



## State of Idaho Contract Number 5855

### Parties

Agency	Contractor
Department of Administration 650 W. State St. Boise, ID 83702	PRB Oil Company LLC. 62 N. 550 W. Blackfoot, ID 83221

### Contract Summary

<b>Contract Name:</b> Statewide Bulk Fuel <b>Contract Description:</b> Statewide Bulk Fuel Zone 5 Unleaded Fuel and 1 & 2 Diesel Dyed <b>Original Effective Date:</b> July 1, 2024 <b>Current Expiration Date:</b> June 30, 2025	<b>Current Contract Value:</b> \$ 500,000.00 <b>Estimated Lifetime Value:</b> \$ 2,500,000.00 <b>Contract Usage Type:</b> Statewide
--	---

### Agency Contacts

Contact Name	Contact Type	Contact Email
DOP Contract Administration	Contract Administrator	<a href="mailto:Contractadmin@adm.idaho.gov">Contractadmin@adm.idaho.gov</a>

### Contractor Contacts

Contact Name	Contact Phone	Contact Email
JAKE BUTT	+1 208-785-0401	PRBOILCO@GMAIL.COM

### Recitals

1. This Contract number 5855 for Statewide Bulk Fuel **Zone 5 Unleaded Fuel and 1 & 2 Diesel Dyed** ("the Contract") is awarded for the Department of Administration ("the Agency") pursuant to state of Idaho sourcing event number 367 ("the Solicitation").
2. The Contract is issued under the authority provided by the Administrator of the Division of Purchasing pursuant to the State Procurement Act, title 67, chapter 92, Idaho Code.
3. PRB Oil Company LLC. ("Contractor") agrees to provide the Property identified in the line item(s) below as detailed herein.

### Agreement

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:  
This Contract including the attached files below, constitutes the State of Idaho's acceptance of your signed Bid (Including any electronic submission) which is herein by reference. In the event of any inconsistency, precedence shall be given in accordance with section 34 of the State of Idaho Contract Terms and Conditions.

Attachments: Invitation to Bid Event 367  
State of Idaho Terms and Conditions  
Bid Schedule  
Contractors Signed Bid

Department of Administration

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

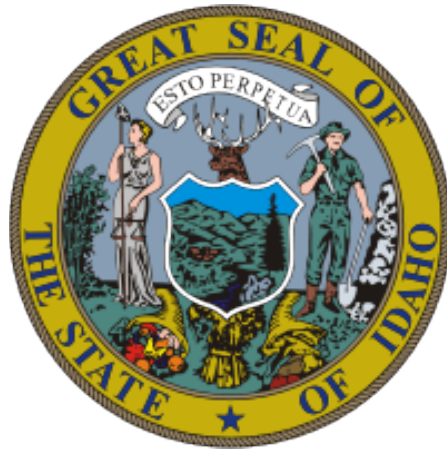
PRB Oil Company LLC.

Signature: 

Name: Jacob Butt

Title: owner / manager

Date: 6-28-24



**STATE OF IDAHO  
DIVISION OF PURCHASING**

**EVENT 367**

**Statewide Bulk Fuel**

**ITB ADMINISTRATIVE INFORMATION**

ITB Title:	Statewide Bulk Fuel
ITB Project Description:	Statewide Contract for Bulk Fuel for Idaho Zone 1, Zone 2, Zone 3, Zone 4, Zone 5, and Zone 6.
ITB Lead:	Joseph Nelson, Purchasing Officer Email: <a href="mailto:joseph.nelson@adm.idaho.gov">joseph.nelson@adm.idaho.gov</a> Phone: 208-332-1602
Submit electronically via IPRO:	Electronic Submission <a href="#">IPRO LOGIN</a>
Deadline To Receive Questions:	Thursday, February 29, 2024 @11:59:59p.m. Mountain Time
ITB Closing Date:	See IPRO Header Document
ITB Opening Date:	See IPRO Header Document
Initial Term of Contract and Renewals:	One (1) years. Upon mutual, written agreement, the Contract may be renewed, extended or amended. The anticipated total Contract term is five (5) years.
<b>The Contract(s) resulting from this ITB will be exempt from the 1.25% Administrative Fee requirement detailed in Paragraph 5 of the State's Standard Terms and Conditions (i.e. NO ADMINISTRATIVE FEE WILL APPLY TO ORDERS).</b>	

## 1 PURPOSE

The Idaho Division of Purchasing (“DOP”) is requesting Bids from qualified Vendors for the purchase of Bulk Fuel for Idaho Zone 1, Zone 2, Zone 3, Zone 4, Zone 5, and Zone 6 in accordance with the specifications provided below.

### 1.1 Public Agencies

The Contractor(s) must accept orders from, and extend contract terms, conditions, and prices to, all “Public Agencies” (Public Agencies) as defined in Section 67-2327 of Idaho Code, which provides as follows: “Public Agency” means any city or political subdivision of this State, including, but not limited to counties; school districts; highway districts; port authorities; instruments of counties; cities or any political subdivision created under the laws of the State of Idaho.” By submitting a bid, bidders agree to extend contract pricing, terms, and conditions to all Idaho “Public Agencies.”

1.2 The resulting contract(s) will be mandatory use for all State of Idaho agencies, as defined in Section 67-9203(3) of Idaho Code. The contract(s) will be optional use for public agencies that are not an Idaho State Agency. From this point on, any reference to State of Idaho agencies and/or political subdivision shall be known as “Ordering Agency”.

## 2 GENERAL INFORMATION, SOLICITATION INSTRUCTIONS AND STANDARD TERMS AND CONDITIONS

This Solicitation is issued by the state of Idaho (the “State”) via IPRO: [\(IPRO LOGIN\)](#). The ITB Lead is the only contact for this Solicitation. All correspondence regarding this ITB shall be in writing. In the event that it becomes necessary to revise any part of this ITB, amendments will be posted at IPRO. It is the responsibility of the Bidder to monitor IPRO for any updates or amendments. Any oral interpretations or clarifications of this ITB shall not be relied upon. All changes to this ITB must be in writing and posted at IPRO to be valid. Alternate Bids are not allowed.

## 3 INQUIRIES

Questions or other correspondence must be submitted in writing to the ITB Lead listed below. **QUESTIONS MUST BE RECEIVED BY 11:59:59 P.M. Mountain Time ON THE DATE LISTED IN THE ITB ADMINISTRATIVE INFORMATION.** Written questions must be submitted using **Attachment 1**, Bidder Questions. Official answers to all written questions will be posted on IPRO as an amendment to this ITB.

ITB Lead: Joseph Nelson  
Phone: 208-332-1602  
E-mail: [Joseph.nelson@adm.idaho.gov](mailto:Joseph.nelson@adm.idaho.gov)

Any questions regarding the State of Idaho Standard Contract Terms and Conditions found in the attachments in Luma) must also be submitted in writing, using **Attachment 1**, Bidder Questions, by the deadline identified in the ITB Administrative Information. The State will not consider proposed modifications to these requirements after the date and time set for receiving questions. Questions regarding these requirements must contain the following:

1. The rationale for the specific requirement being unacceptable to the party submitting the question (define the deficiency).
2. Recommended verbiage for the State’s consideration that is consistent in content, context, and form with the State’s requirement that is being questioned.

3. Explanation of how the State's acceptance of the recommended verbiage is fair and equitable to both the State and to the party submitting the question.

**Bids which condition the Bid based upon the State accepting other terms and conditions not found in the ITB, or which take exception to the State's terms and conditions, will be found non-responsive, and no further consideration of the Bid will be given.**

#### **4 SPECIFICATIONS**

These specifications are the minimum mandatory specifications that your Bid must meet in order for the State to consider your Bid for award. Restate each specification listed in this section, followed by your response demonstrating that your Bid meets or exceeds the required specifications; provide model, part #, or description, as appropriate.

