



NEW HAMPSHIRE STATE LIQUOR COMMISSION
ADVERTISING SERVICES REQUEST FOR PROPOSAL

**REQUEST FOR PROPOSAL
FOR ADVERTISING AGENCY SERVICES 2009
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Request for Proposals

Title: Advertising Agency Services

Issue Date: September 5, 2009

Issuing Agency: New Hampshire State Liquor Commission

Mailing Address: P.O. Box 503
Concord NH 03302-0503

Physical Address: 50 Storrs Street
Concord, NH 03301

Period of Contract: From Liquor Commission and Attorney General's Office approval through October 31, 2011 with two, two-year option to renew (through October 31, 2015) upon written consent of both parties.

Pre-proposal Conference: Meeting will be held at 2:00 PM on Monday, September 14, 2009.

Written Proposal Deadline: Sealed proposals will be received until **9:00AM, on Monday, October 5, 2009**, for furnishing the services described herein. **Proposals postmarked prior to, but received after deadline, will not be accepted.**

Proposal Opening: Monday, October 5, 2009 at 9:00 a.m.

Bids must be made on the enclosed bid form and must be typed or clearly printed in ink, and signed. Corrections must be initialed. Bids that are not complete or are unsigned will not be considered. Faxed Bids will **NOT** be accepted.

Bids will be made public at the time of the opening. Bid results will not be given by telephone and shall be given by mail only if requested in writing and accompanied by a self-addressed, stamped envelope.

If sending through the mail, send to: NHSLC, P.O. Box 503, Concord, NH 03302-0503

If sending via another carrier, send to: NHSLC, 50 Storrs Street, Concord, NH 03301

Or hand-delivered, deliver to: The New Hampshire State Liquor Commission, 50 Storrs Street, Concord, NH 03301.

ALL PROPOSALS MUST BE LABELED: PROPOSAL-ADVERTISING AGENCY SERVICES

Attention: John D. Bunnell, Division Director of Sales, Marketing, Merchandising & Distribution

All inquiries for information should be directed to: John D. Bunnell, telephone 603-271-2163

In compliance with this Request For Proposals, and to all the conditions imposed herein, the undersigned Offerors and agrees to furnish the services in accordance with the attached signed proposal, or as mutually agreed upon by subsequent negotiation.

THIS BID IS NOT VALID UNLESS SIGNED BY A PERSON AUTHORIZED TO LEGALLY BIND THE COMPANY.

Name and Address of Company:

Date: _____

Contact: _____

Title: _____

Authorized Signature: _____

Phone: _____ Fax: _____

E-Mail: _____

PLEASE DIRECT ANY QUESTIONS REGARDING THIS PROPOSAL TO:
Mr. John Bunnell, Division Director of Sales, Marketing, Merchandising & Distribution PHONE: 271-2163

PROPOSAL FOR: Proposal for Advertising Agency Services

Unless specifically deleted by the N.H. State Liquor Commission, the following General Terms and Conditions apply to this Proposal and any resulting Contract.

GENERAL CONDITIONS FOR BIDDING AND CONTRACTS FOR MATERIALS, EQUIPMENT AND SUPPLIES

NATURE OF PROPOSAL AND ELIGIBILITY TO BID.

The proposal is submitted in accordance with Chapter 21-1 and Chapter 8, and rules promulgated thereunder, and constitutes a firm and binding offer. The determination of whether a bid proposal may be withdrawn is solely at the discretion of the N.H. State Liquor Commission. However, in no event shall a proposal be withdrawn unless the request for withdrawal is filed within five days of the date of bid opening, and the bidder establishes that the bid contains a material mistake, and that the mistake occurred despite the exercise of reasonable care.

Proposals may be issued only by the N.H. State Liquor Commission to authorized Contractors and are not transferable.

SAMPLES AND DEMONSTRATIONS. When samples are required they must be submitted free of costs and will not be returned.

Items left for demonstrations purposes shall be delivered and installed free of charge and shall be removed by the vendor at no cost to the State. Said demonstration units shall not be offered to the State as new equipment.

BIDS. Bids must be received at the N.H. Liquor Commission before the date and time specified for the opening. Bids must be made on the official bid proposal and must be typed or clearly printed in ink. Corrections must be initialed. Bids are to be made less Federal Excise Tax and no charge for handling. Bids that are not complete or unsigned will not be considered.

Bids will be made public at the time of the opening and may be reviewed, only after they have been properly recorded. Bid results will not be given by telephone and shall be given by mail only if requested in writing and accompanied by a self-addressed, stamped business-size envelope.

SPECIFICATIONS. Vendors must bid on items as specified. Any proposed changes must be detailed in writing and received at the N.H. Liquor Commission at least five (5) days prior to the bid opening. Vendors shall be notified in writing if any changes to bid specifications are made. Verbal agreements or instructions from any source are not authorized.

AWARD. The award will be made to the responsible bidder meeting specifications at the lowest cost unless other criteria are noted in the proposal. Unless other criteria are noted in the proposal, the award may be made by individual items. The State reserves the right to reject any or all bids or any part thereof.

If there is a discrepancy between the unit price and the extension, the unit price will prevail.

When identical low bids are received with respect to price, award will be made by drawn lot.

Discounts will not be considered in making award but may be offered on the invoice for earlier payment and will be applicable on the date of completion of delivery or receipt of invoice, whichever is later. On orders specifying split deliveries, discounts will apply on the basis of each delivery or receipt of invoice, whichever is later.

