Lock" price tendered. The State may also choose to change the "lock" price, or range, if a downward price trend is anticipated in the market.
- 3.12.1.1.8. The time frame window provided for a State decision to "Lock" or "Pass" is **6 business hours** starting from the time the email offer is confirmed as received by the State via email. The clock in the computer receiving the email shall prevail as official time.
- 3.12.1.1.9. Offers tendered by the Contractor that are received after 12:00 noon EST shall have the 6-hour window extended to the next business day (excluding weekends) for the time difference to equal 6 hours total. The Contractor would be required to guarantee the fixed price agreed to for a minimum usage over the agreed upon period of time.
- 3.12.1.1.10. The established basis of **business hours** shall be from 8:00 AM EST to 4:00 PM EST Monday through Friday, non-State holidays.

3.13. THE CONTRACTOR SHALL:

- 3.13.1. Throughout the term the Contractor shall monitor and share market trends for rates that are favorable to the State as well as notify the State when or if the "Lock" price or range is available on a weekly basis with notification by close of business Thursday.
- 3.13.2. A performance bond shall be required for 25% of the guaranteed volume (see performance bond requirements in FIXED PRICE section below).
- 3.13.3. The Contractor will incorporate all costs including fuel purchase, delivery, taxes, fees, margin and the performance bond cost for the guaranteed gallons into the "Lock" price.
- 3.14. PRICE ADJUSTMENT FOR FUEL PRICE LOCK TRIGGER MUST BE MUTUALLY AGREED UPON WITH CONTRACTOR AND THE STATE.
- 3.14.1. The State agrees to set a preliminary trigger range of \$1.9999 as a low point for Conventional Gasoline.
- 3.14.2. The State agrees to set a preliminary trigger range of \$1.9999 as a low point for Reformulated Gasoline.
- 3.14.3. The State agrees to set a preliminary trigger range of \$2.9999 as a low point for Diesel Premium.
- 3.14.4. The State agrees to set a preliminary trigger range of \$2.9999 as a low point for Premium B5 Biodiesel.

3.15. FIXED PRICE FORMAT

- 3.15.1. Prices shall be **PER GALLON** and shall not exceed **4 places** to the right of the decimal (example .0125) and will be mutually agreed upon by the State and Contractor;
- 3.15.1.1. Fixed prices shall be for the volume usage over a duration mutually agreed upon between the State and Contractor.

3.15.1.2. If at any time the fixed price usage volume has been depleted the State, at its discretion, may purchase fuel from the "rack" plus a mark-up and transportation price - the mark-up shall be, at a maximum, the mark-up prices referenced in Exhibit C herein, for the county and product, or negotiate a new fixed price for a volume of gasoline and/or diesel.

3.16. GUARANTEED USAGE (Fixed Price Option)

3.16.1. The quantities indicated in the contract are the State's estimated annual requirements. The State will guarantee a maximum of 85% of the quantities indicated in the total volumes by county, as stated in Exhibit C herein.

3.17. REQUIREMENT - PERFORMANCE BOND (Fixed Price Option)

3.17.1. If a fixed price is established, a performance bond shall be required for 25% of the guaranteed volume (**Bond value shall be the total of all offered fixed price X guaranteed gallons**) of the contract as stated by county and category in the location section stated within RFB 2614-23. The State shall notify the Contractor of their awarded volumes. The completed performance bond shall be received at the Bureau of Purchase and Property within 10 days after approval by the Commissioner of the Department of Administrative Services. The cost of the performance bond shall be the Contractor's sole responsibility. If Contractor fails to provide proof of bond as indicated below, the Contractor will be considered in default of the contract.

3.17.2. If the State chooses to award a fixed price contract based on 24 months, a 25% performance bond is required for 12 months' worth of fuel usage and the bond must be renewable for the following 12 months of usage. Proof of bond must be provided within 10 days after the first 12-month bond has expired.

3.17.3. In addition to the other required documents, Contractor shall supply a letter from their chosen bond company, insurance company or other bond source on the bond source letterhead that states the bond source will supply a bond in the value of the Contractor value in dollars should the State award a fixed price contract or choose to convert to fixed price in the future.

3.17.4. The bond letter and this document (signed) shall be submitted with the Contractor's response to RFB 2614-23.

3.17.5. The bonding source shall utilize a value of the fixed or "lock" price (e.g., \$2.15 US per gallon) of diesel, reformulated or conventional gasoline. The value per gallon shall be multiplied by the "guaranteed" sub-total quantity (85% of annual) per section per county for all counties.

3.18. BOND VALUE EXAMPLE

COOS COUNTY CATEGORY B	151,300
CARROLL COUNTY CATEGORY B	89,250
GRAFTON COUNTY CATEGORY B	185,300
TOTAL	425,850 GALLONS x \$2.15 x 25.00% = \$228,894.38

3.19. ABILITY TO PROVIDE

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

3.20. ORDERING PROCEDURE

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

3.21. USAGE REPORTING:

3.21.1. Contract Consumption- Tracking/Reporting:

3.21.2. The Contractor shall submit consumption reports monthly to the Purchasing Agent and DOT – Fuel Distribution. The consumption report shall include transaction history for the previous month and in total since contract inception. The reports shall be received no later than the 10th day of the month for the previous month's activity. The report shall include the following data at a minimum:

3.21.2.1. County

3.21.2.2. Delivery Agency

3.21.2.3. Physical location with Tank ID (if available)

3.21.2.4. Date of delivery

3.21.2.5. Gallons delivered

3.21.2.6. Product type

3.21.2.7. Total gallons delivered to date by product, delivery type (TT/PT) per county

3.21.2.8. Reports shall be emailed to:

Brian Pike - Fuel Distribution Manager

DOT – Bureau of Fuel Distribution

Email: Brian.E.Pike@dot.nh.gov

3.22. Quarterly Usage:

3.22.1. The Contractor shall submit a quarterly report for analysis for each state agency or eligible participant. Reports are due no later than 30 days after each end of each calendar quarter Bureau of Procurement Services, Purchasing Agent Name and sent electronic to Ryan.M.Godin1@DAS.NH.Gov. At a minimum, the Report shall include:

3.22.1.1. Contract Number

3.22.1.2. Utilizing Agency and Eligible Participant

3.22.1.3. Services/Products Purchased (showing the manufacturer, item, part number, and the final cost.)

3.22.1.4. 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:

3.22.1.4.1. Percentage of recycled materials contained within finished products

3.22.1.4.2. Percentage of waste recycled throughout the manufacturing process

3.22.1.4.3. Types and volume of packaging used for transport

3.22.1.4.4. Any associated material avoided and/or recycled as applicable under contract

3.22.1.4.5. A standardized reporting form will be provided after contract award

3.22.1.4.6. Total Cost of all Services/Products Purchased. Ability to sort by agency/eligible participant.

3.22.1.4.7. Preferred in Excel format

3.23. ACCOUNT COMMUNICATION & ESCALATION

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

3.24. RETURNED GOODS

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

3.25. DELIVERY POLICY, PROCEDURES, REQUIREMENTS

3.25.1. State agencies shall contact the Contractor and coordinate deliveries. All deliveries shall be made in accordance with the following requirements:

3.25.1.1. Deliveries shall be made within 48 hours after receipt of order, regardless of method of delivery. Weekends and holidays are NOT exempt from the stated delivery schedule, and it is understood that the Contractor is a 365-day delivery operation. The use of a private carrier to make delivery does not relieve the Contractor from the responsibility of meeting the delivery requirement. Requesting agency and contractor may pre-arrange deliveries beyond the 48-hour requirement to suit delivery needs, at the mutual agreement of contractor and requesting agency.

3.25.1.2. Dipping tanks - State agencies require the Contractor to have their delivery personnel dip tanks before and after deliveries and note said readings on delivery slips, to include a check for water during each sticking. Dip stick readings will be accurate within 1/8" inch per State of New Hampshire Department of Environmental Services Oil and Remediation Program Rule "Env-Or 406.03" or the most recent revision.

3.25.1.3. Delivery slip / BOL - All deliveries shall include a bill of lading and delivery slip. Delivery Slip and BOL Requirements are stated further within the delivery policy of this solicitation. Failure to leave delivery documentation at each delivery site may result in delayed payment(s) for said deliveries.

3.25.1.4. Spills/ overfills - Most underground tanks are equipped with 4" tight fill adapters. Delivery trucks should be equipped with appropriate hardware to seal delivery-lines to prevent over-fills and/or spills. Should a spill occur during delivery, or should Contractor deliver the wrong product to tank(s), the Contractor assumes all responsibility and liability for the spill, clean-up and/or cleaning of tank and the delivery driver shall report the incident to onsite agency personnel immediately.