##### **4.1 Gasoline Fuel**

- 4.1.1 Gasoline must meet or exceed the most current and active standard specification listed in the American Society for Testing and Materials (ASTM) Specification D4814 (<https://www.astm.org/Standards/D4814.htm>).
- 4.1.2 Contractor must provide gasoline complying with volatility requirements as outlined in ASTM, Specification D4814, Table 4 (Seasonal Specifications).
- 4.1.3 For all delivery sites requiring unleaded gasoline, the Contractor must provide unleaded gasoline with an anti-knock index "(R+M)/2" of at least 85. All orders are for a minimum 85-octane; however, an Ordering Agency may order a higher-octane fuel. Contractor's margin will be the same for all gasoline regardless of octane.
- 4.1.4 If Contractor fails to deliver the specified octane, Contractor bears all expenses to remove and or replace the contents of the affected tank.
- 4.1.5 Contractor must attach and maintain octane stickers on all gasoline pumps at sites where they deliver gasoline.

##### **4.2 Diesel Fuel**

- 4.2.1 Diesel fuel must meet or exceed the most current and active standard specification listed in the ASTM Specification D975 (<https://www.astm.org/Standards/D975.htm>).
- 4.2.2 Diesel fuel must meet or exceed standard specifications listed in ASTM Specification D1976 (<https://www.astm.org/Standards/D1976.htm>).
- 4.2.3 Ultra-Low sulfur dyed diesel must meet or exceed standard specifications listed in ASTM Specification D4294 (<https://www.astm.org/Standards/D4294.htm>).

##### **4.3 Diesel # 1 and # 2 Fuel**

- 4.3.1 Contractor must provide blended diesel that meets or exceeds standard specifications listed in the ASTM Specification D2500 (<https://www.astm.org/Standards/D2500.htm>).

4.3.2 Contractor must provide blended diesel that is suitable for use at the temperatures that can reasonably be expected to occur. In most cases, satisfactory operation can be expected to occur if the cloud point (or wax appearance point) is 5 degrees F above the tenth percentile minimum ambient air temperature for the area.

4.3.3 The following blending table suggests appropriate fuel blends (Degrees F to Percent of Diesel # 1 and 2):

Temperature (Degrees F)	0	-5	-10	-15	-20	-25	-30	-35
Diesel #1 (Percent)	0	15	40	50	60	67	75	100
Diesel #2 (Percent)	100	85	60	50	40	33	25	0

**4.4 Chemical treatment of Diesel for winter conditions**

4.4.1 In addition to diesel blends for winter conditions some agencies may prefer purchasing diesel fuel that has been treated with a winter chemical additive in place of ordering a blend. Blending of # 1 and # 2 diesels may be done in addition to chemical for very cold regions of the state. If available, Bidders are to include the price per gallon and name of winter chemical additive to the Bid Schedule. Award will not be based on the Bidder’s ability to provide a winter chemical additive.

4.4.2 If the winter chemical additive can be provided, the Ordering Agency will notify the Contractor of the need for winter chemical additive in writing, and the Contractor will include the cost and name as a separate line item on the invoice.

4.4.3 The winter chemical additive listed on the Bid Schedule must be what is provided to the Ordering Agency. The Contractor must not provide a different winter chemical additive than what is listed on the Bid Schedule.

4.4.4 Contractor must provide chemically blended diesel suitable for use at the temperatures that can reasonably be expected at each specific delivery site. If requested by the Ordering Agency, the Contractor must provide documentation showing the temperature ranges the winter chemical additive is rated for.

4.4.5 Contractor must determine the chemical blend rate appropriate for the post-delivery total tank volume.

4.4.6 Contractor must treat the diesel before delivery to a site. The Contractor must not blend in the agency’s tank.

#### **4.5 Biodiesel Fuel**

- 4.5.1 Some agencies may require diesel blended with a percentage of biodiesel delivered to their tank(s). If available, Bidders are to indicate their ability to provide biodiesel and provide their margin cost per gallon. Award will not be based on the Bidder's ability to provide biodiesel.
- 4.5.2 If the biodiesel can be provided, the Ordering Agency will notify the Contractor of the need for biodiesel in writing, and the Contractor must add the cost of biodiesel and their margin (cost must include any cost for blending) as a separate line item on the invoice.
- 4.5.3 Contractor must blend biodiesel with the diesel before delivery to a site. The Contractor must not blend in the agency's tank.

#### **4.6 Fuel Quality**

- 4.6.1 All fuels delivered are subject to testing by a certified commercial laboratory, approved by the Idaho Transportation Department or the Idaho Transportation Department laboratory, to determine acceptability. If fuel delivered is contaminated or does not comply with contract, all costs for testing must be paid by the Contractor. In addition, the Contractor must remove contaminated or non-compliant fuel from bulk tanks and equipment tanks and replace the contaminated or non-compliant fuel. The Contractor agrees to remove contaminated or non-compliant fuel within twenty-four (24) hours after receiving written notification with proof from the Ordering Agency that the product is contaminated or does not meet contract requirements.
- 4.6.2 The State reserves the right to procure a sample of fuel from the Contractor's delivery truck at time of delivery for purposes of verification of specification compliance.
- 4.6.3 Deliveries and/or payment may be refused if quality is unacceptable.
- 4.6.4 Nothing herein must preclude conformance with other federal, state, or local regulations that may be more stringent.

#### **4.7 Taxes**

- 4.7.1 Contract prices and/or Contractor margins must not include taxes. Taxes applicable at time of delivery are to be added to invoices as separate entries.
- 4.7.2 The State does not pay Federal Excise tax. This tax is not to be included on Contractor's invoice.
- 4.7.3 The Contractor is responsible for filing all necessary claims for tax refunds due the Contractor.
- 4.7.4 As of January 1, 1996, Idaho Fuel Tax must be charged on all UNDYED (CLEAR) DIESEL FUEL sold. If tax-paid fuel (clear) is used for non-taxable purposes, you may claim a refund from the tax commission by filing a Form 75. For any questions call your nearest State of Idaho State Tax Commission office.
- 4.7.5 Idaho Fuel Tax must not be charged on any DYED DIESEL FUEL.  
Red-Dyed HIGH-SULFUR diesel fuel
  - Cannot be used in any motor vehicle.
  - Can be used in equipment, stationary engines, combines, tractors, etc.



4.7.6 Red-Dyed ULTRA LOW-SULFUR Diesel Fuel

- Can be used in vehicles operated exclusively by state or local government.
- Can be used in vehicles that are not required to be licensed, equipment, stationary engines, combines, tractors.

**4.8 Order Quantity**

4.8.1 Quantities given are estimated amounts used for bidding purposes only. Agencies may place an order for any quantity of fuel. There is no minimum order quantity set for the resulting Contract. Every effort will be made by the ordering agencies to consolidate orders of all items for each delivery location.

4.8.2 Orders may be placed to Contractor by telephone, e-mail or by fax.

**4.9 Order Acknowledgement**

4.9.1 All orders must be acknowledged by the Contractor within twenty-four (24) hours of receipt. Acknowledgement can be provided by phone, fax, or email, to the Ordering Agency representative who placed the order. Likewise, if any questions, concerns, or problems arise from an order, the Contractor must first correspond with the Ordering Agency representative who placed that order. If an Ordering Agency representative cannot be contacted, the Contractor must correspond with the front office of the Ordering Agency or an assigned designee.

4.9.2 The Contractor must require any first-time Ordering Agency to provide its point-of-contact, address of delivery location, and any other pertinent information to the Contractor for invoicing. The Ordering Agency's failure to provide the information will suspend any order(s) to that Ordering Agency until Contractor has received the correct information for billing.

**4.10 Delivery**

4.10.1 Fuel metering devices must be utilized to provide accurate delivery quantities. Contractor's delivery truck must have a metering device. The only exception to this requirement is for deliveries from a fuel distribution terminal directly to an Ordering Agency site using a transport truck. In this case a bill of lading for each truck and/or trailer load will be acceptable. Split loads will be accepted if all fuel from the distribution terminal is for delivery to multiple sites of a single State agency.

