

State of New Hampshire Department of Energy



**Weatherization Assistance Program
CFDA # 81.042
FAIN # DE-EE0010001**

**REQUEST FOR PROPOSALS
#2023-009**

Monitoring of BIL Subgrantees/Creating Risk Assessment Policy

**Release Date: June 5, 2023
Proposals Due: July 7, 2023, 12:00 p.m. EST**

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EXECUTIVE SUMMARY

The contractor selected as a consequence of a successful response to this Request for Proposals will provide technical support, technical review and reporting services, and collaboration and consultation services to the New Hampshire Department of Energy (Department), as applicable, to assist the Department's federally funded Bipartisan Infrastructure Law Weatherization Assistance Program (BIL WAP) in meeting its obligations to:

- Monitor BIL WAP work at each of the five Community Action Agency (CAA) territories in New Hampshire, assisting the Department with the annual monitoring of each CAA's management of the BIL WAP funding in its territory for each program year of the BIL WAP period of performance. The BIL WAP period of performance began July 1, 2022, and will end June 30, 2027. The period of performance comprises five program years, each beginning July 1 and ending June 30 of the following year. Said monitoring must be completed prior to June 30 of each program year except for 2023, for which the monitoring will occur late.
- Assess the need, largely as a result of the monitoring work, for technical assistance to increase weatherization knowledge, skills, and abilities among all WAP personnel.
- Working closely with the Department, create a risk assessment policy and tool for BIL WAP subgrantees, for which the objective is to identify potential risks and vulnerabilities associated with subgrantee management, including financial, operational, and compliance risks.

The Contractor will operate under a contract with the Department, commencing with the approval of said contract by the New Hampshire Governor and Executive Council and concluding on June 30, 2027. The Department will have the option, at any time and at its sole discretion, to terminate the contract or postpone or delay all or any part of the contract upon written notice. The Department anticipates that the contract will also have the option, at the Department's discretion and with the willing negotiation of the Contractor and approval of Governor and Council, to increase the scope upon the receipt of additional funding and to extend the contract for up to 24 more months after June 30, 2027.

Pertinent Dates and Information

1. Schedule of Events

EVENT	DATE/DEADLINE	TIME
RFP Issued	June 5, 2023	
Close of Question Period	June 16, 2023	4:30 PM
Responses to Questions Posted	June 23, 2023	4:30 PM
Proposal Due Date and Time	July 7, 2023	12:00 PM

2. Written Inquiries

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

Susan M. Gagne
Program Specialist III
New Hampshire Department of Energy
21 South Fruit Street, Suite 10
Concord, NH 03301-2429
RFP@energy.nh.gov

Inquiries must be received no later than the Close of Question Period as specified in the Schedule of Events. The subject of the email should state the following: “**RFP #2023-009 BIL WAP Monitoring Subgrantees and Creating Risk Assessment Policy.**” **No phone calls please.** It is highly recommended that prospective proposers review the RFP as soon as possible and submit any questions promptly. Please note that responses to questions are carefully considered and may require several days. Responses to questions will be posted and can be found here: [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. Faxed proposals 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. 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. No USB drives please.

The subject of the e-mail should state the following “**RFP #2023-009 BIL WAP Monitoring Subgrantees and Creating Risk Assessment Policy.**”

The Department shall assess the completeness and responsiveness of the proposal to eliminate nonconforming proposals. The Department may waive or offer a limited opportunity to cure minor or 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 180 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

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 approved by the RFP Point of Contact, Susan Gagne, Program Specialist III, or as otherwise outlined in Section VI.1.(b). Department employees have been directed not to hold conferences and/or discussions concerning this RFP with any potential proposer during the selection process unless otherwise authorized by the RFP Point of Contact or as otherwise outlined in Section VI.1.(b).

I. BACKGROUND

1. General

The Department is responsible for the administration of the federally funded Bipartisan Infrastructure Law New Hampshire Low-Income Weatherization Assistance Program (BIL WAP). The Department has executed five-year Subgrantee contracts with the five New Hampshire Community Action Agencies (CAAs), located throughout the state and serving every NH county, to obtain weatherization services for the residences of income-eligible clients. The BIL WAP period of performance began on July 1, 2022, and ends on June 30, 2027, comprising five program years, each of which begin on July 1 and end on June 30 of the following year.

