



U.S. DEPARTMENT OF
ENERGY

Petroleum Distillate Sales Provisions (PDSP) for Northeast Home Heating Oil Reserve

**Office of Petroleum Reserves
United States Department of Energy
Washington, D.C. 20585**

(2025)

NORTHEAST HOME HEATING OIL RESERVE (NEHHOR) SALES PROVISION

Background

The Energy Act of 2000 (Public Law 106-469), enacted on November 9, 2000, amended the Energy Policy and Conservation Act [(EPCA)Public Law 94-163] and authorized the Secretary of Energy “to establish, maintain, and operate in the Northeast, a Northeast Home Heating Oil Reserve,” containing no more than two million barrels of petroleum distillate. In the event the President should make a finding of a “severe energy supply interruption,” as defined by the Energy Act, the Department of Energy (DOE) would sell and distribute some or all of the heating oil contained in the Reserve. The Petroleum Distillate Sales Provisions (PDSPs) set forth below will apply to any sales from this Reserve.

Northeast Home Heating Oil Reserve Sale Implementation Plan

The PDSPs implement the NEHHOR Sale Implementation Plan, which was developed in consultation with public and industry. In October 2000, the Department of Energy issued a draft Sale Implementation Plan for public comment on the DOE Office of Petroleum Reserves (OPR) web site. The comment period closed in November 2000. DOE carefully reviewed the comments received and made appropriate changes to the draft plan. Subsequent review during the following winters has resulted in further refinement. The most recent version of the plan has been posted on the Office of Petroleum Reserve web site for the Northeast Home Heating Oil Reserve.

Summary of the Sales Process

Upon a Presidential decision to draw down the NEHHOR, the Department of Energy (DOE) would issue a Notice of Sale (NS), announcing the offering of petroleum distillate to the U.S. Northeast market. The NS would contain the specifications, volume, and location of the distillate for sale, delivery period, and procedures for submitting bids, as well as measures for assuring performance and financial responsibility.

DOE would specify in the NS which of the terms and conditions in the PDSPs would or would not apply to a particular sale. In addition, in the NS, DOE could revise the terms and conditions or add new ones applicable to that sale. No contract would be awarded to a bidder who had not unconditionally agreed to all provisions stipulated by the NS.

The next step in the sales process is the submission of bids by prospective purchasers. Bidders must unconditionally accept all terms and conditions in the NS, submit a bid guarantee, and bid at least the minimum price specified in the NS. Upon submission, the bids are ranked and purchasers are selected based on the highest bid prices, subject to specified quantitative limitations for affiliates.

All purchasers are required to prepay the entire amount of their contract prior to commencement of deliveries. Deliveries then commence to the purchasers, consistent with their arrangements for commercial transportation.

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SECTION A - GENERAL PRE-SALE INFORMATION**A.1 List of abbreviations**

- (a) NEHHOR: Northeast Home Heating Oil Reserve
- (b) DOE: U.S. Department of Energy
- (c) NA: Notice of Acceptance
- (d) NS: Notice of Sale
- (e) PDSPs: Petroleum Distillate Sales Provisions

A.2 Definitions

- (a) *Affiliate*. The term "affiliate" means associated business concerns or individuals if, directly or indirectly, (1) either one controls or can control the other, or (2) a third party controls or can control both.
- (b) *Bid*. The term "bid" means a response to a solicitation and, if accepted, would bind the bidder to perform the resultant contract. A bid is a single price/quantity combination for a specific line item. A bidder may submit multiple bids.
- (c) *Business Day*. The term "business day" means any day except Saturday, Sunday or a U.S. Government holiday.
- (d) *Contract*. The term "contract" means the contract under which DOE sells petroleum distillate. It is composed of the NS, the NA, the successful bid(s), and the PDSPs incorporated by Reference.
- (e) *Contracting Officer*. The term "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings, including entering into sales contracts on behalf of the government. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (f) *Electronic signature or signature* means a method of signing an electronic message that—
 - (1) Identifies and authenticates a particular person as the source of the electronic message; and
 - (2) Indicates such person's approval of the information contained in the electronic message.
- (g) *Government*. The term "Government", unless otherwise indicated in the text, means the United States Government.
- (h) *Line Item*. The term "line item" means a quantity of Reserve product at a specific location made available by the Government for purchase during a particular sale, e.g., 1,000,000 barrels at Terminal A, or 500,000 barrels at Terminal B.

(i) *Notice of Acceptance (NA)*. The term "Notice of Acceptance" means the electronic notice that is sent by DOE to accept the purchaser's bid to create a contract.

(j) *Notice of Sale (NS)*. The term "Notice of Sale" means the document announcing the sale of Reserve product, the amount, specifications and location of the Reserve product being sold, the delivery period and the procedures for submitting bids. The NS will specify what contractual provisions and financial and performance responsibility measures are applicable to that particular sale of Reserve product and provide other pertinent information.

(k) *Petroleum Distillate Sales Provisions (PDSPs)*. The term "Petroleum Distillate Sales Provisions" means this set of terms and conditions of sale applicable to price competitive sales of Reserve product.

(l) *Product*. The term "product" means petroleum distillate stored by DOE in the Northeast Home Heating Oil Reserve. Petroleum distillate includes heating oil and diesel fuel.

