

STATE OF NEW HAMPSHIRE BID TRANSMITTAL LETTER

Date: March 3, 2011

Company Name: _____

Address: _____

To: Point of Contact: **ALAN HOEMANN**

Telephone: (603)-271-2550

Fax: (603) 271-7564

Email: prchweb@nh.gov

RE: **Bid Invitation Name: CONTRACT SERVICES COLLECTION AND RECYCLING OF WASTE OIL AND ANTI-FREEZE**

Bid Number: BID 1278-11

Bid Opening Date and Time: MARCH 15, 2011 @ 1:30 PM

Dear **ALAN HOEMANN**:

[Insert name of signor] _____, on behalf of [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 # 1278-11 for **COLLECTION AND RECYCLING OF WASTE OIL AND ANTI-FREEZE** Services Contract(s) at the price(s) quoted herein in complete accordance with the bid.

_____ is authorized to legally obligate _____
Print Signor Name Print Company Name

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 120 days from the Bid submission deadline of JANUARY 4, 2011.
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.

Vendor's official point of contact is: _____

Telephone: _____ Email: _____ Fax: _____

Authorized Signor's Name Printed _____

Authorized Signor's Signature _____

COUNTY: _____ STATE: _____ ZIP: _____

NOTARY PUBLIC / JUSTICE OF THE PEACE

On the ____ day of _____, 2011, There appeared before me, the state and county foresaid a person who satisfactorily identified _____ and acknowledge that he executed this document indicated above.

In witness thereof, I hereunto set my hand and official seal.

(Notary Public / Justice of the Peace)

My commission expires: _____ (Date)

**REQUEST FOR BID FOR CONTRACT(S) TO
PROVIDE COLLECTION AND RECYCLING OF WASTE OIL AND ANTI-FREEZE SERVICES FOR
THE STATE OF NEW HAMPSHIRE**

PURPOSE

This is a request for bid issued by the Department of Administrative Services (DAS) Division of Plant and Property Management, to establish a contract(s) for **COLLECTION AND RECYCLING OF WASTE OIL AND ANTI-FREEZE** services for all State facilities in accordance the requirements of this bid invitation and any resulting contract(s).

ELIGIBLE PARTICIPANTS

Political subdivisions (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 at their discretion. In doing so, they are entitled to the prices established under the contract(s). However, they are responsible for their association with the successful vendor. The State of New Hampshire assumes no liability of any kind between the successful vendor and any of these entities.

SPECIFICATIONS

Complete specifications required are detailed in **SCOPE OF SERVICES** in this bid. In responding to the bid, the vendor shall address all requirements for information as outlined.

VENDOR RESPONSIBILITY

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

TERMS OF SUBMISSION

All material received in response to this bid shall become the property of State and will not be returned to the Vendor. Regardless of the Vendors selected, 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.

Complete bids shall be filled out on original bid format. Vendors may submit additional paperwork with pricing, but all pricing shall be on bid and in the State's format.

LIABILITY

The State shall not be held liable for any costs incurred by the vendor in the preparation of their bid or for work performed prior to contract(s) issuance.

STATE OF NEW HAMPSHIRE VENDOR APPLICATION

Vendor shall have a completed Vendor Application and W-9 Form on file with the NH Bureau of Purchase and Property. Forms may be downloaded from our website at: <http://www.admin.state.nh.us/purchasing>

CERTIFICATE OF INSURANCE

Vendors awarded a contract(s) shall be required to submit proof of Comprehensive General Liability prior to performing any services for the State. The coverage shall have appropriate riders against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000.00 per claim and \$2,000,000.00 per incident. Coverage shall also include automobile liability and workers' compensation.

CONTRACT(S) TERMS AND CONDITIONS

The vendor's signature on a bid submitted in response to this bid guarantees that all of the State of New Hampshire's Terms and Conditions are accepted by the Vendor

The form contract(s) P-37 included herein 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 form of contract(s), which is to be completed by incorporating the service requirements and price conditions established by the vendor's offer.