4.10.2 Contractor must be in compliance with Bureau of Weights and Measures rule IDAPA 02.02.14 (<https://adminrules.idaho.gov/rules/current/02/0214.pdf>). Vehicle mounted metering systems must be equipped with a ticket printer to be used for all product delivered through the metering system. A clearly legible copy of the ticket issued by the printer device must be attached to the delivery ticket presented at the time of each delivery.

4.10.3 Bill of lading must be attached to the delivery ticket. The Ordering Agency will pay only for the actual amount of fuel delivered as shown on the delivery vehicle's metering device or on bill of lading.

4.10.4 Delivery is required within two (2) business days after receipt of order. Deliveries exceeding two (2) business days may be allowed, at a mutually determined date between the Contractor and the Ordering Agency.

- 4.10.5 A minimum of twenty-four (24) hours before delivery, the Contractor must contact the Ordering Agency representative or designee advising them of the arrival time of the delivery truck.

For all deliveries, an Ordering Agency representative must be:

- Informed of the delivery truck arrival;
- Afforded an opportunity to observe/confirm off-loading; and
- Be given a numbered delivery receipt to sign confirming delivered quantities. Practical procedures for accomplishing these requirements will be at the discretion of each State agency.

- 4.10.6 Contractor must make deliveries between 8:00 AM and 5:00 PM (local time) Monday through Friday, excluding all state of Idaho observed holidays (<https://www.idaho.gov/government/holidays.html>). The Ordering Agency may upon mutual agreement designate a timeframe for delivery outside the perimeters outlined in this section.

- 4.10.7 Prior to fueling, the Contractor must determine that the tank system to be filled is able to hold the volume of fuel being delivered.

- 4.10.8 The Contractor must perform all deliveries in a safe and professional manner. Contractor's equipment must be in good working order and all Contractor personnel must be trained in safety measures to preclude accidents endangering personnel or property.

- 4.10.9 The Contractor must provide systems necessary to prevent spills and overfills from occurring during the product transfer. The Contractor must also provide the systems necessary to prevent product from reaching streets, catch basins or other drainage structures during product transfers. In the event that a spill occurs, the Contractor is responsible to bear any costs associated with the proper cleanup and disposal of waste. **Please see Pollution Liability coverage below.**

**4.10.9.1 Pollution Liability-** For any work that involves the handling of hazardous material or if the work could create or exasperate an environmental hazard, contractor shall maintain Pollution Liability coverage extending to claims of bodily injury, property damage, including cleanup costs, removal, storage, disposal, and/or use of the pollutant with a limit of liability of not less than \$1,000,000\* and the State, officers, employees, agents, and volunteers should be included as an Additional Insured with respects to liability and defense of suits arising out of activities performed by or on behalf of contractor, including Completed Operations. Completed Operations coverage should be included for up through the statute of repose after the project is completed and accepted by the project Owner. If the contractor is responsible for removing any pollutants from a site, the contractor's automobile liability insurance should be endorsed to include the required auto pollution endorsements and Motor Carrier Act Endorsement MCS-90. **If a vendor does not currently have this type of coverage. The vendor must have this coverage after award and before start of service.**

- 4.10.10 The Contractor's fuel truck operator must be present during delivery and take an active part in the prevention of spills. The fuel truck operator must take immediate action to stop the flow of product when the working capacity of the tank has been reached or when an emergency or spill occurs. Prior to transfer of product and also prior to departure of delivery truck, the fuel truck operator must

examine the lowermost drain and all outlets for leakage, and if necessary, tighten, adjust or replace to prevent liquid leakage.

4.10.11 Contractor is responsible for familiarizing themselves with each Ordering Agency location tank configuration.

4.10.12 In the event of emergencies (declared or undeclared) or natural disasters, any state of Idaho ordering agencies must be given first priority for fuel orders.

#### **4.11 Delivery Locations**

4.11.1 Without penalty to the State, the State reserves the right to add and/or remove delivery locations as needed throughout the life of the Contract.

4.11.2 Any new location added to the Contract will be governed by the same terms and conditions of the resulting contract. Contractor's pricing must extend to the newly added location from the location closest in proximity that is an established location on Contract.

4.11.3 New and/or removed locations will be documented by placement of a revised Bid Schedule, which will be acknowledged in writing by the Contractor and the State, after which an updated list will be published to the Division of Purchasing's website for ordering agencies to view.

4.11.4 Zone map can be found in **Attachment 3** below.

#### **4.12 Changes at Delivery Locations**

4.12.1 The Contractor agrees to deliver fuels to additional tanks at a delivery location using the same margin as already charged for that product.

4.12.2 The ITD Council and New Plymouth sites do not have tanks for either unleaded or diesel fuels. Contractor must provide the necessary tank and dispensing equipment for these sites. Size(s) of tanks will be determined upon contract award. ITD reserves the right to exclude the unleaded fuel tank(s) if margin charged by Contractor is not cost effective.

#### **4.13 Transitional Services**

In the event a replacement Contract is not established before expiration of this Contract or upon termination by the State, Contractor agrees to continue to provide service under the same terms, conditions, and pricing for a minimum of ninety (90) days following Contract termination, or such longer period as agreed upon by the parties.

#### **4.14 Exceptions to Use**

State agencies will obtain all bulk fuels from the resulting Contract. The State reserves the right to purchase fuel elsewhere on an emergency basis or where any delivery requirements are burdensome or restrictive.

### **5 COST**

Provide your fully burdened Total Cost on the Bid Schedule (**Attachment 2**). The State will evaluate cost on **Attachment 2-Bid Schedule**.

#### **5.1 PRICING INSTRUCTIONS**

Bidders: Enter your bid price (margin) for each type of fuel and delivery destination in the appropriate spaces in Attachment 2, Bid Schedule. Bidder must show the amount (margin) to be added to the OPIS RackFax Rack

Average price for the city or terminal designated for each zone: Spokane, WA (Zones 1 & 2), Boise, ID (Zone 3), Burley, ID (Zone 4), and Pocatello, ID (Zones 5 & 6). No other price change method such as referencing your own price list or your supplier's posted price list or any other publication shall be considered.

5.2 Refusal by a bidder to accept OPIS RackFax Rack average prices for the Contract price adjustments as specified herein may result in the bid being deemed non-responsive.

5.3 Bidder's margin must include freight (delivery cost); blending fees (charge for blending Diesel #1, Diesel #2 and any chemical additives); and all other costs except fixed costs (taxes).

5.4 In the proper column of the bid schedule, enter Y (yes) or N (no) indicating your ability to provide biodiesel to each specific Idaho Transportation Department site you are bidding.

EXCEPTION: ITD's Hailey site must be biodiesel. Bids for any diesel product other than biodiesel will not be considered.

## **6 BILLING PROCEDURE**

6.1 Invoices must be Contractor's invoices. The State will not accept invoices from sub-contractors and will not pay sub-contractors directly.

6.2 The Contractor must deliver/fax an invoice to each ordering agency's business office within ten (10) business days after delivery of the fuel – do not send invoices to the Division of Purchasing.

6.3 In the case of a late delivery, fuel base price will to be the lower of the price posted by Idaho Transportation Department on the actual day of delivery or any day between date of order and actual date of delivery.

6.4 The Contractor's invoice must include the following information. Failure to include all of this information may result in the withholding of payment, without penalty, until a properly executed invoice is received:

- Date of delivery
- Name, address, phone, and fax number of Contractor
- Delivery location
- Type of fuel delivered
- Price of fuel per gallon
- Quantity of fuel delivered
- Contractor margin and applicable fixed costs (i.e. taxes)
- Copy of delivery ticket

6.5 The following are fixed costs per gallon:

- State Excise Tax (gasoline) \$0.25
- Special Fuels Tax (undyed diesel only) \$0.25
- Federal LUST Tax \$0.001
- Idaho Transfer Fee \$0.01
- Federal Oil Spill Recovery Fee
- Clear gasoline and diesel \$0.0019
- E10 gasoline \$0.0017

- Where applicable, Washington Hazardous Substance Fee 0.7% of wholesale selling price.