- 3.25.1.5. Overfills - Delivery personnel shall unload product at a reasonable pace and rate to allow the overfill protection device (flapper valve) to perform its function. Over filling of the tank will require the Contractor to return to the site, pump out the overfill and clean out the manhole. All costs associated with correcting the overfill will be the Contractor sole responsibility. Violations of this requirement shall be reported to the State of New Hampshire Department of Environmental Services.
- 3.25.1.6. The requesting agency will do everything possible to prevent over ordering, although if a tank is unable to take the full amount ordered, the ordering agency will attempt to place the fuel at another location where said Contractor has a contract at no additional cost to the State.
- 3.25.1.7. Emergencies - Contractor further agrees to deliver in less time in case of emergencies to the best of its ability. If delivery requirements are not met, the buyer reserves the right to purchase elsewhere, charging any additional costs back to the original Contractor.
- 3.25.1.8. The State reserves the right to make additions or deletions to the list of delivery points and to increase or decrease the estimated quantity of fuel, as it may deem necessary, during the contract period.
- 3.25.1.9. The use of a private carrier to make deliveries does not relieve the Contractor from the responsibility of meeting the delivery requirements stated herein.
- 3.25.1.10. Contractor may utilize other distributors for supply and/or delivering Premium Ultra Low Sulfur Diesel or Gasoline, with prior written approval from the Administrator of the Bureau of Purchase and Property. Such approval will not warrant any increase in the State's purchasing price.
- 3.25.1.11. Contractor guarantees to be the base supplier if necessitated by imposition of the State of federal allocation plans.
- 3.25.1.12. Contractor is responsible for replacement of any State property that is damaged by their employees.
- 3.26. DELIVERY - TANK CONTAMINATION:
- 3.26.1. If the Contractor delivers a fuel product to the wrong tank and that delivery causes contamination between 2 different products (IE diesel fuel and gasoline etc.), the Contractor shall take the following steps to correct the situation:
- 3.26.1.1. The Contractor that delivered the product to the wrong tank shall contact the agency owning the fuel tank to convey the situation as soon as the Contractor becomes aware of the situation
- 3.26.1.2. The Contractor shall then pump out the total contents of the contaminated tank, both existing product and the newly delivered product
- 3.26.1.3. It shall be the Contractor's responsibility and cost to properly dispose of the contaminated fuel
- 3.26.1.4. The Contractor shall clean the tank
- 3.26.1.5. The Contractor shall replace the total volume of the product pumped out charging the State for only the original volume requested to be delivered

3.26.1.6. The Contractor shall be physically and financially responsible for the pumping, cleaning, and replacing of the fuel product

3.26.1.7. The Contractor shall work without delay to remedy the error so the fuel tank may be put back in service ASAP.

3.27. DELIVERY - SAFETY REQUIREMENTS AND PROCEDURES:

3.27.1. All fuel delivery personnel will adopt the following safety procedures when making deliveries to any State site:

3.27.1.1. Exercise caution when maneuvering to avoid damage to containment walls

3.27.1.2. Inspect tank, fittings, and liquid level indicator prior to filling

3.27.1.3. Place drip pans under all hose fittings prior to loading or unloading

3.27.1.4. Block truck wheels before starting to load or unload

3.27.1.5. Remain with the vehicle while loading or unloading

3.27.1.6. Drain loading or unloading line to storage tank when loading or unloading is complete

3.27.1.7. Verify that all drain valves are closed before disconnecting loading or unloading lines

3.27.1.8. Inspect vehicle before departure to be sure all loading or unloading lines have been disconnected & closed

3.27.1.9. Immediately report any leakage or spillage to the onsite personnel.

3.27.1.10. In a case where the leak, spill or overfill takes place at a DOT fuel distribution location, in addition to reporting the incident to onsite personnel, delivery personnel will contact said agency immediately @ 603-271-6862 (24/7/365).

3.27.1.11. Delivery personnel will shut off all electrical devices (cellular phones, pagers, etc.) while unloading product.

3.27.1.12. Delivery personnel shall clean the manhole and/or spill containment devices (i.e., spill bucket) of any product they may have spilled during delivery.

3.28. DELIVERY SLIPS:

3.28.1. Delivery slips shall be left at each delivery location. Delivery slip shall indicate all data stated below, at a minimum:

3.28.2. The quantity of product delivered

3.28.3. Description of product delivered

3.28.4. Date of delivery

3.28.5. Tank I.D. number (if available)

3.28.6. Delivery location, agency, and physical address

3.28.7. Delivery driver shall make reasonable effort to obtain signature by agency or interested party; if no one is available to sign, driver shall sign delivery slip to include date and time

3.28.8. Dip reading both before and after delivery, measured in inches

3.28.9. Inches of water in tank before after delivery

- 3.28.10. Driver's signature
- 3.28.11. Truck Number
- 3.28.12. Bill of Lading #
- 3.28.13. Consignee name and address

3.29. BILL OF LADING:

3.29.1. The Bill of Lading (BOL) included with the delivery slip shall provide the following information, at a minimum:

- 3.29.1.1. The quantity of product delivered in gallons. (GROSS & NET)
- 3.29.1.2. Driver Name
- 3.29.1.3. Bill of Lading Number
- 3.29.1.4. Description of product lifted
- 3.29.1.5. For On-Road Premium Ultra Low Sulfur Diesel description shall include terminology that signifies the product listed is "premium"
- 3.29.1.6. Product temperature
- 3.29.1.7. Product gravity
- 3.29.1.8. If drop is a split load, handwritten information indicating where the remaining fuel went
- 3.29.1.9. Product code equating to the description of the product lifted.
- 3.29.1.10. Date of product lifted
- 3.29.1.11. Terminal name, address, and telephone
- 3.29.1.12. Carrier name lifting product from terminal
- 3.29.1.13. Consignee name and address

3.30. OBLIGATIONS AND LIABILITY OF THE CONTRACTOR

- 3.30.1. The Contractor shall provide all product/services strictly pursuant to, and in conformity with this contract which resulted from RFB 2614-23.
- 3.30.2. It is the responsibility of the Contractor to maintain this State contract and New Hampshire Contractor Registration with up-to-date contact information.
- 3.30.3. Additionally, all updates i.e., telephone numbers, contact names, email addresses, W9, tax identification numbers are required to be current through a formal electronic submission to the Bureau of Purchase and Property at [https://das.nh.gov/purchasing/vendorregistration/\(S\(a0f2cy55qhdeas45jpya5i45\)\)/welcome.aspx](https://das.nh.gov/purchasing/vendorregistration/(S(a0f2cy55qhdeas45jpya5i45))/welcome.aspx)
- 3.30.4. The Contractor shall agree to hold the State 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.

3.31. DEPARTMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

3.31.1. 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.

3.32. CONFIDENTIALITY & CRIMINAL RECORD

3.32.1. 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.

**EXHIBIT C
METHOD OF PAYMENT**

4. CONTRACT PRICE

- 4.1. The Contractor shall provide the items specified in Exhibit B in the amount not to exceed the Price Limitation of \$35,804,575.50; 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.
- 4.2. Line-Item prices identified in this Agreement shall remain firm for the entire term of the contract and shall be in US dollars and include delivery and all other costs. Special charges, surcharges (including credit card transaction fees), or fuel charges of any kind (by whatever name) may not be added on at any time. Unless otherwise specified in purchase orders, contractor shall deliver all goods/products F.O.B. DESTINATION, which means delivered to a State agency's receiving facility or other designated point as specified in this contract or subsequent purchase orders without additional charge. No charge for packing, shipping, or for any other purpose will be allowed over and above the price specified in this Agreement. Shipments shall be made to arrive at the destination at a satisfactory time for unloading during receiving hours.

