

MODIFICATION

**State of Maine****Master Agreement****Effective Date:** 11/01/18**Expiration Date:** 10/31/19**Master Agreement Description:** 2018-2019 Heating Fuel- #2 & ULS Diesel**Buyer Information**

Donny Crockett

207-624-7336 ext.

Donny.Crockett@maine.gov

**Issuer Information**

TERRY DEMERCHANT

207-624-7334 ext.

TERRY.L.DEMERCHANT@MAINE.GOV

**Requestor Information**

Terry Demerchant

207-624-7334 ext.

TERRY.L.DEMERCHANT@MAINE.GOV

**Authorized Departments**

ALL

**Vendor Information****Vendor Line #: 1****Vendor ID**

VC1000022542

**Vendor Name**

DEAD RIVER CO

**Alias/DBA****Vendor Address Information**

PO BOX 467

SCARBOROUGH, ME 04070-0467

US

**Vendor Contact Information**

David Luce

207-358-5787 ext.

david.luce@deadriver.com

## Commodity Information

**Vendor Line #:** 1

**Vendor Name:** DEAD RIVER CO

**Commodity Line #:** 1

**Commodity Code:** 40512

**Commodity Description:** 2018-2019 Heating Fuel- #2 & ULS Diesel

**Commodity Specifications:** Fixed price thru 9/30/2019: #2 = \$2.5020 per gal, Diesel thru 4/30/2019= \$2.5571 per gal. See contracts for margin pricing if reserved gallons have been exhausted.

**Commodity Extended Description:** As per the specifications attached and made part of this MA. Please attach invoices to Delivery Orders

<b>Quantity</b>	<b>UOM</b>	<b>Unit Price</b>
0.00000		\$0.00
<b>Delivery Days</b>	<b>Free on Board</b>	
0	FOB Dest, Freight Prepaid	
<b>Contract Amount</b>	<b>Service Start Date</b>	<b>Service End Date</b>
\$0.00	11/01/18	10/31/19
<b>Catalog Name</b>	<b>Discount</b>	
	0.0000 %	
	<b>Discount Start Date</b>	<b>Discount End Date</b>

## Terms and Conditions

### **Agreement Terms and Conditions**

**T&C #:** 165

**T&C Name:** Payment Terms

**T&C Details:**Net 30

**FIXED PRICE AGREEMENT  
STATE OF MAINE**

Date: May 10<sup>th</sup>, 2019

Account No: TBD

Dead River Company ("DRC") agrees to sell, and State of Maine, Department of Administrative and Financial Services ("Customer") agrees to purchase 208,000 gallons of Ultra-Low Sulfur Heating Oil ("Committed Gallons") for the period of May 9<sup>th</sup>, 2019 through September, 30<sup>th</sup>, 2019 ("Contract Period") to be delivered at current locations. This agreement is an extension of the 2018-19 Ultra-Low Sulfur Heating Oil fixed price agreement previously expired on April 30<sup>th</sup>, 2019.

The fixed price per gallon ("Contract Price") is \$2.5020 per gallon (including all taxes except sales, use, excise or new taxes) for a total amount of \$520,416.00.

This Contract ("Contract") provides that Dead River Company ("DRC") will sell, and the above-named customer ("You") will buy exclusively from DRC, the gallons of product shown above ("Committed Gallons") for the period shown above ("Contract Period") at the fixed price shown above, including all taxes except sales and use tax ("Contract Price"), to be delivered at the current contract addresses.

1. All gallons delivered will be temperature compensated.

2. **Requirements and Purchase Obligation:** You agree to purchase from DRC ALL requirements of the fuel type indicated for the Contract Period and shall not purchase from any other source during such period. The price of any fuel purchased in excess of the Committed Gallons will be reflected in the pricing addendum.

3. **Payment Terms Service and Equipment:** Charges to your account beyond the fuel charges described above (for example, for service or equipment purchases) shall be paid in full within 30 days of an approved invoice.

4. **Automatic Delivery:** Unless otherwise directed by Customer, DRC will deliver to the addresses attached automatically, based upon projections calculated from historical consumption and weather. You should notify DRC of any changes in consumption expectations. Automatic delivery will continue after the term of the Contract Period. Also, please keep the path to the fill location clear for DRC's driver.

5. **Limitation of Liability:** DRC shall not be liable for any indirect or consequential damages whatsoever. Furthermore, DRC shall not be liable for damages incurred as a result of failure or delay in delivery of fuel as a result of circumstances beyond DRC's control, including but not limited to, force majeure, supplier interruptions, government mandated allocation, Your failure to notify DRC of consumption changes, or Your failure to keep the fill location clear.

**6. New Taxes:** The Contract Price set forth above may be increased by an amount equal to the increment of new taxes imposed on fuel sales not in effect at the time this Agreement was made.

**7. Termination by DRC:** DRC may terminate this Agreement and pursue legal remedies if You breach this Agreement in any way, including failing to pay for goods and services and/or the Committed Gallons covered by this Agreement, and/or by notifying DRC that you do not intend to fulfill the purchase requirements in paragraph 2, DRC may elect to cease deliveries and pursue damages and/or Liquidated Damages as set forth below.

**8. Damages, and Liquidated Damages:** See addendum

**9. NOTICE OF PRICE RISK TO CONSUMER:** The fixed price in this Agreement is based upon market conditions prevailing at the time of signing. You understand and agree that the price is fixed for the season regardless of whether market price goes up or down. You are agreeing to all of the Committed Gallons regardless of weather conditions reducing Your fuel requirements.