NOTE: Special Fuels Tax is not charged on dyed diesel.

6.6 Any mandatory fixed costs added by federal, state or local government after award of Contract will be allowed.

## **7 SUBMISSION REQUIREMENTS**

### **7.1 Required Bid Submission Items**

Your Bid Submission must consist of the following:

#### **7.1.1 Bid Schedule**

Provide your cost information on **Attachment 2**, Bid Schedule. Do not submit your Bid on any other form. Submitting your Bid on a form different than the Bid Schedule may cause your Bid to be rejected as non-responsive.

#### **7.1.2 State of Idaho Signature Page**

The State of Idaho Signature Page must be completed and submitted as part of your Bid. The State of Idaho Signature Page is attached in IPRO.

#### **7.1.3 Electronic Submission via IPRO**

please submit electronically via IPRO, upload all of the Required Bid Submission Items (*See Section 7.1*) and enter your cost in IPRO for each line item; as the "Total Cost" on the Bid Schedule OR \$0.01 as your cost in IPRO.

Upload all Required Bid Submission Items using Microsoft products such as Word and Excel. Do not submit items in .pdf format, unless provided otherwise in this ITB.

Submitting via IPRO, be advised that that the Bidder for Bid evaluation and award purposes is the entity profile under which submit in IPRO, which must be the same legal entity presented in your uploaded response materials. If the entity identified on the state supplied Signature Page differs from the entity under which you submit your Bid in IPRO, the information provided on the Signature Page prevails.

It is mandatory to submit your Bid electronically via IPRO, all Bidders participating in a Solicitation issued through IPRO must establish an account in the IPRO system as it is necessary in order to process and/or award the resulting Contract(s). It is free to establish an account and only takes a few minutes.

Bidders are further advised to upload response materials with descriptive file names, organized and consolidated in a manner which allows the State to efficiently navigate the Bidder's response; as the State will print uploaded documents for evaluation in the manner received via IPRO.

### **7.2 Trade Secrets**

If your Bid contains trade secret information which you have identified, you must also submit a redacted copy of the Bid (in electronic format, with the word "redacted" in the file name) with all trade secret information removed or blacked out; as well as a separate document containing a complete list (per the instructions in the three (3) paragraphs directly below) of all trade secret information which was removed or blacked out in the redacted copy.

Paragraph 28 of the Solicitation Instructions to Vendors describes trade secrets to “include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy.” In addition to marking each page of the document with a trade secret notation (as applicable; and as provided in Paragraph 28 of the Solicitation Instructions to Vendors), Bidders must also:

Identify with particularity the precise text, illustration, or other information contained within each page marked “trade secret” (it is not sufficient to simply mark the entire page). The specific information you deem “trade secret” within each noted page must be highlighted, italicized, identified by asterisks, contained within a text border, or otherwise clearly delineated from other text/information and specifically identified as a “trade secret.”

Provide a separate document entitled “List of Redacted Trade Secret Information” which provides a succinct list of all trade secret information noted in your Bid; listed in the order it appears in your submittal documents, identified by Page #, Section #/Paragraph #, Title of Section/Paragraph, specific portions of text/illustrations; or in a manner otherwise sufficient to allow the State’s procurement personnel to determine the precise text/material subject to the notation. Additionally, this list must identify with each notation the specific basis for your position that the material be treated as exempt from disclosure.

## **8 AWARD**

More than one (1) award may be issued from this solicitation. Award may be made by zone, multiple zones, or a total of all zones, to the responsive responsible bidder(s) providing the lowest margin price for unleaded, diesel 1 and 2 ULS dyed, and diesel 1 and 2. The State reserves the right to make multiple awards for each zone, whichever is deemed to be in the best interest of the State. Bidders are encouraged to bid on all locations within a zone.

## **9 SUBCONTRACTORS**

Bidders must list any subcontractors and describe the extent to which subcontractors will be used to comply with contract requirements. Contractors must ensure that all subcontractors and their employees will meet all requirements of the Contract. If the Bidder utilizes any entity other than the entity submitting the bid to provide any of the services required by this bid, the relationship between the two entities is considered that of a contractor-subcontractor for the purpose of this section, regardless of whether a relationship is based on an actual written contract between the two.

## **10 CONTRACT CANCELLATION CONDITIONS**

In addition to any other reasons otherwise available to the State, a Contract may be terminated in part or in its entirety by the Division of Purchasing upon written notice for a violation of any of the following conditions:

## **11 PRICE ADJUSTMENT CLAUSE**

11.1 The State’s intention is to establish fuel contracts whereby the purchase price per gallon of fuel can be directly reconciled to the published Oil Price Information Services (OPIS) OPIS RackFax Closing prices FOB Terminal in ct/gal, excluding taxes, discounts and Superfund line items based on the following formula:

- Contract Net Price per gallon = OPIS RackFax Rack Average price in effect on date of delivery + Applicable Taxes/Fees + Contractor’s Margin

11.2 The OPIS RackFax RACK AVERAGE prices identified as OPIS CLEAR GROSS GASOLINE PRICES for Unl, Mid and Pre Unl shall be used to reference changes in contract net prices for unleaded gasoline.

11.3 The OPIS RackFax RACK AVERAGE prices identified as OPIS GROSS DISTILLATE PRICES for Ultra Lo Sul Red No. 2, and Ultra Lo Sul Red No. 1 shall be used to reference changes in contract net prices for Diesel No. 2 ULS Dyed and Diesel No. 1 ULS Dyed.

11.4 The OPIS RackFax RACK AVERAGE prices identified as OPIS GROSS DISTILLATE PRICES for Ultra Lo Sul No. 2 and Ultra Lo Sul No. 1 shall be used to reference changes in contract net prices for low sulfur clear diesels.

11.5 Biodiesel

Summer, 2 lines consisting of 20% biofuel, 80% Ultra lo Sul Red No. 2

Winter, 3 lines consisting of Ultra Lo Sul Red No. 2, Ultra Lo Sul Red No. 1, and chemical additive.

Contractor must itemize each fuel separately (see 4.5) and must provide copies of their distributor's biofuel invoice so pricing can be verified by the State.

11.6 The contract base prices must be per the OPIS RackFax as published daily by UCG, 11300 Rockville Pike, Suite 1100, Rockville, MD 20852-3030. These prices must be the prices in effect for deliveries made on that date and will be posted on the Idaho Transportation Department (ITD) internet website. The State expects to receive and post the prices in the afternoon on a daily basis Monday through Friday, holidays excepted. Weekend and holiday prices will be posted the following business day. Contractor agrees to access the ITD website to determine appropriate contract base prices. (The internet website address will be provided to successful vendors at time of award.)

NOTE: ITD reserves the right to add or remove products for terminals and update the OPIS website as necessary. For example, the Pocatello terminal no longer stocks premium unleaded therefore no pricing is reflected.

11.7 Blended diesel (#1 diesel blended with #2 diesel or petroleum based diesel blended with biodiesel) may only be invoiced at the actual quantity of each gallon of each fuel grade delivered. Blending fees must be included in the Contractor's margin.

11.8 The price per gallon for diesel with a winter chemical additive must be the same as the price per gallon without the additive. The Contractor's invoice is to show the winter chemical additive as a separate entry. Blending fees are to be included in fuel margin.

11.9 It is understood and agreed that company names and prices can be removed from and added to the OPIS RackFax publication by the publishing company without affecting the procedure for price computation.

11.10 If it appears that an error has occurred in any OPIS RackFax issue, the Division of Purchasing shall contact the publisher for clarification.

11.11 If it is discovered, after the fact, that an OPIS RackFax publication that had been used to adjust prices was in error, or that another error occurred, corrections will be made subject to the following conditions:

11.12 The error is detected and sufficient data is available to make corrections within thirty (30) calendar days after the effective date of the contract prices reflecting the erroneous pricing information.