5. PRICING STRUCTURE:

MARK-UP PRICING TABLE

COUNTY	MARKUP OVER OPIS COMBINED GASOLINE & DIESEL			MARKUP OVER OPIS BIODIESEL
	CONVENTIONAL T/T GAS	REFORMULATED T/T GAS	PREMIUM T/T DIESEL	PREMIUM B5 T/T BIODIESEL
COOS PRICE S	0.1442	0.1442	0.0592	0.3592
ESTIMATED ANNUAL USAGE	178,000	178,000	202,000	202,000
GRAFTON PRICE S	0.1442	0.1442	0.0592	0.3592
ESTIMATED ANNUAL USAGE	218,000	218,000	299,000	299,000

Contractor Initials *[Signature]*
Date *11/20/13*

CARROLL PRICE S	0.1442	0.1442	0.0592	0.3592
ESTIMATED ANNUAL USAGE	105,000	105,000	136,000	136,000
BELKNAP PRICE S	0.1442	0.1442	0.0592	0.3592
ESTIMATED ANNUAL USAGE	179,000	179,000	98,000	98,000
SULLIVAN PRICE S	0.1442	0.1442	0.0592	0.3592
ESTIMATED ANNUAL USAGE	75,000	75,000	70,500	70,500
CHESHIRE PRICE S	0.1442	0.1442	0.0592	0.3592
ESTIMATED ANNUAL USAGE	90,000	90,000	73,000	73,000
MERRIMACK PRICE S		0.0642	0.0292	0.3592
ESTIMATED ANNUAL USAGE		548,000	291,000	291,000
HILLSBOROUGH PRICE S		0.0642	0.0292	0.3592
ESTIMATED ANNUAL USAGE		190,000	145,000	145,000
STRAFFORD PRICE S		0.0642	0.0292	0.3592
ESTIMATED ANNUAL USAGE		200,000	176,000	176,000
ROCKINGHAM PRICE S		0.0642	0.0292	0.3592
ESTIMATED ANNUAL USAGE		255,000	278,500	278,500

Contractor Initials *ma*
Date 11/20/02

6. INDEX PRICING REFERENCE:

6.1. Cost mark-ups identified in section 5 above are fixed rates that are added to OPIS "Oil Price Daily" rate for the day of the fuel type that was delivered listed in table below:

Type of Fuel	OPIS Index Pricing Explanation
CONVENTIONAL GASOLINE	Contractor Index Pricing for gasoline fuel based on the UNBRANDED New York, NY LOW price as posted in the Unleaded Regular 87 Octane column of the Gasoline Prices section of the OPIS "Oil Price Daily," in effect on the date of delivery.
REFORMULATED GASOLINE	Contractor Index Pricing for gasoline fuel based on the UNBRANDED Boston, MA LOW price as posted in the Unleaded Regular 87 Octane column of the Gasoline Prices section of the OPIS "Oil Price Daily," in effect on the date of delivery.
ADDITIVE PREMIUM ULTRA LOW SULFUR DIESEL (ON-ROAD)	Contractor must offer mark-ups for diesel fuel based on the Portsmouth, NH ULSD PREM. LOW price as posted in the Daily Petroleum Prices section of the OPIS "Oil Price Daily", in effect on the date of delivery.

7. CONTRACTOR'S BALANCE OF PRODUCT LINE ITEMS:

7.1. The items herein include the items most commonly purchased by State. During the term of this contract, the State may purchase other items in relation to conventional/Reformulate Gasoline, Premium Diesel, and B5 Biodiesel from the Contractor's Balance of Product Line. All items ordered shall include all shipping/charges as specified above in "4. contract price".

8. MINIMUM ORDERS

8.1. There will be no minimum order regardless of quantity or dollar value associated with this contract.

9. INVOICE

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

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

10. PAYMENT

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

Contractor Initials MC
Date 11/30/23

EXHIBIT D

RFB 2614-23 is incorporated herein.

EXHIBIT E

Contractor's Bid Response is incorporated herein.

Contractor Initials
Date 1/30/22

Colonial Pipeline Company

PRODUCT SPECIFICATIONS
 CONVENTIONAL REGULAR GASOLINE BLENDSTOCK (CBOB)
 FOR BLENDING WITH 10% DENATURED FUEL ETHANOL
 (92% PURITY) AS DEFINED IN ASTM D4806

3.3.1

Cancels Previous Issues of A grades

This CBOB may not be combined with any other CBOB except CBOB having the same requirement for oxygenate type and amount.
 All parameters must be met after blending with denatured fuel ethanol unless noted.

ALL A GRADE REQUIREMENTS (SEGREGATED AND FUNGIBLE)

Product Property	ASTM Test Method	Test Results		Note
		Minimum	Maximum	
Octane RON	D2699	Report		
MON	D2700	82.0		
(R+M)/2		87.0		
Oxygen Content, weight %	[C] D4815 , D5599		0.1	1,2,7
RVP (psi)	D5191			3
Grades				
A1,1A			8.8	
A2,2A			10.0	
A3,3A			12.5	
A4,4A			14.5	
A5,5A			15.5	

A1,1A, the RVP of this blendstock/gasoline for oxygenate blending does not exceed 7.8 psi
 A2,2A, the RVP of this blendstock/gasoline for oxygenate blending does not exceed 9.0 psi
 Gasoline designed for gasoline-ethanol blends in accordance with 40 CFR 80.27(d)(2)
 Suitable for the special RVP provisions for ethanol blends that contain 9 and 10 vol % ethanol.
 The use of this gasoline to manufacture a gasoline-ethanol blend containing anything other than between 9 and 10 volume percent ethanol may cause a summertime RVP violation.

Heavy Metals are not allowed to be present.

Additive requirements/restrictions - refer to section 3.2.

This is a base gasoline, not for sale to the ultimate consumer.

Any gasoline exhibiting an offensive odor and/or poses a personal health hazard will not be accepted for shipment.

Any gasoline containing more than 0.50 wt. % of dicyclopentadiene will not be accepted for shipment.

The referee method will be based on a gas chromatograph test.

Delivery test results may vary by the smaller of ASTM reproducibility for a given test or any test tolerance as allowed by state or EPA regulations at the point of delivery.

Colonial Pipeline Company

PRODUCT SPECIFICATIONS
 CONVENTIONAL REGULAR GASOLINE BLENDSTOCK (CBOB)
 FOR BLENDING WITH 10% DENATURED FUEL ETHANOL
 (92% PURITY) AS DEFINED IN ASTM D4806

3.3.2

Cancels Previous issues of A grades
FUNGIBLE ONLY REQUIREMENTS:

Product Property	ASTM Test Method	Test Results		Note
		Minimum	Maximum	
Benzene (vol%)	D3606		3.8	
Color			Undyed	
Corrosion (Cu) 3 hrs @122°F (50°C)	D130		1	
Corrosion (Ag) 3 hrs @122°F (50°C)	[C] D7667 D7671		1	
Doctor test	D4952		Negative (sweet)	5
or				
Mercaptan sulfur, wt.%	D3227		0.002	
Solvent Washed Gum mg/100 ml	D381		4	
Gravity °API at 60°F	[C] D287 D1298 , D4052	Report		7
Oxidation stability-minutes	D525	240		7
Phosphorous, gms/gal	D3231		0.004	
Sulfur (ppmw)	D2622		80	8
	or equivalent			
Nace Corrosion	TM0172	B+ (Origin)		7
Volatility:				
Driveability Index	D4814		See Chart	
Distillation, °C (°F) @ %Evap.	D86			
Vapor/Liquid Ratio (V/L), °C (°F) @ 20	D5188 (See Note 6)			6

Grades	Driveability Index	10 vol%		50 vol%		90 vol%	End Pt.	V/L
		Max	Min	Max	Min	Max	Max	Min
A1,A2	1250	70(158)	66(150)	121(250)		190(374)	221(430)	50 (122)
A3	1230	60(140)	66(150)	116(240)		185(365)	221(430)	47(116)
A4	1220	55(131)	66(150)	113(235)		185(365)	221(430)	42(107)
A5	1200	50(122)	66(150)	110(230)		185(365)	221(430)	39(102)

- All A grades may not contain oxygenates, such as ethers and alcohols. The use of non-hydrocarbon blending components in these grades is prohibited.
- Refer to test methods published in 40 CFR Chapter 1, Part 80.46. Alternative aromatics and oxygenates test methods, ASTM D1319 and ASTM D 4815, may be used according to federal and state regulations.
- For products blended to meet EPA or state imposed summer VOC requirements, tests must be performed in accordance with the procedures described in 40 CFR, Part 80.
- ~~4. Reserved~~
- ~~5. 4. Mercaptan Sulfur waived if fuel is negative by Doctor test.~~
- ~~6. 5. Computer and Linear methods may be used to determine V/L value. [C] D5188 will be the referee method~~
- ~~7. 6. Specifications must be met before blending of denatured fuel ethanol.~~
- ~~8. 7. Refer to 40 CFR Part 80.195 (d)(2). Alternative sulfur test methods, ASTM D 5453 and D 7039, may be used according to federal and state regulations.~~
8. Colonial will accept test methods results that are listed in ASTM D4814 for all tests. Test methods listed in the table above are considered referee methods by Colonial Pipeline. Referee methods apply for any dispute.
9. Use of these grades is controlled by the RVP calendar.

Colonial Pipeline Company

3.5.1

PRODUCT SPECIFICATIONS
REFORMULATED REGULAR GASOLINE BLENDSTOCK (RBOB)
FOR BLENDING WITH 10% DENATURED FUEL ETHANOL
(92% PURITY) AS DEFINED IN ASTM D4806

Cancels Previous Issues of F grades

This RBOB may not be combined with any other RBOB except RBOB having the same requirement for oxygenate type and amount.

