



**REQUEST FOR PROPOSALS**

**2023-05-CARTS**

**SHOPPING CART SUPPLY**

**November 2, 2023**

**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”). Any changes will be posted on the NHLC official website, [https://www.nh.gov/liquor/public\\_notices.shtml](https://www.nh.gov/liquor/public_notices.shtml) Proposers are responsible for checking the website for any schedule changes.

<b><u>Events</u></b>	<b><u>Responsibility</u></b>	<b><u>Date</u></b>
Request for Proposals Issued:	NHLC	Thursday, November 3, 2023
Deadline to Submit Inquiries By Electronic mail to NHLC Issuing Officer	Potential Proposers	Wednesday, November 15, 2023 by 2:00 p.m.
Anticipated Response Date to Inquiries	NHLC	Wednesday, November 22, 2023 by 2:00 p.m.
Deadline for Submission of Proposals: NH Liquor Commission ATTN: Janet Donnelly, RFP 2023-05 50 Storrs Street Concord, NH 03301	Proposers	Friday, December 8, 2023 by 2:00 p.m.

## PART I - GENERAL INFORMATION FOR PROPOSERS

### 1. **PURPOSE**

The NHLC seeks to procure a contractor to supply shopping carts for the NHLC's retail outlet stores throughout the State of New Hampshire, and, in addition, to procure replacement parts and carts as may be needed. This RFP describes the project and the NHLC's requirements.

### 2. **ISSUING OFFICER**

The Issuing Officer responsible for managing this RFP 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))

All inquiries regarding this RFP must be submitted electronically to the Issuing Officer.

### 3. **SCOPE**

This RFP contains instructions governing the required content of proposals, terms governing this procurement process, a description of the services sought by the NHLC, requirements that a proposer must satisfy to be eligible for consideration, evaluation criteria, standard contract terms and conditions, and other requirements that must be satisfied in each proposal.

### 4. **PROJECT DELIVERABLES:**

Deliverables for this engagement consist of the following:

1. The NHLC is intending to standardize its total inventory of approximately 1600-1700 shopping carts to two types: a larger single basket style, and a smaller single basket style. Bidders will be expected to explain and describe the type, size, and style of shopping carts available. The ultimate determination on the type, size, and style shall be made by the NHLC in consultation with the winning bidder at the time of contracting. The NHLC anticipates that the contract will involve approximately 70 percent of the larger style, and 30 percent of the smaller style. The actual number of each size/style shall be determined by the NHLC in consultation with the winning bidder at the time of contracting.
2. The Contractor shall be responsible for supplying new, or like-new refurbished, metal, NOT PLASTIC, carts to the NHLC store locations listed in **Appendix B** to this RFP in the sizes and styles required by the NHLC. At the time of delivery, the Contractor will remove and haul away any existing carts at each location. The list of stores provided in **Appendix B** is subject to change. If at any time a store is opened or relocated, the new location shall be considered part of this contract. The delivery schedule for the new carts shall be determined by the NHLC in consultation with the winning bidder at the time of contracting.

3. Carts removed from stores at the time of delivery of new carts may be scrapped, resold, or otherwise disposed of at the discretion of the Contractor, subject to the NHLC receiving an appropriate credit for each cart so disposed.
4. For bidding purposes, bidders are expected to describe the availability of: handles with custom logos or text; different colors or styles for accessories such as handles, seats, and seat belts; or any other features that may be added to, or adjusted on, the carts.
5. In addition to supplying new carts, the Contractor will supply or keep in inventory, replacement parts, including, but not limited to: wheels and casters; handles; seats and seat belts for delivery to the NHLC or specific NHLC retail stores as requested by the NHLC, over the term of the contract.
6. The Contractor will supply or keep in inventory a stock of replacement carts equating to at least 10 percent of the number of newly delivered carts for delivery to the NHLC or specific NHLC retail stores as requested by the NHLC, over the term of the contract. While the NHLC anticipates requiring replacements for damaged, lost/stolen, or defective carts from time to time, the NHLC does not anticipate including maintenance and repair services through this RFP.

## 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 with any inquiries. 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 November 15, 2023 by 2:00 p.m.** Inquiries received after the Proposer Inquiry Period shall not be considered properly submitted, and the NHLC may exercise its discretion in determining whether to provide an answer.

The NHLC intends to issue official responses to properly submitted 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 for efficiency and clarity. The NHLC may amend this RFP on its own initiative or in response to issues raised by inquiries. 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 the most updated information online before submitting a proposal.

### 3. **AMENDMENT TO THE RFP**

The NHLC may amend this RFP at any time at its sole discretion. The NHLC will post any amendments on the NHLC's website at: [https://www.nh.gov/liquor/public\\_notices.shtml](https://www.nh.gov/liquor/public_notices.shtml). In the event that the NHLC deems it necessary to amend this RFP, the NHLC may extend deadlines and/or invite submission of additional information from proposers at any time. Proposers 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, and any written information that is not contained within the RFP or formally issued as an amendment by the Issuing Officer.

