



## **REQUEST FOR PROPOSAL**

### **2022-02-AUTOMATIC DOOR REPAIR AND REPLACEMENT SERVICES**

**April 15, 2022**

**Issued by:**



**New Hampshire  
Liquor Commission  
50 Storrs Street  
Concord, NH 03301**

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**TABLE 1: SCHEDULE**

The following table sets forth the Schedule for this Request for Proposal (“RFP”). The Schedule is subject to change at the sole discretion of the New Hampshire Liquor Commission (“NHLC”). The NHLC will post any changes on its official website, [https://www.nh.gov/liquor/public\\_notices.shtml](https://www.nh.gov/liquor/public_notices.shtml). Proposers are responsible for monitoring the website for changes.

<b><u>Events</u></b>	<b><u>Responsibility</u></b>	<b><u>Date</u></b>
Request for Proposals Issued	NHLC	Friday, April 15, 2022
Deadline to Submit Inquiries By Electronic mail to NHLC Issuing Officer	Potential Respondents	Friday, April 29, 2022 by 2:00 p.m.
Anticipated Response Date to Inquiries	NHLC	Friday, May 6, 2022 by 4:00 p.m.
Deadline for Submission of Sealed Proposals	Proposers	Friday, May 20, 2022 by 2:00 p.m.

## **PART I - GENERAL INFORMATION FOR PROPOSERS**

### **1. PURPOSE**

The NHLC seeks to procure automatic door repair and replacement services, as well as new door purchase and installation, at retail store locations throughout New Hampshire as needed. This RFP describes the project and the NHLC's requirements.

### **2. ISSUING OFFICER**

The Issuing Officer responsible for managing the RFP process and the sole point of contact is:

Ms. Janet Donnelly, Paralegal  
NH Liquor Commission  
50 Storrs Street  
Concord, NH, 03301  
(email: [janet.donnelly@liquor.nh.gov](mailto:janet.donnelly@liquor.nh.gov))

### **3. SCOPE OF WORK**

The scope of services shall include, but not limited to, the following:

The intent of this RFP is to obtain a contractor to provide automatic door repair and replacement services at the NHLC's various retail store locations throughout the state. This contractor will also install new doors as needed. Locations are listed in **Appendix B**; the listing of stores provided within is subject to change, if at any time a store is closed, opened, or relocated, that location shall be considered part of this contract.

**THIS CONTRACT CONSISTS OF FURNISHING ALL MATERIALS, EQUIPMENT, LABOR AND TRANSPORTATION NECESSARY TO PROVIDE THE SERVICES DESCRIBED.**

The NHLC's deliverables for this engagement consist of the following:

- A. Contractor must be able to provide door repair/replacement services at all NHLC retail outlet locations, which are located across the entire state of New Hampshire.
- B. Contractor must be able to provide and install new doors from **Nabco Entrances Inc.**, including fixed panels, automatic single and double sliders, and multi-panel telescoping doors at various NHLC retail outlet locations across the state.
- C. Contractor shall contact the Liquor Commission Maintenance Supervisor – Maurice Gerow, II for information regarding the types of doors used at the locations listed.
- D. Contractor must be able to repair Nabco model GT1175 and Nabco model GT8500 entry systems, which are currently in use at many NHLC locations, with original replacement parts. Contractor must also have the capability to repair other Nabco entry/exit systems as well as Stanley, Horton, and Besom brand sliders and swingers (entry and exit), which are in use at some of the NHLC's retail locations.

- E. Contractor must demonstrate that it has an adequate stock of automatic door parts that are subject to frequent replacement, located within a reasonable distance of where the work is to be performed.
- F. Contractor shall be available seven days per-week and on call 24 hours per-day in the event an emergency arises. For service calls, Contractor shall be expected to be at the NHLC store location for the repair service within 24 hours from the time of the call.
- G. Work shall consist of, but not be limited to, repairing or modifying existing doors and installing new or additional doors and related equipment.
- H. If requested by the NHLC, Contractor shall provide a signed scaled drawing of the relevant project either in CAD, .dwg format, or an SK version.
- I. Major repair services will require an estimate being submitted to the NHLC. The cost of providing the estimate will be at no charge to the NHLC.
- J. If any one-service call is estimated to be more than a total of \$500.00, Contractor must contact the Administrative Offices prior to any work being started. Contractor must provide the cost of materials and labor before authorizations will be given. In the case of an emergency where the contacts cannot be reached, the vendor must then contact the administrative offices at the earliest possible convenience.

