UNIVERSITY OF MAINE SYSTEM

REQUEST FOR BIDS

Administered by:
Competitive Energy Services, LLC

FUELS:

#6.5 Residual Oil
University of Maine at Orono

RFB# 2024-064

ISSUE DATE:
March 25, 2024

BIDS RESPONSE DATE:
April 8, 2024
(See Section Two for details)

Competitive Energy Services
Attn: Sarah Bilodeau

SECTION ONE

1.0 GENERAL INFORMATION:

1.1 Purpose: Competitive Energy Services ("CES"), the Bid Administrator, on behalf of the University of Maine System ("University"), is seeking quotations from fuel distributors to supply University of Maine at Orono locations with fuel.

1.2 References: Each respondent to this Request for Bids ("RFB") shall be referred to as a "Bidder." Each Bidder to whom a contract is awarded shall be referred to as a "Contractor."

1.3 Objectives: To obtain:

Spot-market index price delivery contract(s) for fuel product, quantities, and delivery term as specified in **Section 2** below. Hereinafter, these prices shall be referred to as the "Spot-Market Price."

1.4 Timeline of Events: Timeline dates are subject to change at the University's sole discretion. The University reserves the right to award this RFB at any time it determines that market conditions are favorable and such award is in the best interests of the University.

Event	**Due Date**
Issue Date	March 25, 2024
Inquiries Deadline	4 PM March 28, 2024
Response to Inquiries	4 PM April 1, 2024
Bids Due Date	4 PM April 8, 2024
Estimated Award Date	On or before February 1, 2025

1.5 Evaluation Criteria: Award will be made to the low Bidder provided that all other requirements are satisfactorily met and competitively bid, and based upon the University's evaluation of bids to unlike market indices, preference may be given to the Bids offered that are consistent with the University preferred market indices specified in **Section 5.** The University will not consider non-responsive bids or proposals, i.e., those with material deficiencies, omissions, errors or inconsistencies.

1.6 Award: The University reserves the right to award this bid on a location by location basis, price and other factors considered. The University reserves the right to conduct any tests it may deem advisable and to make all evaluations. The University reserves the right to reject any or all bids, in whole or in part and is not necessarily bound to accept the lowest bid if that bid is contrary to the best interests of the University. The University may cancel this request for bids and reject any or all responses in whole or in part. The University reserves the right to waive minor irregularities. Scholarships, donations, or gifts to the University, will not be considered in the evaluation of bids. A bid may be rejected if it is in any way incomplete or irregular. When there are tie bids, there shall be a preference for "in-state Bidders". When tie bids are both in state or both out of state, the award will be made to the bid that arrives first in the office designated to receive the bids.

1.7 Freedom of Access Act: The University must adhere to the provisions of the Maine Freedom of Access Act. (FOAA), 1 MRSA sec 401 et seq. As a condition of accepting a contract under this section, a contractor must accept that, to the extent required by Maine FOAA, responses to this solicitation, and any ensuing contractual documents, are considered public records and therefore are subject to freedom of access requests.

1.8 Award Protest: Bidders may appeal the award decision by submitting a written protest to the

University Chief Procurement Officer within 5 business days of the date of the award notice with a copy of the protest to the successful bidder. The protest must contain a statement of the basis for the challenge.

1.9 Costs of Preparation: Bidder assumes all costs of preparation of the bid and any presentations necessary to the bidding process.

1.10 Debarment: Submission of a signed bid in response to this solicitation is certification that your firm (or any subcontractor) is not currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal department or agency. Submission is also agreement that the University will be notified of any change in this status.

END SECTION ONE

SECTION TWO

2.0 BIDDING REQUIREMENTS:

2.1 Bid Understanding: By submitting a bid, the Bidder agrees and assures that the specifications are adequate, and the Bidder accepts the terms and conditions herein. Any exceptions must be noted in a Bidder's response. Notwithstanding a Bidder's apparent low bid price or any provision to the contrary herein, any conditions or exceptions that Bidder places upon the University's terms and conditions shall be weighed as part of the evaluation criteria for bid award.