### 4. **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. Proof of signatory authorization must be included with the proposal submission.

### 5. **PROPOSALS AND AWARDS**

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, or to split the contract between the supply

requirement and the maintenance and repair requirement. A contractor will not retain any exclusive rights to provide the services and supplies described in this RFP process during the term of a contract or any extension thereto. The NHLC may, at its sole discretion, obtain services and related materials from other contractors.

## 6. **PROPOSAL SUBMISSION**

1. **Proposal Submission Deadline:** Proposals must be submitted in hard copy and clearly marked “New Hampshire Liquor Commission, Response to RFP 2023-05-CARTS.” Proposals must be submitted to the NHLC no later than the deadline for submission of proposals 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 electronic mail or facsimile transmission. The receipt of a proposal by the State’s mail system does not qualify as receipt of a proposal by the Issuing Office.

- i. If due to inclement weather, natural disaster 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 NHLC business day on which the Issuing Office is open, unless the respondents are otherwise notified by the Issuing Office. The time for submission of proposals shall remain the same. Proposals not submitted by the Closing Date and Time in Table 1: *Schedule* or as otherwise extended pursuant to this RFP will be rejected.

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

### 3. **Proposal Information:**

- i. The NHLC will accept proposals until the deadline date in Table 1: *Schedule*. Proposal packages may be delivered to the address below and identified on the outside of the envelope as:

Proposals:           New Hampshire Liquor Commission  
                              ATTN: “Janet Donnelly, RFP 2023-05-CARTS”  
                              50 Storrs Street  
                              Concord, NH 03301

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

- ii. Proposers are advised to carefully read and complete all information requested in this RFP. If the Proposer’s response does not comply with the conditions for submittal to this RFP, **it may be considered unacceptable by the NHLC and may be rejected without further consideration.**
- iii. The contents of the proposal of the successful proposer(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 inconsistency or ambiguity.

7. **PLANNED EVALUATIONS**

The NHLC will use the following process:

- Initial screening to ensure that the Proposals are in 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.

8. **INITIAL SCREENING**

The NHLC will conduct an initial screening step to verify Proposer compliance with the submission requirements set forth in this RFP. A Proposal that fails to satisfy either submission requirements or minimum standards may be rejected without further consideration.

9. **TECHNICAL SCORING OF PROPOSALS**

The NHLC will select an evaluation team to score Technical Proposals (*i.e.* non-cost related criteria).

10. **COST PROPOSALS REVIEW**

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

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

The cost scoring is broken down into two sub-criteria: (1) Cart Cost Total; (2) Cart Delivery Cost Total. The above formula will be used independently in conjunction with each sub-criterion. The points allocated to each sub-criterion are set forth in Section IV below.

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.

11. **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) for the NHLC’s consideration. The NHLC reserves the right to select the Proposer based solely on the initial proposals and is under no obligation to solicit or accept a BAFO from any Proposers. Proposers are encouraged to provide their most competitive prices in their initial proposals in the event the NHLC does not request a BAFO.

If the NHLC invites a Proposer to submit a BAFO, the NHLC will provide a submission deadline. The NHLC may communicate in writing to any Proposer selected to participate in the BAFO any price or cost targets that the NHLC is seeking in the BAFO. All restrictions on contact with NHLC employees shall remain in effect for the BAFO period.



Each invited Proposer may only make one BAFO. The BAFO may not alter the substance of the Proposer's technical proposal. The BAFO may only amend the Proposer'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' price. The NHLC will not select a Proposer 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 Cost Proposal. Only those Proposers who were invited to submit a BAFO will be considered for the award.

**12. FINAL SELECTION**

The NHLC will conduct a final selection based on the final evaluation of the initial proposals or, if requested, as a result of the BAFO, and begin contract negotiations with the selected Proposer.

If the NHLC determines to make an award, the NHLC will issue an "intent to negotiate" notice to a Proposer based on these evaluations. Should the NHLC be unable to reach agreement with the selected Proposer during Contract discussions, the NHLC may then undertake Contract discussions with the second preferred Proposer and so on, or the NHLC may reject all proposals, cancel this RFP, or solicit new Proposals under a new acquisition process.

**13. RIGHTS OF THE NHLC IN ACCEPTING AND EVALUATING PROPOSAL**

The NHLC reserves the right to:

- a. Make independent investigations in evaluating Proposals and consider any source of information, including but not limited to State employees, previous customer experiences, internet research, and rating agencies;
- b. Request additional information to clarify elements of a Proposal;
- c. Waive minor or immaterial deviations from the RFP requirements, if determined to be 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;
- f. Cancel this RFP; and
- g. Open contract discussions with the second highest scoring Proposer and so on, if the NHLC is unable to reach an agreement on Contract terms with the higher scoring Proposer(s).

