

STATE OF NEW HAMPSHIRE
Department of Employment Security



State of New Hampshire
Department of Employment Security
45 South Fruit Street
Concord, NH 03301

RFB #: NHES 2022-03B
Bids Due: May 18, 2022 2:00 EST

REQUEST FOR BID FOR: FULL SERVICE MAINTENANCE AGREEMENT FOR TWENTY-SEVEN (27)
MULTI-FUNCTIONAL DEVICES (MFD)

Unless specifically deleted by Employment Security the following General Terms and Conditions apply to this Request for Bid and any resulting Contract.

GENERAL CONDITIONS FOR BIDDING AND CONTRACTS

NATURE OF PROPOSAL AND ELIGIBILITY TO BID. This bid invitation is submitted in accordance with Chapter 21-1, and rules promulgated thereunder, and constitutes a firm and binding offer. A bid may not be withdrawn unless permission is obtained from the Employment Security.

This bid invitation may be issued only by Employment Security to authorized vendors 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 demonstration or evaluation purposes shall be delivered and installed free of charge and shall be removed at no cost to the State. Demonstration units shall not be offered to the State as new equipment.

BIDS. Bids must be received at Employment Security before the date and time specified for the opening. Bids must be submitted on the official Vendor Bid Response form included and must be typed or clearly printed in ink. Corrections must be initialed. Bids are to be made less Federal Exercise Tax and no charge for handling unless required by law.

Bids will be made available to the public after the time of award and posted at <https://apps.das.nh.gov/bidscontracts/bids.aspx>. Bid results will only be given by mail 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 Employment Security at least five (5) days prior to bid opening. Vendors shall be notified in writing if any changes to bid specifications are made.

AWARD: The award will be made to the responsible bidder meeting specifications at the lowest cost unless other criteria are noted in the bid invitation. Unless otherwise noted, the award may be made by individual items.

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 in accordance with Administrative Rules.

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.

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

ASSIGNMENT PROVISION. The vendor hereby agrees to 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 materially affect the price of goods or services obtained by the state under this contract if so requested by the State of New Hampshire.

FEDERAL FUNDS. The Division of Plant and Property Management, as the delegated enforcement agency of RSA 21-1:14 for the Commissioner's Office, shall assure the continuation or granting of federal funds or other assistance not otherwise provided for by law by following the Federal Procurement Standards.

STATES OPTION. Employment Security reserves the right to reject or accept all or any part of any bid, to determine what constitutes a conforming bid, to award the bid solely as it deems to be in the best interest of the State and to waive irregularities that it considers not material to the bid.

PUBLIC INFORMATION. Bidder hereby acknowledges that all information relating to this bid and any resulting order (including but not limited to fees, contracts, agreements and prices) are subject to these laws of the State of New Hampshire regarding public information.

PERSONAL LIABILITY. Bidder agrees that in the preparation of this bid or the execution of any resulting contract or order, representatives of the State of New Hampshire shall incur no liability of any kind.

SPECIFICATION COMPLIANCE. The vendor may be required to supply proof of compliance with the bid specifications. When requested, the vendor must immediately supply Employment Security with certified test results or certificates of compliance. Where 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 in any additional Terms and Conditions by Employment Security are part of the bid and will apply to any contract awarded to the bidder unless specific exceptions are taken and accepted and will prevail over any contrary provisions in Terms and Conditions submitted by the bidder. The form P-37 Contract attached hereto shall be part of this bid and the basis for the contract(s). The successful Vendor and the State, following notification, shall promptly execute this contract form, which is to be completed by incorporating the service requirements and price conditions established by the vendor's offer.

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

Company Name: _____

Address: _____

Telephone (Local): _____ (Toll Free) _____

Fax Number: _____

Authorized Signature: _____

(Type or Print Name Here)

This document must be signed by a person who is authorized to legally obligate the bidder. A signature on this document indicates that all State of New Hampshire terms and conditions are accepted by the bidder and that any and all other terms and conditions submitted by the bidder are null and void even if such terms and conditions have terminology to the contrary. Bidder shall also be subject to State of New Hampshire terms and conditions as stated on the reverse of the purchase order.

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1. The State of New Hampshire, acting through Employment Security engages the firm or individual ("the Vendor") to perform the services and/or sale of goods, described in the attached State documents, if any, and the Vendor's bid or quotation, both of which are incorporated herein by reference.