(m) *Purchaser*. The term "purchaser" means any person or entity that enters into a contract with DOE to purchase Reserve product.

(n) *Reserve*. The term "Reserve" means the Northeast Home Heating Oil Reserve.

(o) *Vessel*. The term "vessel" means a tanker, an integrated tug-barge (ITB) system, a self-propelled barge, or other barge.

A.3 Petroleum Distillate Sales Provisions (PDSPs)

These PDSPs contain pre-sale information, sales solicitation provisions, and sales contract clauses setting forth terms and conditions of sale, including purchaser financial and performance responsibility measures, or descriptions thereof, which may be applicable to price competitive sales of Reserve product. The NS will specify which of these provisions will apply to a particular sale of such product, and it may specify any revisions therein and any additional provisions Which will be applicable to that sale.

A.4 Periodic revisions of the Petroleum Distillate Sales Provisions

DOE will review the PDSPs periodically and republish them on the Office of Petroleum Reserves web site for the Northeast Home Heating Oil Reserve.

A.5 Publicizing the Notice of Sale

(a) The NS will also be posted on the Office of Petroleum Reserves web page for the Northeast Home Heating Oil Reserve for public viewing.

(b) A DOE press release, which will include the salient features of the NS, will be made available to all news agencies.

SECTION B - SALES SOLICITATION PROVISIONS

B.1 Requirements for a valid bid

- (a) Bidders are advised that the submission of a bid in an electronic format is required. Submission of electronic bids via DOE's designated Heating Oil email address (heatingoil@hq.doe.gov) will constitute a legal, binding bid. By submission of a bid, the bidder certifies that he:
- (1) Is customarily engaged in the sale and distribution of petroleum distillate (see Provision B.4); and
 - (2) Agrees without exception to all provisions of the PDSPs that the NS makes applicable to a particular sale, as well as to all provisions in the NS. The Government will not award a contract to a bidder who has failed to so agree;
- (b) A valid bid to purchase Reserve product must meet the following conditions:
- (1) The bid must be submitted via DOE's designated Heating Oil email address (heatingoil@hq.doe.gov) as designated in the NS.
 - (2) The bid guarantee (see Provision B.9) must be received no later than the time specified in the NS for receipt of bid guarantees; and
 - (3) The bid must be received during the times set in the NS for receipt of bids.
- (c) At the discretion of the Contracting Officer, bids may be received by alternative means if circumstances preclude use of the specified on-line system.

B.2 Penalty for false statements in bids to buy Reserve product

- (a) Making false statements in a bid to buy Reserve product may expose a bidder to a penalty under the False Statements Act, 18 U.S.C. Section 1001, which provides:

Whoever, in any matter within the jurisdiction of any executive, legislative, or judicial branch of the government of the United States knowingly and willfully – (1) falsifies, conceals or covers up by any trick, scheme, or device a material fact, – (2)

makes any false, fictitious or fraudulent statements or representations, – (3) makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not

more than 5 years, or, if the offense involves international or domestic terrorism (as defined in Section 2331) imprisoned not more than 8 years, or both.

(b) Under 18 U.S.C. 3571, the maximum fine to which an individual or organization may be sentenced for violations of 18 U.S.C. (including Section 1001) is set at \$250,000 and \$500,000 respectively, unless there is a greater amount specified in the statute setting out the offense, or the violation is subject to special factors set out in Section 3571. The United States Sentencing Guidelines also apply to violations of Section 1001, and offenders may be subject to a range of fines under the guidelines up to and including the maximum amounts permitted by law.

B.3 Certification of independent price determination

(a) The bidder certifies that:

(1) The prices in this bid have been determined independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to: (i) those prices; (ii) the intention to submit a bid; or (iii) the methods or factors used to calculate the prices bid.

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or to any competitor before the time set for receipt of bids, unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each submission of a bid is considered to be a certification by the bidder that the bidder:

(1) Is the person within the bidder's organization responsible for determining the prices being bid, and that the bidder has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) of this Provision; or

(2) (i) Has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) of this provision; (ii) as their agent does hereby so certify; and (iii) as their agent has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) of this Provision.

(c) A bid will not be considered for award where (a)(1), (a)(3), or (b) of this Provision has been deleted or modified. If the bidder deletes or modifies (a)(2) of this provision, the bidder must furnish with the bid a signed statement setting forth in

detail the circumstances of the disclosure.

B.4 Purchaser eligibility

DOE will only sell Reserve product to bidders customarily engaged in the sale and distribution of petroleum distillate. By submission of a bid, the bidder certifies that he meets this requirement. The Contracting Officer retains the right to verify the eligibility of a bidder.

B.5 Requirements for vessels - caution to bidders

(a) The Department of Homeland Security's regulations concerning Vessels Carrying Oil, Noxious Liquid Substances, Garbage, Municipal or Commercial Waste, and Ballast Water (33 CFR Part 151) and Reception Facilities For Oil, Noxious Liquid Substances, and Garbage (33 CFR Part 158) implement the requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). These regulations prohibit any oceangoing tankship, required to retain oil or oily mixtures on-board while at sea, from entering any port or terminal unless the port or terminal has a valid Certificate of Adequacy as to its oil reception capabilities. Purchasers are responsible for determining specific terminal ballast, sludge and oily waste reception capabilities, and to make arrangements for and be responsible for all costs associated with appropriate disposal of such ballast or waste.