11.13 The amount necessary to make the correcting adjustment, plus or minus, must require an invoice correction in excess of \$40.00.

11.14 Notwithstanding the above, should the price structure become unworkable, detrimental or injurious to the State of Idaho, or result in prices which are not truly reflective of current market conditions and no adjustment in price is mutually agreeable, the Division of Purchasing reserves the right to cancel this contract.

## **12 RECORDS MAINTENANCE**

Contractor shall maintain or supervise the maintenance of all records necessary to properly account for all payments made to the Contractor pursuant to the Contract. These records shall be retained by the Contractor for at least three (3) years after the Contract terminates, or until all audits initiated within the three (3) years have been completed, whichever is later.

## **13 AUDIT RIGHTS**

The Contractor agrees to allow State and Federal auditors and State purchasing staff access to all the records relating to this Contract, for audit, inspection, and monitoring of services or performance. Such access will be during normal business hours or by appointment.



**EVENT 367 STATEWIDE BULK FUEL  
ATTACHMENT 1-BIDDER QUESTIONS**

PLEASE DO NOT IDENTIFY YOUR NAME OR YOUR COMPANY'S NAME OR PRODUCT NAMES OF INTELLECTUAL PROPERTY IN YOUR QUESTIONS.

ADD ROWS BY HITTING THE TAB KEY WHILE WITHIN THE TABLE AND WITHIN THE FINAL ROW.

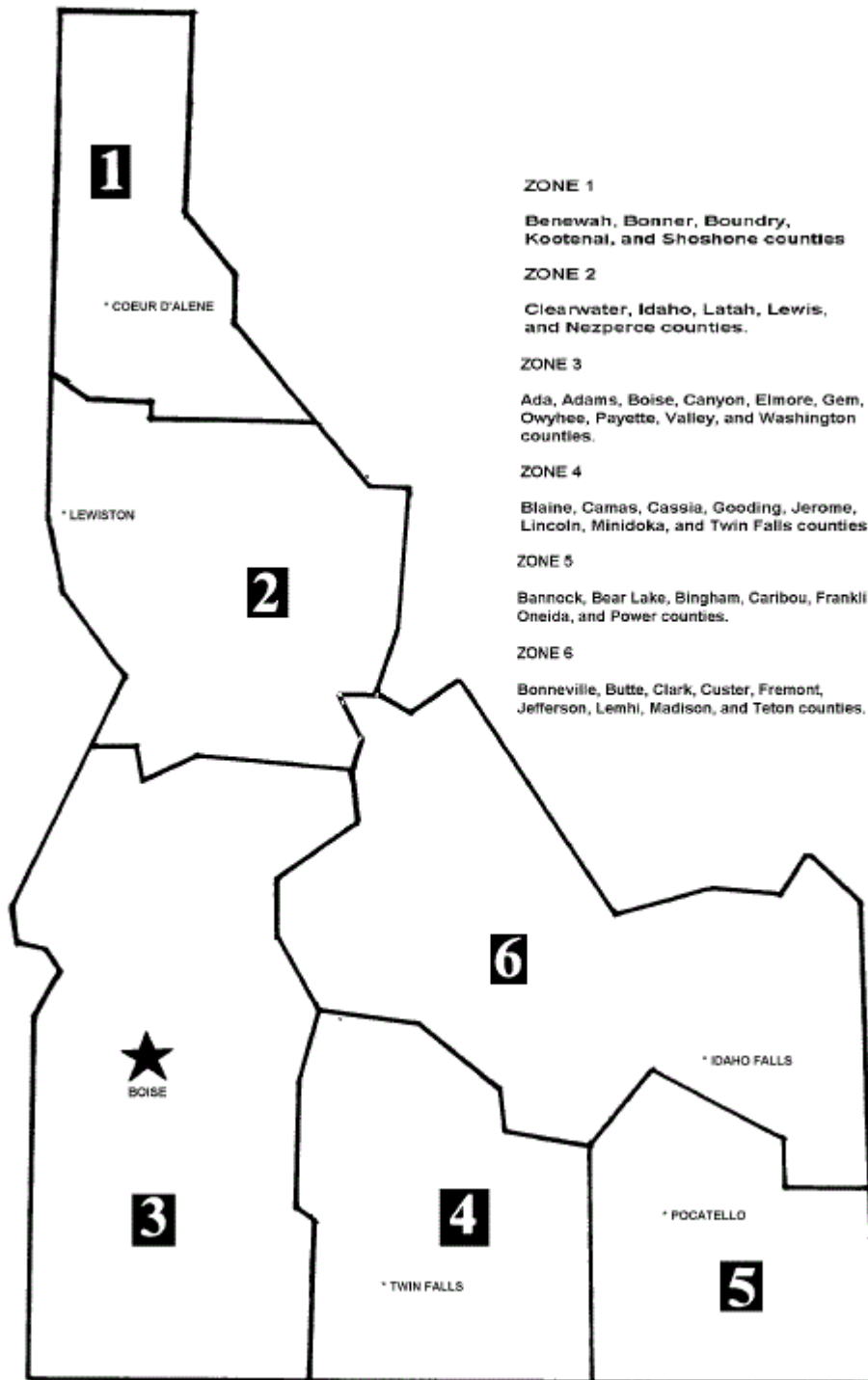
The following instructions must be followed when submitting questions using the question format on the following page.

1. DO NOT CHANGE THE FORMAT OR FONT. Do not bold your questions or change the color of the font.
2. Enter the ITB section number that the question is for in the "ITB Section" field (column 2). If the question is a general question not related to a specific ITB section, enter "General" in column 2. If the question is in regards to a State Term or Condition or a Special Term or Condition, state the clause number in column 2. If the question is in regard to an attachment, enter the attachment identifier (example "Attachment A") in the "ITB Section" (column 2), and the attachment page number in the "ITB page" field (column 3).
3. Do not enter text in the "Response" field (column 5). This is for the State's use only.
4. Once completed, this form is to be e-mailed per the instructions in the ITB. The e-mail subject line is to state the ITB number followed by "Questions."

EVENT 367 STATEWIDE BULK FUEL

	ITB Section	ITB Page	Question	Response
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				

**ATTACHMENT 3  
EVENT 367 STATEWIDE BULK FUEL  
ZONE MAP**



## STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

**1. DEFINITIONS:** Unless the context requires otherwise, all terms not defined below shall have the meanings defined in Idaho Code Section 67-9203 or IDAPA 38.05.01.011.

A. Agency. All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant-governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction.

B. Bid – A written offer that is binding on the Bidder to perform a Contract to purchase or supply Property in response to an Invitation to Bid.

C. Contract - Any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of Property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries.

D. Contractor – A Vendor who has been awarded a Contract.

E. Property – Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interest in such Property. Includes concession services and rights to access or use state property or facilities for business purposes.

F. Proposal – A written response, including pricing information, to a Request for Proposals that describes the solution or means of providing the Property requested and which Proposal is considered an offer to perform in full response to the Request for Proposals. Price may be an evaluation criterion for Proposals, but will not necessarily be the predominant basis for Contract award.

G. Quotation – An offer to supply Property in response to a Request for Quotation and generally used for small or emergency purchases.

H. Solicitation – An Invitation to Bid, a Request for Proposals, or a Request for Quotation issued by the purchasing activity for the purpose of soliciting Bids, Proposals, or Quotes to perform a Contract.

I. State – The state of Idaho including each Agency unless the context implies other state(s) of the United States.

J. Vendor – A person or entity capable of supplying Property to the State.

**2. TERMINATION:** The State may terminate the Contract (and/or any order issued pursuant to the Contract) when the Contractor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days. If the Contract is terminated for default or non-compliance, the Contractor will be responsible for any costs resulting from the State's award of a new contract and any damages incurred by the State. The State, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.

**3. RENEWAL OPTIONS:** Notwithstanding any other provision in the Contract limiting or providing for renewal of the Contract, upon mutual, written agreement by the parties, the Contract may be extended under the same terms and conditions for the time interval equal to the original contract period, or for such shorter period of time as agreed to by the parties.

