

**State of New Hampshire Department of Energy**



**Default Service Investigation Consultant**

**REQUEST FOR PROPOSALS (RFP)  
RFP #2023-008**

**Release Date: May 26, 2023  
Proposals Due: 12:00 p.m. EST June 21, 2023**

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## EXECUTIVE SUMMARY

The New Hampshire Department of Energy (Department) is seeking proposals from qualified firms to provide utility technical consulting services from a qualified consultant in the area of solicitation for and procurement of default energy supply in restructured electric utility markets.

Electronic proposals must be received at the Department no later than 12:00 p.m. EST on June 21, 2023. If the Department decides to award a contract or contracts as a result of this RFP process, any award is contingent upon approval of the contract(s) by the Commissioner of the Department and, if applicable, the Governor and Executive Council of the State of New Hampshire, with payment subject to the Department's special utility assessment process. *See* RSA 365:37.

### Pertinent Dates and Information

#### 1. **Schedule of Events**

<b>Event</b>	<b>Date/Deadline</b>	<b>Time</b>
RFP Issued	05/26/2023	
Question Period Closes	06/07/2023	4:30 PM
Responses to Questions Posted	06/12/2023	4:30 PM
Proposal Due Date and Time	06/21/2023	12:00 PM
Anticipated Contract Start Date	Mid-July 2023	

#### 2. **Vendor Inquiries**

All inquiries concerning this RFP must be submitted by e-mail to the following RFP Point of Contact:

Susan Gagne, Program Specialist III  
New Hampshire Department of Energy  
21 S. Fruit Street, Suite 10  
Concord, NH 03301-2429  
[RFP@energy.nh.gov](mailto:RFP@energy.nh.gov)

Inquiries must be received no later than Close of Question Period as specified in the Schedule of Events above. The subject of the email should state the following: “**RFP #2023-008, Default Service Investigation Consultant.**” **No phone calls.** It is highly recommended that respondents review the RFP as soon as possible and submit any questions promptly. Responses will be posted by the above-described deadline at: [Requests for Proposals | NH Department of Energy](#).

#### 3. **Proposal Submission Instructions**

Proposals submitted in response to this RFP must be received no later than the time and date specified in the Schedule of Events, herein. Late submissions will not be accepted. Delivery of the proposals shall be at the Vendor's responsibility. The Department

accepts no responsibility for damaged, mislabeled, or undeliverable mailed or emailed proposals.

Proposals must be typed. The strongly preferred format includes 12-point font size with 1-inch page margins. Page numbers should be included.

Paper copies are not required and will not be accepted.

### **3.1. Electronic Proposals**

Electronic proposals must be in PDF format and must be searchable. Proposals must be submitted electronically to: [RFP@energy.nh.gov](mailto:RFP@energy.nh.gov). The file will be considered received based on the time stamp in the receiver's email. The Department can accept electronic files no larger than 25 MB.

The subject of the email should state the following: **"2023-008, Default Service Investigation Consultant."** Please include the company name in the Subject line.

The Department shall assess completeness and responsiveness of the proposal to eliminate nonconforming proposals. The Department may waive or offer a limited opportunity to cure immaterial deviations from RFP requirements if it is determined to be in the best interests of the State. Any response that is filed shall be valid for not fewer than 150 days following the deadline for submission of proposals, or until the effective date of any resulting contract, whichever is later.

### **4. Restriction on Contact with State Employees Regarding RFP:**

From the date of the release of this RFP until awards are made and announced regarding the selection, all communications with personnel employed by or under contract with the State regarding this RFP are forbidden, unless first approved by the Point of Contact, Susan Gagne, Program Specialist III, or as otherwise outlined in Section V below or as part of a preexisting relationship. Department employees have been directed not to hold conferences and/or discussions concerning this RFP with any potential contractor during the selection process, unless otherwise authorized by the RFP point of contact, or as otherwise outlined in Section V below.

## **I. BACKGROUND**

The Department opened INV 2023-001, an investigative proceeding, pursuant to its investigative authority under RSA 12-P:2 and RSA 12-P:10. This investigative proceeding was opened May 24, 2023, and relates to procurement of default energy service by New Hampshire's regulated distribution electric utilities.

The Department is seeking consultant(s) in the area of solicitation for and procurement of default energy supply in restructured electric utility markets to assist the Department in this investigation.