All parameters must be met after blending with denatured fuel ethanol unless noted.

ALL F GRADE REQUIREMENTS (SEGREGATED AND FUNGIBLE)

Product Property	ASTM Test Method	Test Results		Note
		Minimum	Maximum	
Octane RON	D2699	Report		
MON	D2700	82.0		
(R+M)/2		87.0		
Benzene (vol%)	D3606		1.30	
Oxygen Content, weight %	D5599 (See Note)			1,2,7,8
Aromatics (vol%)	D5769 (See Note)		50	2
E200 (vol%)	D86	30	70	
E300 (vol%)	D86	70	100	
Olefins (vol%)	D1319 [C], D6550		25	
Sulfur (ppmwt)	D2622		80	9
Non-VOC Controlled Requirements				
RVP (psi)	D5191			3
Grades				
F3,3F (Non-VOC Controlled)			11.5	
F4,4F (Non-VOC Controlled)			13.5	
F5,5F (Non-VOC Controlled)			15.0	
VOC Controlled Requirements				
(Grades F1,F2,1F,2F, only)				
RVP (psi)	D5191		Report	2 3
Emissions Performance Reductions (%)				
Region 1 (Grades F1,1F)	Origin:		-28.0%	4 11
	Delivery:		-25.0%	
Region 2 (Grades F2,2F)	Origin:		-26.4%	11
			-25.4%	
	Delivery:		-23.4%	

Colonial Pipeline Company

PRODUCT SPECIFICATIONS
 REFORMULATED REGULAR GASOLINE BLENDSTOCK (RBOB)
 FOR BLENDING WITH 10% DENATURED FUEL ETHANOL
 (92% PURITY) AS DEFINED IN ASTM D4806

3.5.2

Cancels Previous Issues of F grades
FUNGIBLE ONLY REQUIREMENTS:

Product Property	ASTM Test Method	Test Results		Note
		Minimum	Maximum	
Color			Undyed	
Corrosion (Cu) 3 hrs @122°F (50°C)	D130		1	
Corrosion (Ag) 3 hrs @122°F (50°C)	[C] D7667 , D7671		1	
Doctor test	D4952		Negative (sweet)	5
or				
Mercaptan sulfur, wt. %	D3227		0.002	
Solvent Washed Gum mg/100 ml	D381		4	
Gravity °API at 60°F	[C] D287, D1298 , D4052	Report		7
Oxidation stability-minutes	D525	240		7
Phosphorous, gms/gal	D3231		0.004	
Nace Corrosion	TM0172	B+ (Origin)		7
Volatility:				
Driveability Index	D4814		See Chart	
Distillation, °C (°F) @ %Evap.	D86			
Vapor/Liquid Ratio (V/L), °C (°F) @ 20	D5188 (See Note 6)			6

Grades	Driveability		10 vol%		50 vol%		90 vol%	End Pt.	V/L
	Index	Max	Min	Max	Min	Max	Max	Max	Min
F1,F2	1250	70(158)	66(150)	121(250)			190(374)	221(430)	50(122)
F3	1230	60(140)	56(150)	116(240)			185(365)	221(430)	47(116)
F4	1220	55(131)	66(150)	113(235)			185(365)	221(430)	42(107)
F5	1200	50(122)	66(150)	110(230)			185(365)	221(430)	39(102)

NOTES (Apply to Fungible and Segregated):

Heavy Metals are not allowed to be present.

Additive requirements/restrictions - refer to section 3.2.

This is a base gasoline, not for sale to the ultimate consumer.

Any gasoline exhibiting an offensive odor and/or poses a personal health hazard will not be accepted for shipment.

Any gasoline containing more than 0.50 wt. % of dicyclopentadiene will not be accepted for shipment.

The referee method will be based on a gas chromatograph test.

1. All F grades may not contain oxygenates, such as ethers and alcohols. The use of non-hydrocarbon blending components in these grades is prohibited.

2. Refer to test methods published in 40 CFR Chapter 1, Part 80.46. Alternative aromatics and oxygenates test methods, ASTM D1319 and ASTM D 4815, may be used according to federal and state regulations.

3. For products blended to meet EPA or state imposed summer VOC requirements, tests must be performed in accordance with the procedures described in 40 CFR, Part 80.

Delivery test results may vary by the smaller of ASTM reproducibility for a given test or any test tolerance as allowed by state or EPA regulations at the point of delivery.

Colonial Pipeline Company

3.5.3

PRODUCT SPECIFICATIONS
REFORMULATED REGULAR GASOLINE BLENDSTOCK (RBOB)
FOR BLENDING WITH 10% DENATURED FUEL ETHANOL
(92% PURITY) AS DEFINED IN ASTM D4806

Cancels Previous Issues of F grades

NOTES [N]CONTINUED (Apply to Fungible and Segregated):

4. Emissions reductions must be calculated using EPA guidelines.
5. Mercaptan Sulfur waived if fuel is negative by Doctor test.
6. Computer and Linear methods may be used to determine V/L value. [C] ~~D5188~~ will be the referee method
7. Specifications must be met before blending of denatured fuel ethanol.
8. Oxygen content must meet a minimum of 1.7 wt.% and a maximum of 4.0 wt.% after blending of denatured fuel ethanol.
9. Refer to 40 CFR Part 80.195 (d)(2). Alternative sulfur test methods, ASTM D 5453 and D 7039, may be used according to federal and state regulations.
10. Woodbury and Linden facilities will only allow shipments of region 2 fuels.
Any Region 1 fuels shipped downstream of Aberdeen will be comingled with region 2 fuels
11. Refer to Colonial's current RVP schedule for cycle numbers
- [N] 12. Colonial will accept test methods results that are listed in ASTM D4814 for all tests. Test methods listed in the table above are considered referee methods by Colonial Pipeline. Referee methods apply for any dispute.
- [N] 13. Use of these grades is controlled by the RVP calendar.

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 DENNIS K. BURKE, INC. is a Massachusetts Profit Corporation registered to transact business in New Hampshire on November 17, 1981. 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: 9912

Certificate Number: 0005851458

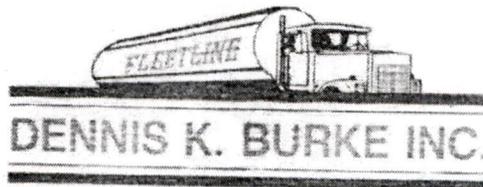


IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 26th day of August A.D. 2022.

A handwritten signature in black ink, appearing to read "D. Scanlan", is written over a faint circular stamp.

David M. Scanlan
Secretary of State



**Minutes of Meeting of the Board of Directors
Of
Dennis K. Burke Inc**

November 30, 2022

A meeting of the Board of Directors of Dennis K. Burke Inc. was held at the office of the Company in Taunton, MA on November 30, 2022. Edmund F. Burke, Jr. was present in Taunton and Edmund Burke was connected via telephone.

The purpose of the meeting was to identify and confirm that the following individuals are authorized to sign and execute contracts, bonds, or other obligations on behalf of Dennis K. Burke Inc.:

- Edmund F. Burke - Chairman
- Edmund F. Burke, Jr - President
- Joseph Cote - Chief Supply and Business Development Officer
- Dan Hill - Chief Operating Officer
- Mark Pszeniczny - Sales Manager
- Ryan Downey - Controller
- Neal Finklestein - Tax Manager

It was voted that the above employees are authorized to act and sign on behalf of Dennis K. Burke Inc. There being no further business to discuss, motion was made and seconded to adjourn.