Each Subgrantee retains staff or engages contractors for the performance of weatherization work in client homes. Weatherization staff or contractors at each Subgrantee are trained and certified to serve as Quality Control Inspectors, Energy Auditors, Crew Chiefs, Installers, or Administrators and are responsible for providing weatherization services at the local level. Weatherization services are provided by agency in-house crews, or by agency subcontractors, in accordance with federal and state regulations and as prescribed in the *New Hampshire Weatherization Policies and Procedures Manual* (NH PPM) and the *NH Weatherization Field Guide*. More information about the NH Weatherization Assistance Program is available at: [Weatherization Assistance Program | NH Department of Energy](#).

2. Subgrantee Monitoring services required

The Department requests proposals to assist it in meeting its obligations to the US Department of Energy (USDOE) for monitoring the BIL WAP work of the five NH Community Action Agencies, each of which is a BIL WAP Subgrantee. The Contractor will be responsible for assisting the NH BIL WAP Manager in setting up, conducting, and reporting on program, financial, and technical monitoring at each Subgrantee WAP office for the BIL WAP period of performance, which began on July 1, 2022, and ends on June 30, 2027.

3. Training & Technical Assistance need assessment services required

A significant portion of the responsibility for state-level management of the federal Weatherization Assistance Program comes under Training and Technical Assistance (T&TA). The USDOE, which must answer to Congress for the stewardship of the federal

tax dollars placed into the Program, seeks to ensure that the Program is delivered professionally, utilizing the latest proven technological instruments and techniques, with personnel who are fully trained, credentialed, and supported to provide excellent weatherization services to low-income clients. As the BIL WAP grantee in New Hampshire, the Department requires regular and ongoing assessment of training and technical assistance needs among the staff and contractors responsible for delivering WAP services. The Contractor chosen as a result of this RFP will utilize the results of monitoring activities to provide T&TA suggestions to the NH BIL WAP Manager in pursuit of a strategic T&TA plan for the Department.

4. Creating a Risk Assessment Policy and Template services required

The Department requests proposals to assist the NH BIL WAP Manager with creating a Risk Assessment Policy and Tool. The purpose of a risk assessment is to:

- Identify possible points of failure in the successful execution of the BIL WAP by the community action agencies.
- Use for planning, budgeting, and implementing program improvements.

Working closely with the Department and the QAI vendor, and in compliance with 2 CFR Part 200.332, the Contractor will be responsible for creating a comprehensive risk assessment for Department subgrantees. The assessment should include the following:

- a. Reviewing subgrantee financial reports and other relevant financial documents.
- b. Reviewing subgrantee policies, procedures, and internal controls related to financial management and compliance.
- c. Evaluating subgrantee program performance and outcomes (in comparison to projected production schedule and quality work plan.)
- d. Assessing the adequacy and effectiveness of the Department subgrantee monitoring process.
- e. Developing recommendations for mitigating identified risks and improving subgrantee management and performance.

5. Funding expectations in the course of the expected contract period

The Department expects that the Contractor's first priority will be to complete the monitoring visits required by the Department at each Subgrantee. The visits should be scheduled in collaboration with the Department and the Subgrantee and can be conducted at the same time and in the same visit as the annual grant monitoring. The Department's budget can entertain proposals that anticipate expenditures for this work no greater than the following:

- For Program Year 22 (beginning 7/1/22 and ending 6/30/23):
 - Monitoring services (with T&TA needs assessment): \$13K
- For Program Year 23 (beginning 7/1/23 and ending 6/30/24):
 - Monitoring services (with T&TA needs assessment): \$15K
 - Creation of Risk Assessment Policy and Template: \$15 K
- For Program Years 24, 25, 26 (each program year beginning on 7/1 and ending on 6/30):
 - Monitoring services (with T&TA needs assessment): \$20K annually.

The Department expects the Contractor to manage the available dollars efficiently and to the best advantage for meeting the goals of the contract: five complete years of subgrantee monitoring, T&TA needs assessment, and the creation of a Risk Assessment Policy and Tool. Unspent dollars at the end of any calendar year may be moved into the budget for the following year, except for the final year, where unused funds may be returned to USDOE. Dollars devoted to each of the three distinct outcomes sought from the winning RFP bidder need not correspond with the amounts named above – the total amount available for this work is \$110,000 (or less, depending on the competitive nature of the bidding) and all three goals named in this RFP are expected to be reached using the agreed upon contract budget.