#### **4. ADDITIONAL REQUIREMENTS**

- 4.1** All work shall be performed by skilled professionals and shall be executed in a workmanlike manner in accordance with the best standards and practices of the trade and shall be repaired in kind by skilled professionals of the trades involved at no additional cost to the NHLC.
- 4.2** Contractor shall complete all work and provide all materials, tools, equipment, and safety devices necessary to perform work in the proper manner within the time specified. Contractor shall complete the entire work to the satisfaction of the NHLC and in accordance with the specifications herein described, at the price agreed upon. All the work, labor, and equipment to be completed and provided under the contract, shall be completed and provided strictly pursuant to, and in conformity with the specifications described herein and any directions of the NHLC representatives as given from time to time during the progress of the work, under the terms of this Contract.
- 4.3** Contractor shall secure and pay for all permits, inspections and licenses necessary for the execution of the work.
- 4.4** Contractor must perform all work in such a manner as to minimize inconvenience to building occupants. Contractor shall determine the NHLC's normal working conditions and activities in progress and shall conduct the work in the least disruptive manner.
- 4.5** Contractor shall at its own expense, wherever necessary or required, provide safety devices and take such other precautions as may be necessary to protect life and property.

- 4.6** Contractor shall bear all losses resulting to them or to the NHLC due to any inadequacy in the quality of work performed or due to any error on the part of Contractor in its estimation of project requirements, or due to the weather, elements or other causes.
- 4.7** Unsatisfactory response to any of the listed services or requirements will be considered sufficient basis for immediate termination of the contract. The NHLC reserves the right to terminate this contract at any given time with a 10 day written notice.
- 4.8** Normal Working Hours: 8:00 AM to 5:00 PM, Monday through Friday. Other Hours: overtime, holidays, and weekends.
- 4.9** Upon arrival Contractor's personnel sign in with the manager or person in charge. After each scheduled or emergency call, before leaving the job site, contractor shall present a written summary of the work performed and obtain the NHLC's signature thereon (Time of day must be written in and manager must initial at time of arrival and departure).
- 4.10** Subcontracting any portion of the contract is not permitted without prior written approval from the NHLC. In the event the NHLC approves the use of subcontractors in performance of this contract, the prime contractor is not relieved of its responsibility and obligation to meet all the requirements of this agreement.
- 4.11** The State may require the Contractor to provide security clearance and/or background checks for any and all Contractor representatives or approved subcontractors that may complete work or be present during the completion of work in any NHLC facility.
- 4.12** The NHLC shall require correction of defective work or damages to any part of the building or its appurtenances when caused by the Contractor's employees, approved subcontractors, equipment or supplies. The Contractor shall correct all defective work and repair damages incurred. Upon failure of the Contractor to proceed promptly with the necessary corrections, the NHLC may withhold any amount necessary to correct all defective work or repair damages from payments to the Contractor.
- 4.13** Contractor's work staff shall consist only of qualified persons completely familiar with the products and equipment they will be required to use. The Contracting Officer may require the Contractor to dismiss from the work such employees as they deem incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed to be contrary to the public interest or inconsistent with the best interest of security.
- 4.14** Contractor's personnel shall not represent themselves as employees or agents of the State. While on the State of New Hampshire's 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 NHLC. Contractor's personnel shall be allowed only in areas where work is being performed. The use of State telephones by the Contractor or their personnel is prohibited.
- 4.15** Contractor shall provide employee picture identification badges identifying the company and name of each employee servicing the NHLC account. All contract employees, while servicing the NHLC, shall wear the identification badge.

## PART II - RFP TERMS AND INSTRUCTIONS

### 1. TYPE OF CONTRACT

Any contract resulting from this RFP shall be structured as a not-to-exceed contract.