Edmund F. Burke, Jr. President

FLEETLINE
LUBRICANTS





CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
03/22/2022

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 Aon Risk Services Central, Inc. Chicago IL Office 200 East Randolph Chicago IL 60601 USA	CONTACT NAME: PHONE (A.C. No. Ext): (866) 283-7122 FAX (A.C. No.): (800) 363-0105 E-MAIL ADDRESS:																						
	INSURED Dennis K. Burke, Inc. 555 Constitution Drive Taunton MA 02780 USA	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A:</td> <td>Zurich American Ins Co</td> <td>16535</td> </tr> <tr> <td>INSURER B:</td> <td></td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Zurich American Ins Co	16535	INSURER B:			INSURER C:			INSURER D:			INSURER E:			INSURER F:	
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COVERAGES **CERTIFICATE NUMBER:** 570092110486 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			GLO463738611	04/01/2022	04/01/2023	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BAP 4637387-11	04/01/2022	04/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION						EACH OCCURRENCE AGGREGATE
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC463738511	04/01/2022	04/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER 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)

CERTIFICATE HOLDER**CANCELLATION**

State of New Hampshire, Administrative Services, Bureau of Purchase & Property Attn: Ryan Aubert 25 Capitol Street, Room 102 Concord NH 03301 USA	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 <i>Aon Risk Services Central Inc.</i>
--	--

Holder Identifier :

Certificate No : 570092110486

STATE OF NEW HAMPSHIRE BID TRANSMITTAL LETTER

Date: 11/22/22

Company Name: Dennis K. Burke
Address: 555 Constitution Dr.
Taunton, MA 02780

To: Point of Contact: Ryan Godin
Telephone: (603)-271-3146
Email: NH.Purchasing@dgs.nh.gov

RE: Bid Invitation Name: Fuel, Gasoline and Diesel (On-Road Premium)
Bid Number: **2614 -23**
Bid Posted Date (on or by): **11/15/2022**
Bid Closing Date and Time: **11/22/2022@ 2:00 PM (EST)**
Dear **Ryan Godin**:

[insert name of signor] Joseph Cote, on behalf of Dennis K. Burke, 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 # **2614 -23** for Fuel, Gasoline and Diesel (On-Road Premium) 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 21-1:1-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 21-1:1-c within the past year.

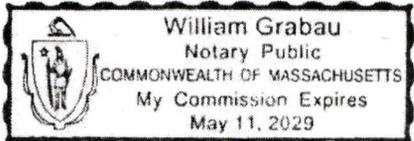
Authorized Signor's Signature Joseph Cote Authorized Signor's Title VP Supply Chain

NOTARY PUBLIC/JUSTICE OF THE PEACE

COUNTY: Bristol STATE: MA ZIP: 02780

On the 17 day of November, 2022, personally appeared before me, the above named Joseph Cote in his/her capacity as authorized representative of DKB INC, known to me or satisfactorily proven, and took oath that the foregoing is true and accurate to the best of his/her knowledge and belief.

In witness thereof, I hereunto set my hand and official seal.
William Grabau
(Notary Public/Justice of the Peace)



My commission expires: MAY 11, 2029 (Date)

Contractor Initials rc
Date 11/22/22

**REQUEST FOR BID FOR FUEL, GASOLINE AND DIESEL (ON-ROAD PREMIUM) FOR
THE STATE OF NEW HAMPSHIRE**

PURPOSE:

The purpose of this bid invitation is to establish a contract for supply and delivery of Fuel, Gasoline and Diesel (On-Road Premium) to the State of New Hampshire with product list and requirements indicated in the SCOPE OF WORK and OFFER sections of this bid invitation, in accordance with the requirements of this bid invitation and any resulting contract.

INSTRUCTIONS TO VENDOR:

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

BID SUBMITTAL:

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

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

BID INQUIRIES:

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

Questions shall be submitted by E-mail to Ryan Godin at the following address:

Ryan.M.Godin1@DAS.NH.Gov

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

BID DUE DATE:

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

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

ADDENDA:

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

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

TIMELINE:

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

11/15/2022	Bid Solicitation distributed on or by
11/18/2022	Last day for questions, clarifications, and/or requested changes to bid
11/22/2022	2:00 PM (EST) Bid Closing
12/01/2022	Implementation of Contract

TERMS OF SUBMISSION:

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

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

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

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

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

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

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

CONTRACT TERM:

The term of the contract shall commence on December 1, 2022 or upon approval of the Governor and Executive Council, whichever is later, through November 30, 2025, a period of approximately Three (3) years.

The contract may be extended for up to an additional two (2) 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 Governor and Executive Council

CONTRACT AWARD:

Award(s) will be made to the responsible Vendor(s) meeting the criteria established in this RFB and providing the lowest total delivered price for each county. There is the potential to award three (3) contracts per county (one gas, one diesel and one biodiesel) should the individual product category pricing be lower than combined pricing for the county. Contracts will be awarded to the Vendor(s) with the lowest total delivered **fixed price or index based** price per county as stated in the offer section of this solicitation, at the discretion of the State. This decision shall be made during the award process. The State reserves the right not to award locations with fixed prices or any product not deemed in the best interest of the State. The state shall be the sole determining factor in this decision process. The State reserves the right to reject any or all bids or any part thereof and add/delete

locations to the contract price. If an award is made it shall be, in the form of a State of New Hampshire Contract(s).

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

NOTIFICATION AND AWARD OF CONTRACT(S):

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

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

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

LIABILITY:

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

PUBLIC DISCLOSURE OF BID OR PROPOSAL SUBMISSIONS:

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

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

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

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

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

If a request is made to the State by any person or entity to view or receive copies of any portion of a proposal and if disclosure is not prohibited under NH RSA 21-G:37 or any other applicable law or regulation, bidders acknowledge and agree that the State may disclose any and all portions of the proposal or related materials which is not marked as confidential. In the case of bids, proposals or related materials that contain portions marked confidential, the State shall assess what information it believes is subject to release; notify the bidder that the request has been made; indicate what, if any, portions of the proposal or related material shall not be released; and notify the bidder of the date it plans to release the materials. The State is not obligated to comply with a bidder's designation regarding confidentiality. The State shall have no obligation to advise a bidder that an individual or entity is attempting to electronically access, or has been referred to, materials which have been made publicly available on the State's web sites.

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

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

TERMINATION:

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

VENDOR CERTIFICATIONS:

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

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

VENDOR CERTIFICATIONS:

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

- **STATE OF NEW HAMPSHIRE VENDOR APPLICATION:** To be eligible for a contract award, a Vendor must have a completed Vendor Application Package on file with the NH Bureau of Purchase and Property. See the following website for information on obtaining and filing the required forms (no fee): <https://DAS.NH.Gov/Purchasing>
- **NEW HAMPSHIRE SECRETARY OF STATE REGISTRATION:** To be eligible for a contract award, a Vendor that is a corporation, limited liability company, or other limited liability business entity (this excludes sole proprietors and general partnerships) must be registered to conduct business in the State of New Hampshire **AND** in good standing with the NH Secretary of State. Please visit the following website to find out more about the requirements for registration with the NH Secretary of State: <https://sos.nh.gov/corporation-division/>
- **CONFIDENTIALITY & CRIMINAL RECORD:** If Applicable, any employee or approved subcontractor of the Vendor who will be accessing or working with records of the State of New Hampshire shall be required to sign a Confidentiality and Non-Disclosure Agreement and a Release of Criminal Record Authorization Form. These forms shall be returned to the designated State agency prior to commencing any work.

- **CERTIFICATE OF INSURANCE:**

Prior to being awarded a contract the Vendor shall be required to submit proof of comprehensive general liability insurance coverage prior to performing any services for the State. The coverage shall insure against all claims of bodily injury, death or property damage in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Coverage shall also include State of New Hampshire workers' compensation insurance to the extent required by RSA Chapter 281-A.

BID PRICES:

Bid prices must be per gallon, in US dollars not to exceed 4 decimal places, and must include delivery and all other costs required by this bid invitation. Bid prices should result in prices that are no higher than those charged to the bidder's best/preferred customer. Special charges, surcharges, or fuel charges of any kind (by whatever name) may not be added on at any time. Any and all charges must be built into your offered prices at the time of the bid. Vendors **are** allowed to pass on any discounts to the State of New Hampshire. Any invoices with pricing lower than the awarded bid price shall be considered a discount.

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

FEES AND TAXES:

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

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:

CONTRACT CONSUMPTION – TRACKING / REPORTING:

The successful bidder(s) shall submit consumption reports on a monthly basis to the Purchasing Agent and DOT – Fuel Distribution. The consumption report shall include transaction history for the previous month and in total since contract inception. The reports shall be received no later than the 10th day of the month for the previous month's activity. The report shall include the following data at a minimum:

- County
- Delivery Agency
- Physical location with Tank ID (if available)
- Date of delivery
- Gallons delivered
- Product type
- Total gallons delivered to date by product, delivery type (TT/PT) per county

Reports shall be emailed to: Brian Pike - Fuel Distribution Manager
DOT – Bureau of Fuel Distribution
Email: Brian.Pike@dot.nh.gov

AND: Ryan Godin– Purchasing Agent
Bureau of Purchase and Property
Ryan.M.Godin1@das.nh.gov

Quarterly 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 the end of each calendar quarter to The Bureau of Procurement & Support Services, Ryan Godin and sent electronic to Ryan.M.Godin1@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:

Invoices shall be submitted to the corresponding State agency after completion of work/acceptance of delivery.

