

State of New Hampshire Department of Energy



Weatherization Assistance Program

CFDA # 81.042

FAIN # DE-EE0010001

REQUEST FOR PROPOSALS

#2024-002

Quality Assurance and Training & Technical Assistance Services

Release Date: February 23, 2024

Proposals Due: April 5, 2024 at 12:00 p.m.

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EXECUTIVE SUMMARY

The New Hampshire Department of Energy (Department) seeks the services of (an) experienced technical residential energy efficiency expert(s) over the duration of the Weatherization grant period (July 1, 2022, to June 30, 2027) to assist the Department with tasks related to the oversight of the federally funded Bipartisan Infrastructure Law Weatherization Assistance Program (BIL WAP) in New Hampshire.

Those tasks broadly include:

- a. The conduct of detailed Quality Assurance Inspections (QAI) documented in written reports on dwelling units that have received Department BIL WAP weatherization services. The number of QAI to be completed is set at 10% of completed BIL WAP units. The total number of BIL WAP completed units includes any completed units prior to the execution of this contract (approximately 250 as of January 1, 2024.)
- b. The performance of “in-progress” inspections, including written reports, of projects while work is underway to observe weatherization installation practices and procedures, including particular attention to effective, efficient work scopes and health and safety protocols.
- c. The design of Training and Technical Assistance (T&TA) activities for the NH WAP generally. This will include activities to address and correct deficiencies in weatherization techniques, practices, and procedures as observed during inspections. The Department preference is for these training services to be mostly delivered in the field, at dwellings, rather than in the classroom.

An electronic proposal must be submitted to the Department no later than 12:00 Noon EST on April 5, 2024. If the Department decides to award a contract or contracts as a result of this Request for Proposals (RFP), any contract award is contingent upon approval of the contract by the Department and the Governor and Executive Council.

Pertinent Dates and Information

1. Schedule of Events

EVENT	DATE/DEADLINE	TIME
RFP Issued	02/23/24	
Close of Question Period	03/06/24	12:00 PM Noon EST
Responses to Questions Posted	03/15/24	4:30 PM EST
Proposal Due Date and Time	04/05/24	12:00 PM Noon EST

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 #2024-002 Quality Assurance and Training & Technical Assistance Services.**” **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 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

Proposals must be submitted electronically to: RFP@energy.nh.gov. Proposals must be submitted in PDF format as a file attachment to an email and must be searchable. In no event should a proposal be provided through a link embedded in the submitted email. The file will be considered received when it is successfully submitted to the mailbox associated with the email address above, and the time of submittal will be based on the time stamp in the receiver’s email. The Department can accept electronic files no larger than 25 MB. Proposals may consist of multiple PDF attachments or one PDF with all attachments combined.

The subject of the e-mail should state the following “**RFP #2024-002 Quality Assurance and Training & Technical Assistance Services.**”

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 (Step 3: Final Evaluation) or as part of a preexisting relationship. Department employees have been directed not to hold conferences 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 (Step 3: Final Evaluation). Communications with state personnel not bearing on this RFP are permitted.

I. BACKGROUND

1. General

The Department is responsible for the administration of the Bipartisan Infrastructure Law Low-Income Weatherization Assistance Program (BIL WAP) for New Hampshire. The Department has executed five-year contracts with the five New Hampshire Community Action Agencies (CAA), located throughout the state and serving every New Hampshire 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. Each CAA retains staff or engages contractors for the performance of weatherization work in client homes. Weatherization staff or contractors at each CAA 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 sub-contractors per 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. Quality Assurance Inspection services required

The Department requests proposals for the provision of Quality Assurance Inspection (QAI) services to assist the Department in meeting its obligations to the US Department of Energy (USDOE) for monitoring the BIL WAP. The Quality Assurance Inspector will be responsible for inspecting and reporting on dwelling units that have received weatherization services in New Hampshire through the federally funded BIL WAP in the

period of performance beginning on July 1, 2022. The Department is responsible to the USDOE for performing Quality Assurance Inspections on at least 10% of the total units receiving BIL WAP services in the period of performance, as well as for doing periodic in-progress inspections to observe workers on-site to ensure that safe work practices are being employed and that health and safety concerns are being addressed. The Department will work with the Contractor to develop a plan to integrate all units completed prior to the commencement of this contract into the QAI schedule. Per the schedule of BIL WAP disbursements and benchmarks, being current with QAI is required to receive the next tranche of funding.