**14. NON-COLLUSION**

The Proposer'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 Proposers and without effort to preclude the NHLC from obtaining the best possible competitive Proposal.

**15. PROPERTY OF THE NHLC**

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

**16. CONFIDENTIALITY OF A PROPOSAL**

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 Proposer's disclosure or distribution of Proposals other than to the NHLC will be grounds for disqualification.

**17. PUBLIC DISCLOSURE**

In order to protect the integrity of the bidding process, notwithstanding RSA 91-A:4, no information shall be available to the public, or to the members of the general court or its staff concerning specific responses to requests for bids (RFBs), requests for proposals (RFPs), requests for applications (RFAs), or similar requests for submission for the purpose of procuring goods or services or awarding contracts from the time the request is made public until the closing date for responses. On the closing date for responses, the NHLC will post the number of responses received with no further information on the NHLC website. At least 5 business days prior to submitting the proposed contract to the department of administrative services, the NHLC will post the rank or score for each responding vendor on its website. RSA 21-G:37.

In accordance with RSA 9-F:1, any contract entered into as a result of this RFP will be made accessible online via the website Transparent NH (<http://www.nh.gov/transparentnh/>). The content of each Proposal shall become public information 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 in response to this request for proposal 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 by the Proposer of information it believes exempt does not have the effect of making such information exempt. The NHLC will determine the information it believes is properly exempted from disclosure. Marking of the entire Proposal or entire sections of the Proposal (*e.g.* pricing) as confidential will neither be accepted nor honored. 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.

**18. 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 portions thereof, at any time; to cancel this RFP; and to solicit new Proposals under a new acquisition process.

19. **PROPOSAL PREPARATION COST**

By submitting a Proposal, a Proposer agrees that in no event shall the NHLC be either responsible for or held 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.

20. **ETHICAL REQUIREMENTS**

From the time this RFP is published until a contract is awarded, 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 that has been 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 for such an offense, shall be disqualified from bidding on the RFP, or similar request for submission and every such Proposer shall be disqualified from bidding on any RFP or similar request for submission issued by any state agency. A Proposer that was disqualified under this section because of a pending criminal charge that is subsequently dismissed, results in an acquittal, or is annulled, may notify the Department of Administrative Services, which shall note that information on the list maintained on the state's internal intranet system, except that in the case of annulment, the information shall be deleted from the list.

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

A proposer questioning an agency's identification of the selected vendor may request that the agency review its selection process. Such request shall be made in writing and be received by the agency within 5 business days after the rank or score is posted on the agency website. The request shall specify all points on which the proposer believes the agency erred in its process and shall contain such argument in support of its position as the proposer seeks to present. In response, the issuing agency shall review the process it followed for evaluating responses and, within 5 business days of receiving the request for review, issue a written response either affirming its initial selection of a vendor or canceling the RFP. In its request for review, a proposer shall not submit, and an agency shall not accept nor consider, any substantive information that was not included by the proposer in its original proposal. No hearing shall be held in conjunction with a review. The outcome of the agency's review shall not be subject to appeal.

By submitting a proposal, the Proposer is deemed to have waived any challenges to the NHLC's authority to conduct this procurement and the form and procedures of this RFP.

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

From the date of release of this RFP until an award is made and announced regarding the selection of a Proposer, *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.

23. **VALIDITY OF PROPOSAL**

Proposals must be valid for 180 days following the deadline for submission of Proposals in the *Schedule*, or until the Effective Date of any resulting Contract, whichever is later.

## PART III - INFORMATION REQUIRED FROM PROPOSERS

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

### 1. **COST PROPOSAL:**

#### A. **Cart Supply:**

Provide a cost breakdown describing the cost of the carts, including any markup applied by the Contractor. The cost break down should specify the cost of each size of carts, any applicable freight or delivery costs or fees (further broken down by the size of cart, if different), and the total “all-in” cost for the procurement and delivery of the carts.

#### B. **Replacement Part or Cart Cost:**

To the extent not included or covered by the cart supply information in A, above, provide a cost breakdown describing the cost of any replacement parts, including wheels and casters, seats, seat belts, and handles, as well as the cost of supplying replacement carts for any carts that are damaged, lost/stolen, or defective, including any markup applied by the Contractor. The cost break down should specify any applicable freight or delivery costs or fees, and the total “all-in” cost for the procurement and delivery of the replacement parts or carts.

