



Y&R
39

STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL and CULTURAL RESOURCES
DIVISION OF PARKS AND RECREATION

172 Pembroke Road Concord, New Hampshire 03301
Phone: (603) 271-3556 Fax: (603) 271-3553 E-Mail: nhparks@dncr.nh.gov
Web: www.nhstateparks.org

January 16, 2018

His Excellency, Governor Christopher T. Sununu
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 21-I:80, I(b), authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation, to enter into a contract with K.S. L.L.C. General Contracting (VC #160877), Mason, NH in the amount of \$164,400 for the construction of a new Ski Patrol Hut at the Cannon Mountain Ski Area, Franconia Notch, NH upon approval of Governor and Executive Council through September 28, 2018. **100% Capital Funds**

Funding is available as follows:

	<u>FY2018</u>	<u>FY2019</u>
03-35-35-350030-31320000		
RSA 12-A:29-B Cannon Capital Improvements	\$30,000	\$134,400
034-500161 Capital Projects		

EXPLANATION

This contract provides construction services for the building of the new Ski Patrol Hut at Cannon Mountain Ski Area. The Cannon Mountain Ski Patrol currently operates out of the basement of the Tramway Mountain Station. The spaces occupied limit interaction with the public and hinder response times. The new building will improve guest interaction and decrease Patrol response times. Funding for the Ski Patrol Hut was included in the 2017 request for Cannon Mountain Aerial Tramway & Ski Area Capital Improvement Projects recommended by the Cannon Mountain Advisory Commission and approved by both the Capital Budget Overview Committee on May 16, 2017 (CAP #17-015) and the Governor and Executive Council on June 7, 2017 (Item #81).

In August 2017, an invitation to submit bids for the Ski Patrol Hut at Cannon Mountain Ski Area was posted on the Division of Purchase and Property's website, the Division of Parks and Recreation's website, and the following construction services' websites: Construction Summary of NH, Infinite Imaging, McGraw Hill Construction, Signature Press and Blueprinting, and Works in Progress. Seven (7) contractors attended a mandatory pre-bid meeting on August 29, 2017. Bid opening occurred on September 12, 2017 where five (5) bid proposals were received, and the low bidder was selected. Attached for your information is a tabulation of bid proposals received.

The Attorney General's Office has approved this contract as to form, substance and execution. A 100% performance and payment bond shall be furnished by the Contractor 15 days prior to the start of construction. The bond shall meet the requirements of New Hampshire RSA 447:16. The work of the contract shall not commence until such bond has been executed.

Respectfully submitted,

Concurred,

Philip A. Bryce
Director

Jeffrey J. Rose
Commissioner

**STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
Division of Parks and Recreation
Planning and Development**

Closing Date: September 12, 2017 at 2:00 PM

CAP 1804 Cannon Mountain Ski Area Ski Patrol Hut

Contractor Name and Address	Bid Amount
Dynacon Builders 10 Chestnut Dr., Bedford, NH 03110	No bid
CMGC Building Corp. 360 Harvey Rd, Manchester, NH	\$199,082.00
KS LLC General Contracting 765 Greenville Rd, Mason, NH 03048	\$164,400.00
Graves Builders 329 Cloud Brook Rd, Barnet, VT 05821	\$174,940.00
Build-It Construction 73 Newton Rd, Plaistow, NH 03865	\$167,040.00
T-Buck Construction 302B Auburn Rd, Turner, ME 04282	No bid
Davis Construction 418 Town Farm Rd, Jaffrey, NH 03452	\$258,150.00

Bidding Procedure: In August 2017, an invitation to submit bids for the above project was issued in accordance with Department of Administrative Services' policy. The bid solicitation was posted on the Division of Purchase and Property's website, the Division of Parks and Recreation's website, and the following construction services' websites: Construction Summary of NH, Infinite Imaging, McGraw Hill Construction, Signature Press and Blueprinting, and Works in Progress. Seven (7) contractors attended a mandatory pre-bid meeting on August 29, 2017.

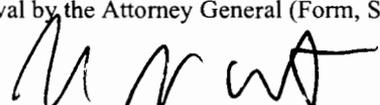
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Natural and Cultural Resources		1.2 State Agency Address 172 Pembroke Road, Concord, NH, 03301	
1.3 Contractor Name K.S. L.L.C. General Contracting		1.4 Contractor Address 765 Greenville Road, Mason, NH, 03048	
1.5 Contractor Phone Number 603-801-9305	1.6 Account Number 30-31320000-500161	1.7 Completion Date September 28, 2018	1.8 Price Limitation \$ 164,400
1.9 Contracting Officer for State Agency Thomas Mansfield, DNCR Architect		1.10 State Agency Telephone Number 603-271-2606	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Ken Spacht, owner	
1.13 Acknowledgement: State of New Hampshire County of Hillsborough <p>On <u>Nov. 21, 2017</u>, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.</p>			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 		<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> AMANDA L BLOOD Notary Public, New Hampshire Commission Expires May 27, 2020 </div>	
1.13.2 Name and Title of Notary or Justice of the Peace Amanda Blood, Customer Service, TD Bank NA			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Jeffrey J. Rose, Commissioner	
Date: <u>2/6/18</u>			
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>N/A</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>2/8/2018</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: On:			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

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

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

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

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

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

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

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

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

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

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

Agreement. This provision shall survive termination of this Agreement.