**4. PRICES:** Prices shall not fluctuate for the period of the Contract and any renewal or extension unless agreed to in writing by the State. Unless otherwise specified, prices include all costs associated with delivery to the F.O.B. Destination address identified in the Solicitation, as provided in Paragraph 17, Shipping and Delivery, below.

**STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS**

**5. ADMINISTRATIVE FEE:**

A. Application of Administrative Fee:

1. All Statewide Blanket Purchase Orders (SBPO) shall be subject to an Administrative Fee of one and one-quarter percent (1.25%), based on orders placed against the Contract (unless the SBPO is exempt), as follows:

- a. The prices to be paid by the State (the price BID by Contractor) shall be inclusive of a one and one-quarter percent (1.25%) Administrative Fee. On a quarterly basis, Contractor will remit to State of Idaho, Attn: Division of Purchasing, PO Box 83720, Boise, Idaho 83720-0075 an amount equal to one and one-quarter percent (1.25%) of Contractor's net (sales minus credits) quarterly Contract sales.

*For Example: If the total of Contractor's net sales to the Agency for one quarter = \$10,000, Contractor would remit  $\$10,000 \times 0.0125 = \$125$  to the Division of Purchasing for that quarter, along with the required quarterly usage report.*

- b. Contractor will furnish detailed usage reports as designated by the State. In addition to any required detailed usage reports, Contractor must also submit a summary quarterly report of purchases made from the Contract to [purchasing@adm.idaho.gov](mailto:purchasing@adm.idaho.gov), utilizing the State's Summary Usage Report Form.

c. Reporting Time Line (Fiscal Year Quarters):	Fee and Report Due:
1st Quarter July 1 - Sept 30	October 31 <sup>st</sup>
2nd Quarter Oct 1 - Dec 31	January 31 <sup>st</sup>
3rd Quarter Jan 1 - Mar 31	April 30 <sup>th</sup>
4th Quarter Apr 1 - Jun 30	July 31 <sup>st</sup>

2. Unless otherwise exempt, the Administrative Fee will apply regardless of how Contractor submits its response to the solicitation (i.e. manual (paper) or electronic via IPRO).

3. A Contractor's failure to consider the Administrative Fee when preparing its Solicitation response shall not constitute or be deemed a waiver by the State of any Administrative Fees owed by Contractor to the State as a result of an Award issued through IPRO.

B. Administrative Fee Exemptions:

- 1. Notwithstanding any language to the contrary, the Administrative Fee will not apply to Contracts with an original awarded value of \$100,000 or less.
- 2. The Administrative Fee will not apply to Purchase Orders (PO), Contract Purchase Orders (CPO) or Blanket Purchase Orders (BPO).
- 3. The Administrative Fee will not apply to Contracts issued without a competitive solicitation, e.g. Emergency Procurements (EPA), Sole Source Procurements (SSA), etc.
- 4. The Administrator of the Division of Purchasing may also exempt a specific solicitation or class of solicitations from the Administrative Fee requirement.

C. Payment of Administrative Fee:

Contractor will remit the Administrative Fee to the Division of Purchasing, PO Box 83720, Boise, Idaho 83720-0075, as follows:

- 1. SBPOs: Contractor will remit the Administrative Fee and Report for the prior quarter based on the schedule outlined in Paragraph 5.A.1.c., above.

D. Refund of Administrative Fee: In the event that a Contract is cancelled by the State through no fault of the Contractor, or if item(s) are returned by the State through no fault, act, or omission of the Contractor after the sale of any such item(s) to the State, the State will refund the Contractor any Administrative Fees remitted. Administrative Fees will not be refunded or Effective May 6, 2021

## STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

returned when an item is rejected or returned, or declined, or the Contract cancelled by the State due to the Contractor's failure to perform or comply with specifications or requirements of the Contract. If, for any other reason, the Contractor is obligated to refund to the State all or a portion of the State's payment to the Contractor, or the State withholds payment because of the assessment of liquidated damages, the Administrative Fee will not be refunded in whole or in part.

E. Failure to Remit Administrative Fees: If a Contractor fails to remit the Administrative Fee, as provided above, the State, at its discretion, may declare the Contractor in default; cancel the Contract; assess and recover re-procurement costs from the Contractor (in addition to all outstanding Administrative Fees); seek State or federal audits, monitoring or inspections; exclude Contractor from participating in future solicitations; and/or suspend Contractor's IPRO account.

**6. CHANGES/MODIFICATIONS:** Changes of specifications or modification of the Contract in any particular manner can be affected only upon written consent of all parties. In the event that a typographical or other ministerial or clerical error is discovered, the State may correct such error after providing notice to the Contractor of its intent to make the clerical correction. A copy of the corrected Contract (or that portion of the Contract which contains correction(s)) will be provided electronically to the Contractor immediately after the correction(s) are made.

**7. CONFORMING PROPERTY:** The Property shall conform in all respects with the requirements of the State's Solicitation. In the event of non-conformity, and without limitation upon any other remedy, the State shall have no financial obligation in regard to the non-conforming goods or services. Additionally, upon notification by the State, the Contractor shall pay all costs for the removal of nonconforming Property from State premises.

**8. OFFICIAL, AGENT AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE:** In no event shall any official, officer, employee or agent of the State be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with the Contract.

**9. CONTRACT RELATIONSHIP:** It is distinctly and particularly understood and agreed between the parties to the Contract that the State is in no way associated or otherwise connected with the performance of any service under the Contract on the part of the Contractor or with the employment of labor or the incurring of expenses by the Contractor. Said Contractor is an independent contractor in the performance of each and every part of the Contract, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, except as specifically stated herein, and for any and all damages in connection with the operation of the Contract, whether it may be for personal injuries or damages of any other kind. The Contractor shall exonerate, defend, indemnify and hold the State harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, worker's compensation and income tax laws with respect to the Contractor or Contractor's employees engaged in performance under the Contract. The Contractor will maintain any applicable worker's compensation insurance as required by law and will provide certificate of same if requested. There will be no exceptions made to this requirement and failure to provide a certificate of worker's compensation insurance may, at the State's option, result in cancellation of the Contract or in a contract price adjustment to cover the State's cost of providing any necessary worker's compensation insurance. The Contractor must provide either a certificate of worker's compensation insurance issued by a surety licensed to write worker's compensation insurance in the state of Idaho, as evidence that the Contractor has in effect a current Idaho worker's compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission. The State does not assume liability as an employer.

**10. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE:** The Contractor is bound to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964, in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for Contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Act of 1990, are also incorporated into the Contract. The Contractor shall comply with pertinent amendments to such laws made during the term of the Contract and with all federal and state rules and regulations implementing such laws. The Contractor must include this provision in every subcontract relating to the Contract.

Effective May 6, 2021

## STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

**11. TAXES:** The State is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The State is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service (Chapter 32 Internal Revenue Code [No. 82-73-0019K]). Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State, it shall be solely responsible for the payment of those taxes. If, after the effective date of the Contract, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time the Contract becomes effective, the State will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the State be responsible for personal property taxes affecting items subject to the Contract at the time it becomes effective.

### **12. GENERAL INDEMNIFICATION:**

A. Contractor's Indemnification. Contractor shall indemnify, defend, and save harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Contractor's acts or omissions under this Contract or Contractor's failure to comply with any state or federal statute, law, regulation, or rule during performance or applicable to the performance of the Contract.

B. Actions on Tender; Limitations. Upon receipt of the State's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under the Contract. Contractor shall not be required to hold the State harmless for damages attributed to the State in a final order issued by a court of competent jurisdiction. If it is determined by a final judgment that the State's negligent act or omission is the sole proximate cause of a suit or claim, the State, to the extent funds are legally available therefore, shall reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to section 12.C.

C. Requirements of Defense. Any legal defense provided by Contractor to the State under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).