The term of the contract shall be from the date of award through **MARCH 31, 2014**, a period of approximately 3 year(s) to a maximum of 5 years. The contract may be extended for additional periods of time thereafter under the same terms, conditions and pricing structure upon the mutual agreement between the successful vendor and the Bureau of Purchase and Property, with the approval of the Commissioner of the Department of Administrative Services.

PUBLIC DISCLOSURE OF BID SUBMISSIONS:

Generally, all bids and proposals (including all materials submitted in connection with them, such as attachments, exhibits and addenda) become public information upon the effective date of a resulting contract or purchase order. However, to the extent consistent with applicable state and federal laws and regulations, as determined by the State, including, but not limited to, RSA Chapter 91-A (the "Right-to-Know" Law), the State will attempt to maintain the confidentiality of portions of a bid 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 must be clearly designated in a manner that draws attention to the designation. The State shall have no obligation to maintain the confidentiality of any portion of a bid, proposal or related material, which is not so marked. Marking an entire bid, proposal, attachment or sections thereof confidential without taking into consideration the public's right to know will neither be accepted nor honored by the State. Notwithstanding any provision of this RFP/RFB to the contrary, pricing will be subject to public disclosure upon the effective date of all resulting contracts or purchase orders, regardless of whether or not marked as confidential. If a bid or proposal results in a purchase order or contract, whether or not subject to approval by the Governor and Executive Council, all material contained in, made part of, or submitted with the contract or purchase order shall be subject to public disclosure.

If a request is made to the State by any person or entity to view or receive copies of any portion of a bid or proposal, and if disclosure is not prohibited under RSA 21-I:13-a, vendors acknowledge and agree that the State may disclose any and all portions of the bid, 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 will assess what information it believes is subject to release; notify the bidder that the request has been made; indicate what, if any, portions of the bid, proposal or related material will 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.

By submitting a bid or proposal, the vendor 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.

TERMINATION:

The State of New Hampshire shall have the right to terminate the contract(s) at any time by giving 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:** Vendor **SHALL** have a completed Vendor Application and Alternate W-9 Form which **SHALL** be 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): <http://admin.state.nh.us/purchasing/vendor.asp>
- **NEW HAMPSHIRE SECRETARY OF STATE REGISTRATION:** A bid award, in the form of a contract(s), will **ONLY** be awarded to a vendor who is registered to do business **AND** in good standing with the State of New Hampshire. Please visit the following website to find out more about the requirements for registration with the NH Secretary of State: <http://www.sos.nh.gov/corporate>.
- **CONFIDENTIALITY & CRIMINAL RECORD:** If Applicable, by the using agency, the vendor will have signed by each of employees or its approved sub-contractor(s), if any, working in the office or externally with the State of New Hampshire records a Confidentiality form and Criminal Record Authorization Form. These forms shall be returned to the individual using agency prior to the start of any work.

INVOICING:

Invoices shall be submitted after completion of work to the requesting agency. Payment shall be paid in full within thirty (30) days after receipt of invoice and acceptance of the work to the State's satisfaction.

BID INQUIRIES

All questions regarding this bid, including clarifications and proposed specification changes shall be submitted to ALAN HOFMANN, Purchasing Agent, Bureau of Purchase and Property, at alan.hofmann@nh.gov, or Telephone number: 603-271-2550. All requests shall be submitted five business days prior to bid opening date.

Vendor shall include complete contact information including the vendor's name, telephone number and fax number and e-mail address.

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 transmittal letter of this bid. Submissions received after the date and time specified will be marked as "Late" and will not be considered in the evaluation process.

A vendor's disclosure or distribution of Bids other than to DAS, Bureau of Purchase and Property will be grounds for disqualification. No more than one (1) bid per respondent should be submitted.

VENDOR(S) OPPORTUNITY:

Bidder(s) may also make site visits to any location they chose to bid on if applicable. Bidder(s) are responsible for having ascertained pertinent local conditions, such as equipment conditions, locations, accessibility and general character of the sites knowledge of conditions affecting delivery performance. The act of submitting a bid is to be considered in full acknowledgment that the Bidder(s) is familiar with the conditions and requirements of these specifications.