TERMS OF PAYMENT:

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

VENDOR RESPONSIBILITY:

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

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

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

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

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

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

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

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

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

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

[https://das.nh.gov/purchasing/vendorregistration/\(S\(0fzcv55qhaeqs45jpyq5145\)\)/welcome.aspx](https://das.nh.gov/purchasing/vendorregistration/(S(0fzcv55qhaeqs45jpyq5145))/welcome.aspx)

IF AWARDED A CONTRACT:

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

Section 1.3 Contractor Name

Contractor Initials

Date

11/23/2023

- 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.

Successful bidder(s) at their sole expense shall furnish, upon request by a using agency, an analysis from an approved laboratory of the fuel delivered to any State location.

PRODUCT TESTING:

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

A. GASOLINE SPECIFICATIONS:

During the term of the contract, State agencies shall order **REFORMULATED UNLEADED REGULAR AND / OR CONVENTIONAL UNLEADED REGULAR GASOLINE.**

1. The minimum octane number of regular unleaded gasoline supplied under this contract shall be **87**.
2. Octane to be determined by the following method: $\frac{R \& M}{2}$ R = RESEARCH
M = MOTOR METHOD
3. Specifications for reformulated or conventional gasoline are attached hereto. Supplied product(s) will meet specifications as written, or the most recent revised ASTM specification.
4. **Reformulated unleaded regular gasoline** SHALL meet the attached specifications for reformulated unleaded regular fuel, Grades F2, 2F.
5. **Conventional unleaded regular gasoline** SHALL meet the attached specifications for conventional unleaded regular fuel, Grades A1, 1A.

SPECIAL CONDITIONS

If at any time during this contract or any extension thereof, the State of New Hampshire is no longer required to purchase reformulated unleaded regular gasoline for the counties of **Merrimack, Strafford, Rockingham and Hillsborough**, the tank locations within those counties may revert to the purchase of conventional unleaded regular gasoline and the existing specifications and pricing format for conventional unleaded regular gasoline shall apply.

Reformulated (R) unleaded regular gasoline may be substituted for conventional unleaded regular gasoline for the locations requiring conventional (C) unleaded regular gasoline. Vendor(s) may offer pricing for Reformulated unleaded regular gasoline to be utilized in place of conventional unleaded regular gasoline (SEE **BID OFFER SECTION** on page 20).

B. ULTRA LOW SULFUR DIESEL – PREMIUM ON-ROAD SPECIFICATIONS:

During the term of the contract, State agencies shall order **ULTRA LOW SULFUR DIESEL - PREMIUM ON ROAD FUEL**. Bidder shall be required to utilize both specifications to produce the required product they are offering.

SPECIFICATION - ULTRA LOW SULFUR DIESEL

The Premium Ultra Low Sulfur #2 blend stock, i.e. premium ultra-low sulfur diesel fuel supplied shall meet ASTM D975-17, grade No. 2-D \$15 specifications, or the most recent revised specification.

SPECIFICATION - PREMIUM (ADDITIVE) ON ROAD FUEL REQUIREMENTS

In addition to the ultra-low sulfur diesel specifications stated within, this bid shall also require the following "premium" characteristics. These characteristics shall be adopted and included in the ultra-low sulfur component of the premium ultra-low diesel delivered.

Premium Ultra Low Diesel Fuel - All diesel fuels identified on retail dispensers, bills of lading, invoices, shipping papers, or other documentation with terms such as premium, super, supreme, plus, or premier must conform to the following requirements:

1. **Cetane Number** - A minimum cetane number of 45.0 or as determined by the most recent ASTM Standard Test Method D613.
2. **Low Temperature Operability** - A cold flow performance measurement which meets the most recent ASTM D 975-17 tenth percentile minimum ambient air temperature charts and maps for New Hampshire by either the most recent ASTM Standard Test Method D 2500 (Cloud Point), or most recent ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1 through March 31 of each year.
3. **Thermal Stability** - A minimum reflectance measurement of 80% or as determined by the most recent ASTM Standard Test Method D6468 (180 min, 150 °C).
4. **Lubricity** - A maximum wear scar diameter of 520 microns or as determined by the most recent ASTM D6079.

ULTRA LOW SULFUR DIESEL PREMIUM ON ROAD FUEL PROGRAM – TEMPERATURE PROTECTION (ALL DOT FUEL DISTRIBUTION LOCATIONS):

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

- October 1st to December 14th – **ULTRA LOW SULFUR DIESEL - PREMIUM ON ROAD FUEL** winter diesel with temperature protection characteristics that meet or exceed +8° F cloud points.
- December 15th to March 31st – **ULTRA LOW SULFUR DIESEL - PREMIUM ON ROAD FUEL** winter diesel with temperature protection characteristics that meet or exceed -5° F cloud points

PRODUCT COMPLIANCE DOCUMENTATION – SULFUR CONTENT

In compliance with State of New Hampshire Department of Environmental Services ENV-A-1607.01 or most recent revision, Awarded vendors shall be required to supply a statement of compliance with regard to the sulfur content of the diesel fuel products delivered to the State of New Hampshire. The Statement shall be on company letterhead and read: "**the sulfur content of the fuel as delivered does not exceed the state or federal standard for that fuel**" and signed by a duly authorized agent of that company. These documents shall be kept on file with the bid offers for the term of the contract. The

state currently maintains a list of these documents on file and after the bid award process has been completed, the State will notify any awarded vendor to supply the required document if it is not previously on file.

DELIVERY POLICY, PROCEDURES, REQUIREMENTS

DELIVERY:

State agencies shall contact the successful vendor(s) and coordinate deliveries. All deliveries shall be made in accordance with the following requirements:

1. Deliveries **shall be made within 48 hours after receipt** of order, regardless of method of delivery. Weekends and holidays are NOT exempt from the stated delivery schedule and it is understood that bidders are a 365-day delivery operation. The use of a private carrier to make delivery does not relieve the successful bidder from the responsibility of meeting the delivery requirement. Requesting agency and contractor may pre-arrange deliveries beyond the 48 hour requirement to suit delivery needs, at the mutual agreement of contractor and requesting agency.
2. **DIPPING TANKS** - State agencies require all vendors to have their delivery personnel dip tanks before and after deliveries and note said readings on delivery slips. Dip stick readings will be accurate within 1/8" inch per State of New Hampshire Department of Environmental Services Oil and Remediation Program Rule "Env-Or 406.03" or the most recent revision.
3. **DELIVERY SLIP / BOL** - All deliveries shall include a bill of lading and delivery slip. Delivery Slip and BOL Requirements are stated further within the delivery policy of this solicitation. Failure to leave delivery documentation at each delivery site may result in delayed payment(s) for said deliveries.
4. **SPILLS/ OVERFILLS** - Most underground tanks are equipped with 4" tight fill adapters. Delivery trucks should be equipped with appropriate hardware to seal delivery-lines to prevent over-fills and/or spills. Should a spill occur during delivery, or should vendor deliver the wrong product to tank(s), the vendor assumes all responsibility and liability for the spill, clean-up and/or cleaning of tank and the delivery driver shall report the incident to onsite agency personnel immediately.
5. **OVERFILLS** - Delivery personnel shall unload product at a reasonable pace and rate to allow the overfill protection device (flapper valve) to perform its function. Over filling of the tank will require the vendor to return to the site, pump out the overfill and clean out the manhole. All costs associated with correcting the overfill will be the vendors sole responsibility. Violations of this requirement shall be reported to the State of New Hampshire Department of Environmental Services.
6. The requesting agency will do everything possible to prevent over ordering, although if a tank is unable to take the full amount ordered, the ordering agency will attempt to place the fuel at another location where said vendor has a contract at no additional cost to the State.
7. **EMERGENCIES** - Bidder further agrees to deliver in less time **in case of emergencies** to the best of its ability. If delivery requirements are not met, the buyer reserves the right to purchase elsewhere, charging any additional costs back to the original vendor.
8. The State reserves the right to make additions or deletions to the list of delivery points and to increase or decrease the estimated quantity of fuel, as it may deem necessary, during the contract period.
9. The use of a private carrier to make deliveries **does not** relieve the successful vendor(s) from the responsibility of meeting the delivery requirements stated herein.
10. Successful vendor(s) may utilize other distributors for supply and/or delivering Premium Ultra Low Sulfur Diesel or Gasoline, with prior written approval from the Administrator of the Bureau of Purchase and Property. Such approval will not warrant any increase in the State's purchasing price.
11. Successful vendor(s) guarantees to be the base supplier if necessitated by imposition of the State of federal allocation plans.
12. Successful vendor(s) is responsible for replacement of any State property that is damaged by their employees.