DELIVERY. If the vendor fails to furnish items and/or service in accordance with all requirements, including delivery, the State may re-purchase similar items from any other source without competitive bidding, and the original vendor may be liable to the State for any excess costs. If a vendor is unable to complete delivery by the date specified, he must contact the using agency. However, the agency is not required to accept a delay to the original delivery date. All deliveries are subject to inspection and receiving procedure rules as established by the State of New Hampshire. Deliveries are not considered accepted until compliance with these rules has been established. State personnel signatures on shipping documents shall signify only the receipt of shipment.

INVOICING. All invoices must be in triplicate showing Order number, Unit and Extension Prices and Discounts Allowed. A separate invoice shall be submitted for each order. Unless otherwise noted on the proposal or purchase order, payment will not be due until thirty (30) days after all services have been completed, or all items have been delivered, inspected and accepted or the invoice has been received at the agency business office, whichever is later.

PATENT INFRINGEMENT: Any bidder who has reason to believe that any other bidder will violate a patent should such bidder be awarded the contract shall set forth in writing, prior to the date and time of bid opening, the grounds for his belief and a detailed description of the patent.

ASSIGNMENT PROVISION. The bidder/vendor hereby agrees that it will assign all causes of action that it may acquire under the antitrust laws of New Hampshire and the United States as the result of conspiracies, combinations, or contracts in restraint of trade which affect the price of goods or services obtained by the State under this contract if so requested by the State of New Hampshire.

TOXIC SUBSTANCES. In compliance with RSA 277-A known as the Workers Right to Know Act, the vendor shall provide Material Safety Data Sheets with the delivery of any and all products covered by said law.

SPECIFICATION COMPLIANCE. The vendor may be required to supply proof of compliance with bid specifications. When requested, the vendor must immediately supply the N.H. State Liquor Commission with certified test results or certificates of compliance. When none are available, the State may require independent laboratory testing. All costs for such testing, certified test results or certificate of compliance shall be the responsibility of the vendor.

FORM OF CONTRACT. The terms and conditions set forth on the following pages are part of the proposal and will apply to any contract awarded the bidder unless specific exceptions are taken and accepted by the N.H. State Liquor Commission.

OFFER. The undersigned hereby offers to sell to the State of New Hampshire the commodities or services indicated in the following page(s) of this Proposal at the price(s) quoted in complete accordance with all conditions of this Proposal.

EXHIBIT A - PART TWO

REQUIREMENTS

1. BACKGROUND

The New Hampshire Liquor Commission is one of only 18 control states in the nation. As a control state, the New Hampshire state government is responsible for the exclusive sale of spirits at the retail level. Additionally, the Commission sells wine at both the retail and wholesale level.

New Hampshire has been recognized nationally as one of the leading control states in the nation for its innovative marketing, merchandising, and sales efforts.

In recent years, deregulation of federal pricing controls and increased competition for the wine and spirits dollar have created a competitive market in overall sales nationally.

2. INTRODUCTION

The Request for Proposal (RFP) is being issued to invite qualified bidders to submit proposals for integrated marketing services, including but not limited to advertising, marketing, market research, promotions, and web based advertising services as well as public relations services for the New Hampshire State Liquor Commission.

The purpose and intent of this RFP is to enter into one or more contracts for up to two years, (with 2 – two year extensions) with one or more qualified firms. Agencies of all sizes are encouraged to submit proposals.

All proposals (written and oral) will be evaluated by a special committee; the committee will determine qualified bidder(s). The decision as to whom is qualified; who will make an oral presentation and the intent to award the contract lies solely with the above mentioned committee.

3. NON-COMMITMENT OF THE STATE

3.1. The solicitation of bids by this RFP does not commit the State of New Hampshire Liquor Commission to award a contract or to pay costs incurred in the preparation of a bid proposal. All materials received in response to this RFP shall become the property of the State of New Hampshire and will not be returned to the Vendor. Regardless of the Vendor(s) selected, the State reserves the right to use any information presented in the proposal. The content of each Vendor's proposal is required by law to become public information once a contract has been awarded.

3.2. The State of New Hampshire assumes no responsibility or liability for costs incurred by the bidders in preparing or submitting their proposals or for samples included in their response to this RFP, or in making any requested oral presentation regarding this RFP. Any samples or any type of artwork submitted by the vendor will be returned upon request.

3.3. All proposals shall remain valid for a period of 180 days from the proposal due date.

3.4. The Committee reserves the right to accept or reject any or all proposals received in response to this RFP, or to cancel this RFP entirely if it is in the best interest of the State.

3.5. The Committee reserves the right to waive any informality in bid proposal content. However, failure to furnish all information requested may disqualify the bid.

3.6. The contents of the proposal of the successful Offeror will become part of any contract awarded as a result of this procurement process.

EXHIBIT A - PART TWO

REQUIREMENTS

3.7. Addenda to the Request for Proposal:

In the event it becomes necessary to revise any portion of the RFP, addenda will be provided to all Offerors who have requested the original RFP at least 15 days prior to the proposal deadline.

3.8. Proposal Disclosure:

RSA 21-I:13-a, II – (1988) provides, in part that no information shall be made available to the public concerning invitations or proposals for public bids from the time the proposal is made public until contract is actually awarded, in order to protect the integrity of the public bidding process. Accordingly, the NHSLC has determined that information contained in proposals submitted to this or any subsequent RFP issued by the NHSLC shall not be released to the public or to other persons identified in RSA21-1:13-a, II, until the NHSLC has awarded a contract. At that time all proposals will be disclosed to the public to the extent required by the statutes governing access to public records and meeting (the “Right to Know” law), RSA Ch. 91-A.

3.9. Bid results will not be given by telephone and shall only be given by mail only if requested in writing and accompanied by a self-addressed, stamped business size envelope.

