



REQUEST FOR PROPOSALS

RFP 2023-03-FORK

FORKLIFT PREVENTATIVE MAINTENANCE AND REPAIR SERVICES

AUGUST 11, 2023

Issued by:



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

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TABLE 1: SCHEDULE OF EVENTS

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

<u>EVENTS</u>	<u>RESPONSIBILITY</u>	<u>DATE</u>
Request for Proposals Issued	NHLC	Friday, August 11, 2023
Deadline to Submit Inquiries by Electronic Mail to NHLC Issuing Officer	Potential Bidders	Wednesday, August 23, 2023, by 2:00 p.m.
Anticipated Response Date to Inquiries	NHLC	Wednesday, August 30, 2023, by 2:00 p.m.
Deadline for Submission of Proposals	Bidders	Friday, September 8, 2023, by 2:00 p.m.

PART I: GENERAL INFORMATION AND SCOPE OF WORK

1. PURPOSE

The NHLC seeks to enter a contract for the preventative maintenance and repair service of its forklifts and other equipment as described herein. The NHLC is issuing this RFP to solicit and evaluate proposals from interested Bidders with the goal of contracting with one selected Vendor. This RFP describes the services sought by the NHLC and provides the terms governing the procurement process, including instructions governing the required content of a proposal, and the criteria by which submissions are evaluated. A Bidder may submit a proposal as further described in Part III of this RFP.

2. BIDDER INSTRUCTIONS

Interested Bidders must read the entire RFP and submit the required documents in the manner specified in the RFP. Bidders are responsible for reviewing the most updated information related to this RFP before submitting proposals. If a Bidder's response to this RFP does not comply with the conditions for submittal, the NHLC may reject it without further consideration.

3. SCOPE OF WORK

A. The Bidder shall furnish all materials, equipment, labor, and transportation necessary to provide the services described herein.

B. The Bidder shall provide maintenance and repair services on the equipment described in the list included in Part V, Section 2(B) of this RFP and any new equipment as may be purchased during the term of a resulting contract. The location of any piece of equipment is subject to change over the course of a resulting contract without prior notice. Changes to location notwithstanding, the Bidder shall at all times be responsible for fulfilling the terms of a resulting contract.

C. Preventative maintenance servicing shall be performed every ninety (90) days. Preventative maintenance shall be completed on a pre-arranged schedule to be coordinated with the NHLC Representative. The Bidder shall provide planned preventative maintenance schedules two weeks prior to performing the service.

D. The Bidder shall provide preventative maintenance, including but not limited to:

I. Check fluid levels and add as needed:

1. Battery fluid;
2. Brake fluid;
3. Differential, speed reducer, and transaxle;
4. Hydraulic fluid;

II. Check Conditions for Wear or Damage:

1. All hydraulic hoses;
2. All equipment belts;
3. Brake shoes – adjust or replace as required;
4. Contactor tips;
5. Forks;
6. Hydraulic tank breather – clean or replace;
7. Lift and tilt cylinders;
8. Lift chains;

9. Parking and seat brake – adjust as necessary;
10. Safety decals – replace if necessary;
11. All chargers – test, clean and replace as necessary;

III. Check Operation:

1. Creep Speed;
2. Limit Switches;
3. Plugging;

IV. Lube and Latches:

1. Control levers and linkages;
2. Hoist chain;
3. Hood hinges, latches, and seat rails;
4. Parking brakes;
5. Steering axle and tie rods;
6. Upright pivots and sliding surfaces.

- E. In addition to preventative maintenance, the Bidder shall provide repair services on an on-call basis, which shall include both normal working hours and other hours as detailed below.
- F. Normal Working Hours: Normal working hours are 8:00 a.m. to 4:30 p.m., Monday through Friday. (Warehouse hours are 7:00 a.m. to 3:00 p.m., Monday through Friday). If the Bidder's normal working hours are different, that should be noted in the Proposal.
- G. Other Hours: Hours outside of Normal Working Hours, holidays, and weekends.
- H. Response Time: Bidder shall respond to calls for emergency service within four (4) hours. Bidder shall maintain a 24-hour phone number for emergency service requests. Bidder shall respond by phone to all other service requests within twenty-four (24) hours.
- I. Upon arrival at the job site, the Bidder shall either sign in or log in (if paperless) with the manager of the store or the person in charge. The Bidder shall note, and the manager or person in charge shall initial, both the time of arrival and of departure.
- J. At the completion of each maintenance or service, either planned or unplanned, the Bidder shall provide a work order to the NHLC Representative and to the NHLC Accounts Payable department. A work order shall be made for each unit serviced and sent in with the invoice for payment.
- K. If a portion of equipment cannot be repaired on location, there shall be no charge for transportation of the equipment to or from the Bidder's maintenance facility.
- L. Major repair service (*i.e.* those over \$1,000.00) will require a free-of-charge estimate. In addition, the State reserves the right to get a second estimate for major repairs.
- M. The Bidder shall maintain and make available to the NHLC a maintenance history for each piece of equipment covered under the resulting contract. The maintenance history shall include the date of service, detailed description of the service completed, parts replaced, and cost of repair.