The investigative proceeding follows on a report issued by the New Hampshire Public Utilities Commission (NHPUC) on April 24, 2023 in IR 22-053. The Department expects to use the NHPUC report and the materials provided to the NHPUC as well as data and analysis from INV 2023-001 to, among other things, assess (1) current market conditions and their effects on energy service procurement, (2) whether procurement methods used in other restructured states could provide better pricing to New Hampshire Default Service customers if used by New Hampshire's electric distribution utilities, and (3) whether the use of self-supply for default service is an option for default service and the potential risks and benefits of self-supply. Any change to energy service procurement would need to assess its effects on customers, the electric distribution utilities as well as the market and other potential market participants.

## **II. SCOPE OF SERVICES AND DELIVERABLES**

The consultant(s) will be hired and supervised by the Department to perform the consulting work, and will work at the direction of, and in consultation with, the Department. The consultant(s) chosen will be expected to investigate, analyze and assess various methodologies and approaches related to the assignment as detailed in the Department's Order of Notice. Among other things, tasks will include:

- Preliminary meeting regarding work plan with Department staff and periodic meetings with Department staff during the investigation;
- Review of the record in NHPUC docket IR 22-053;
- Preparation of data requests and discovery activities;
- Interviews of electric utility personnel, market participants and other relevant entities;
- Preparation and submission of a preliminary and final report, according to the schedule in INV 2023-001;
- Preparation of responses, if needed, to inquiries regarding the final report; and
- Attendance, if needed, at any public meetings/hearings regarding the investigation.

The consultant shall conduct an initial project scoping meeting with the Department. The purpose of the meeting is to review and refine the scope, task and project approach requirements; review the allocation of resources among deliverables; establish a project plan, with key deliverables and milestone dates; and establish project management and communication protocols to ensure that the information needs of both the Department and the consultant are satisfied.

In the process of preparing each deliverable, the consultants will work closely with Department in order to facilitate effective knowledge transfer of each issue. The work of the consultant will be subject to an evaluation of progress achieved against the above-mentioned scope and tasks to take place after completion of the key deliverables identified during the project scoping meeting.

## **III. CONFIDENTIALITY**

Each proposer agrees to maintain as confidential all information received from the Department in the course of this RFP and contracting process until such time as it is instructed otherwise by the Department. A proposal must remain confidential until the effective date of any contract

resulting from this RFP. A proposer's disclosure or distribution of proposals or the information received from the Department other than as permitted by the Department will be grounds for disqualification.

#### **IV. COMPONENTS OF THE PROPOSAL**

Proposals must contain the required information below and adhere to the following outline:

1. Letter of Transmittal: Include name of proposer, contact information for, and signature of, proposed consultant. (1 page)
2. Corporate/Company/Consultant Information: Information concerning its corporate/company/consultant history; i.e., how many years in business, corporate officers or company principals, location of branch offices, professional and business association memberships, current or prior engagements involving substantive areas similar to those described in this RFP, the parties it represented in such engagements, the scope of work it performed in such engagements, and the conclusion and recommendations it made publicly in connection with such engagements. (1 page)
3. Proposed Scope of Work and Schedule: Describe the essential elements of the proposed services consistent with Section II, Scope of Services and Deliverables, and the proposed means of providing those elements and the schedule for doing so. (no more than 3 pages)
4. Relevant Qualifications and Experience of Personnel Assigned: Detailed description of the proposer's relevant experience with respect to the proposed scope of services. A list of all personnel who would be assigned to this engagement, including the project manager and subcontractors' personnel (if applicable), and detailed resumes (in an appendix) and summaries of each individual reflecting their relevant experience and the nature of their specific responsibilities. Identify any proposed subcontractors and their key personnel. Sample work, including testimony prepared by assigned personnel may be requested during the scoring process. During the course of the work, the Department must approve in writing any substitutions or changes in personnel, including any subcontractor personnel, assigned to perform the work. (no more than 3 pages, not including the resumes of the key personnel)
5. References: A list of up to three references for work performed which is similar in scope or content to that proposed, preferably within the past 3 years. (1 page)
6. Statement of Disclosure: Identification and description of any existing or potential conflicts of interest, including those that arise as a result of relationships or affiliations with utility companies under the jurisdiction of the PUC, other industry participants, trade associations, or advocacy organizations or groups

that participate in, or represent stakeholders who participate in, proceedings before the PUC or Department.

7. Project Fee and Cost Estimates: Provide a detailed schedule of fees and estimated costs for completion of the work scope, including details on key personnel positions, rates, fees, and hours. The detailed cost estimates should encompass the full scope of work described in this RFP, including all items indicated in Section II above. (up to 3 pages).
8. An explicit statement that the proposer will comply with the requirements of Form P-37 (version 2/23/2023).