DELIVERY - TANK CONTAMINATION:

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

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

DELIVERY - SAFETY REQUIREMENTS AND PROCEDURES:

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

1. Exercise caution when maneuvering to avoid damage to containment walls
2. Inspect tank, fittings and liquid level indicator prior to filling
3. Place drip pans under all hose fittings prior to loading or unloading
4. Block truck wheels before starting to load or unload
5. Remain with the vehicle while loading or unloading
6. Drain loading or unloading line to storage tank when loading or unloading is complete
7. Verify that all drain valves are closed before disconnecting loading or unloading lines
8. Inspect vehicle before departure to be sure all loading or unloading lines have been disconnected & closed
9. Immediately report any leakage or spillage to the onsite personnel.
10. In a case where the leak, spill or overfill takes place at a **DOT fuel distribution location**, in addition to reporting the incident to onsite personnel, delivery personnel will contact said agency immediately @ 603-271-6862 (24/7/365).
11. Delivery personnel will shut off all electrical devices (cellular phones, pagers, etc.) while unloading product.
12. Delivery personnel shall clean the manhole and/or spill containment devices (i.e., spill bucket) of any product they may have spilled during delivery.

DELIVERY SLIPS:

Delivery slips shall be left at each delivery location. Delivery slip shall indicate all data stated below, at a minimum:

1. The quantity of product delivered
2. Description of product delivered
3. Date of delivery
4. Tank I.D. number (if available)
5. Delivery location, agency and physical address
6. Delivery driver shall make reasonable effort to obtain signature by agency or interested party; if no one is available to sign, driver shall sign delivery slip **to include date and time**
7. Dip reading both before and after delivery, measured in inches
8. Inches of water in tank before after delivery
9. Drivers signature
10. Truck Number
11. Bill of lading #
12. Consignee name and address

BILL OF LADING:

The Bill of Lading (BOL) included with the delivery slip shall provide the following information, at a minimum:

1. The quantity of product delivered in gallons, (GROSS & NET)
2. Driver Name
3. Bill of Lading Number
4. Description of product lifted
 - For On-Road Premium Ultra Low Sulfur Diesel description shall include terminology that signifies the product lifted is "premium"
5. Product temperature
6. Product gravity
7. If drop is a split load, hand written information indicating where the remaining fuel went
8. Product code equating to the description of the product lifted.
9. Date of product lifted
10. Terminal name, address and telephone
11. Carrier name lifting product from terminal
12. Consignee name and address

SOLICITATION PRICING FORMATS: APPLIES TO ALL PRODUCT CATEGORIES

INDEX BASED FORMAT - consists of 2 components:

Index: Price of the product, on the date of delivery, as provided by the OPIS "Oil Price Daily" posting. See "Index Pricing Reference" Section below for Oil Price Daily posting per product.

Mark-up: Cost added to index to cover vendor's costs and profit. Mark-up shall be based per gallon and is not to exceed 4 places to the right of decimal (example \$0.0125).

1. Bidder(s) shall offer a mark-up price per gallon for the county they are bidding on that shall remain firm for the contract term specified, unless the State exercises the lock price option.
2. The mark-up price shall be based on the "ESTIMATED" volume stated for the product being bid and price shall **include** all taxes, fees, delivery cost and all other charges.
3. Thereafter, bidder(s) will base their pricing during the term of the contract on the "Oil Price Daily" price on the date of delivery, plus mark-up.
4. Mark-up prices bid by the successful bidder(s) shall remain firm for the product category for the term of the contract and any extension thereof and shall include delivery and all other charges, unless the State exercises the lock price option.

- Fuel price postings may increase or decrease during the term of the contract in accordance with the "Oil Price Daily" postings. Mark-up prices offered by the bidder shall be added to the index price posted for the **date of delivery** to achieve the **total** price per gallon for the product delivered.

INDEX PRICING REFERENCE:

A. REFORMULATED GASOLINE:

Bidder(s) must offer mark-ups for gasoline fuel based on the **UNBRANDED Boston, MA LOW** price as posted in the Unleaded Regular 87 Octane column of the Gasoline Prices section of the OPIS "Oil Price Daily," in effect on the date of delivery. See enclosed sample dated 11/09/22 (\$2.8659 was the low post for **Boston, MA**).

B. CONVENTIONAL GASOLINE:

Bidder(s) must offer mark-ups for gasoline fuel based on the **UNBRANDED New York, NY LOW** price as posted in the Unleaded Regular 87 Octane column of the Gasoline Prices section of the OPIS "Oil Price Daily," in effect on the date of delivery. See enclosed sample dated 11/09/22 (\$2.9341) was the low post for **New York, NY**).

C. ADDITIVE PREMIUM ULTRA LOW SULFUR DIESEL (ON-ROAD):

Bidder(s) must offer mark-ups for diesel fuel based on the **Portsmouth, NH ULSD PREM. LOW** price as posted in the Daily Petroleum Prices section of the OPIS "Oil Price Daily", in effect on the date of delivery. See enclosed sample dated 11/09/22 (\$4.9449 was the low post for **ULSD PREM**).

INDEX BASED PRICING VERIFICATION:

Agencies shall verify pricing from "Oil Price Daily" through the Bureau of Purchase and Property. Please contact Ryan Godin at (603)271-3146 or Ryan.M.Godin1@das.nh.gov for assistance.

STATE OPTION FOR CONTRACT CONVERSION FROM INDEX BASED FORMAT TO "LOCK" FIXED PRICE

At any point during the term of any contract(s) issued from this solicitation & in the States opinion, if the market is in a favorable position, the State **may** choose to "lock" a fixed price per gallon for an amount of gallons that is approximate to the usage over a certain period of time (ex. 12 months diesel usage). If this option is exercised the following parameters shall apply:

THE STATE SHALL, HAVE, BE OR PROVIDE

- The State shall provide awarded vendor(s) with a lock price or range at its discretion.
- The state may change the "lock" price or range in accordance with budget limitations OR anticipated market direction at its discretion.
- Any change in the States "lock" price range would be communicated via email on a "contract fixed price lock option document".
- If the state should exercise the lock option, it would lock for a minimum usage over the period of one (1) year starting on the date of the lock.
- The fixed price lock agreement shall commence on deliveries effective the date both parties (state and vendor) sign the contract fixed price lock option document.
- If or when the market provides the "lock" price, the vendor shall email the offer to Ryan Godin, Purchasing Agent, at Ryan.M.Godin1@das.nh.gov
- At this point, the State may choose to accept or reject the "Lock" price tendered. The State may also choose to change the "lock" price, or range, if a downward price trend is anticipated in the market.
- The time frame window provided for a State decision to "Lock" or "Pass" is **6 business hours** starting

from the time the email offer is received by the State via email. The clock in the computer receiving the email shall prevail as official time.

Offers tendered by the vendor that are received after 12:00 noon EST shall have the 6 hour window extended to the next business day (excluding weekends) for the time difference to equal 6 hours total. The vendor would be required to guarantee the fixed price agreed to for a minimum usage over the period of one (1) year.

9. The established basis of **business hours** shall be from 8:00 AM EST to 4:00 PM EST Monday through Friday, non-state holidays, (see page 9 for State observed holidays).

THE VENDOR SHALL, HAVE, BE OR PROVIDE

1. Upon notification of the State's chosen "Lock" price or range, the vendor shall follow market trends and direction and notify the State when or if the "Lock" price or range is available.
2. A performance bond shall be required for 25% of the guaranteed volume (**see performance bond requirements in FIXED PRICE section below**).
3. The vendor will incorporate all costs including fuel purchase, delivery, taxes, fees, margin and the performance bond cost for the guaranteed gallons into the "Lock" price.

FIXED PRICE FORMAT: Offers shall be **PER GALLON** and shall not exceed **4 places** to the right of the decimal (example .0125). Contract(s) will be awarded as stated in the "Contract Award" section of this solicitation. The following criteria shall apply:

1. Fixed price offers shall be for the volume usage over 12 months, and/or 24 months. If a contract is awarded by fixed price the State reserves the right to award the contract for 12 months, or 24 months.
2. If a fixed price contract is awarded for the 24 month option, the State reserves the right to use future volume at the same fixed price.
3. If at any time the fixed price usage volume has been depleted the State, at its discretion, may purchase fuel from the "rack" plus a markup and transportation price - the mark-up shall be, at a maximum, the mark-up prices offered in response to this RFB by the successful vendor(s) for the county and product, **or** negotiate a new fixed price for a volume of gasoline and/or diesel.

GUARANTEED USAGE

The quantities indicated in the offer section of this bid invitation are the State of New Hampshire's estimated annual requirements. The State of New Hampshire will guarantee a maximum of 85% of the quantities indicated in the total volumes by county, as stated in the offer section of this solicitation.

LOCATION ADDITIONS / DELETIONS DURING CONTRACT TERM

1. In the case of a location deletion during the term of the contract and any extension, the locations guaranteed volume would be consumed under the contract.
2. In the case of a location addition during the term of the contract and any extension, the bidders guaranteed volume established before the added location would be honored and the added location may be added at the fixed price applicable to the product and county.