**10. Downside Protection Option:** If a Downside Protection fee is indicated in the Program Terms, You will pay the lower of DRC's standard daily retail price or the Fixed Rate Per Gallon for the Covered Gallons. If there is no downside protection fee indicated above, You have declined to purchase downside protection and will be charged the Fixed Rate Per Gallon for the Covered Gallons. Please initial indicating Your acceptance of the downside protection program: \_\_\_\_\_ (shall initial)

**11. Fixed Price Contract Compliance:** DRC's performance is secured by fixed price contracts and inventory in compliance with ME - 10 M.R.S.A. 1110(2), NH - R.S.A. §339:79, and VT - 9 V.S.A. §2461(e).

**12. Gallons in Excess of Contract:** For gallons in excess of contract, please see schedule below:

Region	Total Fixed Margin
Bangor	0.1185
Capitol	0.2059
Downeast	0.2676
Midcoast	0.128
Northern	0.2356
Southern	0.1308
Western	0.2082

**13. THIS IS A LEGALLY BINDING CONTRACT. PLEASE READ CAREFULLY BEFORE SIGNING BELOW. THIS AGREEMENT IS NOT BINDING UNLESS A SIGNED COPY IS RECEIVED BY DRC BY THE DEADLINE SPECIFIED ABOVE.**



**DEAD RIVER COMPANY**

By:



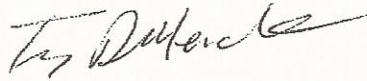
**Name: David Luce**

**Title: Commercial Account Manager**

**Date: May 10<sup>th</sup>, 2019**

**STATE OF MAINE**

By:



**Name: Terry DeMerchant**

**Title: Procurement Analyst Manager**

**Date: May 10, 2019**

**STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
BUREAU OF BUSINESS MANAGEMENT  
DIVISION OF PROCUREMENT SERVICES**

**RFQ # 18P 18091000000000000081**

**#2 HEATING OIL FOR STATE FACILITIES**

**Quotations/Responses Due:** 9/24/18 not later than 4:00 p.m. local time

**Note:** All questions and responses must be provided via the State of Maine's e-Procurement system: AdvantageME / Vendor Self Service (VSS).

**General Instructions on Bidder Questions**

It is the responsibility of each Bidder to examine the entire RFQ and to seek clarification by submitting questions through the Q & A List tab on the Solicitation page. Any answers to questions will appear there as well. It is the vendor's responsibility to log in to view all questions and answers posted. Additional information obtained any other way will not be valid.

**In the event that you must contact us for any other reasons than the Q & A previously mentioned,** only the Buyer listed on the Solicitation page may be contacted from the time this RFQ is issued until award notification is made. No other person/State employee is empowered to make binding statements regarding this RFQ. Violation of this provision may lead to disqualification from the bidding process, at the State's discretion.

**Summary**

For this competitive Request for Quotations (RFQ) process, the State of Maine Division of Procurement Services ("Division") is acting on behalf of (**All Using Agencies**) ("Requesting Department"). The Division and the Requesting Department seek quotations (also referred to as "bids" or "responses" herein) to provide the goods/services listed above. This document provides instructions and descriptions of requirements for this competitive process.

## **RFQ REQUIREMENTS**

### **1. Description of Requirements**

The following is a description of the goods and/or services sought by the State of Maine under this RFQ.

- Please see **Appendix B**

### **2. Bid Contents Requirements**

In addition to the cost, delivery, and other information required in VSS, all bids should contain the following information as attachments, in the Appendices listed below:

- **Appendix A:** Bid Cover Page and Debarment Form
- **Appendix D:** Maine Business and Economic Impact Consideration Form
- **Appendix E:** Municipality Political Subdivision and School District Participation Certification
- **Attachment A:** Excel Cost spreadsheet
- **Product Data/Information Sheets**

### **3. Master Agreement Term**

In addition to any mutually agreed upon delivery dates for purchases of goods, the contract resulting from this RFQ will have a term, or “Period of Performance”, during which the contract is considered to be in effect. The anticipated contract term is defined in the table below. Please note that the dates below are estimated and may be adjusted as necessary in order to comply with all procedural requirements associated with this RFQ and the contracting process. The actual contract start date will be established by the completed and approved contract.

Contract Renewal: Following the initial term of the contract, the Division may opt to renew the contract for two renewal periods of one year each, subject to continued availability of funding and satisfactory delivery/performance.

The term of the anticipated contract, resulting from this RFQ, is defined as follows:

<b>Period</b>	<b>Start Date</b>	<b>End Date</b>
Initial Period of Performance	10/1/2018	9/30/2019
Renewal Period #1	10/1/2019	9/30/2020
Renewal Period #2	10/1/2020	9/30/2021

### **4. Submitting a Quotation**

- a. **Quotations Due:** Quotations must be received no later than 4:00 p.m. Eastern Standard Time (EST), on the date listed in VSS. Quotations received after the 4:00 p.m. deadline will not be accepted.