3. Training and Technical Assistance services required

A significant portion of the responsibility for state-level management of the federal BIL Weatherization Assistance Program comes under the heading of Training and Technical Assistance (T&TA). The USDOE, which must answer to Congress for the stewardship of the federal tax dollars appropriated to BIL WAP, seeks to ensure that BIL WAP 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 is seeking high-quality feedback for T&TA needs to meet those USDOE expectations. See further explication of T&TA responsibilities in the discussion of the scope of services below.

4. Funding expectations, in the course of this five-year period of performance

Based on the total BIL WAP funding and average-cost-per-unit (ACPU) maximum set by USDOE and on the ability of the CAA to complete weatherization work, the Department estimates that a total of 125 quality assurance inspections and 30 in-progress safety inspections, two in each CAA service territory for each program year, will be necessary to meet Department requirements for the period of performance ending June 30, 2027. If the USDOE institutes any changes during the period of performance that impact the total subgrantee production number or if the CAA production schedule varies substantially, the Department will work with the Contractor to revise the number of inspections as necessary. The Department retains the right to alter the number of units that must be inspected in any calendar year within the funding and time limits.

II. SCOPE OF SERVICES AND DELIVERABLES

The Department seeks expert services for the performance of inspections of completed and in-progress weatherization work for purposes of quality assurance and program compliance, as well as to observe and interview workers regarding health and safety issues. All inspections require written reports in accordance with the NH PPM and in a format acceptable to the Department. The Contractor will assist the Department to ensure that program regulations are followed, including but not limited to ensuring that all appropriate measures are included on work orders, installed measures are allowable, effective, and of good quality workmanship, installed measures are comprehensive, and all measures meet program standards.

In addition, the Contractor will be expected to assist the Department BIL WAP Program Manager in the design and delivery of appropriate weatherization training and technical assistance programs and activities, to address deficiencies gleaned from the QAI and in-progress field inspections, and to address the observed needs and the requested training topics of the wider NH weatherization network. Those appropriate training and technical assistance activities may include but are not limited to:

- Answering technical questions from the field regarding using the NH Weatherization Field Guide, the USDOE's Standard Work Specifications, etc.
- Conducting or arranging mentoring activities for weatherization staff and/or contractors as needed and requested.
- Providing technical support to the NH BIL WAP Manager in developing annual planning and administrative documents required by the Program.
- Collaborate with the Department and its Subgrantees on a training plan utilizing a third-party provider to meet the needs of the various weatherization professionals: retrofit installers, crew chiefs, home energy auditors, quality control inspectors, administrative personnel, etc.

The contract period:

The Contractor shall commence work as soon as possible after the NH Governor and Executive Council approve the contract with the Department. The contract terminates on June 30, 2027, unless extended by mutual agreement and approved by the Governor and Executive Council.

Funding for BIL WAP is based on the Department reaching benchmarks established by USDOE:

1. The Department received 15% of the total grant at the time of the initial award.
2. Thirty five percent (35%) of the total grant was received upon final approval of the 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. Thirty percent (30%) of all units estimated to be weatherized in the approved Department Weatherization Plan are weatherized (approximately 424).
 - b. The Department has been fulfilling its monitoring and inspection protocol as part of its approved annual Grantee plan.
 - c. The Department monitoring local agencies at least once each year to determine compliance with administrative, fiscal, and the Department field policies and guidelines.
 - d. Local quality control efforts are in place.
 - e. At least 10% of the completed units are inspected by the Department Quality Control Inspection (QCI) staff during the year.
 - f. The Department progress reports are acceptable and submitted in accordance with grant requirements, including being on time and accurate.

- g. Monitoring reviews by the Department confirm acceptable performance.

The Contractor who is awarded the contract through this RFP must understand that beginning approximately July 1, 2025, the contract with the Department will be contingent upon receipt of the third tranche of federal funding (50% of the total allocation.).