REQUIREMENT – PERFORMANCE BOND

1. If a fixed price award is made, a performance bond shall be required for 25% of the guaranteed volume (**Bond value shall be the total of all offered fixed price X guaranteed gallons**) of the contract awarded as stated by county and category in the location section stated within this solicitation. The state shall notify the apparent low bidders of their awarded volumes. The completed performance bond shall be received at the Bureau of purchase and property within 10 days after the award of the contract. The cost of the performance bond shall be the bidder's sole responsibility. If awarded bidder fails to provide proof of bond as indicated below, the awarded bidder will be considered in default of the contract.

2. If the State chooses to award a fixed price contract based on 24 months, a 25% performance bond is required for 12 months' worth of fuel usage and the bond must be renewable for the following 12 months of usage. Proof of bond must be provided within 10 days after the first 12 month bond has expired.
3. In addition to the other required documents, Bidders shall supply a letter from their chosen bond company, insurance company or other bond source on the bond source letterhead that states the bond source will supply a bond in the value of the bidders awarded value in dollars should the State award a fixed price contract, or choose to convert to fixed price in the future.
4. The bond letter and this document (signed) shall be submitted with the vendor's response to RFB 2614-23.
5. The bonding source shall utilize a value of the fixed or "lock" price (ex., \$2.15 US per gallon) of diesel, reformulated or conventional gasoline. The value per gallon shall be multiplied by the "guaranteed" sub-total quantity (85% of annual) per section per county for all counties and sections awarded.
6. **BOND VALUE EXAMPLE**

COOS COUNTY CATEGORY B	151,300
CARROLL COUNTY CATEGORY B	89,250
GRAFTON COUNTY CATEGORY B	185,300
TOTAL	425,850 GALLONS x \$2.15 x 25.00% = \$228,894.38

FIXED PRICE & DEFAULT PRICING ONCE GUARANTEED "LOCK" GALLONS ARE DEPLETED – STATES OPTION

(Only Applicable if Contract is initially awarded based on Fixed/Lock Price)

1. In order to effectively utilize all the guaranteed gallons contracted for, the state reserves the right to transfer any quantity of guaranteed gallons from one county to another as long as the 2 counties affected are under the same contract.
2. If there is a price per gallon difference between the 2 counties. The State shall pay the higher of the 2 contract prices for the guaranteed gallons transferred.
3. Bidder(s) is required to guarantee up to 30% "carry forward" on the guaranteed volumes.
4. The State of New Hampshire will grant a contract extension to the vendor(s) for the period required to utilize any "carry forward" quantities at the end of the initial contract period.
5. In the event that a vendor delivers a load of fuel at the end of the contract via automatic delivery or requested by the agency and the delivered gallons exceed the balance of the guaranteed gallons for that county, the State will pay the contracted price for the load.
6. Any deliveries made following the exhaustion of the guaranteed gallons for a county (unless #1 above applies) shall be priced and paid as described below.

DEFAULT PRICING ONCE GUARANTEED GALLONS ARE DEPLETED (STATE OPTION):

1. The state shall use the same "Index Based Format" as specified under the Solicitation Pricing Format section beginning on page 16.
2. The index price reference shall be as provided in the "Index Based Format" section, by product type.
3. The mark-up shall be, at a maximum, the mark-up prices offered in response to this RFB by the successful vendor(s) for the county and product.

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

OBLIGATIONS AND LIABILITY OF THE VENDOR:

The successful Vendor shall perform all work and furnish all 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.

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.

RETURNED GOODS:

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

Vendor hereby offers to furnish to State of New Hampshire agencies and institutions and to any political sub-division and authorized non-profit organization wishing to participate, Premium On-Road Diesel and/or Gasoline, in accordance with all of the requirements of this bid invitation at the prices provided in the attached **RFB 2614-23 Offer Sheet** for the entire contract term and any extension.

The attached offer section has been divided into ten (10) counties with each county having up to two (2) options for the specified products: fixed price OR index based price. This bid contains all the locations requiring Diesel and/or Gasoline delivery at the time this bid was assembled.

BID OFFER FORMAT – DECIMAL PLACES:

Offer prices are to be PER GALLON and must include delivery and all other costs required by this bid invitation. Special charges, surcharges, or fuel charges of any kind (by whatever name) may not be added on at any

time. Offered price per gallon shall not exceed **4 places** to the right of the decimal (example .0125). Bidders shall round up to four places to accommodate the current state 5 digit OPC fee.

BIDDER OPPORTUNITY/STATE LOCATIONS:

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

1. Locations are listed individually but grouped and awarded by county and fuel type, as listed in the **DELIVERY LOCATIONS** attachment.
2. Bidders may bid on as many counties as they feel they can service effectively. Bidders must have the capability to deliver to all locations within a county if bidding on that county.
3. Although Belknap, Sullivan, Grafton, Cheshire, Coos, and Carroll counties do not require Reformulated Gasoline, vendor(s) may offer pricing for reformulated gasoline in these counties. One (1) award for gasoline will be made per county (i.e. there will not be awards for conventional and reformulated gasoline in the same county).

ADDITIONAL INFORMATION:

Vendor(s) shall provide terminal locations they expect to use throughout the term of the contract and the product codes with associated descriptions belonging to such terminals.

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>Joseph Cote</u> Contact Person	<u>617-884-7800</u> Local Telephone Number	<u>800-289-2875</u> Toll Free Telephone Number
<u>bids@burkeoil.com</u> E-mail Address	<u>www.burkeoil.com</u> Company Website	
<u>Dennis K. Burke, Inc.</u> Vendor Company Name	<u>555 Constitution Drive Taunton, MA 02780</u> Vendor Address	

DELIVERY LOCATIONS:

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

ATTACHMENTS:

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

- Attachment A: Sample P-37 Form
- Attachment 1: RFB 2614-23 OFFER SECTION and DELIVERY LOCATIONS
- Attachment 2: Gasoline Specifications
- Attachment 3: OPIS Pricing Reference Samples
- Attachment 4: Sample Tax Exempt Certificate - FUELS

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

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

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 265 329 523 700

Passcode: W6RF8C

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

Or call in (audio only)

[+1 603 931 4944, 464742960#](#) United States, Concord

Phone Conference ID: 464 742 960#

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

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ATTACHMENT A

SAMPLE FORM TO BE COMPLETED UPON AWARD

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

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

AGREEMENT

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

GENERAL PROVISIONS

I. IDENTIFICATION.

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

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

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

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

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

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

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

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

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

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

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

7. PERSONNEL.

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

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

9. TERMINATION.

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

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

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

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

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

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

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

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

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

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

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

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

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

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

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: 11/21/2022

ADDENDUM # 01 TO BID INVITATION # 2614-23

DATE OF BID CLOSING: 11/22/2022

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

FOR: Fuel, Gasoline and Diesel (On-Road Premium)

Clarifications and Questions during the inquiry period:

1. When I look at Attachment 1, are the highlighted blue cells the ones you are looking for pricing on across gas, diesel and biodiesel fuel types?
 - a. Vendor is responsible for pricing by county offer section expect for the grey highlighted that don't have any estimated usage.
2. Is the volume the same for diesel and biodiesel as you are comparing pricing or is your current fuel operation inclusive of those fuel types and that gallon volume for each?
 - a. Per RSA 228:24-a II: The commissioner shall only purchase diesel fuel that contains at least 5 percent biodiesel, as defined in RSA 362-A:1-a, 1-b, except if such fuel is unavailable or is more costly than 100 percent petroleum diesel, in which case such purchase shall be at the discretion of the commissioner. The commissioner, when using such discretion, shall consider at a minimum any savings related to equipment maintenance and longevity that may result from biodiesel use. The commissioner is encouraged to purchase diesel fuels containing up to 20 percent biodiesel when such fuels are compatible with the vehicles served at given fuel depots. Any biodiesel blend purchased by the commissioner shall be made available as provided for in paragraph I.
 - b. So in other words, we are looking for the price that the vendor can supply diesel in each county as well as B5 in each county. If the price for B5 is equal to or lower to diesel, then by law we have to purchase the B5 product. If B5 is not the same price or more expensive, then we purchase diesel.
3. How would I best obtain a copy of this current contract?
 - a. Link for current contract: [8002259 Gasoline Diesel Fixed.pdf \(nh.gov\)](#)

PURCHASING AGENT: Ryan Godin

E:Mail: 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 Dennis K. Burke, Inc. **ADDRESS** 555 Constitution Drive

BY  Taunton, MA 02780

(this document must be signed)

Joseph Cote

TEL. NO. 800-289-2875

(please type or print name)

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