- N. All replacement parts shall be new and of the same quality as those being replaced. All supplies shall be as specified by the equipment manufacturer. Substitutions shall be permitted only with prior authorization of the NHLC Representative or his or her designee.
- O. Warranty: All service, parts, and labor, shall be warranted for sixty (60) days. This provision in no way alters the manufacturer's warranty.
- P. The Bidder shall not subcontract any portion of the agreed-upon services without prior approval from the NHLC. In the event the NHLC approves the use of a subcontractor in performance of the contract, the prime Bidder is not relieved of its responsibility and obligation to meet all the requirements of the contract.
- Q. The Bidder shall take all responsibility for the work under the contract, for the protection of the work, and for preventing injuries to persons and damage to property and utilities on or about the work. The Bidder shall in no way be relieved of his responsibility by any right of the NHLC 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 NHLC to give such permission or issue such orders. The Bidder shall bear all losses on account of the amount or character of the work performed, or due to any error on the part of the Bidder in their estimation or expectation of project requirements or due to the weather, elements, or other causes.
- R. The NHLC shall require correction of defective work or damages to any part of the building or its appurtenances when caused by the Bidder's employees, approved subcontractors, equipment, or supplies. The Bidder shall correct all defective work and repair damages incurred. Upon failure of the Bidder 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 Bidder.
- S. 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.
- T. The Bidder's staff shall consist of qualified persons completely familiar with the products and equipment they will be required to use. The NHLC Representative may require the Bidder to dismiss from the work such employees as he or she deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed to be contrary to the public interest or inconsistent with the best interest of security.
- U. The Bidder shall perform all the work and furnish all the materials, tools, equipment, and safety devices necessary to perform work in the proper manner and within the time specified. The Bidder shall complete the entire work to the satisfaction of the NHLC and in accordance with the specifications herein described, and at the agreed-upon price. All the work, labor, and equipment to be done and furnished 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 the contract.

- V. The Bidder shall secure and pay for all permits, inspections, and licenses necessary for the execution of the work.
- W. All work shall be performed in such a manner as to minimize inconvenience to the building occupants. The Bidder shall determine the NHLC's normal working conditions and activities in progress and shall conduct the work in the least disruptive manner.
- X. The Bidder shall, at its own expense, whenever necessary or required, provide safety devices and take such other precautions as may be necessary to protect life or property.
- Y. Unsatisfactory response to any of the listed services or requirements will be considered a basis for termination of the contract. The NHLC reserves the right to terminate the contract at any given time with a 30-day written notice.
- Z. The Bidder or their personnel shall not represent themselves as employees or agents of the NHLC. 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. The Bidder's personnel shall be allowed only in areas where work is being performed. The use of NHLC telephones by the Bidder or their personnel is prohibited.
- AA. At the NHLC's request, Bidder shall provide security clearance and/or background checks for any and all Bidder representatives or approved subcontractors that may complete work or be present during the completion of work in any NHLC facility.
- BB. The Bidder shall provide employee picture identification badges identifying the company and name of each employee servicing the NHLC account. All Bidder employees, while servicing the NHLC, shall wear the identification badge.
- CC. The Bidder shall maintain a Certificate of Good Standing with the Office of the Secretary of State of New Hampshire at all times and shall produce the same, dated within sixty (60) days, upon request.

PART II: CONTRACT TERMS AND CONDITIONS

1. TYPE OF CONTRACT AND CONTRACT PERIOD

Any contract resulting from this RFP shall be structured as a not-to-exceed contract. The contract will be for a period of three (3) years with a possibility of two, two-year extensions.

Contract Continuity: Upon expiration of the initial contract term or any extension to it, the Bidder must continue to provide all services required under the same terms and conditions of the then-in-force contract on a month-to-month basis for a period not to exceed four (4) months to enable the NHLC to identify a satisfactory replacement.

2. PROPOSALS AND AWARDS; NON-EXCLUSIVE CONTRACT

The NHLC intends to award a contract to one Bidder. However, 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 Bidders, wholly or in part. A Vendor will not retain any exclusive rights to provide the services and supplies described in this RFP. The NHLC reserves the right, at its discretion, to retain other contractors to provide any of the services or deliverables identified in this RFP or make an award by item, part or portion of an item, group of items, or total Proposal.