VENDOR(S) RESPONSIBILITY:

Read the entire bid invitation prior to filling it out. Complete the pricing information in the "Offer" section (the unit price is the price for the unit of purchase required by this bid invitation (i.e. each, case, box, etc.) and all other required information on your offer. The extension is the unit price multiplied by the quantity required by this bid invitation. Also complete the "Bidder Contact Information" section. Finally, complete the company information on the "General Conditions and Instructions" page of this bid invitation, then sign the bid in the space provided on that page.

All State of New Hampshire bid invitations and addenda to these bid invitations are advertised on our website at: <http://admin.state.nh.us/purchasing/index2.asp>

It is a prospective Bidder's responsibility to access our website to determine any bid invitation under which they wish to participate. It is also the Bidder(s)'s responsibility to access our website for any posted addendum.

The website is updated several times per day; it is the responsibility of the prospective Bidder(s) to access the website frequently to ensure no bidding opportunity or addenda are overlooked.

It is the prospective Bidder's responsibility to forward a signed copy (if the form has a signature block) of any addenda to the Bureau of Purchase and Property with the bid response.

INSTRUCTIONS TO VENDOR(S):

Read the entire bid invitation prior to filling it out. In the preparation of your bid response you shall:

- Complete the pricing information in the "Offer" section
- Complete all other required information on your offer
- Complete the "Bidder(s) Contact Information" section
- Complete the company information on the "General Conditions and Instructions" page, and sign the bid in the space provided on that page.

IF AWARDED A BID, YOU WILL BE REQUIRED TO complete the following sections of the attached agreement State of New Hampshire Form #P-37;

- Section 1.3 Contractor(s) Name
- Section 1.4 Contractor(s) Address
- Section 1.11 Contractor(s) Signature
- Section 1.12 Name & Title of Contractor(s) Signor
- Section 1.13 Acknowledgement
- Section 1.13.1 Signature of Notary Public or Justice of the Peace
- Section 1.13.2 Name & Title of Notary or Justice of the Peace

- Provide certificate of insurance with the minimum limits required as described above on Page 2.
- Provide a certificate of good standing from the NH Secretary of State or proof of your completion of and payment for the start of the registration process.

BID SUBMISSION:

This bid may have been delivered to you in a facsimile or web based format. Vendor shall return their signed complete hard copy or complete fax copy offers to the Bureau of Purchase and Property before the date and time above in "Bid Submission".

Submission of bid in its entirety via mail, fax (603-271-7564) or email (prchweb@nh.gov) to:
ALAN HOFMANN, Purchasing Agent
NH Bureau of Purchase and Property
25 Capitol Street - Room 102
Concord NH 03301

Bid responses shall be marked as:

State of New Hampshire BID 1278-11
Due Date: MARCH 15, 2011 @ 1:30 PM
COLLECTION AND RECYCLING OF WASTE OIL AND ANTI-FREEZE Services

AWARD:

The award will be made to the responsible bidder(s) meeting the criteria established in this RFB.

AWARDED BY COUNTY FOR A COMBINED TOTAL FOR WASTE OIL - THE HIGHEST PRICE PER GALLON (CREDIT) AND ANTI-FREEZE - THE LOWEST COST CHARGED PER GALLON (IF ANY)

The State reserves the right to reject any or all bids or any part thereof and add/delete locations to the contract price.

Any resulting contract(s) shall become effective on the date approved by the Commissioner of Department of Administrative Services for the State of New Hampshire.

NOTIFICATION AND AWARD OF CONTRACTS:

Bid results will not be given by telephone. For Vendors wishing to attend the bid opening: only the names of the vendors submitting responses will be made public. Specific response information will not be given out. Bid results will be made public after final approval of the contract(s) and shall be given by mail only if requested in writing and accompanied by a self-addressed, stamped business size envelope.

Bid results may also be viewed on our website at <http://www.state.nh.us/purchasing/bid.asp>.