II. SCOPE OF SERVICES AND DELIVERABLES

A. Subgrantee Monitoring during the BIL Period of Performance

The Contractor will provide monitoring services to the Department, assisting the Department in meeting its annual obligations to monitor and provide technical assistance to the federal Bipartisan Infrastructure Law Weatherization Assistance Program (BIL WAP) as it operates in each of the five Subgrantee territories in New Hampshire. The provision of monitoring services will be the highest priority task for the Contractor in 2023.

Deliverables:

In collaboration with the NH BIL WAP Manager, the Contractor will be responsible for:

- Updating the NH WAP Subgrantee monitoring questionnaire to be sure it conforms with USDOE monitoring requirements as presented in WPN 20-4 and other subsequent and related guidance.
- Annual distribution of the questionnaire to the Subgrantee WAP offices, with appropriate instructions for completion and return to NH BIL WAP.
- Review and analysis of questionnaire responses in anticipation of annual on-site monitoring and the opportunity to probe Subgrantee WAP management on selected topics.
- Participation in the annual on-site monitoring visit to each Subgrantee WAP office and the various monitoring activities that must be completed while there.
- On-site monitoring visit review and follow-up in anticipation of final reporting
- Final monitoring report preparation for each Subgrantee WAP office.
- End-of-program-year aggregation of monitoring information to produce a “themes” document, summarizing the year just completed and laying the foundation for the monitoring that must take place in the following year.

B. Assessment of Training and Technical Assistance (T&TA) needs during the BIL WAP period of performance, ending June 30, 2027.

The Contractor will be involved in helping the NH BIL WAP Manager to assess and plan improvements to the knowledge, skills, and abilities of each Subgrantee and its contractors. This T&TA needs assessment work is closely associated with the Subgrantee monitoring and will be considered deserving of attention as a part of completing the monitoring work. T&TA needs at the Subgrantee level will be assessed in the context of managing and implementing the following six technical areas essential to a successful local Weatherization Assistance Program.

- a) Home energy auditing.
- b) Use of the software program chosen for creating an accurate computer model of the audited dwelling. During the BIL WAP period of performance, in collaboration with the NH utility low-income weatherization programs, the software program chosen for this purpose may change from Targeted Retrofit Energy Analysis Tool (TREAT) to Surveyor, requiring the Contractor to become familiar with the new program in order to continue successful monitoring of the Subgrantees and so that Subgrantee users of the program can be offered helpful feedback on skills and techniques to improve their use of the software.
- c) Preparation of work orders to describe the implementation of the energy conservation measures deemed appropriate and cost-effective as a result of the energy auditing site visit and computer software modeling.
- d) Management and oversight of the energy conservation measure (work order) installation process, whether implemented by contractors or by Subgrantee employee crews, seeking to ensure that energy conservation measures are completed as required under the NH Weatherization Field Guide and the NH Weatherization Policies and Procedures Manual.
- e) Conduct the final inspection process, which determines job fitness for reimbursement.
- f) Building and maintaining a qualified workforce through the application of appropriate recruiting, training, and technical assistance.

During the monitoring visits to Subgrantees, whether some portions are accomplished on-site or remotely, and during other interactions with Subgrantee personnel, the Contractor will assist the Department's BIL WAP Manager in discerning opportunities and situations that suggest training and technical assistance that would improve the WAP work completed by the Subgrantees. As time and budget allow, and in consultation with the Department's BIL WAP Manager, the Contractor may provide instructional technical assistance based on monitoring observations and assist with the review and planning necessary for the implementation of appropriate technical assistance by other parties.

Deliverables:

In collaboration with the NH BIL WAP Manager, the Contractor will be responsible for the following:

- Review of auditing techniques and practices of Subgrantee audit personnel, with instruction to improve practices where necessary.

- Review of weatherization job management practices, including defining and describing the work scope so that contractors are sure of the measures to be installed and how.
- Review the final inspection process, with instructions on best practices where needed.
- Review the Department’s strategic T&TA plan to keep it relevant and aligned with all available sector resources for building capacity and expertise among NH WAP community staff.
- Review workforce development efforts, with instruction and provision of resources where needed.

C. Creation of Risk Assessment Policy and Tool.

The Contractor will provide technical support and collaboration to the Department’s WAP office as it moves to create a Risk Assessment Policy to reflect updated and current policies and compliance requirements as prescribed by the USDOE and other appropriate authorities. (see 2 CFR Part 200.332)

Deliverables:

- A Comprehensive Risk Assessment Policy and Tool to include:
 - Policies and procedures outlining the process for risk assessment (also to be included in the Department WAP Policies and Procedures Manual.)
 - Risk factor categories and risk factors.
 - Risk scale to measure the objectives based on risk tolerance.
 - Risk score and risk assessment report.
 - Recommendations for enforcement actions throughout the matrix of findings.