### 2. RFP INQUIRIES AND RESPONSES

All inquiries concerning this RFP, including requests for clarifications, requests for changes to the RFP, and questions regarding New Hampshire Form P-37, which is attached to this RFP as **Appendix A**, shall be submitted via email to [janet.donnelly@liquor.nh.gov](mailto:janet.donnelly@liquor.nh.gov), who shall be the Issuing Officer and single point of contact for this RFP. Proposers shall not contact the Issuing Officer by phone. Proposers shall not contact the issuing officer after the close of the proposal inquiry period. **All inquiries must be received by the RFP Issuing Officer no later than 2:00 p.m. on Friday, April 29, 2022.** The NHLC may exercise its discretion in determining whether to provide an answer to inquiries received after the close of the proposer inquiry period.

The NHLC intends to issue responses to inquiries on or before the date specified in the Schedule; however, this date is subject to change at the NHLC's discretion. The NHLC may consolidate or paraphrase questions. The NHLC may amend this RFP at any time prior to the submission due date. Oral statements, representations, clarifications, or modifications shall not be binding upon the NHLC. The NHLC will post responses at: [https://www.nh.gov/liquor/public\\_notices.shtml](https://www.nh.gov/liquor/public_notices.shtml). Proposers are responsible for viewing updated information online before submitting a proposal.

### 3. STANDARD CONTRACT TERMS

The NHLC may consider modifications of State Form P-37. To the extent that a Proposer believes that exceptions to the P-37 are necessary, **the Proposer shall raise those issues during the RFP Inquiry and Response Period by requesting an exception to the provision at issue.** The NHLC will review requested exceptions and accept, reject, or note that it is open to negotiation of the proposed exception. The NHLC will provide notice to all potential Proposers of the exceptions that have been accepted or deemed negotiable. In no event is a Proposer to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this solicitation.

### 4. AMENDMENT TO THE RFP

The NHLC may amend this RFP at any time. The NHLC will post any amendments on its website: [https://www.nh.gov/liquor/public\\_notices.shtml](https://www.nh.gov/liquor/public_notices.shtml). In the event of an amendment, the NHLC may extend deadlines and/or invite submission of additional information. Proposers are responsible for checking the website periodically for any new information or amendments.

### 5. PROPOSAL FORMAT

Proposers must submit a complete response to this RFP using the format specified in Part III. An official authorized to bind the proposer to its proposal must sign the proposal.

### 6. PROPOSALS AND AWARDS; NON-EXCLUSIVE AGREEMENT

The NHLC intends to award a contract to one proposer. Notwithstanding the foregoing or any provision of this RFP to the contrary, the NHLC reserves the right, at any time and in its sole discretion, to reject any or all proposals, wholly or in part, and/or to award multiple contracts to one or more proposers, wholly or in part. A contractor will not retain any exclusive rights to provide the services and supplies described in this RFP.

## 7. **PROPOSAL SUBMISSION**

- A. **Proposal Submission Deadline:** Proposals must be submitted in hard copy marked “New Hampshire Liquor Commission, Response to RFP 2022-02-DOORS.” Proposals must be submitted to the NHLC no later than the Closing Date and Time in Table 1: *Schedule*. Any proposer that elects to mail its proposal must allow sufficient mail delivery time. The NHLC accepts no responsibility for mislabeled, damaged, or delayed mail. Proposals will not be accepted via email or facsimile transmission.

If due to inclement weather or any other cause, the location to which proposals are to be returned is closed on the Closing Date and Time in Table 1: *Schedule*, the deadline for submission shall be automatically extended until the next day the office is open, unless the respondents are otherwise notified. The NHLC will reject proposals not submitted by the Closing Date and Time or as otherwise extended.

- B. **Proposal Receipt:** A proposal will be considered received on the date and time of the NHLC’s receipt as officially documented by the NHLC.