SCOPE OF SERVICES:

The purpose of this bid is to provide all labor, tools, transportation, materials, equipment and permits as necessary to provide the required level of services as described herein. The scope of work shall include **COLLECTION AND RECYCLING OF WASTE OIL AND ANTI-FREEZE** at the locations and other agencies/locations as needed for the entire State of New Hampshire. **COLLECTION AND RECYCLING OF WASTE OIL AND ANTI-FREEZE** shall be completed in a reasonable time frame as mutually agreed upon with agency and vendor. The Vendor shall submit a proposed schedule to the state agency requesting services at each facility at least ten (10) days prior to each period.

Vendor may bid on one or more **COUNTIES** as listed within the offer section

All services performed under this Contract(s) shall be performed between the hours of 7:30 A.M. and 3:30 P.M. unless other arrangements are made in advance with the State. Any deviation in work hours shall be pre-approved by the Contract(s)ing Officer. The State requires ten-day advance knowledge of said work schedules to provide security and access to respective work areas. No premium charges will be paid for any off-hour work.

The Vendor agrees that any damage or injury to buildings, materials, equipment or to other property during the performance of this service will be repaired at their own expense.

The State shall require correction of defective work or damages to any part of the building or its appurtenances when caused by the Vendor's employees, equipment or supplies. The Vendor shall place in satisfactory condition all defective work and damages rendered thereby or any other damages incurred. Upon failure of the Vendor to proceed promptly with the necessary corrections, the State may withhold any amount necessary to correct all defective work or damages from payments to the Vendor.

The work staff shall consist of qualified persons completely familiar with the products and equipment they shall use. The Contract(s)ing Officer may require the Vendor to dismiss from the work such employees as deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work deemed by him to be contrary to the public interest or inconsistent with the best interest of security.

The Vendor or their personnel shall not represent themselves as employees or agents of the State.

While on State property, employees shall be subject to control of the State, but under no circumstances shall such persons be deemed to be employees of the State.

All personnel shall observe all regulations or special restrictions in effect at the State Agency.

The Vendor shall furnish all personnel with uniforms, which shall be neat and clean in appearance with picture identification that is visible at all times.

The Vendor's personnel shall be allowed only in areas where work is being performed. The use of State telephones is prohibited.

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.

1. THE VENDOR SHALL BE SOLELY RESPONSIBLE FOR THE COLLECTION AND RECYCLING/ DISPOSAL OF WASTE OILS AND ANTIFREEZE FROM EACH STATE AGENCY LOCATION.
2. THE VENDOR ASSUMES OWNERSHIP OF THE MATERIALS COVERED BY THIS CONTRACT AT THE TIME OF COLLECTION.
3. IT WILL BE THE RESPONSIBILITY OF THE VENDOR TO INSPECT EACH STATE PROVIDED WASTE CONTAINER AT EACH PICK UP FOR LEAKS, OR OVERFILLING AND TO REPORT VERBALLY TO THE STATE EMPLOYEE MONITORING THE COLLECTION. A NOTATION IS ALSO TO BE MADE ON THE COLLECTION SLIP.
4. A COLLECTION SLIP IS TO BE LEFT AT EACH LOCATION AND MUST SHOW THE NAME OF THE DRIVER, TYPE OF PRODUCT, AMOUNT IN GALLONS, AND BE SIGNED BY THE STATE EMPLOYEE MONITORING THE COLLECTION. AMOUNTS ARE TO BE DETERMINED BY STICKING BOTH THE STORAGE CONTAINER AND THE TRUCK CONTAINER WITH GALLONS COMPUTED BY STANDARD INDUSTRY PRACTICE.
5. THE STATE WILL PROVIDE STORAGE CONTAINERS AND KEEP OIL AND ANTIFREEZE SEPARATE.
6. THE VENDOR SHALL SCHEDULE COLLECTIONS DURING NORMAL STATE WORKING HOURS.