III. PROJECT BUDGET DEVELOPMENT

The successful proposer shall commence work as soon as possible after the NH Governor and Executive Council approve the contract between the Contractor and the Department.

Funding for BIL WAP is based on NHDOE reaching benchmarks established by USDOE;

1. Department received 15% of the total grant at the time of the initial award.
2. 35% of the total grant will be received upon final approval of Department’s BIL WAP plan.
3. The balance of total allocation (50%) is based on the Department demonstrating progress in meeting expenditures goals, production targets, and reporting requirement compliance. Demonstrated progress is defined as:
 - a. 30% of all units estimated to be weatherized in the approved Department Weatherization Plan are weatherized (approximately 421).
 - b. Department has been fulfilling its monitoring and inspection protocol as part of its approved annual Grantee plan.

- c. Department monitoring local agencies at least once each year to determine compliance with administrative, fiscal, and Department field policies and guidelines.
- d. Local quality control efforts are in place.
- e. At least 10% of the completed units are inspected by Department Quality Control Inspection (QCI) staff during the year.
- f. Department progress reports are acceptable and submitted in accordance with grant requirements, including being on time and accurate.
- g. Monitoring reviews by Department confirm acceptable performance.

Funds to be awarded under this contract will be for the entire period of performance rather than separated into different funding periods. Any unspent funds from any program year will be carried forward into the following year, except for 2027, when unused funds may be returned to the USDOE. Upon selection of the Contractor, that entity and the Department will negotiate a full contract amount within the bounds of the amount stated in Section V, below, “Components of the Proposal,” and it will be the Contractor’s responsibility to manage time and dollars in a way that allows completion of all tasks described in the scope of work.

The Contractor will be paid on an hourly basis for all activities under the contract. Invoices for work done will be accepted by the Department no more frequently than once per month.

The Department BIL Weatherization Program Manager will supervise the Contractor.

IV. QUALIFICATIONS

Eligible proposers will have knowledge of and expertise regarding the Weatherization Assistance Program, will hold a current Quality Control Inspector certification, and will have training and experience in the following areas:

- Residential energy conservation.
- Home construction details (stick-built and manufactured housing, single-unit and multi-family).
- “House as a system” principles.
- Determination of cost-effective weatherization measures using standard energy audit diagnostics.
- Assessment of health and safety issues, including familiarity with safe practice protocols to deal with infectious diseases.
- Insulation and air sealing techniques.
- Enforcement of the Standard Work Specifications for weatherization field work as promulgated by the USDOE.
- Use of the TREAT for creating, assessing, and reviewing energy audit dwelling models and for establishing work plans for subject buildings; the Contractor may also be required to adapt to a new, similar tool during the course of the contracted work period, as use of TREAT is scheduled to be phased out during that period.
- Quality Control Inspection proficiency must be demonstrated by a current QCI certificate from an IREC-accredited training and testing center.

- Design and conduct of training and technical assistance in key weatherization skills and best practices.
- Ability to communicate technical information professionally and clearly, verbally and in writing.
- A demonstrated proficiency in the design and conduct of weatherization skills training and technical assistance, including skills and practices necessary for the safe conduct of weatherization work when an infectious disease is a factor.

The Contractor must also demonstrate and hold a “good standing” status in SAM, the federal “System for Award Management,” which means that the Contractor is not debarred and is, therefore, able to function under a contract that will make payments using federal dollars.

V. COMPONENTS OF THE PROPOSAL

The proposal must provide the following information and adhere to the following outline:

1. **Table of Contents:** A section to indicate the location by page number of the information included.
2. **Description of Proposing Entity:** A brief description of the proposing entity’s current practice and history, i.e., how many years in business, corporate officers or company principals, office locations, professional and business association memberships, legal and organizational structure.
3. **Response to the Scope of Services:** A discussion of how the Contractor would perform the services, the resources the Contractor would utilize, the issues and challenges the Contractor foresees, etc. The response must contain sufficient technical detail to permit a meaningful evaluation.
4. **Relevant Experience:** A detailed description of the relevant experience of the proposer and/or those individuals expected to work on the project, as well as a description of the anticipated division of duties among individuals, if applicable. Please ensure that all items identified in Section C (Proposer’s Qualifications), Section D (Communication Skills), and Section E (Confidence in Proposer’s Ability to Meet Timelines) are addressed.
5. **References:** Three references from principals at other projects on which the proposer was involved and that are similar in scope and/or content to the one being proposed.
6. **Form P-37:** An explicit statement that the proposer shall comply with the requirements of Form P-37.