3.10. Proposal Disclosure Exemption

If an Offeror wishes to submit information it believes to fall within an exemption from the disclosure requirements of the Right to Know Law, RSA Ch. 91-A, the Vendor must clearly mark each page of its proposal containing such information. A designation by the Vendor of information it believes exempt does not have the effect of making such information exempt. The State will determine the information it believes is properly exempted from disclosure.

4. TERMS AND DEFINITIONS

4.1. “Committee” refers to the members of the evaluation committee.

4.2. “Contractor” refers to the Offeror under this Request for Proposal (RFP) with which the New Hampshire State Liquor Commission negotiates a contract. The terms in this RFP referring to “Contractor”, represent contract terms that will be a part of the final Contract.

4.3. “Offeror” refers to any individual, corporation, partnership or agency that responds in writing to this RFP. “State” refers to the State of New Hampshire; “NHSLC” refers to the New Hampshire State Liquor Commission.

4.4. The NHSLC has issued, and is responsible for this RFP. The Department will enter into the resulting Contract(s) on behalf of the State.

4.5. The “Contract” is the resulting contract entered into between NHSLC and the successful Offeror.

4.6. The terms of the final contract are subject to the agreement of final negotiations.

EXHIBIT A - PART TWO

REQUIREMENTS

7.2. Oral Presentation:

Upon reviewing the written presentations, qualified selected Offerors may be required to make an oral presentation, not to exceed 1 hour. Those qualified selected Offerors will be notified of the date and time of the oral presentation. See Attachment B for explanation of Oral Presentation.

8. CONTRACT PERIOD & FUNDING

8.1. The contract to be awarded in accordance with this RFP will be for a two-year period with two options to extend for an additional two-year period.

8.2. The term of the contract shall be effective upon Liquor Commission and Attorney General's office approval through October 31, 2011. Upon completion of the terms, if the vendor notifies the Liquor Commission by an instrument in writing and both parties hereto agree this contract may be amended for an additional two-year term upon approval of the Liquor Commission and Attorney General's Office.

8.3. Any contract(s) resulting from this process must have the approval of the Liquor Commission and Attorney General's Office. This process takes approximately four to six weeks after the execution of Contract. Upon approval of the Liquor Commission and Attorney General's Office.

8.4. Funding:

For budgeting purposes the NHSLC follows the State's fiscal year calendar which begins each year on July 1st and ends twelve months later on June 30 of the next respective year.

For the remainder of this current fiscal year (FY 2010) ending June 30, 2010, approximately \$600,000 in funding is appropriated by the legislature for advertising services. These funds will be disbursed throughout the year among the most qualified companies based on actual performance and individual areas of expertise.

For the next fiscal year (FY2011) beginning July 1, 2010 and ending on June 30, 2011 approximately \$600,000 is available for advertising services. These funds will be disbursed throughout the year among the most qualified companies based on actual performance and individual areas of expertise.

FY 2011 marks the end of the biennial budget period. Funding is appropriated by the legislature on a biennial basis or every two years. Although future funding levels for this contract are expected to continue at or exceed the FY 2011 funding level, no guarantees can be made as to the future budgets as they are ultimately determined by the legislature.

8.5. The Liquor Commission reserves the right to terminate contracts at any given time. The performance of work under the contract may be terminated as provided in the P-37 form (see attachment) by the NHSLC in whole, or from time to time, in part whenever for any reason the Commission shall determine that such termination is in the best interest of the NHSLC. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of the work under the contract is terminated and the date of which such termination becomes effective.

EXHIBIT A - PART TWO

REQUIREMENTS

8.6. Contract Continuity:

Upon expiration of their contract, if the State or the Contractor fail to accept or agree on a contract extension for an additional period, the Contractor must agree to provide all services 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 a satisfactory replacement of a vendor.

EXHIBIT A - PART TWO

REQUIREMENTS

1. GENERAL SERVICES

- 1.1. The Contractor(s) will be responsible for, with the help of research provided by NHSLC and augmented by its own valid research, recommending marketing strategies, producing high quality advertising and promotional materials designed to meet the Liquor Commission's goals of increasing wine and spirit profits and revenues. Such services may include but are not necessarily restricted to the following:
 - 1) Creative Effort & Image Branding
 - 2) Design & Copywriting
 - 3) Production of Mechanicals/Artwork
 - 4) Media Selection
 - 5) Media Placement
 - 6) Web based/ electronic advertising
 - 7) Strategy
 - 8) Public Relations
- 1.2. The Contractor(s) must provide all the administrative services of a recognized full-service advertising agency. This will include, but is not limited to, media calendars, job estimates, monthly budget and reconciliation updates, detailed monthly billings, and analysis of promotion effectiveness upon completion.
- 1.3. The Contractor(s) will plan and develop CD-ROMs, videos, slide presentations, PowerPoint presentations, etc. and in the case of new technologies, Contractor will explore technical details and present NHSLC staff with viable options.
- 1.4. The Contractor(s) may meet bi-weekly with NHSLC staff to plan, communicate, and review advertising strategies, and their financial performance.
- 1.5. The Contractor(s) will be responsible for negotiation and placement of media. Cost of placement will be net to NHSLC and it is expected that the Contractor will negotiate added value.
- 1.6. The Contractor(s) will recommend advertising schedules for newspapers, magazines, television, radio, interactive and other media within a total annual budget as discussed in section 8.4 Funding.
- 1.7. The Contractor(s) will give guidance and support to other NHSLC contractors to ensure maximum synergy and results. This includes, but is not limited to website developer, public relations, website optimization, and research.
- 1.8. The Contractor(s) will provide expertise in consumer marketing, domestic and international, to enhance and expand current target markets and increase revenue for the NHSLC. The Contractor must propose strategies to expand promotional efforts effectively into new markets and maintain traditional markets. Contractor will provide public relations/publicity support.
- 1.9. The Contractor(s) must develop a strategy to position the State of New Hampshire uniquely apart from other competing states in order to protect and increase our market share. Said positioning must be in concert with those attributes which are valued by our residents and visitors and which build on our authentic assets.
- 1.10. The Contractor(s) may provide printing services either directly or via sub-contract. Printing services may also be provided by the State's Bureau of Graphic Services through competitive bid. Contractor shall provide printing specifications, and press proofs, with NHSLC approval.
- 1.11. The Contractor(s) will participate in industry events such as the New Hampshire Retail Grocers Association and NHSLC sponsored wine tastings to stay current on industry activities and trends.