## V. SELECTION PROCESS AND SCORING CRITERIA

In addition to cost, the Department will consider the following criteria when reviewing proposals:

- a. Knowledge and practical experience that the organization/consultant possesses, including that of its staff and any subcontractors assigned to the engagement.
- b. Experience and qualifications in providing similar services in New Hampshire as well as utility regulatory agencies in other states.
- c. Proposed scope of work.
- d. Overall responsiveness to the requirements of the RFP, including completeness, clarity, and quality of the proposal.
- e. Interviews, if performed.
- f. References, if contacted.

### A. Selection Process

Proposals will be reviewed and evaluated in a four-step review process, followed by a contracting phase. The four steps are summarized below:

Step 1 Preliminary Review: The Department shall assess compliance with the submission requirements set forth in the RFP and minimum content set forth in Section IV. The Department may waive or offer a limited opportunity to cure immaterial deviations from RFP requirements if it is determined to be in the best interests of the State.

Step 2 Preliminary Evaluation: An Evaluation Team consisting of Department personnel shall initially score conforming proposals according to the evaluation criteria set forth above.

Step 3 Final Evaluation: If determined to be appropriate by the Evaluation Team, proposers may be invited to oral interviews. The Department retains the sole discretion to determine whether to conduct oral interviews, with which proposers, and the number of interviews. Proposers are advised that interviews may be conducted with fewer than all proposers. Follow-up conferences or interviews will be scheduled as needed, at the sole discretion of the Department, provided that no proposer with a preliminary score of 70 or less will be interviewed.

The purpose of oral interviews is to clarify and expound upon information provided in the written proposals. Proposers are prohibited from altering the basic substance of their proposals during the oral interviews. Proposers may be asked to provide written clarifications of elements in their proposals, regardless of whether an oral interview will be conducted.

References will be reviewed and/or contacted during Step 3, if determined to be appropriate by the Evaluation Team.

Information gained from oral interviews and references will be used to refine scores assigned during the Step 2 review and evaluation of the proposal.

The Evaluation Team shall generate final consensus scores for each proposal, rank all proposals from best to least qualified as determined by their final scoring in accordance with the above procedures, determine its highest qualified proposer(s), and submit its recommendation to the Commissioner of the Department, to whom which selection is subject to review and approval.

Step 4 Contract Negotiation and Execution: The Department shall negotiate with the recommended proposer(s), if necessary, and develop a contract and related documents consistent with this RFP, then submit the completed contract to the Commissioner of the Department for approval and execution.

Notwithstanding any other provision of this RFP, this RFP does not commit the Department to make an award of a contract. The Department reserves the right, at its sole discretion, to reject any or all proposals, or any portions thereof, for any reason, at any time, including, but not limited to, canceling the RFP, and to solicit new proposals under a new procurement process.

Proposals shall be deemed incomplete and ineligible if information that is essential to the scoring evaluation is not included in the proposal. Proposals that fail to meet the following requirements will be deemed ineligible:

- Filing of a timely proposal containing all mandatory elements.

All proposals deemed ineligible shall receive notification of that determination.

Broadly, the Department will evaluate all proposals received and deemed eligible based upon completeness, clarity, quality of the proposal, how well the proposal meets the specified work



scope and applicable timeline requirements, the qualifications and relevant experience of the consulting team, and the likelihood of the completion of all consulting work within the contract period. All proposals deemed eligible for consideration will be evaluated based upon the specific criteria identified.

## B. Scoring Criteria

The Evaluation Team shall consider all of the following criteria, and assign a corresponding point score, where a maximum score for all criteria shall be 100 points. Cost is a consideration but may not be the determining factor in the selection of the consultant. The Department reserves the right not to consider any proposal with a total aggregate point score of less than 70 points.

1. **Employee and Subcontractor Qualifications:** Qualifications, technical expertise, certifications, and knowledge that the organization or individual possesses, including that of the staff and any subcontractors proposed to be assigned to the engagement, providing services directly relevant to the specified scope of services. (Maximum Point Score: 25)
2. **Proposed Scope of Work:** Clarity and appropriateness of proposed general approaches and demonstrated knowledge of relevant subject matter, including proposed allocation of resources and time to critical tasks, proposed scope of work, and project schedule. (Maximum Point Score: 20)
3. **Experience:** Experience and qualifications in providing similar services to regulatory agencies. General experience providing similar services, including experience in the ISO-NE markets. (Maximum Point Score: 25)
4. **Cost of Consulting Services:** Cost of consulting services and expenses, including the competitiveness of the proposed budget and/or hourly rates and any proposed discounts or other benefits. (Maximum Point Score: 20)
5. **Responsiveness to RFP:** Overall responsiveness to the requirements of the RFP, including completeness, clarity, and quality of proposal. (Maximum Point Score: 10)

## VI. TERM OF CONTRACT

The term of the contract with any selected proposer(s) will be for a period of one year.