2.2 Communication with the University and the Bid Administrator: It is the responsibility of the Bidder to inquire about any requirement of this RFB that is not understood. Responses to inquiries, if they change or clarify the RFB in a substantial manner, will be forwarded by addenda to all parties that have received a copy of the RFB. The University will not be bound by oral responses to inquiries or written responses other than addenda.

Inquiries must be made to:

Sarah Bilodeau
Tel (207) 772-6190
Fax (866) 743-4968
Email sbilodeau@competitive-energy.com

Chris Brook
Tel (207) 772-6190
Fax (866) 743-4968
Email cbrook@competitive-energy.com

2.3 Submission: Signed bids must be received **VIA FAX OR EMAIL** **no later than 4 PM April 8, 2024** in accordance with this RFB. The signed bid document must be submitted to the Bid Administrator acknowledging the terms and conditions of the bid. ***Bids that do not include a signed bidder form will not be considered.*** Late bids will not be considered. Bids shall be submitted to the Bid Administrator via fax to 866-743-4968 or email to sbilodeau@competitive-energy.com.

Bidders may submit additional information, at their discretion. Such information should be submitted in accordance with the terms of this RFB.

There will be NO public opening of the bids. All bids will be held confidential until an award is made. After an award has been made bids will be available for public inspection.

Products and Services

Spot-Market Price

The Spot-Market Price shall consist of a firm mark-up adder for transportation and delivery of fuel to each location, this price to be in excess of an open and transparent market index price, or price point (for example, NYH Barge Mean Index Price for ULSHO). All fees for service shall be included in the mark-up adder, such that this price may be added to the market Index Price to determine the delivered cost of fuel to the University.

Section 5 specifies the preferred index by fuel, however, other regional market indices or price points will be considered. Under this approach, The University would contractually commit to only the mark-up adder and the market Index Price would float.

Option to lock: Bidders shall agree to provide the University the option to lock fuel products at the best then-current market rate for the remainder of the contract term on a best efforts basis. CES or the University may periodically request, and bidder shall agree to provide, an update on the then-current lock-in rate. This would have the effect of converting quantities of fuel from a Spot-Market Price contract to a Fixed Price Contract. **The indicative Spot-Market Price adder bid should be provided for a 24 month term starting February 1, 2025.**

Bids should be based upon fuel market index settlement on **April 5, 2024** (the day before the bid response is due).

A signed bid must be received **no later than 4 PM April 8, 2024.** This document must be submitted to the Bid Administrator acknowledging the terms and conditions of the bid. Bids that do not include a signed bidder form will not be considered.

END SECTION TWO

SECTION THREE

3.0 GENERAL TERMS AND CONDITIONS:

3.1 Contract Documents: If a separate written contract is entered into by the University and the Contractor (hereinafter "the parties,") such contract shall be referred to herein as "Contract". In the event there are discrepancies or inconsistencies among the Contract, the signed bid response and/or this RFB, the Contract will be the prevailing document followed by the signed bid response and then this RFB.

If a separate written contract is not executed, the "Contract" or "Agreement" entered into by the parties shall consist of:
- this Request for Bids;
- the signed bid submitted by the Contractor;
- the specifications including all modifications thereof; and
- a purchase order,

all of which shall be referred to collectively as the Contract Documents.

Any contract or agreement for services that will, or may, result in the expenditure by the University of $50,000 or more must be approved in writing by the Chief Procurement Officer and it is not approved, valid or effective until such written approval is granted.

3.2 Contract Modification and Amendment: The parties may, after mutual written agreement, adjust the specific terms of the Contract (except for pricing) where circumstances beyond the control of either party require modification or amendment. Any modification or amendment proposed by the Contractor must be in writing to the University Purchasing Department. Any modification or amendment must only be upon mutual agreement of the parties and in writing and signed by both parties.