**13. CONTRACT NUMBERS:** The Contractor shall clearly show the State's Contract number or Purchase Order number on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**14. CONTRACTOR RESPONSIBILITY:** The Contractor is responsible for furnishing and delivery of all Property included in the Contract, whether or not the Contractor is the manufacturer or producer of such Property. Further, the Contractor will be the sole point of contact on contractual matters, including all warranty issues and payment of charges resulting from the use or purchase of Property.

**15. SUBCONTRACTING:** Unless otherwise allowed by the State in the Contract, the Contractor shall not, without written approval from the State, enter into any subcontract relating to the performance of the Contract or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of any responsibility under the Contract. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Contract by Contractor's subcontractor. Subcontractor(s) must maintain the same types and levels of insurance as that required of the Contractor under the Contract; unless the Contractor provides proof to the State's satisfaction that the subcontractor(s) are fully covered under the Contractor's insurance, or, except as otherwise authorized by the State.

**16. COMMODITY STATUS:** It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the State in the Solicitation. Demonstrators, previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. "New" means items that have not been used previously and that are being actively marketed by the manufacturer or Contractor. The items may contain minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have the State as their first user and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. The warranty is to include replacement, repair, and any labor

Effective May 6, 2021

## STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

for the period of time required by other specifications or for the standard manufacturer or warranty provided by the Contractor, whichever is longer.

**17. SHIPPING AND DELIVERY:** Unless otherwise required in the Contract, all orders will be shipped directly to the Agency that placed the order at the location specified by the State, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. Unless otherwise specified in the Contract, deliveries shall be made to the Agency's receiving dock or inside delivery point, such as the Agency's reception desk. The Contractor shall deliver all orders and complete installation, if required, within the time specified in the Contract. Time for delivery commences at the time the order is received by the Contractor.

**18. ACCEPTANCE:** Unless otherwise specified in the Contract:

A. When the Contract does not require installation, acceptance shall occur fourteen (14) calendar days after delivery, unless the State has notified the Contractor in writing that the product delivered does not meet the State's specification requirements or otherwise fails to pass the Contractor's established test procedures or programs or test procedures or programs identified in the Contract.

B. When the Contract requires installation, acceptance shall occur fourteen (14) calendar days after completion of installation, unless the State has notified the Contractor in writing that the product(s) delivered does not meet the State's specification requirements, that the product is not installed correctly or otherwise fails to pass the Contractor's established test procedures or programs or test procedures or programs identified in the Contract.

C. When the Contract requires the delivery of services, acceptance shall occur fourteen (14) calendar days after delivery of the services, unless the State has notified the Contractor in writing that the services do not meet the State's requirements or otherwise fail to pass the Contractor's established test procedures or programs or test procedures or programs identified in the Contract.

**19. RISK OF LOSS:** Risk of loss and responsibility and liability for loss or damage will remain with Contractor until acceptance, when responsibility will pass to the State with the exceptions of latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under the Contract.

**20. INVOICING: ALL INVOICES** are to be sent directly to the **AGENCY TO WHICH THE PROPERTY IS PROVIDED**, unless otherwise required by the Contract. The Contract number is to be shown on all invoices. Invoices must not be sent to the Division of Purchasing unless required by the Contract.

**21. ASSIGNMENTS:** Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from the Contract, or delegate any of its performance obligations, without the express written consent of the Administrator of the Division of Purchasing and the Idaho Board of Examiners. Transfer without such approval shall cause the annulment of the Contract, at the option of the State. All rights of action, however, for any breach of the contract are reserved to the State. (Idaho Code Section 67-9230).

Notwithstanding the foregoing, and to the extent required by applicable law (including Idaho Code Section 28-9-406), Contractor may assign its right to payment on an account provided that the State shall have no obligation to make payment to an assignee until thirty days after Contractor (not the assignee) has provided the responsible State procurement officer with (a) proof of the assignment, (b) the identity of the specific state contract to which the assignment applies, and (c) the name of the assignee and the exact address to which assigned payments should be made. The State may treat violation of this provision as an event of default.

**22. PAYMENT PROCESSING:** Idaho Code Section 67-9218 reads as follows: "Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be reimbursed according to the terms of the bid. Within ten (10) days of receipt of the document necessary to permit reimbursement of the contractor according to the terms of the contract, the State Controller shall cause a warrant to be issued in favor of the contractor and delivered." Payments shall be processed within the timeframes required by I.C. § 67-9218 unless otherwise specified in the Contract.

**23. COMPLIANCE WITH LAW, LICENSING AND CERTIFICATIONS:** Contractor shall comply with **ALL** requirements of federal, state and local laws and regulations applicable to Contractor or to the Property provided by Contractor pursuant to the Contract. For the duration of the Contract, the Contractor shall maintain in effect and have in its possession all licenses and certifications required by federal, state and local laws and rules.

Effective May 6, 2021



## STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

### 24. PATENTS AND COPYRIGHT INDEMNITY:

A. Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States' patent, copyright, trade secret, or trademark for Property purchased under the Contract. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the State of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and (iii) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.

B. Contractor shall have no liability to the State under any provision of this clause with respect to any claim of infringement that is based upon: (i) the combination or utilization of the Property with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications unless such combination or utilization was disclosed in the specifications; (ii) the modification of the Property unless such modification was disclosed in the specifications; or (iii) the use of the Property not in accordance with Contractor's previously established specifications unless such use was disclosed in the specifications.

C. Should the Property become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States' patent, the Contractor shall, at its option and expense, either procure for the State the right to continue using the Property, to replace or modify the Property so that it becomes non-infringing, or to grant the State a full refund for the purchase price of the Property and accept its return.

**25. CONFIDENTIAL INFORMATION:** Pursuant to the Contract, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State regards as proprietary or confidential ("Confidential Information"). Such Confidential Information shall belong solely to the State. Contractor shall use such Confidential Information only in the performance of its services under the Contract and shall not disclose Confidential Information or any advice given by it to the State to any third party, except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then only upon timely notice to the State. Confidential Information shall be returned to the State upon termination or expiration of the Contract.

Confidential Information shall not include data or information that:

A. Is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;

B. Becomes generally available to the public other than as a result of disclosure by Contractor; or

C. Becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

**26. USE OF THE STATE OF IDAHO NAME:** Contractor shall not, prior to, in the course of, or after performance under the Contract, use the State's name in any advertising or promotional media, including press releases, as a customer or client of Contractor without the prior written consent of the State.

**27. TERMINATION FOR FISCAL NECESSITY:** The State is a government entity and it is understood and agreed that the State's payments under the Contract shall be paid from Idaho State Legislative appropriations, funds granted by the federal government, or both. The Legislature is under no legal obligation to make appropriations to fulfill the Contract. Additionally, the federal government is not legally obligated to provide funds to fulfill the Contract. The Contract shall in no way or manner be construed so as to bind or obligate the state of Idaho beyond the term of any particular appropriation of funds by the Idaho State Legislature, or beyond any federal funds granted to the State, as may exist from time to time. The State reserves the right to terminate the Contract in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the state of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available (e.g. through repeal of enabling legislation), or if the State discontinues or makes a material alteration of the program under which funds were provided, or if federal grant funds are discontinued. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable. All affected future rights and liabilities of the parties shall

Effective May 6, 2021

## STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

thereupon cease within ten (10) calendar days after notice to the Contractor. Further, in the event that funds are no longer available to support the Contract, as described herein, the State shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom. In the event of early Contract termination under this section, the State will collect all Contractor-owned equipment and accessory items distributed under the Contract within thirty (30) calendar days of Contract termination. Items will be collected at a central (or regional) location(s) designated by the State. Contractor will be responsible for all costs associated with packaging and removing all Contractor-owned items from the State-designated location(s), which must be completed within thirty (30) calendar days of written notification from the State. If Contractor fails to remove its items within that time period, the State may charge Contractor for costs associated with storing the items; and may otherwise dispose of the items as allowed by applicable law. At Contractor's request, the State shall promptly provide supplemental documentation as to such Termination for Fiscal Necessity. Nothing in this section shall be construed as ability by the State to terminate for its convenience.