## VII. GENERAL CONDITIONS

The Department reserves the right to the following: to reject or accept any or all proposals, or any part thereof; to determine what constitutes a conforming proposal; to waive irregularities that it considers non-material to the proposal, solely as it deems to be in the best interests of the State; to negotiate with any selected firm(s) or individual(s) in any manner deemed necessary to best

serve the interests of the State, including to negotiate lower fees or a different hourly rate structure; and to contract for any portion of the proposals submitted and to contract with more than one proposer. In the event that the Department determines to contract with more than one proposer, the Department reserves the right to assign proceedings to proposers according to relevant qualifications and experience, and availability. This RFP and all information relating to this RFP (including, but not limited to, fees, contracts, agreements, and prices), are subject to the laws of the State of New Hampshire regarding public information and state procurement of goods and services.

1. If the Department decides to award a contract as a result of this RFP process, any award is contingent upon approval of the contract by the Commissioner of the Department and, if applicable, the Governor and Executive Council with payment subject to the Department's special utility assessment process. Payments hereunder are contingent upon the availability of funds assessed pursuant to RSA 365:37. The Department shall assess the costs of the contract to the appropriate party(ies) and upon payment of the assessment, will process payment to the consultant. General funds will not be requested to support the contract resulting from this RFP. At the sole discretion of the Department, payment may be made using general assessment funds if a special assessment pursuant to RSA 365:37 cannot be made.

2. The Department reserves the right to request additional information from any or all prospective consultants submitting proposals to assist in the evaluation process.

3. Confidentiality of Proposal and Information Provided to Proposers:

The substance of a proposal must remain confidential until the effective date of any contract resulting from this RFP. A proposer's disclosure or distribution of proposals other than to the Department may be grounds for disqualification. Each proposer also agrees to maintain as confidential all information to which it has access in the course of this RFP and contracting process until such time as it is instructed otherwise by the Department.

4. Public Disclosure:

Pursuant to RSA 21-G:37, all responses to this RFP shall be considered confidential until the award of a contract. At the time of receipt of proposals, the Department will post the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the Department of Administrative Services pursuant to this RFP, the Department will post the name of each proposer, and rank or score of each proposal eligible to be scored. In the event that the contract does not require Governor and Executive Council approval, the Department shall disclose the name of each proposer and rank or score of each proposal eligible to be scored at least five business days before final approval of the contract. All such postings

may be viewed on the Department's website at: [Requests for Proposals | NH Department of Energy](#).

By submitting a proposal, the proposer acknowledges that the Department is subject to the Right-to-Know Law, RSA Chapter 91-A. The content of each proposer's proposal shall become public information upon the award of any resulting contract. Any information submitted as part of a response to this RFP may be subject to public disclosure unless otherwise exempt. *See* RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP may be made accessible to the public online through the website Transparent NH: (<http://www.nh.gov/transparentnh>). However, business financial information, confidential information, such as personally identifiable information, including, but not limited to, social security numbers, taxpayer identification numbers, employer identification numbers, and account numbers, proprietary information such as trade secrets, financial models and forecasts, and proprietary formulas, may be exempt from public disclosure under RSA 91-A:5, IV.

If any part of its proposal contains information that a proposer asserts is exempt from public disclosure, **the proposer must specifically identify all relevant text in a letter to the Department and must mark or stamp each page of the materials claimed to be exempt from disclosure as "confidential,"** and provide support for such assertion(s) as part of proposer's response to this RFP. The proposer shall explain, in writing, what measures it has taken to keep such information confidential, and the personal privacy or competitive business interests that would be harmed if such information were to be publicly disclosed. The explanation shall also identify by page number and proposal section number the specific information the proposer claims to be exempt from public disclosure pursuant to RSA 91-A:5. It is helpful if the text claimed to be confidential is also highlighted, underlined, or otherwise identified in the actual proposal itself. Marking the entire proposal or entire sections of the proposal as "confidential" will neither be accepted nor honored.