### 2. **TECHNICAL PROPOSAL:**

#### A. **Experience/Product Quality**

Provide a summary of your company’s experience providing shopping carts and replacement services to commercial clients, with an emphasis on retail businesses, including wine and liquor stores, or grocery stores, if any. Include examples of projects completed for retail businesses where the size and scope are similar to the size of the NHLC and the projects encompassed by this RFP. Also include an explanation that sets forth the reasons that your company’s experience with other clients indicates that your company will be successful as a business partner to the NHLC. Please also submit an overview of the products that you offer, *i.e.* replacement carts and parts and details regarding the product quality and warranties, if any.

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

Describe your company’s background and capability to provide shopping carts and any replacement/refurbishment services to the NHLC’s numerous retail locations. Include an overview of the company’s ability to provide services to large and mid-size retail chains.

Within your narrative answer, include the following general background information:

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

## PART IV - CRITERIA FOR SELECTION

### 1. MANDATORY RESPONSIVENESS REQUIREMENTS

To be eligible for selection, a proposal must be:

1. Timely received; and
2. 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. REVIEW AND EVALUATION

The NHLC utilize a committee of qualified personnel to review and evaluate timely submitted proposals. The NHLC will enter into contract negotiations with the proposer whose proposal is determined to be the most advantageous to the State of New Hampshire as determined by the NHLC after taking into consideration all of the evaluation factors.

### 3. CRITERIA FOR SELECTION

The following criteria will be used in evaluating each proposal:

**Overall Engagement Price** – This refers to the costs of cart supply and replacement costs as set forth above.

**Experience/Product Quality** – This refers to the Proposer's prior experience performing the services listed within, including serving other clients with similar needs and product quality.

**Capability** – This refers to the Proposer's organizational capability to handle the services at the NHLC's numerous retail store locations.

<u>Criteria</u>	<u>Points</u>
<b>Overall Engagement Price:</b>	40 points
• 30 points – Initial Cart Supply Costs Total	
• 10 points – Replacement Parts and Carts Total	
<b>Experience/Product Quality:</b>	30 points
<b>Capability:</b>	30 points

## PART V - CONTRACT AWARD

### 1. AWARD

If the State decides to award a contract as a result of this RFP process, any award is contingent upon continued appropriation of funding for the contract. The State will issue an Intent to Award Notice to a Vendor based on these evaluations. Should the State be unable to reach agreement with the selected Vendor during Contract discussions, the State may then undertake Contract discussions with the second preferred Vendor and so on. Such discussions may continue at the sole option of the State until an agreement is reached or all Proposals are rejected.

### 2. NON-EXCLUSIVE CONTRACT

Any resulting Contract from this RFP will be a non-exclusive Contract. The State reserves the right, at its discretion, to retain other Contractors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal. The contract awarded for Post-Implementation Support and Maintenance may be separate from the contract awarded for Implementation and may be awarded to the same or a different vendor.

### 3. STANDARD CONTRACT TERMS

The NHLC will require the successful Proposer to execute a Not-to-Exceed Contract using the Standard Terms and Conditions of the State of New Hampshire, which is attached as Appendix A. The use of the phrase “not-to-exceed” in this context means that the Vendor will agree to a not-to-exceed cap on the total value of the Contract, referred to as a “price limitation.” The price limitation is the maximum amount payable to the selected contractor over the life of the contract.

The NHLC may consider modifications of the State Form P-37 during negotiations. To the extent that a Proposer believes that exceptions to the standard form contract will be necessary for the Proposer to enter into the Agreement, **the Proposer should note those issues during the Proposer Inquiry Period.** The NHLC will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion.

If the NHLC accepts a Proposer’s exception the NHLC will, at the conclusion of the inquiry period, provide notice to all potential Proposers of the exceptions which have been accepted and indicate that exception is available to all potential Proposers. **Any exceptions to the standard form contract that are not raised during the Proposer Inquiry Period are waived.** 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.

# **APPENDICES**



**APPENDIX A**

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

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

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name  <b>New Hampshire Liquor Commission</b>		1.2 State Agency Address  <b>50 Storrs Street, Concord, NH 03301</b>	
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.

**APPENDIX B  
NHLC RETAIL OUTLET 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
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
19	22 Ridge View Lane Plymouth, NH
<b>20</b>	19C Manchester Road Derry, NH

Store Number	ADDRESS
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
30	Market Basket Plaza 21 Jones Road, Ste #6 Milford, NH
31	850 Gold Street Manchester, 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
47	165 Main Street, Unit 6 Lincoln, NH
48	849 Brattleboro Road Hinsdale, NH

Store Number	ADDRESS
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
64	New London Shopping Center 293 Newport Road New London, NH
65	Center at Campton Corners 25 Vintinner Road Campton, NH
66	I-93 North Route 3A Hooksett, NH



Store Number	ADDRESS
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
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
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
85	11 Merchants Way Concord, NH