C. **Proposal Information:**

- i. Proposals shall be delivered to the address below and identified on the envelope as:

Proposals: New Hampshire Liquor Commission  
ATTN: “Janet Donnelly, RFP 2022-02-DOORS”  
50 Storrs Street  
Concord, NH 03301

From: Company/Proposer Name  
Address of Proposer  
Phone No. Of Proposer  
Fax No. of Proposer  
Email Address of Proposer:

All Proposals submitted must consist of:

1. One (1) original (clearly identified as such) and three (3) copies of the “Technical Proposal,” including all required attachments; and
  2. One (1) original Cost Proposal in a **separate and sealed envelope** labeled “COST PROPOSAL.”
- ii. Proposers must provide all information requested in this RFP. If the Proposer’s response does not comply with the conditions for submittal to this RFP, the NHLC may reject it.
- iii. The contents of the proposal of the successful proposers(s) will become contractual obligations, except to the extent the contents are changed through best and final offers or contract discussions. The finalized and approved contract language shall prevail over the proposal in the event of any ambiguity;
- iv. In submitting a proposal, Proposer agrees that the proposal will remain valid for one hundred eighty calendar days after the closing date for submission of proposals and may be extended beyond that by mutual agreement.



**8. PLANNED EVALUATIONS**

The NHLC will use the following process:

- Initial screening for compliance with submission requirements;
- Evaluation of Technical Proposals and scoring;
- Review of Cost Proposals and final scoring;
- Best and Final Offer (BAFO), if deemed beneficial; and
- Select the highest scoring Proposer and begin contract negotiation.

**9. INITIAL SCREENING**

The NHLC may reject a proposal that fails to satisfy minimum requirements.

**10. REVIEW OF TECHNICAL PROPOSALS**

The NHLC will select an evaluation team to score Technical Proposals.

**11. SCORING OF COST PROPOSALS**

The evaluation team will unseal and review Cost Proposals after scoring the other criteria. Each Cost Proposal will be scored according to the following formula:

$$\text{Vendor's Cost Proposal Score} = \left( \frac{\text{Lowest Proposed Cost}}{\text{Vendor's Proposed Cost}} \right) \times \text{Total Possible Points}$$

Proposers are advised that this **is not a lowest bid award** and that the score of the Cost Proposal will be combined with the other categories to determine the highest-scoring Proposer.

**12. BEST AND FINAL OFFER**

Upon completion of the scoring process, the NHLC may, at its sole discretion, invite the highest-scoring Proposers to submit a “Best and Final Offer” (BAFO). The NHLC will provide a deadline for the submission of BAFOs and may uniformly communicate any price target(s) that it is seeking. Each invited Proposer is limited to one BAFO. A Proposer’s BAFO shall amend its initial price proposal only. The BAFO shall not alter the substance of the technical proposal. All restrictions on contact with NHLC employees shall remain in effect. Upon receipt of BAFOs, the NHLC will substitute the Proposer’s original pricing with its BAFO pricing and then re-score. The NHLC will not select a Proposer based on the lowest-priced BAFO. A final selection, if any, shall be based on the combined score of the technical proposal and BAFO pricing. In the event of a BAFO, only those Proposers invited to submit a BAFO will be considered for award.

**13. FINAL SELECTION**

If the NHLC elects to make an award, the NHLC will issue an “intent to negotiate” notice to the highest-scored Proposer. Should the NHLC be unable to reach agreement with the selected Proposer, the NHLC may negotiate with the second preferred Proposer and so on, or the NHLC may reject all proposals, cancel this RFP, or solicit Proposals under a new procurement process.

**14. RIGHTS IN PROPOSAL EVALUATION AND CONTRACT NEGOTIATION**

The NHLC reserves the right to:

- a. Make independent investigations and consider any source of information, including but not limited to, State employees, previous customers, internet research, and rating agencies;
- b. Request additional information to clarify elements of a Proposal;
- c. Waive minor or immaterial deviations from the RFP, if in the best interest of the State;
- d. Omit any planned evaluation step if, in the NHLC's view, the step is not needed;
- e. At its sole discretion, reject any and all Proposals at any time; or
- f. Cancel this RFP.

**15. NON-COLLUSION**

The Proposer's signature on a Proposal guarantees that the prices, terms and conditions, and work quoted have been established without collusion with other Proposers and without effort to preclude the NHLC from obtaining the best possible competitive Proposal.