Budget: A detailed cost proposal for each program year of the period of performance, with a budget narrative explaining that proposal. Three different tasks are required: Subgrantee monitoring in each of the program years, analysis of T&TA needs in each of the program years, and creation of a risk assessment policy and tool over the course of the first two program years.

A cost category breakdown should include time, materials/supplies, Contractor fees, travel, and any other costs. Any component of the proposal that the proposer expects to subcontract to another entity should be clearly identified, with the associated costs and the identity of the subcontractor. A rate or fee structure must be included.

In order to respond to this RFP, which has an approximately 48-month timeframe (from contract approval through June 30, 2027), proposers need to be aware that the Department is able to consider proposed budgets of up to a total of \$110,000 for the contract period.

Disclosure: Any existing or potential conflicts of interest that might compromise or appear to compromise the independence and objectivity of the Contractor while engaged in the work contemplated by this RFP should be identified, including those that arise as a result of familial or financial relationships or affiliations with employees at the Department, or any of the Subgrantees participating in the New Hampshire Low-Income Weatherization Assistance Program, or the utilities managing the CORE Home Energy Assistance Program.

VI. EVALUATION PROCEDURES AND SELECTION CRITERIA

1. Selection Process

Proposals will be reviewed and evaluated in a three-step process followed by a contracting phase. The three steps are summarized below, followed by a brief overview of the contract phase:

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 V. 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.

Oral interviews aim to clarify and expound upon information provided in the written proposals. Proposers are prohibited from altering the basic substance of their proposals during 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.

The information gained from oral interviews and references will be used to refine scores assigned during the proposal's Step 2 review and evaluation.

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, select its highest qualified proposer(s), and submit its recommendation to the Commissioner of the Department, to whom the selection is subject to review and approval.

Overview of the 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. At its sole discretion, the Department reserves the right 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 soliciting new proposals under a new procurement process.

Proposals shall be deemed incomplete and ineligible if information essential to the scoring evaluation is omitted. Proposals that fail to meet the following requirements will be deemed ineligible:

- Filing of a timely electronic 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.

2. Scoring Criteria and Weight

The Evaluation Team shall consider all 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 selecting the Monitor. The Department reserves the right to consider only proposals with a total aggregate point score of 70 points or higher.

- (a) Quality and Clarity of Proposal: Overall responsiveness to the requirements of the RFP, including completeness, clarity, and quality of the proposal. (Maximum Point Score: 10)

- (b) Soundness of Proposed Plan of Approach: Proposal discusses in detail how the proposer plans to perform the services and how resources will be deployed. (Maximum Point Score: 20)
- (c) Qualifications of Proposer; Knowledge and Experience; Capacity: The proposer possesses adequate experience, credentials, knowledge of WAP and TREAT, and staff capacity to provide T&TA services. (Maximum Point Score: 30)
- (d) Communication Skills: The proposer has demonstrated ability to effectively communicate with the Department, Subgrantees, and WAP clients, and ability to communicate technical information clearly, both verbally and in writing. (Maximum Point Score: 15)
- (e) Confidence in Proposer's Ability to Meet Timelines: The proposer has demonstrated the capacity to meet project deadlines, including report submission. (Maximum Point Score: 10)
- (f) Budget: Shows fiscal responsibility, reasonableness of costs, and understanding of available project funds. (Maximum Point Score: 15)

VII. 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 or Evaluation Team other than as permitted by the Department will be grounds for disqualification.

VIII. GENERAL REQUIREMENTS AND CONDITIONS

The Department reserves the right 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 nonmaterial 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; to contract with more than one proposer and to extend any contract for a period of up to two years. If the Department determines to contract with more than one proposer, the Department reserves the right to assign proceedings to proposers according to relevant qualifications, 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. All contracted activities resulting from this RFP are subject to the availability of Federal funds. General funds shall not be used.
2. All parties submitting proposals shall be Equal Opportunity Employers. Funding recipients must comply with all federal, state, and local laws respecting non-discrimination in employment.
3. The Department reserves the right to request additional information from any or all prospective consultants submitting proposals to assist in the evaluation process.
4. 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.

5. 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. At least five business days before 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. If 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).

6. 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.
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), a Unique Entity Identifier (UEI) , and to register as a vendor with the State of New Hampshire.