EXHIBIT A - PART TWO

REQUIREMENTS

1.12. Subcontracting

The Contractor(s) is prohibited from subletting, conveying, assigning or otherwise disposing of any contract resulting from the RFP, its rights, title, or interest therein or its power to execute such agreement to any other company, corporation, or entity without the previous consent and written approval of the State. In the event the State approves the use of subcontractors in performance of this contract, the prime contractor is not relieved of its responsibility and obligation to meet all the requirements of this RFP.

1.13. Ownership of Work(s)

The State shall own all right, title and interest in and to any software, documentation, products, Point of Sale materials, advertising for television, radio, print, internet or other media, or deliverables which result from services rendered by the Contractor to the State under this Contract ("Work(s)"). For all purposes of copyright law, the Work(s) shall be deemed works made for hire of the State and copyright shall belong solely to the State. If any Work(s) are determined by a court of competent jurisdiction or by the state to be not a work made for hire, the Contractor agrees to assign, and hereby assigns, all copyright and other rights in such Work(s) to the State. The Contractor shall, at no additional expense to the State, assist the State to obtain copyrights, trademarks, or patents for all such Work(s) in the United States and any other countries. The Contractor agrees to execute all papers and to give all facts necessary to secure the United States or foreign country copyrights and patents, and to transfer or cause to transfer to the State all the right, title and interest in and to such Work(s). The Contractor represents and warrants that the Work(s) shall be free of any claim of any third person or entity based on patent or copyright infringement, trade secret misappropriation, or otherwise.

1.14. Accounting Records

The Contractor(s) will be required to maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with the generally accepted accounting principles and other procedures specified by the State of New Hampshire. Financial and accounting records shall be made available, upon request, to the NHSLC, or its designees and the State of New Hampshire, at all times during the contract period and any extension thereof, and for three (3) years from the expiration date of this contract.

1.15. Change in Work: The NHSLC may order changes in the work, the contract sum being adjusted accordingly. All such orders and adjustments shall be in writing. Claims by the Contractor for extra cost must be made in writing and signed by the Commissioners or their designee before executing the work involved.

1.16. Access to Records: The Contractor(s) shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to cost incurred under the agreement and to make such materials available at their offices at all reasonable times during the period of this agreement and for three years from the date of the expiration of this agreement, for inspection by the NHSLC or any authorized representative of the State of New Hampshire and copies shall be furnished, if requested.

EXHIBIT A - PART TWO

REQUIREMENTS

2. PUBLIC RELATION SERVICES

The Contractor(s) will be required, either directly or through an approved provider, to provide public relations services on an as needed basis. When Public Relation services are requested by the NHSLC and if time allows, the Contractor will provide a cost estimate to be approved prior to work commencing. In some situations, time will not allow for this. These services may include, but are not necessarily restricted to, the following:

- 1) Improve and enhance the image of the NHSLC with the general public.
- 2) Increase public awareness of the favorable aspects of the NHSLC.
- 3) Provide human-interest stories of new employees and or promotions to the available media.
- 4) Provide support for all aspects of Press Conferences.
- 5) Provide press information on new initiatives, promotions/products.
- 6) Have a good working relationship with various editors, reporters and program managers of the existing/new media throughout the New England.
- 7) Ability to provide Crisis Management

3. ON-LINE COLLABORATION TOOLS

The NHSLC strongly desires the agency to have the capability to conduct an on-line collaboration for advertising projects. For example: The NHSLC would like the ability to view work in progress, status reports, etc. by going to the ad agency website or server which provides a secure area for review of such work. Or, the ad agency may conduct E-Business communication by way of e-mail and the sending of files for review. This would include progress reports, graphic files and more. Also included would be audio and/or video electronic files through a common media player such as Real Player or Windows Media Player. Graphic Files sent must be in PC format compatible with the State of New Hampshire. Use of management programs are encouraged, these programs would be Microsoft project, Instant Message programs, software project management solutions and other.

The Contractor will provide web site promotional coordination, as needed, special events marketing, copywriting services and branding image.

EXHIBIT A – PART THREE

PROPOSAL SUBMISSION

Proposals should be as thorough and detailed as possible so that the Committee may properly evaluate Offeror capabilities to provide the required services. Offeror(s) are required to submit the following items as a complete proposal:

1. PROPOSAL SUBMISSION

In order to be considered for selection, Offerors must submit a completed written response to this RFP and must be willing to adhere to the following conditions and must positively state so in the proposal.

Sealed written proposals must be delivered to the New Hampshire Liquor Commission by 9:00 a.m. local time October 5, 2009. The official date and time of receipt will be determined by the New Hampshire Liquor's date and time stamp. Proposals should be clearly marked "Sealed Proposal to Provide Advertising Services to the New Hampshire Liquor Commission".