2. COMPLIANCE BY VENDOR WITH LAWS AND REGULATIONS. In connection with the performance of this agreement, the Vendor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which shall impose any obligation or duty upon the Vendor, including, but not limited to civil rights and equal opportunity laws. In addition, the Vendor shall comply with all applicable copyright laws.

3. TERM. The contract, and all obligations of the parties thereunder, shall become effective on a specified date and shall be completed in their entirety prior to a specified date. Any work undertaken by the Vendor prior to the effective date shall be at his sole risk and, in the event that the contract shall not become effective, the State shall be under no obligation to reimburse the Vendor for any such work.

4. CONTRACT PRICE. The contract price, a payment schedule and a maximum limitation of price shall be as specified by the bid invitation and the Vendor's bid. All payments shall be conditioned upon receipt, and approval by the State, of appropriate vouchers and upon satisfactory performance by the Vendor, as determined by the State. The payment by the State of the Contract Price shall constitute complete reimbursement to the Vendor for all expenses of any nature incurred by the Vendor in the performance by the contractor and complete payment for the Services. The State shall have no other liability to the Vendor.

5. DELIVERY. If the vendor fails to furnish items and/or services 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 shipments. All deliveries shall be FOB Destination.

6. 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 invitation to bid 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.

7. PERSONNEL.

7.1. The Vendor shall disclose in writing the names of all owners (5% or more), directors, officers, employees, agents or subcontractors who are also officials or employees of the State of New Hampshire. Any change in this information shall be reported in writing within fifteen (15) days of their occurrence.

7.2. The person signing this agreement on behalf of the State, or his or her delegee ("Contracting Officer") shall be the State's representative for purposes of this agreement. In the event of any dispute concerning the interpretation of this agreement, the Contracting Officer's decision shall be final.

8. EVENT OF DEFAULT; REMEDIES.

8.1. Any one or more of the following acts or omissions of the Vendor shall constitute an event of default hereunder ("Events of Default"):

- 8.1.1.** failure to deliver the goods or services satisfactorily or on schedule; or
- 8.1.2.** failure to submit any report required hereunder; or
- 8.1.3.** failure to perform any of the other covenants and conditions of this agreement.

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

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

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

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

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

9. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express failure of any Event of Default shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof regarding any further or other default on the part of the Vendor.

10. VENDOR'S RELATION TO THE STATE. In the performance of this agreement the Vendor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Vendor nor any of its officers, employees, agents or members shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

11. ASSIGNMENT AND SUBCONTRACTS. The Vendor shall not assign, or otherwise transfer any interest in this agreement without the prior written consent of the State. No work required by this contract shall be subcontracted without the prior written consent of the State.

12. 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 on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Vendor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

12.1 PATENT PROTECTION. The vendor agrees to indemnify and defend the State of New Hampshire from alleged and actual patent infringements and further agrees to hold the State of New Hampshire harmless from any liability arising under RSA 382-A:2-312(3). (Uniform Commercial Code).

13. 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.

14. 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 below.

15. AMENDMENT. This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto.

16. 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.

17. ADDITIONAL PROVISIONS. The additional provisions (if any) have been set forth as Exhibit "A" hereto.

18. 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.



Instructions for Request for Bid (RFB) Full Service Maintenance Agreement For Twenty-seven (27) Multi-Functional Devices (MFD)

NOTE TO VENDORS

Read and follow these instructions carefully. Many bid responses are submitted incorrectly due to vendor failure to read and follow all instructions. Should you have any questions, refer to the instructions entitled "RFB Inquiries".

PURPOSE for 27 MFD

The purpose of this bid invitation is to establish one full service maintenance agreement contract for Twenty-seven (27) Kyocera MFDs as follows: Seven (7) CS1650/2050, Thirteen (13) Kyocera 2560, Seven (7) Kyocera 420i for the State of New Hampshire, Department of Employment Security, in accordance with the requirements of this bid invitation and any resulting order. This full service maintenance agreement shall be in effect for one (1) year upon approval of any resulting contract by the New Hampshire Governor and Council.