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

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

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

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

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

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

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

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

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

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

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

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
DIVISION OF PARKS AND RECREATION
PLANNING AND DEVELOPMENT SECTION**

**CANNON MOUNTAIN SKI PATROL HUT
Project CAP1804**

EXHIBIT A

SUMMARY OF THE WORK: The intent of this contract is to provide the State with a new Ski Patrol Hut located at Cannon Mountain Ski Area in the Franconia Notch State Park by on or before the completion date. Contractor shall be responsible for all materials, tools, and labor necessary for construction services, in compliance with, and as indicated by and in the Departments specifications "Project Manual, Project No: CAP1804 Ski Patrol Hut" dated August 4, 2017. A copy of which the Contractor acknowledges receipt of and the following scope of work as indicated in the Construction Document dated August 4, 2017 and any associated Addenda issued.

A 100% performance and payment bond shall be furnished by the Contractor 15 days prior to the start of construction. The bond shall meet the requirements of New Hampshire RSA 447:16. The work of the contract shall not commence until such bond has been executed.

The contract includes:

- **Construction of a weather tight building envelope including:**
 - **Framing**
 - **Siding and Trim**
 - **Roofing**
 - **Windows**
 - **Doors**
 - **Exterior finishes**

Not included in the contract:

Preceding Work: The Department of Natural and Cultural Resources will perform the following construction operations at Project site. Those operations are scheduled to be substantially complete before work under this contract begins.

- Site preparation and construction of reinforced concrete pier foundation elements and column base plates to which the building will be attached.

Subsequent Work: The Department of Natural and Cultural Resources will perform the following additional work at the site after Substantial Completion. Completion of this work will depend on successful completion of preparatory work under this contract.

- Interior building fit-up, including; interior partitions, interior casework and finish carpentry, thermal insulation in walls and roof, interior doors, frames and hardware, gypsum board, flooring and base, interior painting and staining, signage, toilet room fit-up, HVAC systems, electrical systems, final site grading and other items required for complete and usable facility.

EXHIBIT B

Contract Price

The total contract shall **not exceed \$164,400**

Method of Payment

Payments shall be made monthly in proportion to the work completed and upon receipt of an itemized invoice and approved by the Project Manager.

Term

This contract shall commence upon approval of the Governor and Executive Council with a completion date of **September 28, 2018**

EXHIBIT C

There are no additional provisions to this contract.

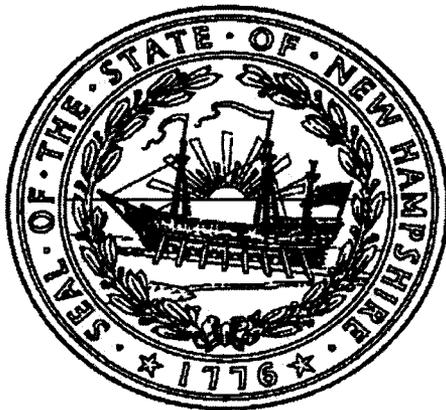
State of New Hampshire

Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that K.S. L.L.C. GENERAL CONTRACTING is a New Hampshire Limited Liability Company registered to transact business in New Hampshire on October 19, 2009. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 621103



IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 13th day of October A.D. 2017.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

CERTIFICATE OF AUTHORITY/VOTE
(Limited Liability Company)

I, Ken Spacht, hereby certify that:
(Name of Sole Member/Manager of Limited Liability Company, Contract Signatory – Print Name)

1. I am the Sole Member/Manager of the Company of KS LLC General Contracting.
(Name of Limited Liability Company)

2. I hereby further certify and acknowledge that the State of New Hampshire will rely on this certification as evidence that I have full authority to bind KS LLC General Contracting
(Name of Limited Liability Company)

and that no corporate resolution, shareholder vote, or other document or action is necessary to grant me such authority.

KS
(Contract Signatory - Signature)

11/24/17
(Date)

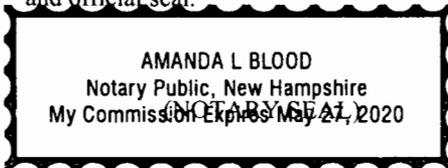
STATE OF New Hampshire

COUNTY OF Hillsborough

On this the 24th day of November 20 17, before me Amanda Blood,
(Day) (Month) (Yr) (Name of Notary Public / Justice of the Peace)

the undersigned officer, personally appeared Ken Spacht, known to me (or
(Contract Signatory – Print Name)

satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.



Amanda Blood
(Notary Public / Justice of the Peace - Signature)

Commission Expires: May 27, 2020