One original and six copies of each proposal must be submitted to the NHSLC. No other distribution of the written proposal shall be made by the Offeror. Items within each proposal that a Offeror deems confidential shall be clearly marked in red as confidential. No Offeror requests for extension of time will be granted. Failure to submit the proposal in a timely manner is grounds for rejection.

In addition, Offerors will be required to make an oral presentation, if requested. The NHSLC retains the right to keep the original copy of the proposal under RSA 91-A, public's right to know. Proposal will not be available for public inspection until a contract has been approved by the Liquor Commission and Attorney General's Office.

1.1. Written Proposal

Proposals shall be signed on **page one** by an authorized representative or the company. Proposals which are incomplete or lack key information may be rejected by the NHSLC at its discretion.

Proposals should be prepared simply and economically, providing a straight-forward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

Each copy of the proposal should be in a simple volume where practical. Elaborate brochures and other representation beyond that sufficient to present a complete and effective proposal are neither required nor desired.

(Below are the attachments to be included in with the response)

1.1.1. ATTACHMENT A – CONTRACTOR DATA SHEET:

- a. Provide the Name, Address, Telephone Number, E-mail Address and fax number of agency as well as Contact Person.
- b. Company name, address, telephone number and contact name of major clients. Include length of service to each client and a brief description of those services.
- c. Experience and Qualifications:
Along with completing the "Contractor Data Sheet" include a written, one-page introductory statement including:

EXHIBIT A – PART THREE

PROPOSAL SUBMISSION

- a. Experience in providing services as described: The expertise of participating personnel including, but not limited to, those identified in Attachment A, and a description of your training and development program which will assure that all personnel assigned to perform under any resultant contract shall be capable and qualified in the work assigned to them.
- b. A brief description of how the addition of the advertising expenditures in excess of approximately \$600,000.00 to the Offeror's current volume of business could be efficiently absorbed without overtaxing the Offeror's capabilities. It is recognized that the majority of the expenditures are not for advertising agency services, Contractor may be required to pay media costs prior to reimbursement by the State.

1.1.2. **ATTACHMENT B – ORGANIZATIONAL CHARTS:**

- a. Provide an Organizational Chart of the Agency including all account executives, creative, public relations, media department, accounting and all other personnel.
- b. Provide an Agency "Liquor Account" Organizational Chart which includes all personnel who will be involved with the account. Included with that document, provide a one-page resume of each individual listed within that chart. Note: the percentage of their time devoted to the NHSLC should be indicated.

1.1.3. **ATTACHMENT C – COMPANY BACKGROUND:**

- a. Provide a 5 (no more than 5 pages) page company background indicating the number of years the agency has been in existence. Describe in detail experience as related to advertising consumer products, including clients presently and/or previously under contract. Include one of your best advertising campaigns and the results it achieved. Briefly describe any contracts that were terminated and why. Internal facilities and skills available at the office from which the NHSLC account would be serviced should be indicated.

1.1.4. **ATTACHMENT D - FINANCIAL DATA AND STATEMENTS: (This information will be required by Offerors selected for final presentations).**

- a. The Contractor must include in their written proposal a financial statement concerning their operations for the last two fiscal or calendar years. This statement shall include but not necessarily be limited to: statement of net assets and statement of revenues, expenses and changes in fund net assets prepared in accordance with generally accepted accounting principles. This financial statement must be unqualified and certified as to accuracy and full disclosure by a licensed certified public accountant. If you are unable to provide the above requested documents, please provide a statement indicating the reason for exclusion of this information.

1.1.5. **ATTACHMENT E – SAMPLE WORK:**

- a. Provide the following samples of previous work for a single retail orientated experience as noted below. A minimum of 5 of the 7 samples listed below must be submitted. Of those 5 samples, specifically include radio, television, web based advertising and marketing plan.
 - a. Broadcast
 - b. Print Advertising
 - c. Point-of-Sale Item
 - d. Brochure
 - e. Press Release
 - f. Marketing Plan
 - g. Web Advertising and Promotion

EXHIBIT A – PART THREE

PROPOSAL SUBMISSION

1.1.6. ATTACHMENT F - MARKETING STRATEGY CREATIVITY AND METHODOLOGY:

- a. Research methodology: A description of research capabilities, including sources of data for marketing and media. Explain how these sources have been used in the past in developing strategies for clients.
- b. Marketing strategy: A description of proposed methods to effectively position the Commission's products, deal with increased competitive pressures, and increase recognition of the NHSLC as a low cost retailer of a premium and value spirits and wines.
- c. Media purchase: A description of the media buying capabilities of the Offeror and examples of media analysis.
- d. Multi-market experience: A description of marketing experience, if any, specifically in other New England states.
- e. By way of demonstrating strategic thinking and creative ability, the Offeror may be required to develop a marketing campaign for January – March of 2010 to maximize retail spirit and wine sales in the finalist phase.

Create a marketing program targeted to out of state consumers in nearby markets of border states that capitalizes on the New Hampshire Liquor and Wine Outlet price advantage, encourages more frequent visits and increases the average sale.

Your program should include:

1. Theme/Creative.
2. Proposed media.
3. In-store promotions & POS.
4. Other advertising and/or promotional activities.

Budget:

Submit a written budget for the above campaign. The budget shall enumerate all charges, i.e. in-house production, third party charges, media placement costs, etc, and shall not exceed \$200,000.

- f. All written proposals will become the property of and are for the exclusive consideration and use of the Commission, and will not be returned to the Offeror.