3. STANDARD CONTRACT TERMS

The NHLC will require the selected Vendor to execute a contract using the Standard Terms and Conditions of the State of New Hampshire (Form P-37) which is attached as Appendix A. In no event is a Bidder to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this RFP.

The terms of this RFP and the selected Vendor's Proposal will be used to form the terms of any resulting contract. The resulting contract may incorporate some or all of the selected Vendor's Proposal. References in Form P-37 to Exhibits A, B, and C are references to the required structure of any resulting contract (Exhibit A – Special Provisions/Amendments to the P-37, Exhibit B – Scope of Services, and Exhibit C – Payment Terms) and are not references to sections of this RFP.

The NHLC may consider modifications to Form P-37. If a Bidder believes that exceptions to Form P-37 are necessary, the Bidder 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 of the exceptions that have been accepted or deemed negotiable by posting this information on its website.

PART III: REQUEST FOR PROPOSAL PROCESS

1. **AGENCY POINT OF CONTACT**

The Issuing Officer and sole point of contact for this RFP is:

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

2. **PROHIBITED COMMUNICATIONS**

From the issue date of this RFP until an award is made and announced regarding the selection of a Vendor, the Issuing Officer shall serve as the sole point of contact for this RFP. Bidders are prohibited from distributing any part of their proposals except to the Issuing Officer as required under this RFP. All communication with personnel employed by or under contract with the NHLC regarding this RFP is prohibited unless first approved by the RFP Issuing Officer. NHLC employees have been directed not to hold conferences and/or discussions concerning this RFP with any potential Bidder during the selection process, unless otherwise authorized by the RFP Issuing Officer. Bidders may be disqualified for violating this restriction on communications.

3. **RFP INQUIRIES AND RESPONSES**

A. **Inquiry Submission.** All inquiries concerning this RFP, including but not limited to, requests for clarifications, questions, any changes to the RFP, and any exceptions to the contract terms in Appendix A, including the Form P-37, shall be submitted via electronic mail (with the subject line titled “RFP-2023-03-FORK - Forklift Preventative Maintenance and Repair Services Questions”) to the Issuing Officer, Janet Donnelly, at Janet.M.Donnelly@liquor.nh.gov. Bidders shall not contact the Issuing Officer by telephone. Bidders shall not contact the Issuing Officer after the close of the inquiry period. All inquiries must be received by the Deadline to Submit Inquiries (see Table 1: Schedule of Events herein).

B. **NHLC Responses to Inquiries.** The NHLC intends to issue responses to inquiries submitted on or before the date specified in Table 1: Schedule of Events; however, this date is subject to change at the NHLC’s discretion. The NHLC may consolidate and/or paraphrase questions for sufficiency and clarity. Oral statements, representations, clarifications, or modifications concerning the RFP shall not be binding upon the NHLC. The NHLC will post responses at http://www.nh.gov/liquor/public_notices.shtml. Bidders are responsible for reviewing the most updated information related to this RFP before submitting a proposal.

4. **AMENDMENT TO THE RFP**

The NHLC may amend this RFP at any time and at its sole discretion. The NHLC will post any amendments to the RFP on the NHLC official website located at https://www.nh.gov/liquor/public_notices.shtml. In the event of an amendment to this RFP, the NHLC may extend deadlines and/or invite submission of additional information. Bidders are responsible for checking the website periodically for any new information or amendments to the RFP. The NHLC shall not be bound by any verbal information or any written information that is not contained within the RFP or formally issued as an amendment by the Issuing Officer.

5. **PROPOSAL SUBMISSION**

A. **Proposal Submission Deadline:** Proposals must be submitted in hard copy and clearly marked “New Hampshire Liquor Commission, Response to RFP-2023-03-FORK - Forklift Preventative Maintenance and Repair Services.” Proposals must be received by the Issuing Officer no later than the Deadline for Submission of Proposals in Table 1: Schedule of Events. Any Bidder that elects to mail its proposal must allow sufficient mail delivery time to ensure timely receipt of its proposal. The NHLC accepts no responsibility for mislabeled, damaged, undeliverable, or delayed mailed proposals. Proposals will not be accepted via electronic mail or facsimile transmission.

If, due to inclement weather, natural disaster, or any other cause the location to which proposals are to be returned is closed on the Deadline for Submission of Proposals in Table 1: Schedule of Events, the deadline for submission shall be automatically extended until the next day the office is open, unless the Bidders are otherwise notified. The time for submission of proposals shall remain the same. Proposals not received by the Deadline for Submission of Proposals in Table 1: Schedule of Events or as otherwise extended pursuant to this RFP will be rejected.