(b) By submission of a bid, the bidder certifies that he will comply with all ballast and oily waste disposal requirements.

B.6 Issuance of the Notice of Sale

To initiate a sale of product from the Reserve, DOE will issue a NS containing all the pertinent information necessary for the bidder to prepare a bid. Bidders are expected to examine the complete NS document, and to become familiar with the PDSPs cited therein. Failure to do so will be at the bidder's risk.

B.7 Submission of bids and modification of previously submitted bids

(a) Bids must be submitted via the guidance on the DOE's Office of Petroleum Reserves website and received during the times specified in the NS for receipt of bids. However, in accordance with Provision B.1(c) above, at the discretion of the Contracting Officer, bids may be received by alternative means if circumstances preclude use of the specified email system.

(b) Modification of a previously submitted bid may be accomplished by submission of new price/quantity combination(s) that will supersede the previously submitted entries. The Government will only consider for evaluation the bidder's last price/quantity combination(s) received prior to the receipt deadline.

(c) The Contracting Officer may elect to extend the deadline for receipt of the bids beyond the time specified in the NS if, during the bid period, in his/her judgment the pattern of bid activity indicates that such extension would improve competition. The length and number of extensions is at the Contracting Officer's discretion.

(d) The Contracting Officer may suspend a bidder's participation in bid activity if the bidder's behavior is intended to restrict competition in an unfair manner, i.e. a bid price is unusually high. A bidder may be reinstated if the situation is resolved to the Contracting Officer's satisfaction.

B.8 Late bids and withdrawal of bids

(a) Bids not received during the times set for receipt of bids will not be considered for evaluation. The date/time stamp affixed by the Government's electronic mail system will be the sole determinant of timely receipt.

(b) A bidder may withdraw a bid by changing the bid quantity to zero and sending the bid any time prior to the end time set for receipt of bids or submitting an email to that effect.

B.9 Bid guarantee

(a) Each bidder must submit a bid guarantee of \$250,000.

(b) Each bid guarantee must be received as specified in the NS no later than the time and date set for receipt of the guarantee. A bidder's failure to submit a timely, acceptable guarantee will result in rejection of its bid.

(c) Each bidder must submit his bid guarantee by electronic funds transfer to the account of the U.S. Treasury in accordance with Provision C.7. All attendant costs are to be borne by the bidder.

(d) The bidder will provide the information for return of his bid guarantee by electronic transfer on the Bid Guarantee Return Form found as an attachment to the NS.

(e) Bid guarantees will be forfeited if the bidder withdraws its bid earlier than the expiration of the bidder's acceptance period (see Provision B.23).

(f) The bidder will be liable for any amount lost by DOE due to the difference between the bid price and the resale price, and for any additional resale costs incurred by DOE in the event that the bidder, having received an award, fails to furnish the required contract payment within 48 hours or before the first delivery, whichever comes first. The bid guarantee will be used toward offsetting such price difference or additional resale costs. Use of the bid guarantee for such recovery will not preclude recovery by DOE of damages in excess of the amount of the bid guarantee caused by such failure of the bidder.

(g) Bid guarantees will be returned to an unsuccessful bidder within 5 business days after the date set for receipt of bids, and to a bidder who has withdrawn all its bids prior to the time set for receipt of bids within 2 business days after the date set for receipt of bids. Return will be made by electronic transfer in accordance with instructions provided by the NS.

(h) A successful bidder may apply the bid guarantee toward the resultant contract

B.10 Explanation requests from bidders

Bidders may request explanations regarding meaning or interpretation of the NS from the individual at the telephone number indicated in the NS. On complex and/or significant questions, DOE reserves the right to have the bidder put the question in writing; explanation or instructions resulting from these questions will be posted on the Office of Petroleum Reserves web page for the NEHHOR prior to the time set for receipt of bids.

B.11 Currency for bids

Prices will be stated and paid in U.S. dollars.

B.12 Language of bids and contracts

All bids in response to the NS and all modifications of bids will be in English. All correspondence between bidders or purchasers and DOE will be in English.

B.13 Proprietary data

Bid quantities and prices are not considered proprietary information. If any other information submitted in connection with a sale is considered proprietary, that information should be so marked, and an explanation provided as to the reason such data should be considered proprietary. Any final decision as to whether the material so marked is proprietary will be made by DOE. Freedom of Information Act regulations governing the release of proprietary data will apply.

B.14 Reserve product specifications

All Reserve product will meet the specifications listed in Exhibit B. DOE intends that product sold under a Reserve sale will be sold only as Ultra Low Sulfur Diesel. Therefore, at time of sale, any diesel that will be sold as heating oil will be dyed per Environmental Protection Agency and the Internal Revenue Service specifications.

B.15 Reserve locations and delivery points

The Reserve is located in commercial storage terminals within the Northeast. Each terminal has established one or more facilities as delivery points for the Reserve product. The geographical locations of these terminal delivery points will be identified and described in the NS.

**B.16 Notice of Sale line item schedule –
Reserve product quantity and delivery location**

(a) The NS will provide individual line items for each terminal delivery point offering Reserve product for sale.