1.1.7. ATTACHMENT G – BUDGET OUTLINE:

(See page 24)

EXHIBIT A – PART THREE

PROPOSAL SUBMISSION

1.2. Oral Presentation:

1.2.1. Offerors who submit a written proposal in response to this RFP may be required to present an oral presentation. An oral presentation may be requested of proposed marketing and methodology and strategy, execution and tracking.

1.2.2. NHSLC will schedule the time and location of these presentations. Finalists in this selection may be required to give oral presentations before the members of the committee.

1.3. Proposal Rejection:

The NHSLC reserves the right to reject any and all proposals in response to this RFP. Offerors whose proposals are not accepted will be notified in writing.

1.4. Best and Final Offers - The NHLC may, at its sole discretion, solicit Best and Final Offers (“BAFOs”) from respondents who have submitted responsive proposals and which have been determined to be reasonably possible of selection for a contract award. Respondents will be given opportunity to respond with a BAFO under a procedure defined by the NHLC which may include one (1) or more of the following:

a. Enter into pre-selection discussions:

- i. Schedule written and/or oral presentations or scripted demonstrations; and/or
- ii. Request revised proposals.

The NHLC will evaluate BAFOs against Criteria for Selection found in Part IV, Section IV-3. The NHLC will conduct BAFO proceedings uniformly, the BAFOs will be subject to solicitation by the NHLC and NHLC’s timely receipt of responses pursuant to schedule set by the NHLC. Respondents are encouraged to submit their best price as part of their initial proposal and not to assume there will be an opportunity to provide a BAFO at a later date.

ATTACHMENT A
CONTRACTOR DATA SHEET

1. Contractor information: Name, address, phone number, and date of incorporation. If not a corporation, state the type of business organization, names and addresses of owners, address of principle place of business, date business began, and state in which organized.

Name: _____

Address: _____

Website Address _____

Phone & Fax #s: _____

E-mail Address _____

2. Years in Business: Indicate the length of time you have been in business providing this type of service:

_____ years _____ months.

3. References: Please list three references and contact persons that your firm has performed similar work for.

1. _____

2. _____

3. _____

ATTACHMENT A
CONTRACTOR DATA SHEET

4. Gross income, net of media-placed billings:

2008 \$ _____	2005 \$ _____
2007 \$ _____	2004 \$ _____
2006 \$ _____	

5. The average size of accounts \$ _____.

6. List approximate percent of total billings by media:

TV _____ %	Research _____ %
Magazine _____ %	Outdoor _____ %
Radio _____ %	Newspaper _____ %
Strategy _____ %	Interactive _____ %
PR _____ %	Other _____ %

7. List five largest accounts and year acquired:

Account	Year Acquired
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

8. Describe any beverage, wine or spirit experience, along with any retail or Point Of Sale (POS) experience held by members of your staff who will work on our account.

ATTACHMENT A
CONTRACTOR DATA SHEET

9. List total number of full-time employees: _____

How many in each of the following categories:

	Full-time	Part-time
Strategy:	_____	_____
Creative:	_____	_____
Production:	_____	_____
Public Relations:	_____	_____
Traffic:	_____	_____
Account Work:	_____	_____
Research	_____	_____
Media	_____	_____
Bookkeeping/Clerical	_____	_____
Total	_____	_____

10. Name the key individuals who will work on this account and what percent of their time will be dedicated to NHSLC.

<u>Name</u>	<u>Function</u>	<u>% of Time</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

11. If you are awarded the NHSLC contract, do you plan to hire any new employees? If so, in what categories?

ATTACHMENT A
CONTRACTOR DATA SHEET

12. Describe any beverage, spirit or wine experience of your company, or propose a strategy to learn more about this industry.

ATTACHMENT B
ORGANIZATIONAL CHARTS

ATTACHMENT C
COMPANY BACKGROUND

ATTACHMENT D
FINANCIAL DATA AND STATEMENTS

This information is not required until the finalist phase.

ATTACHMENT E
SAMPLE WORK

ATTACHMENT F
MARKETING STRATEGY CREATIVITY AND METHODOLOGY

This information is not required until the finalist phase.

ATTACHMENT G
BUDGET OUTLINE

1. CONTRACTING FIRM

To be considered, please submit a bid for your retainer fee for items 1 through 3 and bid on an hourly basis for all other services (items 4 through 6) not included in the retainer fee.

For purposes of the retainer fee, media is estimated to be approximately 70% of the appropriated budget of \$600,000 dollars. The retainer fee is expected to cover the services noted in 1 through 3.

1. Client Services.
2. Media Selection and Recommendation for Placement.
3. Accounting and Administration.

The Liquor Commission will select other firms to be utilized on an as needed basis. These firms will be selected on qualifications and hourly rates submitted for services noted below. Contractors bidding on items 1, 2, and 3 above may also submit hourly rate for all other hourly rate requests below.

4. Creative Concept. Hourly Rate: _____
5. Production. Hourly Rate: _____

(See Production definition on page 24, 5 of the RFP. Production mark-up will only be allowed for those materials or services used outside the agency.)

6. Other. Hourly Rate: _____
- (Other – any charges not covered in the above categories.)

2. PUBLIC RELATIONS SERVICES

If the need arises for Public Relation services, the NHSLC requests if time permits, a written estimate for approval prior to work commencing. It is understood that in some cases of urgency, time may not permit review/approval of a written estimate. See section 2.2 for clarification.