3.3 Contract Term: The Contract term shall be for up to two (2) years with three (3) one (1) year options to renew.

3.4 Cancellation/Termination: If the Contractor defaults in its agreement to provide fuel oil to the University's satisfaction, or in any other way fails to provide service in accordance with the Contract terms, the University shall promptly notify the Contractor of such default and if adequate correction is not made within 48 hours, the University may take whatever action it deems necessary to provide alternate services and may, at its option, immediately cancel this Contract with written notice. Cancellation does not release the Contractor from its obligation to provide goods or services per the terms of the contract during the notification period.

3.5 Contract Administration: Upon execution of the Contract, the University Chief Procurement Officer, Rudy Gabrielson, or his designee or assign at the University shall be the University's authorized representative in all matters pertaining to the administration of this Contract.

3.6 Quantities: The quantities shown on the bid form in Attachment 1 are approximate only. For Fixed Price purchases, the quantity ordered will be set when Contract awards are made. ***For Spot-Market purchases, the Contract shall cover the actual needs of the University throughout the term of the Contract regardless of whether they are more or less than the quantities shown.***

3.7 Subsequent Fixed Price Contracts: During the Contract term the University may, at its option, request pricing from the Contractor for additional firm Fixed Price, pay-as-delivered contracts.

If the pricing is favorable and the University accepts the offer, the terms and conditions of this document shall apply. Generally, these contracts will have the effect of converting quantities of fuel from the Spot Market Price to a Fixed Price contract for anticipated usage for remainder of term.

3.8 Contract Validity: In the event one or more clauses of the Contract are declared invalid, void, unenforceable or illegal, that shall not affect the validity of the remaining portions of the Contract.

3.9 Clarification of Responsibilities: If the Contractor needs clarification of, or deviation from, the terms of the Contract, it is the Contractor's responsibility to obtain written clarification or approval from the University Chief Purchasing Officer, Rudy Gabrielson, or his designee or assign at the University.

3.10 Litigation: This Contract and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Maine without reference to its conflicts of laws principles. The Contractor agrees that any litigation, action or proceeding arising out of this Contract shall be instituted in a state court located in the State of Maine.

3.11 Indemnification: The Contractor shall indemnify, hold harmless and defend the University, its trustees, employees and agents, from and against any and all actions, losses, expenses, claims, lawsuits, damages, judgments, and costs, including reasonable attorney's fees, suffered or sustained by the University or for which the University may be held or become liable by reason of injury (including death) to persons or property or other causes whatsoever in connection with or arising out of the negligent acts, omissions or operations of the Contractor, or any of its subcontractors, under this Contract.

3.12 Assignment: Neither party of the Contract shall assign the Contract without the prior written consent of the other, nor shall the Contractor assign any money due or to become due without the prior written consent of the University.

3.13 Equal Opportunity: In the execution of the Contract, the Contractor and all subcontractors agree, consistent with University policy, not to discriminate on the grounds of race, color, religion, sex, sexual orientation, transgender status or gender expression, national origin or citizenship status, age, disability or veteran's status and to provide reasonable accommodations to qualified individuals with disabilities upon request.

3.14 Sexual Harassment: The University is committed to providing a positive environment for all students and staff. Sexual harassment, whether intentional or not, undermines the quality of this educational and working climate. The University thus has a legal and ethical responsibility to ensure that all students and employees can learn and work in an environment free of sexual harassment. Consistent with the state and federal law, this right to freedom from sexual harassment was defined as University policy by the Board of Trustees.

Failure to comply with this policy could result in termination of this Contract without advance notice. Further information regarding this policy is available from the University, Office of Equal Opportunity, (207) 581-1226.

3.15 Contractor's Liability Insurance: During the term of this Agreement, the Contractor shall maintain the following insurance:

Insurance Type	Coverage Limit
1. Commercial General Liability	$1,000,000 per occurrence or more

(Written on an Occurrence-based form) (Bodily Injury and Property Damage)

2. Commercial Vehicle Liability $5,000,000 per occurrence or more
(Including Hired & Non-Owned) (Bodily Injury and Property Damage)
Coverage must be afforded to all vehicles used to fulfill this Contract.