- b. **Submission Instructions:** Bidders must submit their bids in the State of Maine’s electronic procurement system: Advantage “Vendor Self Service” (VSS). More information on this system can be found at the following internet link:  
<http://www.maine.gov/purchases/venbid/rfq.shtml>.
- c. **Multiple Quotations:** Unless specifically prohibited in Section 1 of this RFQ, Bidders are permitted to submit multiple quotations for this RFQ, offering alternative items or pricing for the State of Maine to consider in its best value determination.
- d. **Withdrawal of a Quotation:** Bidders are permitted to withdraw their own quotations up until the due date and time for receipt of quotations. To do so, a Bidder must enter the VSS system (as referenced above), identify and open their submitted quotation located in the Solicitation Responses tab, and click the “Withdraw” button found at the bottom of the screen. Quotations cannot be withdrawn after the due date and time for receipt of quotations.
- e. **Attachments:** Any attachments provided with the Advantage VSS bid submission must be in MS Word, MS Excel, or Adobe (.pdf) format, unless otherwise specified in Section 1 of this RFQ. Vendors are encouraged to submit supporting documentation that aid the requesting department in understanding how the bid conforms to the requirements. **The VSS attachment file size limit is 2Mb.** Please contact the buyer for this RFQ if you must submit attachment files larger than this.
- f. **Vendor specifications:** Unless otherwise stated in this RFQ document, limited specification information will be required upon submission of a bid in response to this RFQ. However, a Bidder’s response should include an affirmative statement that their bid complies with all requirements of this RFQ, unless the Bidder specifically addresses how its bid differs from the specifications, and why the differences should be deemed acceptable by the State.

## 5. **General Instructions**

- a. The Bidder must submit a cost quotation response that covers the goods and term of the contract, including any optional renewal.
- b. The cost quotation shall include the costs necessary for the Bidder to fully comply with the contract terms and conditions and RFQ requirements.
- c. Failure to provide the requested information may result in the exclusion of the quotation from consideration, at the discretion of the Division.
- d. No costs related to the preparation of the quotation for this RFQ or to the negotiation of the contract with the Department may be included in the quotation.
- e. The State is exempt from the payment of Federal, State and local Taxes on articles not for resale. Please provide quotations that do not include these taxes. Upon application, an exemption certificate can be furnished by the State at the point of contract finalization.

## 6. **Quotation Evaluation and Selection**

Evaluation of the submitted quotations shall be accomplished as detailed below:

- a. State of Maine RFQ documents are evaluated on a **Best Value** basis. The term “Best Value” may take into consideration the qualities of the goods or services to be supplied, their conformity with the specifications listed in the RFQ, the purposes for which they are required, the date of delivery, and the best interest of the State. Once the goods or services have been determined to conform to the specifications then the Division will make its award



decision based on the lowest price among the Bidders. Delivery days can be a factor in awarding.

- b. The State reserves the right to not make an award to the lowest price bidder when that bidder has had documented poor performance, and/or a contract terminated or not renewed within the last five years.
- c. At the discretion of the Division, if a Bidder's submission is deemed to not conform to the specifications listed in the RFQ, or otherwise not conform to the requirements of the RFQ, then that Bidder's submission may not be considered for contract award.
- d. In the event that no Bidder submission conforms to the specifications of this RFQ, then the Division may choose not to make any award. Alternatively, the Division may make an award to the Best Value Bidder whose specifications most closely meet the specifications of this RFQ. For example, if there are five specification requirements, and two responses are received with one Bidder meeting four requirements, and one bidder meeting three requirements, then the Division, at its discretion, may make a contract award to the Bidder meeting four requirements.
- e. If the specifications provided with this RFQ are of a technical nature, then the Division's RFQ Coordinator, at his or her discretion, may seek to use an evaluation team comprised of subject matter experts, end-users from the Requesting Department, or other State Department representatives. In such a case, the evaluation team will judge the merits of the quotations received in accordance with the best value criteria defined in the RFQ.

f. **Maine Business and Economic Impact Consideration**

Using **Appendix D** (Maine Business and Economic Impact Consideration Form), the Bidder (Bidder identified on the "Bid Cover Page" - **Appendix A**) is required to describe the Bidder's investment in the State of Maine as reported on the most recently completed IRS form W-2. Consideration of this information in making contract award decisions is required in accordance with Executive Order 2017-003, which states "Evaluators of competitive bids for goods and services shall give consideration to the investment in the State by business enterprises as a best-value criterion." The State reserves the right to verify this information at any time during the evaluation process or after.

The Maine Business and Economic Impact Consideration will allow up to a 10% reduction in a Bidder's submitted price for comparison purposes when determining award. The exact percentage will be determined using the information provided by Bidders on their submitted Maine Business and Economic Impact Consideration Form (**Appendix D**) compared to the percentage breakdowns below:

Maine Business Analysis	Percentage
Average Percentage of Maine Business Impact - 1 to 74%	2%
Average Percentage of Maine Business Impact - 75 to 100%	4%

Maine Economic Impact	Percentage
Sum of Maine Economic Analysis - \$1 to \$1,000,000	2%
Sum of Maine Economic Analysis - \$1,000,001 to \$10,000,000	4%
Sum of Maine Economic Analysis - over \$10,000,000	6%

The percentages from both Maine Business Analysis and Maine Economic Impact will be combined for a Bidder's total percentage reduction in price. For example, if a Bidder has a "Average Percentage of Maine Business Impact - 1 to 74%" in Maine Business Analysis and

a “Sum of Maine Economic Analysis - \$1,000,001 to \$10,000,000” in Maine Economic Impact, their total percentage reduction for price comparison would be 6% (2% + 4%).