### 28. PUBLIC RECORDS:

A. Pursuant to Idaho Code Section 74-101, et seq., information or documents received by the State will be open to public inspection and copying unless the material is exempt from disclosure under applicable law. The person or entity submitting the material must clearly designate specific information within the document as "exempt," if claiming an exemption; and indicate the basis for such exemption (e.g. Trade Secret). The State will not accept the marking of an entire document as exempt; or a legend or statement on one page that all, or substantially all, of the document is exempt from disclosure.

B. Contractor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate specific information within the document as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any such release. If the State receives a request for materials claimed exempt by the Contractor, the Contractor shall provide the legal defense for such claim.

**29. NOTICES:** Any notice which may be or is required to be given pursuant to the provisions of the Contract shall be in writing and shall be hand delivered, sent by facsimile, email, prepaid overnight courier or United States' mail as follows:

A. For notice to the State, the address, phone and facsimile number

are: State of Idaho  
Division of Purchasing  
650 W State Street – Room 100  
P.O. Box 83720  
Boise, ID 83720-0075  
208-327-7465  
(phone) 208-327-  
7320 (fax)

Additionally, for notice to the State, the email address to use is the email address identified in the Contract, courtesy copied to [purchasing@adm.idaho.gov](mailto:purchasing@adm.idaho.gov).

B. For notice to the Contractor, the address, facsimile number or email address shall be that contained on the Contractor's Bid, Proposal or Quotation (including, for any Bid, Proposal or Quotation submitted electronically through IPRO, the address, facsimile number or email address in the profile under which the Contractor submitted its Bid, Proposal or Quotation). Notice shall be deemed delivered immediately upon personal service, facsimile transmission (with confirmation printout), email (with printout confirming sent) the day after deposit for overnight courier or forty-eight (48) hours after deposit in the United States' mail. Either party may change its address, facsimile number or email address by giving written notice of the change to the other party.

**30. NON-WAIVER:** The failure of any party, at any time, to enforce a provision of the Contract shall in no way constitute a waiver of that provision, nor in any way affect the validity of the Contract, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

**31. ATTORNEY FEES:** In the event suit is brought or an attorney is retained by any party to the Contract to enforce the terms of the Contract or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorney fees, court costs, costs of investigation and other related expenses incurred in connection therewith

Effective May 6, 2021

## STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

in addition to any other available remedies; however, the State's liability is limited to that which is identified in the Idaho Tort Claims Act, Idaho Code Section 6-9 et seq.

**32. CERTIFICATION CONCERNING BOYCOTT OF ISRAEL:** Pursuant to Idaho Code section 67-2346 (effective July 1, 2021), if payments under the Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

**33. FORCE MAJEURE:** Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of either party, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, or unusually severe weather, provided that in all cases the Contractor shall notify the State promptly in writing of any cause for delay and the State concurs that the delay was beyond the control and without the fault or negligence of the Contractor. The period for the performance shall be extended for a period equivalent to the period of the Force Majeure delay.

**34. PRIORITY OF DOCUMENTS:** The Contract consists of and precedence is established by the order of the following documents:

1. The State's Blanket Purchase Order, Statewide Blanket Purchase Order, Contract Purchase Order, Purchase Order, or Participating Addendum;
2. The Solicitation; and
3. Contractor's Bid, Proposal or Quotation as accepted by the State.

The Solicitation and the Contractor's Bid, Proposal or Quotation accepted by the State are incorporated into the Contract by this reference. The parties intend to include all items necessary for the proper completion of the Contract's requirements. The documents set forth above are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a lower numbered document shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency. Provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur.

Where terms and conditions specified in the Contractor's Bid, Proposal or Quotation differ from the terms in the Solicitation, the terms and conditions in the Solicitation shall apply. Where terms and conditions specified in the Contractor's Bid, Proposal or Quotation supplement the terms and conditions in the Solicitation, the supplemental terms and conditions shall apply only if specifically accepted by the Division of Purchasing in writing.

**35. ENTIRE AGREEMENT:** The Contract is the entire agreement between the parties with respect to the subject matter hereof. Where terms and conditions specified in the Contractor's Bid, Proposal or Quotation differ from those specifically stated in the Contract, the terms and conditions of the Contract shall apply. In the event of any conflict between the State of Idaho Standard Contract Terms and Conditions and any Special Terms and Conditions in the Contract, the Special Terms and Conditions will govern. The Contract may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties; however, Termination for Fiscal Necessity is excepted, and, the State may issue unilateral amendments to the Contract to make administrative changes when necessary.

**36. GOVERNING LAW AND SEVERABILITY:** The Contract shall be construed in accordance with and governed by the laws of the state of Idaho. Any action to enforce the provisions of the Contract shall be brought in State district court in Ada County, Boise, Idaho. In the event any term of the Contract is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms of the Contract will remain in force.

Effective May 6, 2021

EVENT 367- Attachment 2 Bid Schedule																
Bidder's Margin = freight + blending fees + profit BUT excludes Fixed Costs (i.e., taxes)																
Bid All items for each Delivery Address!																
	Phone	Tank	Unleaded	Unl.			Diesel 1 & 2	Diesel 1 & 2	Diesel 1 & 2	Diesel # 1 & HS	Diesel # 1 & HS	Diesel # 1 & HS	(IF OFFERED)	(IF OFFERED)	Can you provide	
Delivery Destination	Physical Address	Number	AST	Tank Size	Annual Usage	Unleaded Margin	ULS Dyed Tank Size	ULS Dyed Usage	ULS Dyed Margin	Diesel # 2 Tank Size	Diesel # 2 Usage	Diesel # 2 Margin	Winter Chemical Additive	Winter Chemical Additive	this Delivery Site? (Yes or NO?)	BioDiesel Margin
<b>ZONE 5</b>																
<b>Idaho Department of Parks and Recreation</b>																
Bear Lake State Park	171 Chokeycherry Dr. St. Charles, ID 83272	945-2325		500	2000	0.10000									no	
<b>Idaho State University</b>																
Pocatello, ID	East dunn Street by Davis Field	282-4460	AST	5,000	80,000	0.01500	5,000	20,000	0.03000				0.03	ray Winter power plus		
<b>Idaho Department of Fish and Game</b>																
Sterling WMA (43985)	1345 Barton Road, Pocatello, ID 83204	232-4703					300	150	0.10000				0.03			
<b>Southeastern Idaho Public Health</b>																
Pocatello, ID	1901 Alvin Ricken Drive	233-9080					250	100	0.1000							
<b>Idaho Transportation Department</b>																
American Falls	2996 S. Frontage Rd.	226-5094	UST	2,000	6,200	0.0300	4,000	21,100	0.0300							
Blackfoot	280 W. 50N State Rd.	785-0331	UST	2,000	9,300	0.0200	4,000	19,500	0.0200							
Downey	4181 Highway 40	897-5379	UST	1,000	2,800	0.0500	3,000	9,900	0.0450							
Malad	1010 N 300 EAST	766-2900	UST	1,000	5,300	0.0450	3,000	23,000	0.0450							
Mccammon	359 Highway 30	254-3171	UST	1,000	6,400	0.0450	3,000	9,750	0.0450							
Montpelier	21762 U.S. 30	847-1702	UST	2,000	5,000	0.0500	4,000	23,900	0.0500							
Pocatello	5151 SO. 5TH Ave.	239-3376	UST	12,000	44,300	0.0100	8,000	34,400	0.0100							
Preston	264 E. North	852-1712	AST	1,000	4,900	0.0500	3,000	15,400	0.0500							
Soda Springs	1611 Power Plant Rd.	547-4779	UST	2,000	6,200	0.0700	4,000	27,300	0.0450							
Wayan	5154 SH34	574-2385	UST	1,000	600	0.0300	1,000	8,300	0.04500							