(b) The NS will state the total quantity to be offered on each line item. The Contracting Officer may reduce the line item quantity available for award by any amount and reject otherwise acceptable bids, if they determine, in their sole discretion after consideration of the bids received for all line items, that award of those quantities is not consistent with applicable law or not otherwise in the best interest of the Government because the prices bid for them are not reasonable, or that, in light of market conditions after bids are received, a lesser quantity than

that offered should be sold.

(c) The NS will specify a minimum quantity for each line item. To be responsive, a bid on a line item must be at least that minimum quantity.

(d) No bidder, including affiliates, if any, will be awarded more than 40 percent of the total quantity offered within a specific geographical region as defined in the NS.

B.17 Line item information to be provided in the bid

(a) A bidder may submit a bid for any or all the line items offered by the NS.

(b) All bid quantities must be in multiples of 50,000 barrels.

(c) For each line item bid, the bidder will state the quantity of barrels desired and the corresponding unit price per gallon, expressed as a premium to the CME Group New York Mercantile Exchange (NYMEX) near month closing price for ULSD on the day of the bidding. A bidder may submit up to three quantity and price combinations for a single line item, e.g., for Terminal A, 100,000 barrels at a premium of \$0.0015/gal, 50,000 barrels at \$0.0014/gal, and 50,000 barrels at \$0.0013/gal.

(d) Price premiums may be stated in hundredths of a cent (\$0.0001) per gallon. DOE will drop from the bid and not consider any numbers of less than one one hundredth of a cent. \$0.0000 is not considered to be a premium.

(e) The bidder must choose whether to accept only its stated bid quantity, or, in the alternative, to accept any quantity between the bidder's stated bid quantity and the minimum contract quantity for the line item. The bidder may so indicate by entry of the "N" or "Y" on the Sales Bid Form. However, DOE will award less than the bidder's bid quantity only if the quantity available to be awarded is less than his bid. If the bidder fails to indicate its choice, the bid would be evaluated as though the bidder has indicated "Y", that is, willingness to accept as low as the minimum contract quantity.

B.18 Mistake in bid

(a) After the deadline for receipt of bids, the Contracting Officer will examine all bids for mistakes. In cases where the Contracting Officer has reason to believe a mistake may have been made, he will request from the bidder a verification of the bid, calling attention to the suspected mistake. The Contracting Officer may telephone the bidder and confirm the request by e-mail. The Contracting Officer may set a limit of as little as 30 minutes for telephone or e-mail response. If no response is received, the Contracting Officer may determine that no error exists and proceed with bid evaluation.

(b) The Contracting Officer will make administrative determinations described in (1) and (2) of this provision if a bidder alleges a mistake after the end time set for receipt of bids and before award.

(1) The Contracting Officer may refuse to permit the bidder to withdraw a bid, but permit correction of the bid if clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if such correction would result in displacing one or more higher acceptable bids, the Contracting Officer will not so determine unless the existence of the mistake and the bid actually intended are ascertainable substantially from the NS and bid itself.

(2) The Contracting Officer may determine that a bidder will be permitted to withdraw a bid in whole, or in part if only part of the bid is affected, without penalty under the bid guarantee, where the bidder requests permission to do so and clear and convincing evidence establishes the existence of a mistake, and not the bid actually intended.

(c) In all cases where the bidder is allowed to make verbal corrections to the original bid, confirmation of these corrections must be received in writing within the time set by the Contracting Officer or the original bid will stand as submitted.

B.19 Evaluation of bids

(a) The Contracting Officer will be the determining official as to whether a bid is responsive to the PDSPs and the NS. DOE reserves the right to reject any or all bids and to waive minor informalities or irregularities in bids received.

(b) The Contracting Officer will reject bids where:

- (i) a bidder is on the Federal Government's list of debarred, ineligible and suspended bidders; or
- (ii) evidence, with respect to a bidder, comes to the attention of the Contracting Officer of conduct or activity that represents a violation of law or regulation (including an Executive Order); or
- (iii) evidence is brought to the attention of the Contracting Officer of past activity or conduct of a bidder that shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, so as to substantially diminish the Contracting Officer's confidence in the bidder's performance under the proposed contract.

B.20 Procedures for evaluation of bids

(a) Awards on each line item will be made to the responsible bidders that submit the highest priced bids responsive to the applicable laws, PDSPs and the NS.

(b) Selection of the successful bids involves the following steps:

(1) Any bids priced at or as a discount to the NYMEX closing price, as described in Provision B.17 above, will be rejected as nonresponsive.

(2) All bids on each line item will be arrayed from highest price to lowest price.

(3) The highest priced bids will be reviewed for responsiveness to the NS.

(4) For each line item offered by DOE, the highest priced bids will sequentially be selected for potential award until the Government's offered quantity is depleted, or there are no more acceptable bids. In the event selection of a bidder's entire bid quantity would result in the total amount awarded to that bidder exceeding 40% of the quantity offered by DOE for the geographical location, then only that amount up to the 40% level would be accepted, unless the bidder has indicated that it will accept no less than its bid quantity (see Provision B.17). The 40% award geographical location quantity limitation applies to a bidder and affiliates, if any. In that case, evaluation would then proceed to the next highest priced bid of a different bidder. In the event that acceptance of a bid would result in the sale of more Reserve product on a line item than DOE has offered, DOE will not award the full amount of the bid, but rather the remaining line item quantity. In the event that the quantity remaining is less than the bidder is willing to accept, the Contracting Officer will proceed to the next highest priced bid.