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. **Submission Information:**

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

Proposals: New Hampshire Liquor Commission
ATTN: Janet Donnelly, RFP-2023-03-FORK Forklift Preventative
Maintenance and Repair Services
50 Storrs Street
Concord, NH 03302

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

D. **Format of Submission:**

All proposals submitted must consist of:

I. One (1) original (clearly identified as such) and three (3) copies (clearly identified as such) of the Technical Proposal, including all required attachments; and

II. One (1) original Cost Proposal **in a separate and sealed envelope** labeled “COST PROPOSAL.”

E. **Requirements of Proposal:**

Bidders must submit a complete response to this RFP using the format specified in Part V and provide all information requested. If the Bidders response does not comply with the conditions for submittal to this RFP, the NHLC may reject it.

- F. **Economy of Preparation:** Proposals should provide a straightforward, concise description of the Bidder's ability to meet the requirements of the RFP.

6. **RFP TERMS AND CONDITIONS**

- A. **Proposal Preparation Cost:** By submitting a proposal, the Bidder agrees that in no event shall the NHLC be either responsible for or held liable for any costs incurred by a Bidder in the preparation of or in connection with the proposal, or for work performed prior to the Effective Date of a resulting contract.
- B. **Validity of Proposal:** Proposals must be valid for one hundred and eighty (180) days following the Deadline for Submission of Proposals in Table 1: Schedule of Events, or until the Effective Date of any resulting contract, whichever is later, and can be further extended by mutual agreement.
- C. **Debarment:** Vendors who are ineligible to bid on proposals, bids or quotes issued by the New Hampshire Department of Administrative Services, Division of Procurement and Support Services pursuant to the provisions of RSA 21-I:11-c shall not be considered eligible for an award under this RFP.
- D. **Non-Collusion:** The Bidder's signature on a proposal submitted in response to this RFP guarantees that the prices, terms, and conditions and work quoted have been established without collusion with other Vendors and without effort to preclude the NHLC from obtaining the best possible competitive proposal.
- E. **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 Bidder. Upon contract award, the NHLC reserves the right to use any information presented in any proposal.
- F. **Proposal Confidentiality:** Unless necessary for the approval of a contract, the substance of a proposal must remain confidential until the Effective Date of any contract resulting from this RFP. A Bidder's disclosure or distribution of proposals other than to the NHLC may be grounds for disqualification.
- G. **Non-Commitment:** Notwithstanding any other provision of this RFP, 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 portion thereof, at any time; to cancel this RFP; and to solicit new proposals under a new acquisition process.
- H. **Electronic Posting of RFP Results and Resulting Contract:** At the time of receipt of proposals, the NHLC will post the number of responses received with no further information. No later than five (5) business days prior to final approval, or submission of a contract to the Department of Administrative Services, the NHLC will post the ranks or scores of each responding vendor. By submitting a proposal, Bidders acknowledge and agree that the NHLC may make any contract resulting from this RFP accessible to the public online.

- I. **Challenges to Identification of Selected Vendor:** Within five (5) business days of the NHLC's posting of its selection on its website, Vendors may, in accordance with RSA 21-G:37, request that the NHLC review its selection process. The request must be in writing and must specify all points on which the vendor believes the NHLC erred in its process and shall contain such argument in support of its position as the Vendor seeks to present. In its request for review, a Vendor shall not submit, and the NHLC will not accept nor consider, any substantive information that was not included in the original proposal. The NHLC will respond to the request within (5) business days of its receipt.
- J. **Ethical Requirements:** From the time this RFP is published until a contract is awarded, no Bidder shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any Bidder that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any Bidder who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such offense, shall be disqualified from bidding on the RFP, or similar request for submission issued by any state agency.
- K. **Public Disclosure:**
- I. The information submitted in response to this RFP (including all materials submitted in connection with it, such as attachments, exhibits, addenda, and presentations), any resulting contract, and information provided during the contractual relationship may be subject to public disclosure under Right-to-Know law, including RSA 91-A. In addition, any contract entered into as a result of this RFP may be made accessible to the public online.
- II. Confidential, commercial, or financial information may be exempt from public disclosure under RSA 91-A:5, IV. If a Bidder believes that any information submitted in response to this RFP should be kept confidential, the Bidder must specifically identify that information where it appears in the submission in a manner that draws attention to the designation and must mark/stamp each page of the materials that the Bidder claims must be exempt from disclosure as "CONFIDENTIAL." Bidders must also provide a letter to the Issuing Officer, identifying the specific page number and section of the information the Bidder considers to be confidential, commercial, or financial and providing the rationale for each designation. Marking or designating an entire proposal, attachment, or section (*e.g.* pricing) as confidential shall neither be accepted nor honored by the NHLC. Bidder pricing will be subject to disclosure upon contract approval.
- III. Notwithstanding a Bidder's designations, the NHLC is obligated under the Right-to-Know law to conduct an independent analysis of the confidentiality of the information submitted in a proposal. If a request is made to the NHLC to view or receive copies of any portion of a proposal, the NHLC shall first assess what information it is obligated to release. The NHLC will then notify the Bidder that a request has been made, indicate what, if any, information the NHLC has assessed is confidential and will not be released, and specify the planned release date of the remaining portions of the proposal. To halt the release of information by the NHLC, a Bidder must initiate and provide to the NHLC,

prior to the date specified in the notice, a court action in the Superior Court of the State of New Hampshire, at its sole expense, seeking to enjoin the release of the requested information.