LOCATION

All prices for repair and maintenance service must be FOB destination as defined by the following city/town locations: Berlin (2), Claremont (2) Concord (9), Conway (2), Colebrook (1), Keene (1) Laconia (2), Littleton (1), Manchester (1), Nashua (1), Portsmouth (2), Salem (2) Somersworth (1). Exact locations will be provided to interested bidders. Equipment can be inspected by appointment.

CONTRACT AWARD

This contract shall be awarded in total. The award of the contract shall be based upon the total net low bid for the price of the repair service and maintenance including all parts as indicated in the "Offer" section of this bid. Bidder's offer must meet the required specifications as written.

RFB INQUIRIES

This RFB is issued for the State of New Hampshire by Employment Security, the sole point of contact for the State of New Hampshire during the selection process.

Inquiries must be submitted by an individual authorized to commit their organization to the Terms and Conditions of this RFB. Submissions must clearly identify the RFB Number, the Vendor's name, address and the name of the person submitting the question.

Please take the time to read the RFB carefully before submitting inquiries and make your inquiries as clear as possible. Reference the section of the RFB in question. All inquiries or proposed changes must be submitted in writing and received at the Employment Security at least five business days prior to the bid opening. Inquiries must be submitted by E-mail to Mark Robinson at the following address:

mark.a.robinson@nhes.nh.gov

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TIMELINE

- 05/03/2022 – Bid solicitation (RFB) re-posted and re-distributed
- 05/09/2022 – Deadline for questions, clarifications or requested changes
- 05/10/2022 – Responses to questions, clarifications or requested changes
- 05/18/2022 – Deadline for submitting bids (Bid Opening at 45 S. Fruit St, Concord)

ADDENDA

In the event it becomes necessary to add to or revise any part of this RFB prior to the scheduled submittal date, the Employment Security will post on the NH Purchase and Property web site any Addenda. Before your submission, always check the site for any addenda or other materials that may have been issued that would affect the RFB. The web site address is <https://apps.das.nh.gov/bidscontracts/bids.aspx>

TERMS OF SUBMISSION; RETURN OF COMPLETE ORIGINAL RFB

Vendors must submit a complete response to this RFB. It is mandatory that the vendor conform and respond in accord with the RFB instructions and requirements with completeness and clarity of content. Your "Original" bid submission must include a complete printout of all issued Addenda (if applicable) and the entire RFB.

SUBMISSION OF BID RESPONSE

Your RFB response MUST conform to the following criteria to be considered for award:

All responses must be delivered in sealed packages; permanently marked showing the following information on the outside of the package:

- Vendor's Name and Address
- RFB Number NHES 2022-03B
- BID Due Date May 18, 2022
- Indicated as "SEALED BID"
- Entitled: "Full Service Maintenance Agreement for Digital Copier Equipment – 27 MFD"

The "ORIGINAL" RFB submission must be clearly and permanently marked "ORIGINAL" on the cover.

Your "ORIGINAL" submission must include in the following order:

- Copy of Addenda (if any issued) in numerical sequence; completed and signed.
- The entire Original RFB with completed and signed page 1.
- Vendor's Response to RFB (ATTACHMENT 1, Price Response Sheet).

No forms other than the attached pricing quote sheet may be used to submit pricing for this bid.

- Price Response Sheet must be either typewritten or legibly printed in permanent ink.
- Any change, strikeover or other evidence of alteration to Price Response Sheet **MUST** be initialed by bid signer.
- A **single vendor** will be awarded the contract for repair and maintenance of all machines. This will be a one-year contract, but please give **per quarter** pricing. Prices are to include preventive maintenance and repair services as described in the specifications. Vendors must also submit one (1) identical "COPY" of the response which must be clearly and permanently marked "COPY" on the front.

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The response package must be delivered to the following address:

**Employment Security
45 South Fruit Street
Concord NH 03301-4857
Attention: Fiscal Management – RFP/RFB**

Any package delivered to any other location of the State will not be honored as received!

All responses must be received at the Employment Security on or before the bid due date stated on the first page of this bid. Vendors mailing their responses must allow for sufficient time for delivery by the deadline. Bids received later than the specified date and time at the Employment Security will not be considered.

VENDOR ATTENDANCE AT OPENING OF RFB

If vendors wish to attend the opening of the RFB, only the names of the Vendors submitting responses will be made public. Bid information will be published on the Purchase and Property web site if and when an award is made.