**16. PROPERTY OF THE NHLC**

All material received in response to this RFP shall become the property of the NHLC and will not be returned to the Proposer. Upon Contract award, the NHLC reserves the right to use any information presented in any Proposal.

**17. CONFIDENTIALITY OF A PROPOSAL**

Unless necessary for contract approval, the substance of a proposal must remain confidential until the Effective Date of any Contract resulting from this RFP. A Proposer's disclosure or distribution of Proposals other than to the NHLC will be grounds for disqualification.

**18. PUBLIC DISCLOSURE**

In order to protect the integrity of the bidding process, no information shall be available to the public, or to the members of the general court or its staff concerning this procurement from the time the request is made public until the RFP closing date.

The content of each Proposal shall become public upon the award of any resulting Contract. **Any information submitted as part of a response to this request for proposal (RFP) may be subject to public disclosure under RSA 91-A.** However, business financial information and proprietary information such as trade secrets, business and financial models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV. If you believe any information being submitted should be kept confidential as financial or proprietary information; you must specifically identify that information in a letter to the agency, and must mark/stamp each page of the materials that you claim must be exempt from disclosure as "CONFIDENTIAL." A designation as confidential by the Proposer does not have the effect of making such information exempt. The NHLC will determine the information it believes is properly exempt. Marking an entire Proposal or entire sections (*e.g.* pricing) as confidential will not be accepted. Notwithstanding any provision of this RFP to the contrary, Proposer pricing will be subject to disclosure upon approval of the contract. The NHLC will endeavor to maintain the confidentiality of portions of the Proposal that are clearly and properly marked confidential.

If a request is made to the NHLC to view portions of a Proposal that the Proposer has properly and clearly marked confidential, the NHLC will notify the Proposer of the request and of the date the NHLC plans to release the records. By submitting a Proposal, Proposers agree that unless the

Proposer obtains a court order, at its sole expense, enjoining the release of the requested information, the NHLC may release the requested information on the date specified in the NHLC's notice without any liability to the Proposers.

**19. NON-COMMITMENT**

This RFP does not commit the NHLC to award a Contract. The NHLC reserves the right, at its sole discretion, to reject any and all Proposals, or any portions thereof, at any time; to cancel this RFP; and to solicit proposals for the same or similar service(s) under a new acquisition process.

**20. PROPOSAL PREPARATION COST**

By submitting a Proposal, a Proposer agrees that in no event shall the NHLC be either responsible or liable for any costs incurred by a Proposer in the preparation of or in connection with the Proposal, or for Work performed prior to the Effective Date of a resulting Contract.

**21. ETHICAL REQUIREMENTS**

From the time this RFP is published until contract award, no Proposer 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 will or has selected, evaluated, or awarded an RFP, or similar submission. Any Proposer that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any Proposer convicted of an offense based on conduct in violation of this section, which has not been annulled, or that is subject to a pending criminal charge, shall be disqualified this RFP or any RFP or similar request for submission issued by any state agency.

**22. CHALLENGES ON FORM OR PROCESS OF THE RFP**

Within five business days of the NHLC's posting of its selection on its website, dissatisfied proposers may, in accordance with RSA 21-G:37, request that the agency review its procurement process. The request must be in writing and must specify all points on which the proposer believes the agency erred. The request may not include substantive information not contained in the original proposal. The agency shall respond within 5 business days of receipt. By submitting a proposal, the proposer waives any challenge to the agency's authority to conduct this procurement or to the form and procedures set forth in this RFP.

**23. RESTRICTION OF CONTACT WITH NHLC EMPLOYEES**

From the date of release of this RFP until an award is announced, all communication regarding this RFP with NHLC employees or other vendors under contract with the NHLC is forbidden. NHLC employees have been directed not to hold conferences or engage in discussions concerning this RFP with any potential contractor during the selection process. Proposers may be disqualified for violating this restriction on communications.