OBLIGATIONS and LIABILITY OF THE VENDOR

The Vendor shall do all the work and furnish all the materials, tools, equipment and safety devices necessary to perform in the manner and within the time hereinafter specified. Vendor shall complete the entire work to the satisfaction of the State and in accordance with the specifications herein mentioned, at the price herein agreed upon and fixed therefore. All the work, labor and equipment to be done and furnished under this contract(s), shall be done and furnished strictly pursuant to, and in conformity with the specifications described herein, and the directions of the State representatives as given from time to time during the progress of the work, under the terms of this contract(s) and also in accordance with contract(s) drawings.

The Vendor shall take all responsibility for the work under this contract(s); for the protection of the work; and for preventing injuries to persons and damage to property and utilities on or about the work. The vendor shall in no way be relieved of responsibility by any right of the State to give permission or issue orders relating to any part of the work; or by any such permission given on orders issued or by failure of the State to give such permission or issue such orders. The Vendor shall bear all losses resulting to the Owner on account of the amount or character of the work, or because of the nature of the area in or on which the work is done is differed from what was estimated or expected, or account of the weather, elements or other causes.

The Vendor agrees that any damage or injury to buildings, materials, and equipment or to other property during the performance of this service will be repaired at their own expense.

PERFORMING SERVICES

The Vendor will perform all services according to the requirements and specifications of this bid and the New Hampshire Department of Administrative Services.

OFFER The undersigned hereby offers to perform the services to the State of New Hampshire as specified at the prices quoted below, in complete accordance with general and detailed specifications included herewith.

**COUNTIES
COOS**

WASTE OIL

PRICE PER GALLON CREDIT FOR
BULK (100 GALLONS OR MORE)

\$ _____ CREDIT

WASTE OIL

PRICE PER GALLON CREDIT FOR
DRUMS

\$ _____ CREDIT

ANTI-FREEZE

\$ _____ PRICE PER GALLON (IF ANY)

=====

GRAFTON

WASTE OIL

PRICE PER GALLON CREDIT FOR
BULK (100 GALLONS OR MORE)

\$ _____ CREDIT

WASTE OIL

PRICE PER GALLON CREDIT FOR
DRUMS

\$ _____ CREDIT

ANTI-FREEZE

\$ _____ PRICE PER GALLON (IF ANY)

CARROLL**WASTE OIL**PRICE PER GALLON CREDIT FOR
BULK (100 GALLONS OR MORE)

\$ _____ CREDIT

WASTE OILPRICE PER GALLON CREDIT FOR
DRUMS

\$ _____ CREDIT

ANTI-FREEZE

\$ _____ PRICE PER GALLON (IF ANY)

SULLIVAN**WASTE OIL**PRICE PER GALLON CREDIT FOR
BULK (100 GALLONS OR MORE)

\$ _____ CREDIT

WASTE OILPRICE PER GALLON CREDIT FOR
DRUMS

\$ _____ CREDIT

ANTI-FREEZE

\$ _____ PRICE PER GALLON (IF ANY)

MERRIMACK**WASTE OIL**PRICE PER GALLON CREDIT FOR
BULK (100 GALLONS OR MORE)

\$ _____ CREDIT

WASTE OILPRICE PER GALLON CREDIT FOR
DRUMS

\$ _____ CREDIT

ANTI-FREEZE

\$ _____ PRICE PER GALLON (IF ANY)

BEKNAP**WASTE OIL**PRICE PER GALLON CREDIT FOR
BULK (100 GALLONS OR MORE)

\$ _____ CREDIT

WASTE OILPRICE PER GALLON CREDIT FOR
DRUMS

\$ _____ CREDIT

ANTI-FREEZE

\$ _____ PRICE PER GALLON (IF ANY)

STRAFFORD**WASTE OIL**PRICE PER GALLON CREDIT FOR
BULK (100 GALLONS OR MORE)

\$ _____ CREDIT

WASTE OILPRICE PER GALLON CREDIT FOR
DRUMS

\$ _____ CREDIT

ANTI-FREEZE

\$ _____ PRICE PER GALLON (IF ANY)

CHESHIRE**WASTE OIL**PRICE PER GALLON CREDIT FOR
BULK (100 GALLONS OR MORE)