The services and deliverables to be provided by the contractor include:

For Quality Assurance Inspection Services:

1. To randomly select, in each program year during the term of the contract, and in each of the Community Action Agency (CAA) territories, the required number of housing units on which quality assurance inspections will be performed based on information from the CAA regarding units completed and in progress. The Department reserves the right to add more quality assurance inspections to the scope in one or more CAA territories if it determines that such additions are necessary – for certitude about compliance, for instance – and are possible within the budget and time available. For each of the period of performance program years, the Department is seeking a proposal for QAI services on 10% of the completed dwellings; those services are to be approximately allocated in the following manner among each of the CAA territories:

Estimated BIL WAP QAI Schedule (# of units)

Subgrantees:	PY 2022 (ends 6/30/23)	PY 2023 (ends 6/30/24)	PY 2024 (ends 6/30/25)	PY 2025 (ends 6/30/26)	PY 2026 (ends 6/30/27)
Belknap-Merrimack Counties Community Agency	1	4	5	7	7
Southern New Hampshire Services	3	6	12	14	13
Southwestern Community Services	1	2	3	4	4
Community Action Partnership of Strafford County	3	3	3	3	3
Tri-County Community Action Program	2	3	6	6	7
Estimated Annual Totals	10	18	29	34	34

Please note that the ten percent (10%) inspection requirement will apply to projects completed in PY 2022 & PY 2023. The Department will collaborate with the selected Contractor to develop a plan that includes the inspections of these previously weatherized units, for an approximate total of 125 quality assurance inspections.

2. To schedule a review of client file information and on-site unit inspection reports for each randomly selected unit in collaboration with the subgrantees. Review of client files shall occur prior to visiting a client’s home and performing the quality assurance inspection. Subgrantees and completed units are located throughout the

state. File review consists of, but is not limited to, reviewing reports, forms, work orders, and invoices for complete and accurate information.

3. To review electronic audit files and dwelling modeling in Targeted Retrofit Energy Analysis Tool (TREAT) software to determine the cost-effectiveness of measures and projects.
4. To perform comprehensive quality assurance inspections utilizing the NH Policy and Procedures Manual (PPM) and Field Guide Standards, including a review of the quality of workmanship. Field inspections should also include verification of building dimensions, space and surface locations and functions, window and door values and quantities, heating and domestic hot water system operation and safety, etc., and verification of installed insulation and air sealing measures using a post-weatherization blower door test. Verification of ventilation requirements must be done using ASHRAE 62.2-2016. The Department has a standardized form that the Contractor will utilize for reports.
5. To utilize appropriate test-out diagnostics, including but not limited to combustion appliance zone, ambient CO, pressure pan, blower door, infrared camera, and fan flow testing.
6. To take digital pictures documenting poor and good-quality work.
7. To draft written quality assurance and in-progress safety inspection reports, based on file review and in-field findings and observations, for the Department review and comment before final preparation for delivery to the responsible CAA. The contractor may be required to assist the Department in resolving any issues identified during the inspection process. Further drafts of the report should incorporate comments and content introduced by the Department. The Department has a standardized form that the Contractor will utilize for reports.
 - a. Draft reports shall be provided to the Department within 14 calendar days of the in-field inspection for the Department review and return to the contractor within 21 calendar days of the in-field inspection, and final reports provided to the Department and the responsible CAA within 30 calendar days of the in-field inspection. The Contractor will provide all draft and final reports to the Department and Subgrantees electronically.
 - b. Assistance to the Department with tracking of reports delivered to and responses received from CAA; responses are to be received by the Department and the Contractor within 30 days of the delivery of the report to the CAA.
 - c. Assistance to the Department in determining if responses received from CAA meet the compliance requirements of the BIL WAP.
8. To perform a total of at least thirty (30) in-progress health and safety inspections, two in each program year of the contract period on randomly selected projects in each CAA jurisdiction, and to provide a written report on each such inspection

using the Department reporting form developed for that purpose. In-progress health and safety inspections may include but are not limited to:

- a. Observing the overall efficiency and effectiveness of the work, including a review of the work scope and interviewing workers and clients.
- b. Reporting on adherence to OSHA regulations, EPA Renovation, Repair, and Painting (RRP) regulations, worker personal protective equipment use, federal Center for Disease Control and state Health and Human Services requirements, etc., in accordance with Sections 7.4.1, 7.4.2, and 7.4.3 of the NH PPM.