**24. ELECTRONIC POSTING OF RFP RESULTS AND RESULTING CONTRACT**

Upon receipt of proposals, the Agency will post the number of responses received with no further information. No later than five business days prior to final approval, or submission of a contract to the Department of Administrative Services, the NHLC will post the name, rank or score of each vendor. **By submitting a proposal, vendors acknowledge and agree that any contract resulting from this RFP will be made accessible to the public online.**

## PART III - INFORMATION REQUIRED FROM THE PROPOSER

Proposals must be submitted in the following format, including heading descriptions:

### 1. **EXPERIENCE**

#### A. **Company Profile and Experience**

Describe the company's background and its experience providing commercial door repair, replacement, and related services in New Hampshire. When describing your company's experience, please include the following information:

- Full legal company name and year business started;
- If applicable, information on any parent or subsidiary relationships;
- State of formation and location of headquarters;
- Current number of individuals employed; and
- Relevant licenses or certifications held.

#### B. **Company Capability**

Describe how your company intends to provide the NHLC with the deliverables set forth in Section I above, include in your description an overview of your company's capability to provide timely and quality repair and replacement services to the NHLC. Include a description of your familiarity and ability to obtain and repair products by Nabco, Stanley, Horton, and Besom. **Also provide a detailed summary of your company's experience providing commercial door repair and replacement services to commercial/retail clients, as well as your ability to provide services, including emergency services, across the entire state of New Hampshire.** Include examples of current retail business and/or government entity clients most similar in size and scope to the NHLC. Provide three (3) references, including the name, address and telephone number of the responsible official who may be contacted by the NHLC.

### 2. **PRICING AND SERVICES**

#### A. **Service and Repair Billable Charges Breakdown:**

Complete the Cost Proposal by filling in your company's hourly rates and materials mark-up as prompted below. The number of hours provided is an estimate only. It is included to assist in the scoring of the cost proposals. Billing repair rates are to include personnel and vehicles. Charges shall consist of actual time at the job sites.

- i. **Regular Hours:** Monday through Friday (8:0 am – 6:00 pm EST)

Hourly rate per person \$\_\_\_\_\_ X 200 hours, per year \$\_\_\_\_\_

- ii. **Other Hours:** Weekends, Holidays & After-Regular Hours

Hourly rate per person \$\_\_\_\_\_ X 200 hours, per year \$\_\_\_\_\_

- iii. **Materials Markup - New Doors and related Materials:**

Percentage of Markup from Vendor's or Net Trade Cost \_\_\_\_\_%

## **PART IV - CRITERIA FOR SELECTION**

### **1. MANDATORY RESPONSIVENESS REQUIREMENTS**

To be eligible for selection, a proposal must be:

- A. Timely received; and
- B. Properly signed by the Proposer's authorized representative.

The NHLC reserves the right, in its sole discretion, to waive technical or immaterial nonconformities in a proposal.

### **2. CRITERIA AND POINT ALLOCATIONS**

The following criteria will be used in evaluating each proposal:

**Pricing (45 Points)** – This refers to the costs provided by the proposer in response to the Pricing information required in Part III, Section 11 above. Of the 45 available points, each of the sections, regular hours, other hours, and materials markup will be worth 15 points.

**Company Profile and Experience (25 points)** – This refers to the Proposer's organizational structure and history and capability to provide the work requested.

**Capability (30 points)** – This refers to the Proposer's proven capability and prior experience performing the services listed within, including serving other clients with similar needs and product quality. Proposer must demonstrate the capability to provide timely service to all NHLC location across the entire state of New Hampshire.

# APPENDICES

**APPENDIX A**

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

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

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature  <p align="right">Date:</p>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  <p align="right">Date:</p>		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, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

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

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

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

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

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

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

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

**14. INSURANCE.**

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

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

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

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

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

**15. WORKERS' COMPENSATION.**

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

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

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

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

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

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

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

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

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

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

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

**APPENDIX B**  
**STORE LOCATIONS**

The listing of stores provided below is subject to change. If, at any time during the life of any contract resulting from this RFP, a store is closed, opened, or relocated, it shall be considered part of this contract.