The Department shall maintain the confidentiality of information contained in proposals, insofar as doing so is consistent with RSA Chapter 91-A. Any information a proposer identifies as exempt from disclosure shall be kept confidential until the Department has determined, as necessary, whether such information is exempt from public disclosure pursuant to RSA 91-A.

In the event that the Department receives a request to view portions of a proposal that the proposer has properly and clearly marked "confidential," the Department shall notify the proposer and specify the date the Department intends to release the requested information, redacting any information the Department independently concludes is exempt, consistent with applicable laws and regulations. Any effort to prohibit or enjoin the release of the information the Department identifies for release shall be the proposer's responsibility at the proposer's sole expense. If the proposer fails to obtain a court order enjoining the

disclosure, the Department may release the information on the date the Department specified in its notice to the proposer(s), or in its notice to any other relevant parties, without any liability to the proposer(s).

5. By submitting a proposal, a proposer agrees that in no event shall the Department be either responsible for or held liable for any costs incurred by the proposer in preparation of or in connection with the proposal, or for work performed prior to the effective date of any resulting contract.
6. All parties submitting proposals shall be Equal Opportunity Employers. The selected consultant will be expected to comply with all federal, state, and local laws respecting non-discrimination in employment.
7. The Department reserves the right to amend or cancel this RFP at any time. Proposers should check [Requests for Proposals | NH Department of Energy](#) for any addenda to this RFP before submitting their proposals, and for answers to any questions submitted by others.
8. The selected consultant(s) shall be required to submit a Taxpayer Identification Number (TIN), Employer Identification Number (EIN), or Social Security Number (SSN), and to register as a vendor with the State of New Hampshire.
9. The terms and conditions set forth in the State's Form P-37 (version 2/23/2023) "Agreement, General Provisions" (General Provisions) for contracts, attached hereto as Appendix A, shall apply to the contract to be entered into with the selected proposer(s). In addition, each contract shall be supplemented by three exhibits: Exhibit A will include any special provisions, including any modifications to the General Provisions regarding insurance coverage and other matters; Exhibit B will set forth in detail the Scope of Services; and Exhibit C will set forth in detail the price limitation, the source of payment (special utility assessment), and any preconditions to payment.
10. Once a contract becomes effective, any subsequent material changes or modifications to the contract terms must be submitted for review and prior approval by the Commissioner of the Department and, if applicable, the Governor and Executive Council.
11. This RFP is not an offer. Neither the Department nor this RFP shall create any commitment on the part of the State or confer any rights on the part of the proposer unless and until a binding written contract is executed between the Department and the proposer, and if applicable, approved by the Governor and Executive Council.
12. Property of the State: All materials and data submitted or received in response to this RFP will become the property of the State and will not be returned to the proposer(s). Upon contract award, the State reserves the right to use any

information presented in any proposal, provided that its use does not violate any copyrights, or other provisions of law, including RSA 91-A.

13. Non-Collusion: The proposer's signature on a proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and work quoted have been established without collusion with other proposers and without effort to preclude the Department from obtaining the best possible competitive proposal. Proposers who wish to submit joint proposals with other consultants must clearly identify that the proposal is a "joint proposal" and must identify all proposers in the first instance.

14. Challenges on Form or Process of the RFP

Any challenge regarding the validity or legality of the form and procedures of this RFP, including, but not limited to, the evaluation and scoring of proposals, shall be brought to the attention of the Department at least 10 business days prior to the proposal submission deadline, by sending written notice to the RFP Point of Contact, Ms. Susan Gagne, Program Specialist III. By submitting a proposal, the proposer is deemed to have waived any challenges to the Department's authority to conduct this procurement and the form and procedures of this RFP.

## VIII. GENERAL PROVISIONS, FORM P-37 (version 2/23/2023), AND CERTIFICATES

The selected proposer(s) will be expected to enter into a contract with the State of New Hampshire. The terms and conditions set forth in Form P-37 (version 2/23/2023) General Provisions (available at: [Requests for Proposals | NH Department of Energy](#)) are mandatory and will apply to any contract awarded to the proposer. In addition, project specific terms and conditions will be negotiated with the proposer and included in the final contract. For the convenience of the proposers, Form P-37 (version 2/23/2023) has been included as Appendix A.