VENDOR CERTIFICATIONS

All bidders must be duly registered as a vendor authorized to conduct business in the State of New Hampshire. In order to become duly registered, the following processes must be completed:

- **State of New Hampshire Vendor Application:** Bidders must have a completed Vendor Application and W-9 Form* on file with the NH Bureau of Purchase and Property. See the following website for information on obtaining and filing the required forms
<https://das.nh.gov/purchasing/vendorresources.aspx> .
**Do not submit these documents as part of your bid submission.*
- **New Hampshire Secretary of State Registration:** A person or persons conducting business under any name other than his/her own legal name must register with the NH Secretary of State. Businesses are classified as 'Domestic' (in-state) or 'Foreign' (out-of-state). Please visit the following website to find out more about the requirements and filing fees for both classifications: <https://quickstart.sos.nh.gov/online/Account/LandingPage>

SUBCONTRACTORS

The vendor shall be solely responsible for meeting all requirements and terms and conditions specified in this RFB, its response and any resulting contract. The vendor must describe in its bid any intended use of third (3rd) parties or subcontractors. The State must approve any use of subcontractors.

CANCELLATION OF RFB

The State reserves the right to cancel this solicitation at any time prior to contract award in which case all responses will be rejected.



BID PRICES

Bid prices shall include all supplies, parts, labor, shipping cost, and travel that may be required to maintain equipment.

BID RESULTS

Bid results may be viewed on the Purchase and Property web site at:

<https://apps.das.nh.gov/bidscontracts/bids.aspx>

ADDITIONAL INFORMATION

The State reserves the right to make a written request for additional information in writing from a Vendor to assist in understanding or clarifying a bid.

BID MUST BE SIGNED ON FRONT COVER SHEET TO BE CONSIDERED.

REQUEST FOR BID:

Full Service Maintenance Agreement

TERMS OF CONTRACT

(a) The awarded vendor must adhere to the general terms and conditions listed within the State of New Hampshire General Provision Statement as well as the State of New Hampshire General Conditions for Bidding and Contracts included in this bid invitation. ***No alterations may be made to this bid invitation or the terms and conditions after the vendor inquiry period.*** Any alterations will result in disqualification of the bid.

(b) This repair service and maintenance contract will be in effect for a one (1) year period beginning upon Governor and Council approval. Any request for service placed by the State within the time period of this contract, even up to the last minute, is to be covered in accord with the terms described herein.

(c) This repair service and maintenance contract may be renewed for one additional term of three years by written mutual agreement between the New Hampshire Department of Employment Security and the contracted vendor. Any such contract extension shall be subject to New Hampshire Governor and Council approval.

(d) If the Employment Security should decide to replace or retire any of the listed equipment within the contract period, the full service maintenance for the replaced or retired equipment shall be removed from the contract within 14 working days of written notification to the vendor. After such time, the agency will no longer be responsible for any full service maintenance charges of replaced or retired equipment.

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NARRATIVE

For purposes of understanding the scope of services required through this contract, the agency owns and requests full service maintenance on the following twenty-seven (27) MFD, located in New Hampshire areas only. Copiers may be move to different locations within state during this contract, but will always remain in New Hampshire.