9. The Department may investigate the qualifications of any proposer under consideration, require confirmation of information furnished by proposer, and require additional evidence of qualifications to perform the work described in this RFP.
10. 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 B, shall apply to the contract to be entered into with the winning proposer. 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, and any preconditions to payment. In addition, a number of exhibits may consist of federally required certifications by recipients of federal funds.
11. As with all contracts made with the State of New Hampshire or using federal funding, certain requirements apply, including registration with the NH Secretary of State’s Office. These requirements can be found at the State’s Vendor Resource Center at <https://das.nh.gov/purchasing/vendorresources.aspx>.
 - a. Additionally, **at the time of contracting (do not submit with your proposal)**, the successful proposer will be required, among other things to provide:
 - i. The NH Secretary of State’s Certificate of Good Standing;
 - ii. The Certificate of Vote/Authority from the governing body of the proposer if applicable;
 - iii. The completion of a State of New Hampshire Vendor Application form;
 - iv. Contractor must demonstrate compliance with (or exemption from) [RSA 281-A](#).
 - v. Proof of active registration in the Federal System for Award Management (SAM) and have a Unique Entity Identifier (UEI) number of proposer and sub-contractor(s);
 - vi. Sign certain assurances including but not limited to: Drug Free Workplace; Lobbying; Americans with Disabilities Act Compliance; Environmental Tobacco Smoke; Federal Funding and Accountability Act (FFATA) Compliance; Buy American Compliance; and National Environmental Policy Act (NEPA) compliance.
12. The selected consultant will be required to comply with 2 CFR 200 as amended (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).
13. 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.
14. 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.

15. 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.
16. 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.
17. The Department and or its assignee reserve the right to inspect and monitor financial records and transactions related to any contract awarded under this RFP.
18. Reasonable access must be provided to the Department and the USDOE and/or its assignee to all administrators, vendors, facilities, work sites, employees of the Technical Monitor(s), and financial or other records; and reasonable assistance must be available to the Department and USDOE to ensure safe and convenient performance of site visits and evaluations.
19. The Department reserves the right to issue periodic notices, memos, and updated reporting forms, and information.
20. The Department requests notification about media inquiries, responses, and published clippings.
21. The Department will require notification, as soon as possible, of issues concerning the Contractor or their company that have or may potentially have legal implications as a result of their actions through this contract.
22. NH WAP client information is confidential. Proposers must agree not to disclose any client information in any form for any purpose not required by local, state, or federal law. Failure to maintain awardee confidentiality will be punishable to the fullest extent of the law. Client file information cannot be used as a resource for the financial benefit of the Contractor now or in the future for any purpose.
23. 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, 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.

IX. GENERAL PROVISIONS, FORM P-37, 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 General Provisions are mandatory and will apply to any contract awarded to the proposer, as will a number of federally required certifications. 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 has been included in Appendix B.

When responding to this RFP, each proposer must explicitly indicate that the proposer shall comply with the requirements of Form P-37. 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 question period. The Department will review the question 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 question, and prior to the conclusion of the question 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 received before the Close of Question Period as specified in the Schedule of Events 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 question period begins when the RFP is posted and ends at the Close of Question Period as specified in the Schedule of Events. All inquiries must be in writing and must be sent to the RFP Point of Contact identified above.

With regard to Form P-37 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 ONLY upon the Department's selection of its proposal, and prior to submission of the final contract for review and approval by the Department Commissioner 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.
Proof of active SAM registration	Proposer and any sub-contractor, if used, must provide proof of active SAM registration and a valid UEI number. Proposer and any sub-contractor must not be debarred from working on projects funded with Federal funds.
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, and prior to submission of the final contract(s) for review and approval by the Department Commissioner and, if applicable, the Governor and Executive Council.**

X. 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. SCORING CRITERIA SUMMARY SHEET

Proposer:

Factor	Maximum Score	Score	Comments
Quality and Clarity of Proposal	10		
Soundness of Approach	20		
Qualifications, Knowledge, Experience, and Capacity of Proposer	30		
Communication Skills	15		
Confidence in Proposer’s Ability to Meet Timelines	10		
Budget	15		

Comments:

APPENDIX B. FORM P-37

A copy of the State of New Hampshire's General Provisions to be executed by the parties is attached.

Proposer will be required to fill in this form ONLY if and when its proposal is selected by the Department.

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 <p align="right">Date:</p>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature <p align="right">Date:</p>		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.