(5) In the event of tied bids and an insufficient remaining quantity available on the line item to fully award all tied bids, the Contracting Officer will apply an objective methodology for allocating the remaining quantity. When making this allocation, the Contracting Officer in their sole discretion may do one or more of the following:

- (i) make an additional quantity available; or
- (ii) not award all or part of the remaining quantity of product.

(6) The Contracting Officer may reduce the line item quantity available for award by any amount and reject otherwise acceptable bids if in their sole discretion they determine, after consideration of the bids received on all of the line items, that award of those quantities is not consistent with applicable law or not otherwise in the best interest of the Government; or if the Government determines, in light of market conditions after bids are received, to sell less than the overall quantity of Reserve product offered for sale.

B.21 Requests for additional information

DOE reserves the right to require the submission of additional information from the bidder, including financial statements, plans for use of DOE Reserve product, plans for complying with the Jones Act, if applicable, and any other information relevant to the performance of the contract. The Contracting Officer will set a deadline for receipt of this information.

B.22 Re-solicitation procedures for unsold Reserve product

(a) In the event that Reserve product offered on a line item remains unsold after evaluation of all bids, the Contracting Officer may issue an amendment to the NS, resoliciting bids from all interested parties. DOE reserves the right to alter the line items and/or offer different line items in the re-solicitation.

(b) In the event and for any reason, Reserve product that has been awarded becomes available to DOE for resale, the following procedures will apply:

- (1) If bids remain valid in accordance with Provision B.23, the Reserve product may go to the next highest ranked bid.
- (2) If bids have expired in accordance with Provision B.23, the Contracting Officer may offer the Reserve product oil to the highest eligible bidder for that line item. The pertinent bidder may accept or reject that Reserve product at the price it originally bid. If that bidder rejects the product, it may be offered to the next highest eligible bidder. This process may continue until the entire remaining Reserve product has been awarded.
- (3) If the Reserve product is not then resold, the Contracting Officer may proceed to amend the NS to resolicit bids for that product or add the product to the next sales cycle.

B.23 Bidder's certification of acceptance period

- (a) By submission of a bid, the bidder certifies that its bid will remain valid for 3 business days after the date set for the receipt of bids.
- (b) By mutual agreement of DOE and the bidder, the bidder's acceptance period may be extended for a longer period.

B.24 Notification of Award

The following information concerning its bid(s) will be provided to the awardee by DOE:

- (1) Identification of line item(s) awarded;
- (2) Total quantity awarded on each line item;
- (3) The NYMEX near month closing price on the award date and NYMEX price premium(s) in U.S. dollars per gallon for each line item;
- (4) Extended total bid price for each line item;
- (5) Total contract prepayment amount;
- (6) Contract number;
- (7) Terminal scheduling points of contact; and
- (8) Any other data necessary.

B.25 Contract documents

If a bidder is successful, DOE will make award using an NA e-mailed by the Contracting Officer. The NA will identify the items, quantities, and prices that DOE is accepting. Attached to the NA will be the NS and the successful bid. Provisions of the PDSPs will be made applicable through incorporation by reference in the NS.

SECTION C - SALES CONTRACT PROVISIONS

C.1 Delivery of purchased product

(a) DOE will assure the availability of contracted quantities of purchased product at the distribution terminal facility specified in the NS for each line item, and terminal capability to deliver all purchased product within the contractual delivery period. Each terminal will have the capability to deliver Reserve product by, at a minimum, marine and truck loading systems.

(b) The purchaser, at its expense, will make all necessary arrangements to accept delivery of and transport the purchased product from the facilities listed in the NS. The purchaser will be responsible for meeting any delivery requirements imposed at those points including complying with the rules, regulations, and procedures contained in applicable port/terminal manuals, pipeline tariffs or other applicable documents, and the current NEHHOR Distribution Plan as referenced in the NS.

(c) The purchaser agrees to assume responsibility for, and to pay for, or to indemnify and hold DOE harmless for any costs associated with terminal, port, vessel, pipeline, and truck services necessary to receive and transport the purchased product, including but not limited to demurrage charges assessed by the terminal, ballast and oily waste reception services, mooring and line-handling services, and port charges incurred in the delivery of product to the purchaser. The purchaser also agrees to assume responsibility for, and to pay for or to indemnify and hold DOE harmless for any liability, including consequential or other damages, incurred or occasioned by the purchaser, its agent, subcontractor at any tier, assignee or any subsequent purchaser, in connection with movement of Reserve product purchased under this contract.

(d) Should the DOE sell the ULSD un-dyed across a Storage Contractors truck rack, all required federal excise taxes under IRS Publication 510 will be the responsibility of the Storage Contractor. Payment of excise taxes must be coordinated between the Storage Contractor and the Purchaser. Federal excise tax paid should be reflected on the Bill of Lading; DOE assumes no responsibility for the collection or payment of excise taxes.

C.2 Reserved

C.3 Environmental compliance

(a) Purchasers must ensure that vessels used to transport purchased product comply with all applicable statutes and implementing regulations, including the Ports and Waterways Safety Act of 1972; the Port and Tanker Safety Act of 1972 as amended by the Port and Tanker Safety Act of 1978 (implemented under 33 CFR Parts 160 –169, Subchapter P, Ports and Waterways Safety); the Act to Prevent Pollution from Ships of 1980 (which implements Annexes I, II, and V of the International Convention for the Prevention of Pollution from Ships, 193, as

modified by the Protocol of 1978 (MARPOL 73/78) under 33 CFR 151, Subpart A), and the Oil Pollution Act of 1990.