## **7. Negotiations**

- a. No Best and Final Offers: The State of Maine will not seek a best and final offer (BAFO) from any Bidder in this procurement process. All Bidders are expected to provide their Best Value pricing with the submission of their quotation.
- b. The Division reserves the right to negotiate with the successful Bidder to finalize a contract at the same rate or cost of goods and services as presented in the selected quotation. Such negotiations may not significantly vary the content, nature or requirements of the quotation or the RFQ to an extent that may affect the price of goods or services requested. The Division reserves the right to terminate contract negotiations with a selected Bidder who submits a proposed contract significantly different from the quotation submitted in response to the RFQ.
- c. In the event that an acceptable contract cannot be negotiated with the highest ranked Bidder, the Division may withdraw its award and negotiate with the next-highest ranked Bidder, and so on, until an acceptable contract has been finalized. Alternatively, the Division may cancel the RFQ, at its sole discretion.

# **TERMS AND CONDITIONS FOR RFQ AND CONTRACT**

## **PART I GENERAL INFORMATION ON RFQs**

### **A. Purpose and Background**

The State of Maine (“State”) Department of Administrative and Financial Services (“Department”), Bureau of Business Management (“Bureau”), Division of Procurement Services (“Division”) acts as the purchasing agent on behalf of all Executive Departments and other agencies within State Government. For this competitive Request for Quotations (RFQ) process, the Division is acting on behalf of the Requesting Department listed on the cover page. The Division and the Requesting Department seek quotations (also referred to as “bids” or “responses” herein) to provide the goods/services as defined above in Section 1 of this document. This document provides instructions for submitting quotations, the procedure and criteria by which the Bidder(s) will be selected, and the contractual terms which will govern the relationship between the State and the awarded Bidder(s). Following Bidder selection and upon reaching a mutual agreement, the State and the selected Bidder will enter into a contract – taking the form of a State of Maine Master Agreement or Buyer Purchase Order (all generally referred to as “contract” herein), as applicable.

### **B. General Provisions**

1. Issuance of this RFQ does not commit the Division or the Requesting Department to issue an award or to pay expenses incurred by a Bidder in the preparation of a response to this RFQ. This includes attendance at personal interviews or other meetings and software or system demonstrations, where applicable.
2. All responses to this RFQ should adhere to the instructions and format requirements outlined in this RFQ and all written supplements and amendments (such as the Division’s answers to the Bidders’ questions submitted through the VSS), as issued by the Division. Responses are to follow the format and respond to all questions and instructions specified above in the “Submitting a Quotation” section of this RFQ.
3. Bidders shall take careful note that in evaluating a quotation submitted in response to this RFQ, the Department may consider materials provided in the quotation, information obtained through interviews/presentations (if any), and internal information of previous contract history between the Division and the Bidder (if any). The Division also reserves the right to consider other reliable references and publicly available information available in evaluating a Bidder’s experience and capabilities, if needed. All responses to this RFQ shall be considered to be authorized to legally bind the Bidder, and if selected for award, shall contain or be considered to contain a statement that the quotation and the pricing contained therein will remain valid and binding for a period of at least 180 days from the date and time of the bid opening.
4. The RFQ and the selected Bidder’s quotation, including all appendices or attachments, may be incorporated in the final contract.
5. Following announcement of an award decision, all submissions in response to this RFQ will be considered public records available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA) (1 M.R.S. §§ 401 et seq.).  
<http://www.mainelegislature.org/legis/statutes/1/title1sec401.html>
6. The Division, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in quotations received in response to this RFQ.

7. The Division reserves the right to authorize other State Departments to use the contract(s) resulting from this RFQ, if it is deemed to be beneficial for the State to do so.
8. All applicable laws, whether or not herein contained, shall be included by this reference. It shall be Bidder's responsibility to determine the applicability and requirements of any such laws and to abide by them.

### **C. Eligibility to Submit Bids**

Public agencies, private for-profit companies, and non-profit companies and institutions are invited to submit bids in response to State of Maine Requests for Quotations.

### **D. Delivery Terms**

For the purchase of goods, the Division and selected Bidder will decide upon a delivery date in accordance with the State's requirements and the terms offered in the Bidder's quotation. *Unless stated otherwise in Section 1 of this RFQ, all deliveries are expected with shipping terms of "Free on Board (FOB) – Destination"*. The State intends for this to mean that all goods shall be priced in the bid response to include shipping charges, if any, to the State's desired location. The "FOB – Destination" shipping term is also intended to mean that the State shall not bear any responsibility for the goods in question until the State takes possession of them at the destination point of delivery.

### **E. Alternate Bids and Approved Equals**

When, in bid forms and specifications, an article or material is identified by using a trade name and catalog number of a manufacturer or vendor, the term "or approved equal," if not inserted with the identification, is implied. Any Bidder that seeks to propose an alternate item from what is specified in this RFQ should refer to State of Maine Statute 5 MRSA §1825-B, for "Bids, awards and contracts", found here: <http://www.mainelegislature.org/legis/statutes/5/title5sec1825-B.html>

### **F. Appeal of Contract Awards**

Any person aggrieved by the award decision that results from this RFQ may appeal the decision to the Director of the Bureau of General Services in the manner prescribed in 5 MRSA § 1825-E and 18-554 Code of Maine Rules, Chapter 120 (found here: <http://www.maine.gov/purchases/policies/120.shtml>). The appeal must be in writing and filed with the Director of the Bureau of General Services, 9 State House Station, Augusta, Maine, 04333-0009 within 15 calendar days of receipt of notification of contract award.