3. Workers Compensation Required for all personnel
(In Compliance with Applicable State Law)

Coverage limit requirements may be met with a single underlying insurance policy or through the combination of an underlying insurance policy plus an Umbrella insurance policy. The University shall be named as an Additional Insured on the Commercial General Liability and Vehicle Liability insurances.

Certificates of Insurance for all of the above insurance shall be filed with the University Purchasing Department prior to the date of performance under this Agreement. Said certificates, in addition to proof of coverage, shall contain the standard ACORD statement pertaining to written notification in the event of cancellation, with a thirty (30) day notification period.

As additional insured and certificate holder, the University should be included as follows:

The University of Maine System
Risk Manager
Robinson Hall
46 University Drive
Augusta ME 04330

The University reserves the right to change the insurance requirement or to approve alternative insurances or limits, at the University's discretion.

3.16 Payments: Payment for purchases based on the Fixed Price or on the Spot-Market Price will be made upon submittal of an invoice to the location specified on the purchase order on a net 30 basis unless discount terms are offered. Invoices **must** include a purchase order number and provide type of fuel and quantity delivered, as well as the address of each delivery.

3.17 Independent Contractor: Whether the Contractor is a corporation, partnership, other legal entity, or an individual, the Contractor is an independent contractor. If the Contractor is an individual, the Contractor's duties will be performed with the understanding that the Contractor is a self-employed person, has special expertise as to the services which the Contractor is to perform and is customarily engaged in the independent performance of the same or similar services for others. The manner in which the services are performed shall be controlled by the Contractor; however, the nature of the services and the results to be achieved shall be specified by the University. The Contractor is not to be deemed an employee or agent of the University and has no authority to make any binding commitments or obligations on behalf of the University except as expressly provided herein. The University has prepared specific guidelines to be used for contractual arrangements with individuals (not corporations or partnerships) who are not considered employees of the University.

END SECTION THREE

SECTION FOUR

4.0 PERFORMANCE TERMS AND CONDITIONS:

4.1 Compliance: The Contractor's performance under this Agreement shall comply with all Federal, State, and local laws, rules, and regulations, including but not limited to those laws, rules, and regulations stated herein or otherwise incorporated in the Contract Documents. The Contractor shall obtain a University excavation permit through the Office of Facilities Management for any and all excavation activities on University property. The Contractor shall comply with applicable University policies. University policies shall include but are not limited to parking policies, the tobacco-free campus policy, and the vehicle idling policy. University policies may include those pertaining to environmental and workplace safety, at the discretion of the University.

The University must comply with the "Workplace Smoking Act of 1985" and M.R.S.A. title 22, §1541 et seq "Smoking Prohibited in Public Places." In compliance with this law, the University has prohibited smoking in all University System buildings except in designated smoking areas. This rule must also apply to all contractors and workers in existing University System buildings. The Contractor shall be responsible for the implementation and enforcement of this requirement within existing buildings.

4.2 Employees: The Contractor shall employ only competent and satisfactory personnel and shall provide a sufficient number of employees to perform the required services efficiently and in a manner satisfactory to the University. If the Contract Administrator or designee, notifies the Contractor in writing that any person employed on this Contract is incompetent, disorderly, or otherwise unsatisfactory, such person shall not again be employed in the execution of this Contract without the prior written consent of the Contract Administrator.

4.3 Condition and Care of Site and Protection of the Work: The Contractor shall continuously maintain adequate protection of all work covered by the Contract from damage or loss and shall protect persons and property from injury or loss arising in connection with this Contract, and shall make good any such damage, injury or loss. The Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

4.4 Price Information:

4.4.1 Bid prices shall assume any and all costs associated with a transfer of ownership of fuel tanks, equipment, and any and all other infrastructure that is an asset of the University's current fuel supply Contractor, such that the Bidder shall be able to successfully perform its obligations hereunder.