\$ _____ CREDIT

WASTE OILPRICE PER GALLON CREDIT FOR
DRUMS

\$ _____ CREDIT

ANTI-FREEZE

\$ _____ PRICE PER GALLON (IF ANY)

HILLSBOROUGH**WASTE OIL**PRICE PER GALLON CREDIT FOR
BULK (100 GALLONS OR MORE)

\$ _____ CREDIT

WASTE OILPRICE PER GALLON CREDIT FOR
DRUMS

\$ _____ CREDIT

ANTI-FREEZE

\$ _____ PRICE PER GALLON (IF ANY)

ROCKINGHAM**WASTE OIL**PRICE PER GALLON CREDIT FOR
BULK (100 GALLONS OR MORE)

\$ _____ CREDIT

WASTE OILPRICE PER GALLON CREDIT FOR
DRUMS

\$ _____ CREDIT

ANTI-FREEZE

\$ _____ PRICE PER GALLON (IF ANY)

1.0 AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name		1.2 State Agency Address	
1.3 Vendor Name		1.4 Vendor Address	
1.5 Vendor Phone #	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contract(s)ing Officer for State Agency SAMPLE ONLY Successful vendor will be required to submit completed P37 prior to award.		1.10 State Agency Telephone Number	
1.11 Vendor Signature		1.12 Name and Title of Vendor Signatory	
1.13 Acknowledgement: State of _____, County of _____ On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature		1.15 Name and Title of State Agency Signatory	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: _____ On: _____			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

2. EMPLOYMENT OF VENDOR SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages Vendor identified in block 1.3 ("Vendor") to perform, and the Vendor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A 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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

3.2 If the Vendor commences the Services prior to the Effective Date, all Services performed by the Vendor prior to the Effective Date shall be performed at the sole risk of the Vendor; and in the event that this Agreement does not become effective, the State shall have no liability to the Vendor, including without limitation, any obligation to pay the Vendor for any costs incurred or Services performed. Vendor shall 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, and 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 terminate this Agreement immediately upon giving the Vendor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT(S) PRICE/PRICE LIMITATION/ PAYMENT

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

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

5.3 The State reserves the right to offset from any amounts otherwise payable to the Vendor 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 VENDOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Vendor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Vendor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Vendor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Vendor 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 If this Agreement is funded in any part by monies of the United States, the Vendor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Vendor further agrees to permit the State or United States access to any of the Vendor'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 Vendor shall at its own expense provide all personnel necessary to perform the Services. The Vendor 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 Vendor shall not hire, and shall not permit any subvendor 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 Contract(s)ing 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 Contract(s)ing 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 Vendor 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 Vendor 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 remedied, terminate this Agreement, effective two (2) days after giving the Vendor notice of termination;

8.2.2 give the Vendor 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(s) price which would otherwise accrue to the Vendor during the period from the date of such notice until such time as the State determines that the Vendor has cured the Event of Default shall never be paid to the Vendor;

8.2.3 set off against any other obligations the State may owe to the Vendor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ ACCESS/ CONFIDENTIALITY/ PRESERVATION.

9.1 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.

9.2 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.

9.3 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.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Vendor shall deliver to the Contract(s)ing 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(s) 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 A.

11. VENDORS RELATION TO THE STATE In the performance of this Agreement the Vendor is in all respects an independent Vendor, and is neither an agent nor an employee of the State. Neither the Vendor 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/SUBCONTRACT(S). The Vendor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Vendor without the prior written consent of the State.

13. INDEMNIFICATION. The Vendor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Vendor. 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 Vendor shall, at its sole expense, obtain and maintain in force, and shall require any subvendor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 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 Vendor shall furnish to the Contract(s)ing Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Vendor shall also furnish to the Contract(s)ing 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 fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contract(s)ing Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

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

15.2 To the extent the Vendor is subject to the requirements of N.H. RSA chapter 281-A, Vendor shall maintain, and require any subvendor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Vendor shall furnish the Contract(s)ing 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 Vendor, or any subvendor or employee of Vendor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. 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 Vendor.

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

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be 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.

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 provisions set forth in the attached EXHIBIT C 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 relating hereto.