Store Number	ADDRESS
1	80 Storrs Street Concord, NH
2	100B Route 9 West Chesterfield, NH
4	1271 Hooksett Road Hooksett, NH
5	IGA Shopping Plaza 17 Pleasant Street Berlin, NH
6	Pick N Pay 738 Islington Street Portsmouth, NH
7	Globe Shopping Center 784 Meadow Street Littleton, NH
8	Claremont Market Place 367 Washington Street (Route 103) Claremont, NH
10	68 Elm Street Manchester, NH
11	12 Centerra Parkway Lebanon, NH
12	Route 25, 12 A Main Street Senter's Marketplace, Unit #1 Center Harbor, NH
13	481 High Street Somersworth, NH
14	Ridge Market Place 170 Market Place Blvd Unit #1 Rochester, NH
15	6 Ash Brook Court Keene, NH
16	Butson's Complex 1 Forest Street Woodsville, NH
18	16 Metallack Place Colebrook, NH

Store Number	ADDRESS
19	22 Ridge View Lane Plymouth, NH
21	Peterborough Plaza Suite #1 19 Wilton Road Peterborough, NH
22	44A, Route 13 Brookline, NH
23	234 White Mountain Highway Suite 9 Conway, NH
28	186 Ocean Boulevard Seabrook, NH
30	Market Basket Plaza 21 Jones Road, Ste #6 Milford, NH
32	Westside Plaza 40 Northwest Blvd. Nashua, NH
33	North Side Plaza 1100 Bicentennial Drive Manchester, NH
34	Rockingham Mall 92 Cluff Crossing #4 Salem, NH
35	15 Antrim Road, Suite #1 Hillsboro, NH
37	Butson's Marketplace 199A Main Street Lancaster, NH
38	605 Route 1, Bypass South Portsmouth, NH
39	35 Center Street Wolfeboro Falls, NH
40	32 Ames Plaza Lane Unit #2 Walpole, NH
41	Southgate Plaza 380 Lafayette Road Units D & E Seabrook, NH
42	Old Province Common 71 Route 104 Meredith, NH
44	325 NH Route 104, Suite 11 New Hampton, NH

Store Number	ADDRESS
47	165 Main Street, Unit 6 Lincoln, NH
48	849 Brattleboro Road Hinsdale, NH
49	Market Basket Plaza 32 Plaistow Road, #2A Plaistow, NH
50	Willow Springs Plaza 294 DW Highway Nashua, NH
51	Route 38 Pelham, NH
52	Androscoggin Plaza 159 Main Street Gorham, NH
53	Market Basket Shopping Center Lowell Rd Hudson, NH
54	65 Route 302 Glen, NH
55	9 Leavy Drive Bedford, NH
56	18 Weirs Road Gilford, NH
57	Indian Mound Shopping Center 240 Rte 16B Center Ossipee, NH
58	Shop N Save Plaza 605 Mast Road Goffstown, NH
59	Merrimack Shopping Center 6 Dobson Way, Suite A Merrimack, NH
60	265 Plainfield Road West Lebanon, NH
61	137 Rockingham Road Londonderry, NH
62	Raymond Shopping Center 11 Freetown Road, Route 27 Raymond, NH
63	30 Warwick Road Suite 1 Winchester, NH
64	New London Shopping Center 293 Newport Road New London, NH
65	Center at Campton Corners 25 Vintinner Road Campton, NH

Store Number	ADDRESS
66	I-93 North Route 3A Hooksett, NH
67	I-93 South 25 Springer Road Hooksett, NH
68	Village Shopping Center 69 Lafayette Road North Hampton, NH
69	25 Coliseum Avenue Nashua, NH
71	60 Calef Highway Unit #4 Lee, NH
72	100 Fort Eddy Road Concord, NH
73	I-95 South Hampton, NH
74	Market Basket Plaza 16 Michele's Way, Unit #4 Londonderry, NH
76	I-95 North Hampton, NH
77	Cheshire Marketplace Unit 7, 497 US Route 202 Rindge, NH
78	416 Emerson Avenue Unit #6 Hampstead, NH
79	5 Brickyard Square Epping, NH
81	Pembroke Crossing Plaza 619 Sand Road Pembroke, NH
82	14 Nichols Mills Lane Warner NH
83	929 Suncook Valley Road Epsom, NH
84	80 Market Street Tilton, NH