Equipment may be viewed by appointment only

Location	Model	Serial #	Meter Reading 3-31-2022
Berlin	Kyocera Mita 2560	QAS0908888	150,921
Berlin	Kyocera Mita 420i F/P	QWG0806854	931056
Claremont	Kyocera Mita 2560	QAS0908887	133,321
Claremont	Kyocera Mita 420i F/P	QWG0806881	564,083
Colebrook	Kyocera Mita 1650 F/P	AGK3111342	317,716
Concord	Kyocera Mita 1650 F/P	AGK3111340	142,937
Concord	Kyocera Mita 2050	AGJ3117310	472,276
Concord	Kyocera Mita 2050 F/P	AGH3081152	237,191
Concord	Kyocera Mita 1650 F/P	AGK3081297	430,588
Concord	Kyocera Mita 2050	AGJ3130009	265,788
Concord	Kyocera Mita 1650 F/P	AGK3077410	294,844
Concord	Kyocera Mita 2560/P	QAS0908889	527,390
Concord	Kyocera Mita 2560/F	QAS0908897	807,385
Concord	Kyocera Mita 420i F/P	QWG0X08443	530,146
Conway	Kyocera Mita 420i F/P	QWG0Y09128	518,393
Conway	Kyocera Mita 2560	QAS0908885	111,744
Keene	Kyocera Mita 2560/P	QAS0708323	256,850
Laconia	Kyocera Mita 2560/P	QAS0908896	288,086
Laconia	Kyocera Mita 420i F/P	QWG0806865	973,715
Littleton	Kyocera Mita 2560/P	QAS0908892	91,044
Manchester	Kyocera Mita 2560	QAS0608113	349,680
Nashua	Kyocera Mita 2560	QAS0608112	79,141
Portsmouth	Kyocera Mita 2560	QAS0908875	343,552
Portsmouth	Kyocera Mita 420i F/P	QWG0806851	970,101
Salem	Kyocera Mita 420i F/P	QWG0806846	658,441
Salem	Kyocera Mita 2560	QAS0908886	145,811
Somersworth	Kyocera Mita 2560/P	QAS0908884	371,279

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MINIMUM FUNCTIONAL REQUIREMENTS OF THE SERVICE

This full service maintenance contract will be awarded to the lowest-priced bidder offering to meet or exceed all of the following minimum functional requirements:

1. Services to be provided by contractor under this full service maintenance agreement shall include: 8:00 A.M to 4:00 P.M five (5) days a week Monday-Friday onsite service when requested by the agency. There is to be no limit on the number of service calls placed by Employment Security
2. Vendor must provide certified, trained Kyocera Mita technicians to provide service.
3. Technicians are required to contact service location within one hour, to provide an estimated time of arrival. Such time should not be greater than 4 hours.
4. All maintenance, supplies, toner, parts and labor are to be included in the quarterly base charge and overages of the full service maintenance agreement (excluding staples)
5. Vendor must have web site or e-mail system for ordering toner* and placing service calls
**All supplies must be genuine Kyocera supplies and FOB Destination.*
6. Vendor must have web site or e-mail system for meter read reporting for the submission of quarterly meter reads. Meter reads will be submitted at the last week of the month on the months of September, December, March, and June. No other time frame will be accepted.
7. Vendor **may not** be allowed to charge for parts or labor that may need immediate replacement, due to lack of service from the previous vender
8. This is a full service maintenance agreement. The State of New Hampshire shall not pay or be responsible to pay for any mileage or travel time for any services requested or performed.
9. Vendor may be required to move equipment to different locations within the state of New Hampshire. Such moves will be billable by vendor at the prevailing rates.

INVOICING REQUIREMENTS

Vendor shall invoice quarterly for the **125,000** base clicks and overages. No minimum amount of clicks may be charged to individual machines. Overages rate can be no greater than base rate.

REQUIREMENTS OF THE WINNING BIDDER

Upon receipt of contract award notification, the successful bidder must furnish the following:

- A signed and completed General Provisions Terms and Conditions Form P-37.
- Signed and notarized copy of a Clerk's Certificate.
- Certificate of Comprehensive General Liability Insurance in the amount of \$2 million or more for each occurrence
- Certificate of Good Standing from the State of New Hampshire Department of State.

The awarded vendor must also be certified as noted in RFB instructions.



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ATTACHMENT 1

REQUEST FOR BID

NHES 2022-03B

Full Service Maintenance Agreement

VENDOR'S BID RESPONSE

Company Name: _____

Contact Person: _____ Phone: _____

Please list pricing. Mark in appropriate areas

27 Kyocera MFDs 16PPM-42PPM	Dollar Amount	Click Rate Cost
Quarterly Base Charge for all copiers 125,000 Clicks	\$	(Base Rate) \$.
Overage Click Charge Rate over 125,000 <i>* Cannot be greater than base rate</i>	—————→	(*Overages) \$.

ATTACHMENT 2

SAMPLE FORM TO BE COMPLETED UPON AWARD

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

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

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

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

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 (“Effective Date”).

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

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

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the

performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

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

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

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

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

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

7. PERSONNEL.

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

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

9. TERMINATION.

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

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State’s discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State’s discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

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

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor

arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

16. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United

States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

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

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

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

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

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

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

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

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