Please state the hourly rate for Public Relations Services: Hourly Rate: _____

3. WEB BASED ADVERTISING/MARKETING/INTEGRATED PROGRAM

The web based advertising and marketing program of the Liquor Commission is an essential component of the Liquor Commission's advertising budget. As part of your response, please provide your hourly rate of such positions:

Please state the hourly rate for Web based services: Hourly Rate: _____

4. TRAVEL, LODGING AND MEALS

Travel to regular and normal business meetings with the NHSLC will be reimbursed at the State's reimbursement rate. Travel requests for meetings and conferences shall be pre-approved in writing by the New Hampshire Liquor Commissioners. Travel shall be subject to the same regulations imposed on State Employees. Travel requests, which are not pre-approved, shall not be reimbursed. This charge is not allowed in 1, 2, or 3 above.

Current mileage reimbursement for the State is set at 55.0 cents per mile.

ATTACHMENT G
BUDGET OUTLINE

5. PRODUCTION

Production means the physical creation of advertising materials, as follows:

Print Ads: involving layout, type specification, paste up, finished artwork or photography, copywriting, type composition, phototype, photostats, printing plates and mats or negatives and proofs.

Point-of-Sale Materials: involving but not limited to layout, type specifications, paste up, finished artwork or photography, type composition, permanent signage, photostats, and printing.

Radio: involving script writing and direction, talent, studio costs, tape stock, reel and boxes supplied by subcontractors.

Television: involving script writing and direction, storyboards, talent, props, sets or location expenses, studios, photography or videotaping costs, release prints or videotapes. All services except script writing, direction and storyboards may be provided by subcontractors.

Web based advertising involving design, layout and copy and detail reports of results.

Production Mark-up % _____

Note: A copy of the Contractor's material invoices must be submitted with the billing to verify markup. The NHSLC will allow no other expenses incurred.

6. INVOICING

All invoices must include detail of work performed, dates and location of service and prices. Please include one original invoice and one copy. Payment will not be due until thirty (30) days after the invoice has been received at the New Hampshire State Liquor Commission business office.

All invoices must be submitted within 30 days of the fiscal year-end, (June 30th) of each year for work completed within the current fiscal year. It is the contractor's further responsibility to ensure that they have been paid within 60 days from the time of submittal. If invoices haven't been submitted within the above mentioned timeframe, approval will be required from the Liquor Commission prior to any process of payments, which will delay the payment process.

Payment may be withheld if work is not performed as described under SCOPE OF SERVICES, and the immediate termination of this contract could occur.

A check will be issued through the State Treasurer and forwarded to the Contractor within fourteen (14) days after processing begins at the agency level. Payments will be for only what has been agreed to in the contract. The State of New Hampshire Liquor Commission does not pay late charges or interest.

ATTACHMENT H
EVALUATION AND AWARD CRITERIA

1. GENERAL INFORMATION

All proposals (written and oral) will be evaluated by a committee of statewide members of several NH State Departments. The committee will determine qualified Offeror(s). The decision as to whom is qualified; who will make an oral presentation and the intent to award the contract lies solely with the above mentioned committee.

Agencies who submit a proposal in response to the RFP but who are not awarded the contract will be notified in writing.

2. CRITERIA

- 2.1. The Committee will evaluate the bid proposals received in response to the RFP. The bid proposals must include specific responses for each item.
- 2.2. The Committee will make a recommendation to the Liquor Commissioners who will approve the bid proposal most advantageous to the State for award; the resulting contract to be executed by the Commission is subject to approval by the Attorney General's Office, as required.
- 2.3. Failure of the Offeror to provide any information requested by the RFP may result in disqualification of the bid.
- 2.4. The criteria to be used in the evaluation of the bid proposals is as follows:
 - a. The ability of the Offeror to meet the minimum specified requirements contained in Exhibit A – Part 1.
 - b. The costs of the proposal satisfying the requirements contained in Exhibit A.
- 2.5. Bids will only be considered from Contractors that have a minimum of three years of successful experience providing advertising services. The Contractor shall be required to demonstrate that they have successfully completed these type services for clients of the same size and magnitude for a minimum of three years. Failure to demonstrate this experience will be grounds for bid rejection.
- 2.6. The Committee reserves the right to interview any or all Contractors responding to this RFP. By submitting a proposal in response to this RFP, the Contractor grants the State the right to contact or arrange a visit in person with any or all of the Contractor's clients and facilities.
- 2.7. The Committee shall be the sole factor when determining what constitutes an acceptable Offeror, and will make the decision for selection of a Contractor. Proposals will be evaluated for purpose of award by the Committee. The selected Offeror will be notified in writing.
- 2.8. The Committee may cancel this RFP, or reject proposals at any time prior to an award. The State reserves the right to reject any or all bids or any part thereof as deemed to be in the best interest of the state.
- 2.9. Bid award for the services requested under these specifications will be based upon capacity to perform, capacity of the state to monitor and enforce performance, availability of resources to perform services, and price.
- 2.10. Any agreement that may result from this proposal shall not be binding on either party until it has been approved by the Liquor Commission and Attorney General's Office.

ATTACHMENT H
EVALUATION AND AWARD CRITERIA

2.11. Written Proposal:

The written proposals submitted by your agency will be reviewed for the following criteria. It is noted that the criteria listed will primarily be used for the evaluation process, however, the Commission reserves the right to include additional parts of the presentations if the Commission believes it is in the best interest of the state.

- a. Responsiveness to the RFP.
- b. Agency Staff and their Experience.
- c. Client List.
- d. Length of time the agency has been in business and the total billings.
- e. Financial conditions of the Agency.
- f. The example of the successful advertising campaign.
- g. Price

2.12. The Contractors should demonstrate in their proposal, capabilities in each of the areas listed above. Specifically, successful Offeror's services will be utilized in the following areas:

- 1) Point-of-Sale Brochures
- 2) Point-of-Sale Posters
- 3) Television and Radio Commercials
- 4) Newspaper Advertisements
- 5) Other Promotional Materials
- 6) Event Marketing such as but not limited to Retailer Grand Openings, Customer appreciation days, celebrity appearances
- 7) Web based advertising and promotion and email marketing

2.13. Oral Presentations:

The oral presentation by selected agencies will be reviewed for the following criteria. It is noted that the criteria listed will primarily be used for the evaluation process; however, the Committee reserves the right to include additional parts of the presentations if the Commission believes it is in the best interest of the state.