IV. By submitting a proposal, Bidders acknowledge and agree that:

1. The NHLC may disclose any and all portions of the proposal or related materials which are not marked as confidential and/or which have not been specifically explained in the letter to the Issuing Officer.
2. The NHLC is not obligated to comply with a Bidder's designations regarding confidentiality and must conduct an independent analysis to assess the confidentiality of the information submitted in the proposal; and
3. The NHLC may, unless otherwise prohibited by court order, release the information on the date specified in the notice described above without any liability to a Bidder.

PART IV: EVALUATION OF PROPOSALS

1. CRITERIA FOR EVALUATION AND SCORING

The NHLC Evaluation Team will review and evaluate each responsive proposal according to the criteria outlined below using a scoring scale of 100 points:

CATEGORIES	POINTS	
TECHNICAL PROPOSAL		50
Experience – Bidder’s prior experience performing the services listed within the RFP	25	
Capacity - Bidder’s organizational capacity to handle the services listed within the RFP	25	
COST PROPOSAL		50
Preventative Maintenance Charges	35	
Hourly Charges	5	
Material Charges (Mark-Up %)	5	
Mileage	5	
TOTAL POTENTIAL POINTS		100

2. PLANNED EVALUATION STEPS

The NHLC will use the following process for evaluation of submitted proposals:

- A. Initial screening for compliance with submission requirements;
- B. Evaluation of Technical Proposals and scoring;
- C. Review of Cost Proposals and scoring;
- D. Best and Final Offer (BAFO), if deemed beneficial; and
- E. Final selection of the highest scoring Bidder and begin contract negotiation.

3. INITIAL SCREENING

The NHLC will conduct an initial screening to verify that a Bidder is in compliance with the proposal submission requirements set forth in this RFP. The NHLC may reject a proposal that fails to satisfy the requirements. The NHLC may waive or offer a limited opportunity to cure immaterial deviations from the RFP requirements if it is determined to be in the best interest of the NHLC.

4. REVIEW OF TECHNICAL PROPOSALS

The NHLC will select an Evaluation Team to score Technical Proposals.

5. SCORING OF COST PROPOSALS

The Evaluation Team will unseal and review Cost Proposals after the final technical scoring of proposals. Bidders are advised that this **is not a low bid award** and that the scoring of the Cost Proposal will be combined with the scoring of the Technical Proposal to determine the overall highest scoring Bidder. Each Cost Proposal will be scored according to the following formula:

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

6. **BEST AND FINAL OFFER**

Upon completion of the scoring process, the NHLC may, at its sole option, invite the highest scoring Bidders to submit a “Best and Final Offer” (BAFO) for the NHLC’s consideration. The NHLC reserves the right to select a Vendor based solely on the initial proposals and is under no obligation to solicit or accept a BAFO from any Bidders. As the NHLC may not request a BAFO, Bidders are encouraged to provide their most competitive prices in their initial proposals.

The BAFO is a one-time invitation only process for a Bidder to submit its lowest priced offer for the NHLC’s consideration. The NHLC will provide a deadline submission date for the BAFO and may uniformly communicate in writing any price/cost targets that the NHLC is seeking in the BAFO. All restrictions on contact with State employees outlined in this RFP shall remain in effect.

Each invited Bidder may only make one BAFO. The BAFO may not alter the substance of the Bidder’s Technical Proposal. The BAFO may only amend the Bidder’s initial Cost Proposal.

To the extent the NHLC solicits and receives a BAFO pursuant to this section, the NHLC will re-score the BAFO participants’ Cost Proposals after review of the BAFO in accordance with Paragraph 5: Scoring of Cost Proposals above. The NHLC will not select a vendor based on the lowest priced BAFO proposal. A final selection, if any, shall be based on the combined score of the Technical Proposal and BAFO pricing. Only those Bidders who were invited to submit a BAFO will be considered for the award.