**When responding to this RFP, each proposer must explicitly indicate that the proposer shall comply with the requirements of Form P-37 (version 2/23/2023).** To the extent a proposer believes that an exception to the standard form will be necessary for the proposer to enter into a contract, the proposer should raise that issue during the proposer inquiry period. The Department will review the inquiry regarding the requested exception(s) and respond that the exception is accepted, rejected, or note that the Department is open to negotiation regarding the requested exception(s) at the Department's sole discretion. If a proposer's exception is accepted, or is open to negotiation, the Department will, by means of posting the answer to the proposer's inquiry, and prior to the conclusion of the inquiry response period, provide notice to all potential proposers of the exception(s) which has been accepted, or is open to negotiation, and indicate that exception is available to all potential proposers. Any exceptions to the standard form contract that are not raised during the proposer inquiry period are waived. In no event is a proposer to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this RFP. The proposer inquiry period begins when the RFP is

posted, and ends at the conclusion of the RFP’s written inquiry period. All inquiries must be in writing, and must be sent to the RFP point of contact identified above.

With regard to Form P-37 (2/23/2023) General Provisions, Paragraph 14, “Insurance,” please note that proposers may be allowed to substitute professional liability insurance for part or all of the per occurrence comprehensive general liability insurance coverage. In addition, excess liability insurance in an equal amount may be substituted for up to \$1,000,000 of the per occurrence comprehensive general liability or professional liability insurance coverage. The State reserves the right to consider further waiving or modifying the insurance requirements in Paragraph 14 based on inquiries and proposals submitted, consistent with the procedure described above.

**A proposer will be required to fill in the P-37 Form (version 2/23/2023) ONLY upon the Department’s selection of its proposal, and prior to submission of the final contract for review and approval by the Commissioner of the Department and, if applicable, the Governor and Executive Council.**

The selected proposer(s) will be required to provide the following certificates prior to entering into a contract with the Department:

Secretary of State’s Office Certificate of Good Standing (“CGS”)	Business organizations and businesses using trade names need a CGS, except for nonresident nonprofit corporations. Individuals contracting in their own names do not need a CGS.
Certificate of Vote/ Authority (“CVA”)	Business entities and businesses using trade names need a CVA. Individuals contracting in their own name do not need a CVA.
Certificate of Insurance	Certificate of Insurance form attached with insurance coverages required under the contract. Modifications of insurance coverage required will be specified in the contract.
Workers’ Compensation	Contractor must demonstrate compliance with or exemption from RSA 281-A (and, if applicable, RSA 228:4-b and RSA 21-I:80, and any other applicable laws or rules).

The selected proposer(s) will be required to provide the above certificates ONLY upon the Department’s selection of their **proposal(s), and prior to submission of the final contract(s) for review and approval by the Commissioner of the Department and, if applicable, the Governor and Executive Council.**

**IX. ETHICAL REQUIREMENTS**

From the time this RFP is published until a contract is awarded, no proposer shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined in RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member

of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any proposer that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any proposer who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from bidding on this RFP, or similar request for submission and every such proposer shall be disqualified from bidding on any RFP or similar request for submission issued by any State agency. A proposer that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the Department of Administrative Services, which shall note that information on the list maintained on the State's internal intranet system, except in the case of annulment the information shall be deleted from the list.

**APPENDIX A. FORM P-37**

STATE OF NEW HAMPSHIRE FORM P-37 (version 2/23/2023)  
AGREEMENT, GENERAL PROVISIONS



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 Energy		1.2 State Agency Address  21 S. Fruit St., Ste. 10, Concord, NH 03301	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Unit and Class	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature  <div style="text-align: right;">Date:</div>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  <div style="text-align: right;">Date:</div>		1.14 Name and Title of State Agency Signatory  Jared S. Chicoine, Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By: _____ On: _____			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i>  G&C Item number: _____ G&C Meeting Date: _____			

**2. 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 B 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, 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 1.13 (“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.

3.3 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. 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 by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C which is incorporated herein by reference.

5.2 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. 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.

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 80:7-c or any other provision of law.

5.4 The State’s liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

**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 applicable 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 employment opportunity laws and the Governor’s order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. The Contractor 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 this Agreement and all rules, regulations and orders pertaining to 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 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

## **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) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

## **9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar 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. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

## **10. PROPERTY OWNERSHIP/DISCLOSURE.**

10.1 As used in this Agreement, the word "Property" shall mean all data, 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.

10.2 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.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

**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.**

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 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 any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**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. The Contractor shall furnish the Contracting Officer identified in block 1.9, or any 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.** A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

**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. CHOICE OF LAW AND FORUM.**

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

**20. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**21. THIRD PARTIES.** This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

**22. 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.

**23. SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

**24. FURTHER ASSURANCES.** The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

**25. 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.

**26. 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 with respect to the subject matter hereof.