If this RFQ results in the creation of a pre-qualified or pre-approved list of vendors, then the appeal procedures mentioned above are available upon the original determination of that vendor list, but not during subsequent competitive procedures involving only the pre-qualified or pre-approved list participants.

## **PART II      CONTRACT ADMINISTRATION AND CONDITIONS**

### **A.     Contract Document**

The successful Bidder will be required to execute a contract in the form of a State of Maine Buyer Purchase Order, Contract Agreement to Purchase Services or State of Maine Master Agreement.

The Standard Terms and Conditions used with the aforementioned contract types may be found on the Division of Procurement Services' website at the following link:

[http://www.maine.gov/purchases/info/forms/BPO\\_General\\_Terms.doc](http://www.maine.gov/purchases/info/forms/BPO_General_Terms.doc)

In the event that the State of Maine's Standard Terms and Conditions or RFQ provisions do not otherwise cover contractual scenarios that are specific to the goods or services being purchased under this RFQ, then the State is willing to consider a Bidder's standard terms and conditions. Consideration or use of a Bidder's standard terms and conditions shall only occur under the general agreement that in the event of a conflict, the State of Maine's Standard Terms and Conditions and RFQ provisions shall take precedence.

Other forms and contract documents commonly used by the State can be found on the Division of Procurement Services' website at the following link:

<http://www.maine.gov/purchases/info/forms.shtml>

### **B.     Independent Capacity**

In providing services and performing under the contract, the successful Bidder shall act independently and not as an agent of the State of Maine.

### **C.     Payments and Other Provisions**

The State anticipates paying the selected Bidder for goods and services received, on the basis of net 30 payment terms, upon the receipt of an accurate and acceptable invoice. An invoice will be considered accurate and acceptable if it contains a reference to the State of Maine contract number, contains correct pricing information relative to the contract, and provides any required supporting documents, as applicable, and any other specific and agreed-upon requirements listed within the contract that results from this RFQ.

The State of Maine reserves the right to pay for goods purchased through this solicitation by any of several available means, which include but may not be limited to check, EFT, and/or procurement card. Bidders are advised that state statute precludes sellers from imposing a surcharge on credit or debit card purchases (text follows):

"9-A MRSA §8-303 (2): A seller in a sales transaction may not impose a surcharge on a cardholder who elects to use a credit card or debit card in lieu of payment by cash, check or similar means."



## Appendix A

**STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
DIVISION OF PROCUREMENT SERVICES**

**BID COVER PAGE and DEBARMENT FORM**

Bidder's Organization Name: DEAD RIVER COMPANY		
Chief Executive - Name/Title: DEANNA SHERMAN, PRESIDENT/CEO		
Tel: 358-5800	Fax: 773-1302	E-mail: DEANNA.SHERMAN@DEAD RIVER.COM
Headquarters Street Address: 82 RUNNING HILL ROAD, SUITE 400		
Headquarters City/State/Zip: SOUTH PORTLAND, ME. 04106		
<i>(provide information requested below if different from above)</i>		
Lead Point of Contact for Bid - Name/Title: DAVID LUCE		
Tel: 358-5787 OR 712-6141	Fax: 773-1302	E-mail: DAVID.LUCE@DEAD RIVER.COM
Street Address: 82 RUNNING HILL ROAD, SUITE 400		
City/State/Zip: SOUTH PORTLAND, ME. 04106		

By signing below Bidder affirms:

- Their bid complies with all requirements of this RFQ;
- This bid and the pricing structure contained herein will remain firm for a period of 180 days from the date and time of the bid opening;
- That no personnel currently employed by the Department or any other State agency participated, either directly or indirectly, in any activities relating to the preparation of the Bidder's proposal;
- That no attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a proposal; and
- The undersigned is authorized to enter into contractual obligations on behalf of the above-named organization.

Name: DAVID LUCE	Title: COMMERCIAL ACCOUNT MANAGER
Authorized Signature: DAVID LUCE	Date: 9/24/2018

### Debarment, Performance, and Non-Collusion Certification

*By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals, and any subcontractors named in this proposal:*

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
- b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
  - i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.*
  - ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;*
  - iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and*
  - iv. have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.*
- c. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

- **Failure to provide this certification may result in the disqualification of the Bidder's proposal, at the discretion of the Department.**

*To the best of my knowledge all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.*

Name: DAVID LUCE	Title: COMMERCIAL ACCOUNT MANAGER
Authorized Signature: DAVID LUCE	Date: 9/24/2018

## **Appendix B**

**STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
DIVISION OF PROCUREMENT SERVICES**

**DETAILED SPECIFICATIONS**

**RFQ # 18P 18091000000000000081**

**STATE OF MAINE  
#2 HEATING OIL FOR STATE FACILITIES  
OFF ROAD LOW SULFUR DIESEL FOR STATE FACILITIES  
FOR THE 2018-2019 HEATING SEASON**

### **Bid Specifications and Information**

#### **Scope and Purpose**

This request is to select one or multiple vendors to provide #2 heating fuels and off-road low sulfur diesel fuels, to select State of Maine facilities as specified in Attachment A.

The State reserves the right to (1) negotiate with one or more prospective Bidders; (2) negotiate additions and/or modifications in the volumes of heating fuels at any time prior to award; and (3) terminate its further participation in this request or negotiation process with any or all prospective Bidders.