If the inspection finds unsafe practices, the quality assurance inspector shall immediately notify the workers on site, the homeowner, the CAA responsible for the work, and the Department.

9. To record weatherization work deficiencies observed during both the Quality Assurance Inspection process and the in-progress health and safety inspections, and then to work with the Department BIL WAP Manager to design and possibly deliver T&TA activities to address and correct those deficiencies.
 - a. Categorize non-compliance issues to identify and analyze emerging trends, patterns, and areas of concern in inspection activities. Quarterly, provide comprehensive interpretations of the trends and offer actionable recommendations to enhance inspection procedures, improve compliance, reduce inconsistencies, and address any identified weaknesses or risks.
10. Re-inspection of previously inspected units if determined necessary by the Department.
11. To participate with the Department and BIL WAP monitoring vendor (Foster Sustainable Energy, LLC) to establish risk-mitigating activities for subgrantee non-compliance.

For Training and Technical Assistance Services:

1. Feedback and recommendations to the Department for program training activities that address field observations and improve program services; and, in collaboration with the Department, design, and possibly conduct field and administrative training as necessary to address and correct observed program deficiencies.
2. In collaboration with the Department and in alignment with findings from QAIs or requests from Subgrantees, coordinate the delivery of one TREAT training event annually. Such training generally falls into each of the following categories:
 - i. Novice. Training according to the TREAT Manual, Policies and Procedures Manual, and best practices. This course is designed for those who have not had TREAT training.

- ii. Intermediate. This course is designed for those with TREAT experience but need refresher skills to optimize the use of the software.
- iii. Expert. Audit reviews and challenging model consultation. This course is for advanced TREAT users, identifying areas of improvement in models.

Compile and submit reports detailing each TREAT training event, including participant information, feedback, and outcomes.

Payment for inspection and reporting work will be made only on those dwellings for which:

- The Department has received a full draft report.
- Any re-inspection and report revision work has been completed.
- The Department has approved the final report.
- The final report has been delivered to the appropriate CAA.

Payment to grantees is on a cost-reimbursable basis unless otherwise approved. Disbursement shall be made in accordance with the procedures established by the State and 2 CFR 200.305. Reimbursements are contingent on the occurrence of specified milestone events and the satisfaction of other conditions as set forth in the approved grant agreement. In accordance with the terms of the grant agreement, a grantee is required to submit requests for reimbursement together with supporting documentation of the paid expenditures. The Department will withhold payment of 5% of any grant award until final completion of the project and submission of a final inspection report from the technical monitor.

The Contractor will submit inspection reports as they are completed and invoice the Department monthly for all Department-approved final reports. Payment will not be made for any inspection activity that does not result in a timely approved and delivered final report. In situations where the Subgrantee is required to perform additional work to bring the job into BIL WAP compliance, the Contractor, in consultation with the Department, may be required to re-inspect and amend the final report to reflect full compliance. These additional responsibilities of the Contractor are fully payable under the contract and will only be expected of the Contractor if the budget allows it.

Payment for the design and delivery of training and technical assistance activities will be made upon completion and at a rate agreed upon contractually with the Contractor. The Contractor should indicate an hourly rate suitable for their participation to meet the requirements of this portion of the project.

The Department BIL Weatherization Program Manager will supervise the Contractor.

BIL WAP funds may allow the Contractor the costs of training new staff who will be assigned to these tasks during the contract period. Such training may include but is not limited to, orientation to weatherization and the BIL WAP program, quality control inspection training and testing, and professional development opportunities. The proposer's budget should include an estimate of the cost of providing this training to existing staff and new hires. The Contractor

shall provide a detailed training plan to the Department for approval prior to onboarding new staff, outlining the estimated costs and timelines for each training component. The Department reserves the right to approve or reject any proposed training plan in its sole discretion.

III. QUALIFICATIONS

Eligible proposers will have knowledge of and expertise in Weatherization Assistance Program quality control and quality assurance inspection practices and procedures, will hold a current Quality Control Inspector certification, and will have training and/or 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 contracted work period, if TREAT is phased out during that period.
- Quality Control Inspection proficiency must be demonstrated by possessing a current QCI certificate from an IREC-accredited training and testing center. Multifamily weatherization is a consideration, and if adopted, the Contractor will be required to obtain appropriate certification to allow inspection of these types of units.
- Experience designing and conducting training and technical assistance in key weatherization skills and best practices.
- During the period of performance, the Department may implement a network-wide data management system (DMS) to track all projects, costs, and expenditures. If a DMS is implemented, the Contractor must learn and use the program to conduct its tasks. The Department will provide the Contractor access to DMS vendor training, if available.