(b) To transport purchased product, the purchaser or purchaser's subcontractors must use only those tank vessels for which the vessel's owner, operator, or demise charterer has made a showing of financial responsibility under 33 CFR part 138, *Financial Responsibility for Water Pollution (Vessels)*.

(c) Failure of the purchaser or purchaser's subcontractors to comply with all applicable federal, state, and local statutes and regulations in the transportation of purchased product will be considered a failure to comply with the terms of any contract containing these PDSPs, and may result in termination for default, unless, in accordance with Provision C.8, such failure was beyond the control and without the fault or negligence of the purchaser, its affiliates, or subcontractors.

C.4 Delivery and transportation scheduling

(a) Within 24 hours of being awarded a contract by DOE, the purchaser will advise the Department and the appropriate storage terminals of the desired delivery mode(s), respective volumes, and date(s). All deliveries must be scheduled to occur within the contract delivery period. The terminal will respond to purchaser's request within 12 hours, either confirming or proposing alternative delivery dates within the contract delivery period.

(b) Terminal scheduling points of contact will be provided in the NA.

(c) If requested, each purchaser will provide DOE with a written notice of the intended or actual destination for each cargo scheduled, if such destination is known at that time.

(d) The purchaser will notify DOE of any subsequent changes to the delivery schedule.

C.5 Procedures for delivery of purchased product

(a) The purchaser's and terminal's responsibilities regarding delivery scheduling, measurement, inspection, custody transfer and costs are set forth in a NEHHOR Distribution Plan referenced in the NS.

(b) The purchaser will comply with applicable port and terminal rules and procedures for vessel nomination and notifications of arrival.

(c) Delivery documentation of the purchased product will be based on tank gauging (as certified by third party inspectors) for vessels and inter- and intra- terminal transfers, and custody meter tickets for truck and pipeline deliveries.

C.6 Payment

(a) Deliveries of purchased product will be made on a prepaid basis only. Purchaser must remit to the U.S. Treasury the entire contract dollar amount due to DOE within 48 hours of contract award, or prior to delivery, whichever occurs first.

(b) DOE will use the provisions of the rules established by the CME Group New York Mercantile Exchange for New York Harbor ULSD Heating Oil, which permit a loading tolerance of two percent (2%) above and below the contract volume.

(1) Payment adjustments for the volume variance up to the 2% limit, based on the contract amount and the actual quantity delivered, will be made between the Government and the purchaser at the contract price.

(2) Any delivery imbalances beyond the 2% limit will be reconciled between the storage contractor and the purchaser.

(i) Any under delivery beyond the 2% limit will be the responsibility of the purchaser.

(ii) Any over delivery beyond the 2% limit will be the responsibility of the storage terminal.

(c) All amounts payable by the purchaser will be paid by deposit to the account of the U.S. Treasury by electronic funds transfer (EFT) over the Fedwire Deposit System Network. The information to be included in each EFT will be provided in the NS.

(d) No payment due DOE hereunder will be subject to reduction or set-off for any claim of any kind against the United States arising independently of the contract.

(e) All EFT costs will be borne by the purchaser.

(f) Quantity reconciliation payments to the purchaser will be made through an electronic funds transfer (EFT).

C.7 Termination

(a) Immediate termination.

(1) The Contracting Officer may terminate this contract in whole or in part, without liability of DOE, by written notice to the purchaser in the event that the purchaser either notifies the Contracting Officer that it will not be able to accept, or fails to accept, any delivery line item in accordance with the terms of the contract. Such notice will invite the purchaser to submit information to the Contracting Officer as to the reasons for the failure to accept the delivery line item in accordance with the terms of the contract.

(2) Within 10 business days after the issuance of the notice of termination, the Contracting Officer may determine that such termination was a termination for default under paragraph (b)(1)(ii) of this Provision. In the absence of information which persuades the Contracting Officer that the purchaser's failure to accept the delivery line item was excusable, the fact of such failure may be the basis for the Contracting Officer determining the purchaser to be in default, without first determining under paragraphs

(b)(2) and (b)(3) whether such failure was excusable under the terms of the contract. The Contracting Officer will promptly give the purchaser written notice of such determination.

(b) Termination for Default.

(1) Subject to the provisions of paragraphs (b)(2) and (b)(3), the Contracting Officer may terminate the contract in whole or in part for purchaser default, without liability of DOE, by written notice to the purchaser, in the event that:

(i) The Government does not receive payment in accordance with any payment provision of the contract;

(ii) The purchaser fails to accept delivery of purchased product in accordance with the terms of the contract; or

(iii) The purchaser fails to comply with any other term or condition of the contract within 5 business days after the purchaser is deemed to have received written notice of such failure from the Contracting Officer.

(2) Except with respect to defaults of subcontractors, the purchaser will not be determined to be in default or be charged with any liability to DOE under circumstances which prevent the purchaser's acceptance of delivery hereunder due to causes beyond the control and without the fault or negligence of the purchaser as determined by the Contracting Officer. Such causes will include but are not limited to:

(i) acts of God or the public enemy;

(ii) acts of the Government acting in its sovereign or contractual capacity;

(iii) fires, floods, earthquakes, explosions, unusually severe weather, or other catastrophes; or

(iv) strikes.