The State's requirement is for 90% of the heating oil delivery volume in the Attachment A deliveries worksheets. Note: the usage figures shown in Attachment A facilities list worksheets are estimates of annual usage based on historic use at the facilities. The amount that the vendor is responsible for selling and delivering is not the volume shown, but is the amount shown in Attachment A summary and quote worksheet. The State's estimates are no guarantee of future usage. The winning Bidder will be responsible for ensuring that an adequate amount of fuel is available at each of the facilities throughout the term of the contract, and for arranging all deliveries as required.

#### **Additional State Facilities**

The State has intended to include all its applicable facilities in Attachment A. If the State finds that certain facilities were inadvertently omitted from inclusion in this bid after contracts have been awarded, then the State expects to be able to include these facilities under the same terms and conditions as the included facilities. Those added facilities will draw on the contracted volume.

#### **Contract Duration and Start Date**

The State is interested in entering into a contract for the purchase and delivery of fuels to each of its facilities shown in Attachment A. The State seeks to take its first deliveries starting October 1, 2018.

**Payment Terms**

After contract(s) have been awarded and heating oil is being supplied, the State of Maine seeks to pay a monthly bill for usage at each delivery point. All payments made by the State to the selected Bidder will have payment terms of net 30 days from receipt of an accurate and accepted invoice.

All invoices will include the contract number. Only original invoices will be paid. Statements will not be accepted in lieu of an invoice for payment. There must be one invoice with delivery ticket number to be paid for each delivery. The contracted vendor will be required to include, with each invoice submitted, the locked in price and if in the event we need to go to “Margin-Over-Rack”, a daily OPIS report documenting the rack price must accompany the invoice.

With each shipment of liquid fuel, a shipping receipt and certification from the fuel supplier of the type of fuel delivered, the percentage of sulfur in such fuel (by weight), and the method used by the fuel supplier to determine the sulfur content of such fuel.

In addition, the State of Maine is requiring vendors to accept credit cards as a potential form of payment for the procurement of goods and services under contracts resulting from this bid. The pricing offered to the State of Maine shall be the final price to the State regardless of payment method. No surcharge (e.g. for credit card use) or other compensation will be allowed.

**Quarterly Reporting**

The vendors awarded a contract through this request must provide the points of contact listed below (or a delegate identified by the Director of the Division of Procurement Services) with a quarterly summary report, including contract year-to-date total of actual deliveries made to all accounts during the previous quarter. Reports are due 15 days after the end of each quarter, on January 15, April 15, July 15 and October 15.

Division of Procurement Services  
Terry Demerchant  
111 Sewall Street  
9 State House Station  
Augusta, ME 04333  
[Terry.L.Demerchant@maine.gov](mailto:Terry.L.Demerchant@maine.gov)

**Contract Extension**

For the contract resulting from this bid, the Director of the State of Maine Division of Procurement Services may extend the contract period beyond the indicated expiration date with the consent of the selected Bidder. During the term of the contract, the Director may also extend contract pricing to other State facilities that may not be listed on Attachment A, again, with the consent of the selected Bidder.

**Pricing**

Pricing for all deliveries under the contract will be based on a “Margin-Over-Rack” price as per region. “Margin-Over-Rack” pricing method is defined as follows: participating vendors will be paid for deliveries based on a proposed and agreed monetary margin per gallon over a variable wholesale “rack”

price. The rack price will be based on the information provided by the Oil Price Information Service (OPIS, for reference, see [www.opisnet.com](http://www.opisnet.com)). The margin and all its elements will be fixed for the duration of the contract resulting from the award. However, we reserve the right to “lock in price” when the market is more favorable to do so. The contract vendor will monitor the market and will notify the State when to do so. The submitted price will be the official record of a vendor’s bid and will be the price used when contracts are developed and awarded.

### **Automatic Delivery Facilities**

For facilities that require automatic deliveries, the contract vendor will confirm, 24 hours or less, the oil level in each tank to be filled. This may be accomplished by either:

- a. Calling the facility for a measurement; or
- b. Using an on-site fuel gauge, if accessible

### **All Deliveries**

Make deliveries when the building is occupied/staffed, Monday through Friday between 7:00 AM and 4:00 PM.

Must remain present throughout all deliveries within sight/sound of both the fuel controls and tank high level indicator(s).

Immediately stop delivery when either of the following occur:

- a. Any high-level indicator signals or otherwise indicates that tank capacity has been reached; or the estimated tank capacity is reached, as determined by prior measurement.

In all cases the most conservative evidence of tank fullness shall prevail.

Immediately report any discharges of oil to the using agency

In the event of any actual or suspected equipment malfunctions or code deficiency, immediately cease the delivery and immediately report the issue to the using agency