7. **FINAL SELECTION**

The NHLC will conduct a final selection based on the final evaluation of the proposals or, if requested, as a result of a BAFO. If the NHLC elects to make an award, the NHLC will issue an “intent to negotiate” notice to the highest-scoring Bidder. Should the NHLC be unable to reach agreement with the selected Bidder, the NHLC may negotiate with the second preferred Bidder and so on, or the NHLC may reject all proposals, cancel this RFP, or solicit proposals under a new procurement process.

8. **RIGHTS OF THE NHLC IN ACCEPTING AND EVALUATING PROPOSALS**

The NHLC reserves the right, at its sole discretion, to:

- A. Make independent investigations in evaluating proposals;
- B. Request additional information to clarify elements of a proposal;
- C. Waive minor or immaterial deviations from the RFP and contract requirements, if determined to be in the interest of the State;
- D. Omit any planned evaluation step, if in the NHLC’s view, the step is not needed;
- E. Reject any and all proposals at any time or cancel this RFP; and
- F. Open contract discussions with the second highest scoring Bidder and so on, if the NHLC is unable to reach an agreement on contract terms with the highest scoring Bidder(s).

PART V: INFORMATION REQUIRED FROM THE BIDDER

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

1. EXPERIENCE AND CAPABILITY

A. Company Profile and Experience

Describe the company’s background and its experience providing equipment preventative maintenance, repair, and related services, particularly to commercial and/or retail clients. Include examples of current retail business and/or government entity clients most similar in size and scope to the NHLC. In addition to describing the company’s experience, please provide the following information:

- I. Full legal company name and year business started;
- II. If applicable, information on any parent or subsidiary relationships;
- III. State of formation and location of headquarters;
- IV. Current number of individuals employed; and
- V. Relevant licenses or certifications held.
- VI. Provide three (3) customer references, including the name, current address, and telephone number and email of the responsible official who may be contacted by the NHLC.

B. Company Capability

Describe how the company intends to provide the NHLC with the deliverables set forth in RFP Part I, Section 3: Scope of Work above. Include in your description an overview of the company’s capability to provide timely and quality equipment preventative maintenance and repair services to the NHLC, such as the number of employees with related experience, number of and type of equipment and/or facilities, and ability to meet potentially aggressive timelines.

2. PRICING AND SERVICES

A. Service Other Than Preventative Maintenance

- I. Billing repair rates are to include personnel and vehicles.
- II. The NHLC will pay one (1) way on service calls, mileage allowed shall be portal to portal, or the distance from the previous worksite to the new worksite, whichever is less.
- III. The Materials Charges shall list the percentage of markup from the Bidder’s cost. The NHLC retains the right to examine Vendor’s invoices for the materials used in completing work. A copy of the Vendor’s material invoices must be submitted with the billing to verify markup. The NHLC will allow no other expenses incurred.

Hourly Charges:

Normal Working Hours: Mon. thru Fri. (8:00 a.m.- 4:30 p.m.) \$ _____/hour

Other Hours: Overtime, Holidays, Weekends \$ _____/hour

Other Costs:

Mileage \$ _____/mile

Materials Charges _____%

B. Preventative Maintenance (PM) – Fixed Cost by Equipment Item
 (Price includes Materials, Equipment, Labor and Transportation)

DESCRIPTION	SERIAL NO.	LOCATION	# PM	COST/PM	TOTAL/YEAR
GRAINGER HAND PALLET TRUCK - Model #5LA79		Capitol Plaza 80 Storrs Street Concord	4		
HYSTER LIFTTRUCK W40Z	B218N23952K	100B Route 9 West Chesterfield	4		
Manual Pallet Jack (Model 4YX97)		Globe Shopping Ctr. 784 Meadow St. Littleton	4		
YALE Low Lift Walkie Pallet Truck	MPB045VG SN A245C04414U	Claremont Market Pl. 367 Washington Street Route 103 - Unit 1C Claremont	4		
HYSTER Walkie Lift Pallet Truck W40Z	B218N29267L	68 Elm Street Manchester	4		
RAYMOND 8210 LOW LIFT PALLET TRUCK	821-16-13995	Ridge Market Place 170 Market Place Blvd. Unit #1 Rochester	4		
HYSTER POWER LIFT PALLET JACK MODEL W45ZHD	SN: A419N11299S, UNIT: 65789	6 Ash Brook Court Keene	4		
RAYMOND 8210 LOW LIFT PALLET TRUCK	821-16-14025	16 Metallack Place Colebrook	4		
Yale MPB040-E Motorized Hand Low Lift Pallet Trucks	B827N66664P	22 Ridge View Lane Plymouth	4		
HYSTER PALLET JACK W40Z	B218N21381J	Peterborough Plaza Suite #1 - 19 Wilton Rd Peterborough	4		
HYSTER PALLET TRUCK W40Z	B218N09475D	234 White Mountain Highway, Suite 9 Conway	4		
ULINE HAND JACK H-1043		Market Basket Plaza 21 Jones Rd - Suite #6 Milford	4		
HYSTER PALLET TRUCK W45XT	B215H01817U	Westside Plaza 40 Northwest Blvd. Nashua	4		
Hyster W4oz PALLET JACK	B218N32061N	Rockingham Mall 92 Cluff Crossing #4 Salem	4		
ULINE HAND JACK H-1043		Butson's Marketplace 199A Main Street Lancaster	4		