4.4.2 **The bid price shall include charges such as storage, delivery, insurance, bonding, environmental fees, NORA fees, LUST fees, and all other costs. Charges not specified in the bid will not be honored.**

4.4.3 Taxes and Environmental Fees

The University does not have to pay the Special Fuel Tax on distillates and low-energy fuel because the University is an agency and instrumentality of the State and sales to the State are exempt from this tax.

The University is not subject to the motor fuel tax on gasoline **sold in bulk** to the University because gasoline sold in bulk to an agency of the State is exempt from the tax. The University would be subject to this tax for sales of gasoline not sold in bulk.

The University is not subject to the Federal Retail Excise Tax on Gasoline or Special Fuels because it is an agency and instrumentality of the State and exclusive use by a State is a nontaxable use.

Maine participates in the NORA program so the heating oil purchased by the University would be subject to the $0.002 per gallon NORA fee. NOTE: the bid price shall include the NORA fee, if applicable.

The University must pay the environmental fees associated with both the Maine Coastal and Inland Surface Oil Clean-up Fund and the Maine Ground Water Oil Clean-up Fund. NOTE: the bid price shall include these fees.

The University is subject to and will pay the federal Leaking Underground Storage Tank (L.U.S.T.) Fund tax. As of January 2011 this tax was 1/10 of 1 cent. NOTE: the bid price shall include the L.U.S.T. Fund Tax.

4.5 New Installations: Fuel deliveries to any new tanks that may be installed during the term of this contract will become part of this contract.

4.6 Deliveries:

- **All deliveries must comply with Department of Transportation regulations Title 49 of the Code of Federal Regulations**.
- Deliveries will be made to the storage tanks as listed in the bid specifications, and to locations as may be designated by the participants, in quantities as required during the contract period.
- Unless otherwise noted in this document deliveries shall be made by the Contractor in metered residential sized straight tank trucks.

4.6.1 The Contractor shall be responsible for restarting furnaces and correcting any problems arising from contaminated fuel. For automatic deliveries, and for will-call deliveries for which the Contractor does not respond reasonably timely, the Contractor shall be responsible for restarting furnaces and correcting any problems arising from a tank running out of fuel. In the event that a University employee performs the required work to restart a furnace, reimbursement to the University will be at the Contractor's current per hour charge for labor plus the cost of parts.

4.6.2 On the day of delivery, delivery slips must be left at with a designated representative to be determined upon contract execution. Each delivery shall be accompanied by a pre-numbered and dated metered ticket showing the quantity of fuel delivered. The building name or building number for each delivery address must appear on the delivery ticket and invoice.

4.6.3 Deliveries will be automatic unless otherwise requested and shall be signed for by the employee responsible for receiving fuel at each location.

4.6.4 The driver must notify a designated employee that they are on site in order to get the appropriate tools for removing and installing fill pipe covers.

4.6.5 Deliveries to each University location shall be made between the hours of 7:00 a.m. and 3:00 p.m. unless otherwise approved by the designated employee of that delivery location. If deliveries are made before or after these hours without the employee's approval and if it is necessary to call-back a staff member to assist in locating the appropriate tank/tanks or to open the tank/tanks, the expense for the employee call-back time will be deducted from the invoice. The minimum call-back time is 3 hours.

4.6.6 The Contractor must be able to provide tanker deliveries on Saturday and/or Sunday as it is difficult to get around in traffic with a tractor-trailer unit. Deliveries will be scheduled at the campus's convenience.

4.6.7 The Contractor shall ensure that the fill pipe covers are correctly installed following each fuel delivery, in order to prevent water intrusion into the tank.