## **#2 Specifications**

1. Flash: ASTM specifies a flash of 125 Deg F or higher. An internal target of 110°F min is to maintain the specification during switch loading of trailers.
2. DYE Requirements: Visual color: Dye requirement, this product must exhibit visual evidence that red dye is present. The maximum allowable concentration, or spectral equivalence, is 0.75 pounds of solid red #26 per 1, 000 barrels. Dye: All heating oil delivered against this contract, regardless of Sulphur content, shall be dyed in satisfaction of the dyeing fuel requirements as prescribed by the Internal Revenue Service (IRS) for tax-free sales or uses of diesel fuel (using the Petro Spec dye analyzer or the IRS Test Method), pursuant to Section 4082 of the Internal Revenue Code of 1986, as amended. Under United States regulations, Grades No. 1 S15, No. 2 S15, and No. 4 S5000 (Light) are required by 40 CFR Part 80 to contain a sufficient amount of the dye Solvent Red 164 so its presence is visually apparent. At or beyond terminal storage tanks, they are required by 26 CFR Part 48 to contain the dye Solvent Red 164 at a concentration spectrally equivalent to 3.9 lb. per thousand barrels of the solid dye standard Solvent Red 26.
3. Pour Point: When a pour point is less than -18°C is specified, the minimum viscosity at 40°C for grade No. 2 shall be 1.7 minimum and the minimum 90% recovered temperature shall be waived.
4. Some boilers are licensed to fire distillate fuel and natural gas. [06-096 C.M.R. ch. 115, BPT]
5. On July 1, 2018 and thereafter, #2 Fuel Oil and Ultralow Sulfur Diesel will be refined to the same exact ASTM Specification (ASTM D 975) as Ultra Low Sulfur
6. Compliance shall be demonstrated by fuel records from the supplier showing the type and the percent sulfur of the fuel delivered (if applicable). [06-096 C.M.R. ch. 115, BPT]

## **Bid Evaluation and Award Decision**

Bidder selection will be based on the best value to the State of Maine, and awards will be made either by group of regions or by all regions.

## **Attachments**

Attachment A – MS Excel File with list of facilities

## Appendix C

**STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
DIVISION OF PROCUREMENT SERVICES**

**COST RESPONSE**

**RFQ # 18P 18091000000000000081**

All responses to this RFQ will require a cost quotation response, in a format selected by the State of Maine. That format is described below.

Fill out required sections in this word document, enter in price on Attachment A excel spreadsheet and attach both to your response in Vendor Self Service.

## Appendix E

STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
DIVISION OF PROCUREMENT SERVICES

**MUNICIPALITY POLITICAL SUBDIVISION and SCHOOL DISTRICT PARTICIPATION  
CERTIFICATION**

**RFQ # 18P 18091000000000000081**

The Division of Procurement Services is committed to providing purchasing opportunities for **municipalities, political subdivisions and school districts** in Maine by allowing them access, through our vendors, to our contract pricing. A bidder's willingness to extend contract pricing to these entities will be taken into consideration in making awards.

Will you accept orders from political subdivisions and school districts in Maine at the prices quoted?

\_\_\_\_\_ Yes

  X   Yes, with conditions as follows: **We would welcome any additional opportunities but would need to review and assess each location, as presented, to ensure the correlating formula is neither too high nor too low for the tank size(s) and annual usage required per each facility.**

\_\_\_\_\_ No

**Name of Company:**  
**DEAD RIVER COMPANY**

---

**Address:**  
**82 RUNNING HILL ROAD, SUITE 400, SOUTH PORTLAND, ME. 04106**

---

**Signature: DAVID LUCE-COMMERCIAL ACCOUNT MANAGAER**

---

**Date: 9/24/2018**

---



FIXED PRICE AGREEMENT  
STATE OF MAINE

Date: October 25<sup>th</sup>, 2018

Account No: 4101601

Dead River Company ("DRC") agrees to sell, and State of Maine, Department of Administrative and Financial Services ("Customer") agrees to purchase 1,155,506 gallons of Ultra-low sulfur #2 fuel oil ("Committed Gallons") for the period of November 1st, 2018 through April 30, 2019 ("Contract Period") to be delivered at various locations (See attached for both current DRC and proposed locations).

The fixed price per gallon ("Contract Price") is \$2.4670 per gallon (including all taxes except sales, use, or new taxes) for a total amount of \$2,850,633.30.

This Contract ("Contract") provides that Dead River Company ("DRC") will sell, and the above-named customer ("You") will buy exclusively from DRC, the gallons of product shown above ("Committed Gallons") for the period shown above ("Contract Period") at the fixed price shown above, including all taxes except sales and use tax ("Contract Price"), to be delivered at the following address(es) shown above under the following conditions:

1. All gallons delivered will be temperature compensated.
2. **Requirements and Purchase Obligation:** You agree to purchase from DRC ALL requirements of the fuel type indicated for the Contract Period and shall not purchase from any other source during such period. The price of any fuel purchased in excess of the Committed Gallons will be reflected in the pricing addendum.
3. **Payment Terms Service and Equipment:** Charges to your account beyond the fuel charges described above (for example, for service or equipment purchases) shall be paid in full within 30 days of an approved invoice.
4. **Automatic Delivery:** DRC will deliver to the addresses listed above automatically, based upon projections calculated from historical consumption and weather. You should notify DRC of any changes in consumption expectations. Automatic delivery will continue after the term of the Contract Period. Also, please keep the path to the fill location clear for DRC's driver.
5. **Limitation of Liability:** DRC shall not be liable for any indirect or consequential damages whatsoever. Furthermore, DRC shall not be liable for damages incurred as a result of failure or delay in delivery of fuel



as a result of circumstances beyond DRC's control, including but not limited to, force majeure, supplier interruptions, government mandated allocation, Your failure to notify DRC of consumption changes, or Your failure to keep the fill location clear.

**6. New Taxes:** The Contract Price set forth above may be increased by an amount equal to the increment of new taxes imposed on fuel sales not in effect at the time this Agreement was made.

**7. Termination by DRC:** DRC may terminate this Agreement and pursue legal remedies if You breach this Agreement in any way, including failing to pay for goods and services and/or the Committed Gallons covered by this Agreement, and/or by notifying DRC that you do not intend to fulfill the purchase requirements in paragraph 2, DRC may elect to cease deliveries and pursue damages and/or Liquidated Damages as set forth below.