- a. Strength of the Agency Presentation
- b. Demonstration of key staff ability during the Presentation
- c. Marketing plan suggested for the NHSLC
- d. Selection and placement of media. Understanding the NHSLC media needs
- e. Public relations
- f. Demonstrated ability to reach marketing objectives within budgeted dollar amount
- g. Demonstrated ability and willingness to offer full services: advertising, marketing (focus groups, promotions, etc.), public relations, etc.
- h. Methods to measure program effectiveness
- i. Product positioning clearly defined relative to goals, objectives, target market, etc.
- j. Demonstrated knowledge of regulations governing the sale and advertising of alcoholic beverages
- k. Web based media and email marketing experience

ATTACHMENT H
EVALUATION AND AWARD CRITERIA

2.14. Overall Evaluation

2.14.1. Experience & Qualifications: (45%)

- a. Responsiveness to the RFP:
- b. Agency Staff and their Knowledge and Experience.
- c. Client List
- d. Length of time the agency has been in business and total billing.
- e. Financial conditions of the Agency.
- f. Example of successful advertising campaign.
- g. Past performance.

2.14.2. Financial Terms: (30%)

- a. Price

2.14.3. Marketing Strategy, Creativity & Methodology: (25%)

- a. Strength of the Agency Creativity.
- b. Demonstration of key staff ability during the presentation.
- c. Marketing plan suggested.
- d. Media placement expertise.

2.15. Award of Contract:

Offeror(s) deemed to be best suited among those submitting written proposals will be identified on the basis of evaluation factors stated in the RFP. Offeror(s) may be asked to make an oral presentation. The Commission will make the final decision for selection of a Contractor based on the Committee recommendation. The selected Contractor(s) will be notified in writing.

ATTACHMENTS TO BE INCLUDED WITH BID RESPONSE

A. Sample Packet of Documents: (The information below will only be required if selected for oral presentation).

1. Certificate of Insurance: This certificate is obtained from the Contractor's Insurance Company. One Original and two copies should be returned with Offeror's Response Sheet. The amount of insurance should reflect the requested levels of the RFP.

The Offerors shall furnish to the Contracting Officer, prior to the start of any work, insurance certificates for comprehensive general liability, automobile liability and worker's compensation in accordance with the following:

- a. Comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per incident; and
 - b. Fire and extended coverage insurance covering all property which has been received from the State or purchased with funds provided for that purpose under this agreement.
 - c. The policies shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than 10 days after written notice thereof has been received by the State.
2. Certificate of Authorization/Good Standing: This document may be obtained through the Secretary of State's Office located in the State House, 107 North Main Street, Concord, NH 03301, 603-271-3242. One Original and two copies should be returned with the Offeror's Response Sheet.
 3. Certificate of Authority/Existence: This is merely a form on your company's letterhead stating the individual signing the contract is authorized to enter into contracts on behalf of the company. Standard forms available upon request. One Original and two copies should be returned with the Offeror's Response Sheet.

NOTE: These forms will be REQUIRED during contract signing. We ask that you provide them during the bid submission if possible, or be prepared to furnish them during contract signing.

The Committee may choose to visit the Offeror's business facility.

Subject: _____

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATIONS.

1.1 State Agency Name New Hampshire State Liquor Commission		1.2 State Agency Address P.O. Box 503, 50 Storrs St., Concord, NH 03302-0503	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation \$
1.9 Contracting Officer for State Agency George P. Tsiopras, CFO		1.10 State Agency Telephone Number 603-271-2788	
1.11 Contractor Signature		1.12 Name & Title of Contractor Signatory	
1.13 Acknowledgment: State of _____, County of _____ On, _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal)			
1.13.2 Name and Title of Notary Public or Justice of the Peace			
1.14 State Agency Signature		1.15 Name/Title of State Agency Signatory Mark M. Bodi, Chairman Patricia T. Russell, Commissioner Richard E. Simard, Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (<i>if applicable</i>) By: _____ Director, On: _____			
1.17 Approval by Attorney General (Form, Substance, and Execution) By: _____ On: _____			
1.18 Approval by Governor and Council By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/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 A which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/ COMPLETION OF SERVICES.

3.1. Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement, (“Effective Date”)

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

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

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

5.3. The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H.

RSA 80:7 through RSA 80:7-c or any other provision of law.

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

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

6.1. In connection with the performance of the Services, the Contractor shall comply with all 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 opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

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

6.3. If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 (“Equal Employment Opportunity”), as supplement by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulation and guidelines as the State New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

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

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

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

Contractor Initials _____
Date _____

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1. failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESEVATION.

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

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

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

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. The

form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR’S RELATION TO THE STATE.

In the performance of this Agreement the Contractor is in all respects and 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.

The contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

14.1.1. Comprehensive general liability insurance against all claims of bodily injury, death or property damage in amounts of not less than \$250,00 per claim and \$2,000,000 per occurrence: and

14.1.2. fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

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

Contractor Initials _____
Date _____

14.3. The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under the Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modified of the policy.

15. WORKER'S 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. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

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

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

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment,

waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

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

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

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein be reference.

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

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials _____
Date _____