(3) If the failure to perform is caused by the default of a subcontractor, the purchaser will not be determined to be in default for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the purchaser to meet the delivery schedule, if:

(i) such default arises out of causes beyond the control of the purchaser and its subcontractor, and without the fault or negligence of either of them; or

(ii) such default arises out of causes within the control of a transportation subcontractor, not an affiliate of the purchaser, hired to transport the purchaser's product by vessel or pipeline, and such causes are beyond the purchaser's control, without the fault or negligence of the purchaser, and notwithstanding the best efforts of the purchaser to avoid default.

(4) In the event that the contract is terminated in whole or in part for default, the purchaser will be liable to DOE for the difference between the contract price on the contract termination date and any lesser price the Contracting Officer obtained upon resale of the product;

(5) In the event that the Government exercises its right of termination for default, and it is later determined that the purchaser's failure to perform was excused in accordance with paragraphs (2) and (3), the rights and obligations of the parties will be the same as if such termination was a termination for convenience without liability of the Government under paragraph (c).

(c) Termination for convenience.

(1) In addition to any other right or remedy provided for in the contract, the Government may terminate this contract at any time in whole or in part whenever the Contracting Officer determines that such termination is in the best interest of the Government. Such termination will be without liability of the Government if such termination arises out of causes specified in (a)(1) or (b)(1) of this provision, acts of the Government in its sovereign capacity, or causes beyond the control and without the fault or negligence of the Government, its contractors (other than the purchaser of Reserve product under this contract) and agents. For any other termination for convenience, the Government will be liable for such reasonable costs incurred by the purchaser in preparing to perform the contract, but under no circumstances will the Government be liable for consequential damages or lost profits as the result of such termination.

(2) The purchaser will be given immediate written notice of any termination, under this paragraph (c). The termination will be effective upon its notice to purchaser. The purchaser is deemed to have received an electronic notice on the day of dispatch.

(d) Nothing herein contained will limit the Government in the enforcement of any legal or equitable remedy that it might otherwise have, and a waiver of any particular cause for termination will not prevent termination for the same cause occurring at any other time or for any other cause.

(e) In the event that the Government exercises its right of termination, as provided in paragraphs (a), (b), or (c)(1) of this Provision, the Contracting Officer may sell any undelivered product under such terms and conditions as the he deems appropriate.

- (f) DOE's ability to deliver product under another contract, will not excuse a purchaser that has been terminated for default from the difference between the contract price and any lesser price obtained on resale.
- (g) Any disagreement with respect to the amount due the Government for resale costs will be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision C.11.
- (h) The term "subcontractor" or "subcontractors" includes subcontractors at any tier.

C.8 Limitation of Government liability

The Government under no circumstances will be liable thereunder to the purchaser for the conduct of the Government's contractors or subcontractors or for indirect, consequential, or special damages arising from its conduct; neither will the Government be liable thereunder to the purchaser for any damages due in whole or in part to causes beyond the control and without the fault or negligence of the Government, including but not restricted to, acts of God or public enemy, acts of the Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

C.9 Notices

- (a) Any notices required to be given by one party to the contract to the other in writing will be forwarded to the addressee, prepaid, by electronic means. Parties will give each other written notice of address changes.
- (b) Notices to the purchaser will be forwarded to the purchaser's address as it appears in the bid and in the contract.
- (c) Notices to the Contracting Officer will be forwarded to the following address:
U.S. Department of Energy
Attn: Mary C. Roark
900 Commerce Road East
New Orleans, LA 70123-3406
(504) 734-4195

C.10 Disputes

- (a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. Section 601 et seq.). If a dispute arises relating to the contract, the purchaser may submit a claim to the Contracting Officer, who will issue a written decision on the dispute in the manner specified in 48 CFR 1-33.211.
- (b) "Claim" means:
 - (1) A written request submitted to the Contracting Officer;
 - (2) For payment of money, adjustment of contract terms, or other relief;
 - (3) Which is in dispute or remains unresolved after a reasonable time for its

review and disposition by the Government; and

(4) For which a Contracting Officer's decision is demanded.

(c) In the case of dispute requests or amendments to such requests for payment exceeding \$100,000, the purchaser will certify at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are current, accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which the purchaser believes the Government is liable.

Purchaser's Name

Signature

Title

(d) The Government will pay to the purchaser interest on the amount found due to the purchaser on claims submitted under this provision at the rate established by the Department of the Treasury from the date the amount is due until the Government makes payment. The Contract Disputes Act of 1978 and the Prompt Payment Act adopt the interest rate established by the Secretary of the Treasury under the Renegotiation Act as the basis for computing interest on money owed by the Government. This rate is published semi-annually in the **Federal Register**.

(e) The purchaser will pay to DOE, interest on the amount found due to the Government and unpaid on claims submitted under this provision from the date the amount is due until the purchaser makes payment. Interest will be computed on a daily basis. The interest rate will be in accordance with the Current Value of Funds rate as established by the Department of the Treasury in accordance with the Debt Collection Improvement Act of 1997 and published periodically in Bulletins to the Treasury Fiscal Requirements Manual and in the **Federal Register**.