DESCRIPTION	SERIAL NO.	LOCATION	# PM	COST/PM	TOTAL/YEAR
Yale MPB040-E Motorized Hand Low Lift Pallet Trucks	B827N66652P	Southgate Plaza 380 Lafayette Road Units D & E Seabrook	4		
HYSTER PALLET TRUCK W40XT	A218H06135X	325 Route 104 Suite 11 New Hampton	4		
Walkie Lo-lift	B827N67657P Unit 59153	849 Brattleboro Road Hinsdale	4		
YALE WALKIE PALLET TRUCK MPB040	B827N35409G	Market Basket Plaza 32 Plaistow Road - #2A Plaistow	4		
Yale MPB040-E Motorized Hand Low Lift Pallet Trucks	B827N64884N	Willow Springs Plaza 294 DW Hwy Nashua	4		
Yale MPB040-E Motorized Hand Low Lift Pallet Trucks	B827N67658P	Willow Springs Plaza 294 DW Hwy Nashua	4		
HYSTER Lift Truck	B218N27888L	9 Leavy Drive Bedford	4		
HYSTER PALLET TRUCK W40XT	A218H06136X	18 Weirs Road Gilford	4		
PALLET TRUCK		265 Plainfield Road West Lebanon	4		
HYSTER W40Z ELECTRIC JACK	B218N31152M	137 Rockingham Road Londonderry	4		
ULINE HAND JACK H-1043	129092	137 Rockingham Road Londonderry	4		
Hyster W4oz PALLET JACK	B218N31016M	I-93 North Route 3A Hooksett	4		
Hyster Walkie Low Lift Pallet Truck W45ZHD	EQ0238762 SN:A419C09274W	I-93 North Route 3A Hooksett	4		
HYSTER PALLET JACK W40Z	B218N31031M	I-93 South 25 Springer Road Hooksett	4		

DESCRIPTION	SERIAL NO.	LOCATION	# PM	COST/PM	TOTAL/YEAR
ULINE PALLET JACK H-1043		I-93 South 25 Springer Road Hooksett	4		
DAYTON HAND TRUCK		Village Shopping Ctr 69 Lafayette Road North Hampton	4		
DAYTON HAND TRUCK - MODEL 6W046		Village Shopping Ctr 69 Lafayette Road North Hampton	4		
Scissor Lift Cart - B-Cart	21884S3 016	25 Coliseum Avenue Nashua	4		
ULINE PALLET JACK H- 1043	129116	25 Coliseum Avenue Nashua	4		
YALE Walkie Lo-lift MPB040-EN24T2748	B827N67210P	25 Coliseum Avenue Nashua	4		
HYSTER PALLET TRUCK W45XT	B215H01816U	I-95 South Hampton	4		
Hyster W40z walkie low lift pallet Truck	57835	Market Basket Plaza 10 Michels Way Unit #4 Londonderry	4		
HYSTER PALLET JACK MODEL W45XT	A215H03197S	I-95 North Hampton	4		
UPRIGHT SELF PROP. LIFT	20000000195	I-95 North Hampton	4		
YALE Low Lift Walkie Pallet Truck	MPB045VG SN A245C04411U	I-95 North Hampton	4		
PALLET JACK-ULINE	129003	416 Emerson Ave. Unit #6 Hampstead	4		
Hyster WALKIE LOW LIFT PALLET TRUCK	B218N32522N	5 Brickyard Square Epping	4		
Yale MPB040-E Motorized Hand Low Lift Pallet Trucks	B827N67661P	Pembroke Crossing 619 Sand Road Pembroke	4		
YALE W45ZHD Pallet Jack	A245N09486R Unit 61755	14 Nichols Mills Lane Warner	4		
YALE Low Lift Walkie Pallet Truck	MPB045VG SN A245C04416U	929 Suncook Valley Road Epsom	4		
YALE Low Lift Walkie Pallet Truck	MPB045VG SN A245C04417U	929 Suncook Valley Road Epsom	4		
WALKIE LOW LIFT PALLET TRUCK MPB045VG	A245N22812Y / Unit: 71172	80 Market Street Tilton	4		
YALE Low Lift Walkie Pallet Truck	MPB045VG SN A245C04409U	11 Merchants Way Concord	4		
Genie GR20 Manlift	GRP 53714	14 Hall Street Concord	4		