**8. Damages, and Liquidated Damages:** See addendum

**9. NOTICE OF PRICE RISK TO CONSUMER:** The fixed price in this Agreement is based upon market conditions prevailing at the time of signing. You understand and agree that the price is fixed for the season regardless of whether market price goes up or down. You are agreeing to all of the Committed Gallons regardless of weather conditions reducing Your fuel requirements.

**10. Downside Protection Option:** If a Downside Protection fee is indicated in the Program Terms, You will pay the lower of DRC's standard daily retail price or the Fixed Rate Per Gallon for the Covered Gallons. If there is no downside protection fee indicated above, You have declined to purchase downside protection and will be charged the Fixed Rate Per Gallon for the Covered Gallons. Please initial indicating Your acceptance of the downside protection program: \_\_\_\_\_ (shall initial)

**11. Fixed Price Contract Compliance:** DRC's performance is secured by fixed price contracts and inventory in compliance with ME - 10 M.R.S.A. 1110(2), NH - R.S.A. §339:79, and VT - 9 V.S.A. §2461(e).

**12. Gallons in Excess of Contract:** For gallons in excess of contract, please see schedule below:

Region	Total Fixed Margin
Bangor	0.1185
Capitol	0.2059
Downeast	0.2676
Midcoast	0.128
Northern	0.2356
Southern	0.1308
Western	0.2082



13. THIS IS A LEGALLY BINDING CONTRACT. PLEASE READ CAREFULLY BEFORE SIGNING BELOW. THIS AGREEMENT IS NOT BINDING UNLESS A SIGNED COPY IS RECEIVED BY DRC BY THE DEADLINE SPECIFIED ABOVE.

DEAD RIVER COMPANY

By:



Name: David Luce

Title: Commercial Account Manager

Date: October 25th, 2018

STATE OF MAINE

By:



Name: Laurie Andre

Title: *Director, Procurement Services*

Date:

*10/26/18*

**Dead River Company "Program Terms" and "Terms and Conditions" Document  
(hereinafter "Agreement")  
between Dead River Company and the State of Maine**

- 1) If by March 1, 2019, the State of Maine appears to not be in a position to utilize the heating oil gallons covered in the above named Agreement, the Parties agree to discuss alternative resolutions to any Damages set forth in the above named Agreement, or as set forth below.
- 2) In the event that a volume shortfall results in actual financial damages to Dead River Company, the State of Maine agrees to compensate Dead River Company for the amount of said financial damage to be calculated in a reasonable manner and not as a penalty. Prior to the calculation of actual financial damages, Dead River Company must demonstrate to the State of Maine that it has made all commercially reasonable efforts to resell the State of Maine's volume shortfall gallons.
- 3) Per Paragraph 2 above, in the event that Dead River Company is able to resell the State of Maine's volume shortfall gallons at a price higher than its initial purchase price, and therefore not experience any actual financial damages, then Dead River Company shall provide the State of Maine with an account credit in an amount matching the monetary benefit received from the sale of Maine's unused gallon commitment.
- 4) It is hereby recognized by both parties that the above named Agreement and this amendment are a result of State of Maine request for quotes.

DEAD RIVER COMPANY

By:



Name: David Luce

Title: Commercial Account Manager

Date:

STATE OF MAINE

By:



Name: Laurie Andre

Title: Procurement Manager

*Director, Procurement Services*

Date:

*10/26/18*



FIXED PRICE AGREEMENT  
STATE OF MAINE

Date: October 25<sup>th</sup>, 2018

Account No: 4101601

Dead River Company ("DRC") agrees to sell, and State of Maine, Department of Administrative and Financial Services ("Customer") agrees to purchase 14,498 gallons of Ultra-low sulfur diesel ("Committed Gallons") for the period of November 1st, 2018 through April 30, 2019 ("Contract Period") to be delivered at various locations (See attached for both current DRC and proposed locations).

The fixed price per gallon ("Contract Price") is \$2.5571 per gallon (including all taxes except sales, use, or new taxes) for a total amount of \$37,072.84.

This Contract ("Contract") provides that Dead River Company ("DRC") will sell, and the above-named customer ("You") will buy exclusively from DRC, the gallons of product shown above ("Committed Gallons") for the period shown above ("Contract Period") at the fixed price shown above, including all taxes except sales and use tax ("Contract Price"), to be delivered at the following address(es) shown above under the following conditions:

1. All gallons delivered will be temperature compensated.

2. **Requirements and Purchase Obligation:** You agree to purchase from DRC ALL requirements of the fuel type indicated for the Contract Period and shall not purchase from any other source during such period. The price of any fuel purchased in excess of the Committed Gallons will be reflected in the pricing addendum.

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DEAD RIVER COMPANY

By:



Name: David Luce

Title: Commercial Account Manager

Date: October 25th, 2018

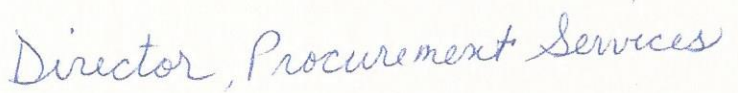
STATE OF MAINE

By:

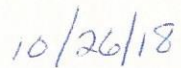


Name: Laurie Andre

Title:



Date:





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DEAD RIVER COMPANY

By:




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Name: Laurie Andre

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*10/26/18*