(f) The decision of the Contracting Officer will be final and conclusive and will not be subject to review by any forum, tribunal, or Government agency unless an appeal or action is commenced within the times specified by the Contract Disputes Act of 1978.

(g) The purchaser will comply with any decision of the Contracting Officer and at the direction of the Contracting Officer will proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract.

C.11 Assignment

The purchaser will not make or attempt to make any assignment of a contract that incorporates these PDSPs or any interest therein contrary to the provisions of Federal law, including the Anti-Assignment Act (41 U.S.C. 15), which provides: No contract or order, or any interest therein, will be transferred by the party to whom such contract or order is given to any other party, and any such transfer will cause the annulment of the contract or order transferred,

so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

C.12 Order of precedence

In the event of an inconsistency between the terms of the various parts of this contract, the inconsistency will be resolved by giving precedence in the following order:

- (1) The NA and written modifications thereto;
- (2) The NS;
- (3) Those provisions of the PDSPs made applicable to the contract by the NS;
- (4) The instructions to the on-line bid system; and
- (5) The successful bid.

C.13 Gratuities

(a) The Government, by written notice to the purchaser, may terminate the right of the purchaser to proceed under this contract if it is found, after notice and hearing, by the Secretary of Energy or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered by or given by the purchaser, or any agent or representative of the purchaser, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary of Energy or his duly authorized representative makes such findings will be in issue and may be reviewed in any competent court.

(b) In the event that this contract is terminated as provided in paragraph (a) hereof, the Government will be entitled (1) to pursue the same remedies against the purchaser as it could pursue in the event of a breach of the contract by purchaser, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of Energy or his duly authorized representative) which will not be less than three nor more than 10 times the cost incurred by the purchaser in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause will not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Exhibit B

**SPECIFICATIONS FOR FUNGIBLE HEATING OIL 15 PPM SULFUR (UNDYED)
CERTIFIED NTDF - GRADE 164**

PRODUCT PROPERTY	ASTM TEST METHODS	TEST RESULTS		NOTE
		MINIMUM	MAXIMUM	
Gravity, API @ 60°F	D4052	30		
Flash Point, °F (at Origin)	D93	130		1
Color, ASTM	D1500, D6045		2.5	
Viscosity, cst @ 104°F	D445	1.9	4.1	
Cloud Point, °F (Sept thru March)	D2500		+15 °F	
(April thru August)			+20 °F	
Pour Point, °F (Sept thru March)	D5985, D5949, D5950, D97		0 °F	
(April thru August)			+10°F	
Total Sulfur, ppm (at receipt)	D5453		11	3,7,10
Corrosion, 3 hrs. @ 122°F	D130		1	
Oxidation Stability, mg/100 ml OR	D2274		2.5	
Thermal Stability, 90 minutes				
150°C Pad rating OR	DuPont		7	
Thermal Stability, Y/Green	D6468	73%		
W Unit		65%		
Carbon Residue, wt. % on 10% bottom	D524		0.35	
Ash, wt. %	D482		0.01	
Sediment and Water, % by volume	D2709		0.05	
Cetane Number or Index	D613	40		
Aromatics (Vol%)	D1319		35.0	
or Aromatics by Cetane Index	D976	40		
Distillation, °F	D86			13
50% recovered		Report		
90% recovered		540	640	
End Point			700	
Haze Rating @ 77°F	D4176		2	
Procedure 2				
Biodiesel (FAME) %	D7371, EN14078		0.0	9, 11
Color Visual		Undyed		4
Additives				5, 6
Electrical Conductivity, pS/m @ 70°F	D2624		250	5
NACE	TM0172	B+		8

NOTES:

- Test method D-93 is the referee method. Minimum flash at delivery is 125 °F.
- Intended to be consistent with ASTM D975 Grade No. 2 middle distillate fuels, unless otherwise noted.
- Receipts from Wolverine Pipe Line will be accepted at a maximum of 12.0 ppm sulfur.
- Product must exhibit no visible evidence of dye.
- Use of static dissipater/conductivity improver is restricted (See Table 1).
- The use of lubricity improver additives is prohibited.
- This fuel is designated for non-transportation use (Certified NTDF – 15 ppm sulfur Max) and for heating oil use (Heating Oil (Max 15 ppm sulfur ULSHO)).
- All products (except aviation grades) must meet a minimum level of corrosion protection, indicated by a minimum rating of B+ as determined by NACE Standard Test Method TM0172 (Determining Corrosive Properties of Cargoes in Petroleum Product Pipelines).
- Biofuel Components (e.g. biodiesel, FAME) are not permitted in this product. Results must be <LDL of the test method (i.e. <1.0% per D7371, or <0.50% per EN14078).
- Sulfur level at delivery will vary depending upon the origin and delivery location.
- Shipments of this Grade Code are limited to less than 5.0% renewable diesel. Renewable diesel is a liquid fuel derived from 100% hydrotreated biomass that meets the registration requirements for fuels and fuel additives established by the EPA under Section 211 of the Clean Air Act and the requirements of ASTM D975. Fuel containing fatty acid esters (FAME, FAEE, or other esters) is prohibited.
- Buckeye will accept test method results as listed in ASTM D975 (most recent version). Test methods listed in this specification are considered the referee methods by Buckeye.
- Simulated distillation (D2887) is allowed, but must be correlated to D86.