DESCRIPTION	SERIAL NO.	LOCATION	# PM	COST/PM	TOTAL/YEAR
Yale Electric Pallet Jack	SN: 245N22814T	14 Hall Street Concord	4		
Hyster Walkie Low Lift Pallet Truck W45ZHD	EQ0227343 SN:A419N10249R	14 Hall Street Concord	4		
Yale Forklift 2012 GLP060	Unit #35074	14 Hall Street Concord	4		
HYSTER FORKLIFT TRUCK		50 Storrs Street Concord	4		
Hyster Walkie Low Lift Pallet Truck W45ZHD	EQ0227344 SN:A419C08541W	50 Storrs Street Concord	4		
Hyster Walkie Low Lift Pallet Truck W45ZHD	EQ0238734 SN:A419C09276W	50 Storrs Street Concord	4		
Hyster Walkie Low Lift Pallet Truck W45ZHD	EQ0238735 SN:A419C09277W	50 Storrs Street Concord	4		
Hyster Walkie Low Lift Pallet Truck W45ZHD	EQ0238733 SN:A419C09275W	50 Storrs Street Concord	4		
RAYMOND 8210 LOW LIFT PALLET TRUCK	821-16-13994	50 Storrs Street Concord	4		
ULINE HAND JACK H-1043		50 Storrs Street Concord	4		
WALKIE LOW LIFT PALLET TRUCK MPB045VG	A245N22813Y / Unit: 71173	50 Storrs Street Concord	4		
WALKIE LOW LIFT PALLET TRUCK MPB045VG	A245N22814Y / Unit: 71174	50 Storrs Street Concord	4		
B60ZAC HYSTER Hand Pallet Truck	SN: D230N01579R Unit 64634	50 Storrs Street Concord	4		
B60ZAC HYSTER Hand Pallet Truck	SN: D230N01589R Unit 64635	50 Storrs Street Concord	4		
ELECTRIC FORKLIFT TRUCK		50 Storrs Street Concord	4		
ELECTRIC FORKLIFT TRUCK		50 Storrs Street Concord	4		
HYSTER ELECTRIC FORKLIFT TRUCK A4	F108V06353T UNIT 106	50 Storrs Street Concord	4		
HYSTER FORKLIFT	A269N01652J Unit 109	50 Storrs Street Concord	4		
HYSTER FORKLIFT STAND UP	D470N01922F #104	50 Storrs Street Concord	4		
HYSTER FORKLIFT TRUCK		50 Storrs Street Concord	4		

DESCRIPTION	SERIAL NO.	LOCATION	#PM	COST/PM	TOTAL/YEAR
HYSTER FORKTRUCK model#E35XW	SN A269N02513M Unit 149 50910	50 Storrs Street Concord	4		
HYSTER MODEL B60ZAC PALLET TRUCK, CHARGER & 24V BATTERY	SN: D230N01842S UNIT 68283	50 Storrs Street Concord	4		
Hyster Pallet Truck	E230N01662T, Unit 73330	50 Storrs Street Concord	4		
HYSTER SINGLE REACH N40ZR FORKLIFT	D470N02387G Unit 100	50 Storrs Street Concord	4		
YALE ELEC RIDER LIFT Push/Pull	A908N07536E Unit 105	50 Storrs Street Concord	4		
YALE Low Lift Walkie Pallet Truck	MPB045VG SN A245C04413U	50 Storrs Street Concord	4		
YALE PALLET TRUCK # 122	197611019	50 Storrs Street Concord	4		
RAYMOND ELECTRIC PALLET JACK	8210 Sn 821-16-13994	50 Storrs Street Concord	4		
Hyster Pallet Jack W45ZHD	A419N10276R	605 Route 1 Bypass S Portsmouth	4		
GRAINGER INT'L HAND HYDR PALLET JACK 5LA79	1110101081-21509	Pick N Pay 738 Islington Street Portsmouth	4		
				TOTAL	

APPENDIX A

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

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

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

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

3.3 Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance

hereof, and shall be the only and the complete compensation to the Contractor for the Services.

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

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

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws and the Governor’s order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

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

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

7. PERSONNEL.

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

7.2 The Contracting Officer specified in block 1.9, or any successor, shall be the State’s point of contact pertaining to this Agreement.

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

9. TERMINATION.

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

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State’s discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. In addition, at the State’s discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.

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

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

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. “Change of Control” means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

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

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys’ fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State’s sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

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

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

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

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

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

16. WAIVER OF BREACH. A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

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

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

19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

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

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

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

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

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

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

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

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