4.7 Spills: All deliveries must comply with the United States Department of Transportation regulations contained in Title 49 of the Code of Federal Regulations. Contractor shall be responsible for complete and immediate clean-up of any spills internal or external, caused by their negligence, equipment, or employees in accordance with all applicable regulations and statutes. The Contractor must notify the University's designated employee in writing within twenty-four (24) hours of any incident whether such spill has resulted in any type of contamination, such as soil or groundwater. "Clean up" means that there will be no remaining trace of contamination.

4.8 Workplace Safety and Environmental Safety Plans: Each Contractor shall submit a copy of their written plan(s) pertaining to occupational and workplace safety, and environmental safety of all Contractor activities that may be performed under this Agreement. The submittal shall include a written copy of the "Spill Prevention Control and Countermeasures Plan," which shall include, but is not necessarily limited to, the equipment, procedures and assistance they will provide in the event of a fuel spill (major or minor) as well as what assistance and procedures they will provide in the event of a leaking fuel tank. This document will be incorporated into the University's "Spill Prevention Control and Countermeasure Plan(s)". All <u>Plans shall be filed prior to the date of performance under this Agreement.</u>

4.9 Oil Analysis Information: The Contractor must furnish the percent sulfur, the lb/MMBtu (million BTU) air emission factor for each pollutant, and heat content of fuel supplied if requested.

END SECTION FOUR

SECTION FIVE

5.0 PREFERRED MARKET INDICES

<table>
<tr><th>Fuel Product</th><th>Quantities</th><th>Delivery Term</th><th>Preferred Market Index/Price Point</th></tr>
<tr><td>#6.5 Oil</td><td>See Attachment 1</td><td>24 months</td><td>USGC Marine Fuel 0.5% Barges (Platts)</td></tr>
<tr><td colspan="4">Per gallon price, based upon the market index settlement price for the business/trading day prior to delivery
If a mark-up over an OPIS, or other, posted price is selected, the bidder must specify price determination method (for example, the weekly OPIS posted rack price for the applicable OPIS region being used. If awarded, the Supplier shall thereafter advise the University in writing of the pricing schedule that the Supplier will use for invoicing. Such reporting should be submitted via email or by facsimile. The Supplier will list the reporting dates within 30 days of the receipt of the fuel contract</td></tr>
</table>

END SECTION FIVE

SECTION SIX

6.0 SUBMISSION REQUIREMENTS:

The bid price shall include charges such as storage, delivery, insurance, bonding, environmental fees, NORA fees, LUST fees, and all other costs. Charges not specified in the bid will not be honored. All bids must be submitted in the supplier bid form in Attachment 1.

END SECTION SIX

RFB# 2024-064
University of Maine at Orono
#6.5 Oil

SIGNATURE PAGE FOR BIDDER

By signing below, the undersigned hereby acknowledges full authority to sign on behalf of, and to legally bind the Bidder to the terms and conditions of this RFB. The Bidder further acknowledges that it has read and fully understands the terms and conditions to which it is agreeing. ***Bids received without a signed bidder form will not be considered.***

COMPANY NAME: ____

By: ______________________________
(Signature of fully authorized representative)

____
(Print Name)

____
(Title)

____
(Phone)

____
(Cell Phone)

____
(E-mail Address)

____
(Date)

Attachment 1 to RFB #2024-064

University of Maine at Orono
#6.5% Residual Oil

Location and Usage Detail

Address:	Steam Plant, College Ave, Orono, ME
Tank Size:	130,000 gallons, above ground
	Tanker delivery
Volume:	~7500 bbls/year
Start Date:	2/1/2025
Term:	24 months
Usage:	#6.5 Oil is not the primary fuel source and will be purchased only as needed

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Bid Form

Supplier Name: ______________________________

Date: ______________________________

Price Units: $/bbl

Spot Market Adder: ____________________

Please provide index: ____________________

Index Settlement Price on 4/5/2024: ____________________

Total Delivered Cost: ____________________

Terms: 30 Days

Notes: please indicate which, if any, taxes, fees or any other delivery charges are NOT reflected in your pricing above.