In addition, as part of the proposal, the Proposer must demonstrate that:

Part A: The person or persons assigned to perform the inspection and reporting tasks described in this RFP have the following qualifications:

1. A minimum of three years of experience performing final inspections with weatherization and home energy performance programs located within the cold

climates of the US, preferably under a quality assurance program, and assigned staff must hold the national Quality Control Inspector (QCI) certification. Assigned staff must thoroughly know building science principles, diagnostics procedures, weatherization practices, and WAP program standards to successfully perform the Scope of Services.

2. Ability to communicate technical information clearly, verbally, and in writing.
3. Experience in the use of TREAT.
4. OSHA 30 Certification or receive certification within 60 days of contract execution.
5. An EPA RRP Certificate or receipt of certification within 30 days of contract execution.

Notwithstanding the assignment of experienced and certified individual(s), the Department acknowledges the importance of fostering workforce development. The Department supports onboarding new staff members for the Contractor, including those with limited experience in the QCI role. In these instances, the Contractor will inform the Department of such staffing and provide assurances that an experienced individual(s) shall provide the necessary oversight and mentorship to complete each contract component successfully.

Part B: The Proposer has:

6. A “good standing” status in SAM, the federal System for Award Management, which means that the firm is not debarred and is, therefore, able to function under a contract that will make payments using federal dollars. The SAM registration is currently active.
7. The ability to always act and communicate professionally.
8. 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.

IV. 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 Proposer would perform the services, the resources the Proposer would utilize, the issues and challenges the Proposer 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. **Budget:** Detailed cost proposals for each of the four calendar years of the contract period, with a budget narrative explaining that proposal.
 - a. For the QAI portion of the budget: There are two different inspections required:
 - i. **In-progress safety inspections:** Ten in number each program year of the contract period (PY2024, PY2025, & PY2026) comprising two in each of the five (5) CAA territories. Because this contract period spans the final three and one-half (3 ½) program years, a total of thirty (30) in-progress inspections are required.
 - ii. **Quality Assurance Inspections:** Inspections of ten percent (10%) of USDOE completed dwelling units per CAA each program year. (See [Quality Assurance Inspection deliverables](#) above).

For both types of inspections, there should be an estimated total per unit cost, including the inspection, the draft report, and the final report. A cost category breakdown should include time, materials/supplies, Contractor fees, travel, and other costs.
 - b. For the T&TA portion of the proposal: Identify the TREAT training deliverables and provide an estimate for the cost of each component of each deliverable, listed by program year – PY2024 (beginning July 1, 2024), PY2025 (beginning July 1, 2025), and PY2026 (beginning July 1 2026).
 - c. Any component of the proposal that the proposer expects to subcontract to another entity should be identified, with the estimated costs and the subcontractor's identity, if known. Funding for program years 2022, 2023, and 2024 is assured; funding for program years 2025 and 2026 is contingent on the Department achieving USDOE benchmarks as described

above in section III, so the actual number of inspections to be completed and the number of hours devoted to T&TA activities during the last two years will be confirmed once the benchmarks have been reached.

To respond to this RFP, proposers must be aware that the Department can consider proposed budgets of up to \$340,000 in total for the contract period.

7. **Disclosure:** Any existing or potential conflicts of interest that might compromise or appear to compromise the independence and objectivity of the QA inspections 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 CAAs participating in the New Hampshire Low-Income Weatherization Assistance Program, or the utilities managing the CORE Home Energy Assistance Program.
8. An explicit statement that the proposer shall comply with the requirements of Form P-37 (version 2/23/2023).

V. 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 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.

The 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.

Contract Negotiation and Execution: Following the conclusion of the RFP, 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 soliciting new proposals under a new procurement process.

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

- Filing of a timely electronic proposal containing all mandatory elements.

In accordance with New Hampshire Executive Order No. 2023-05, any Proposer that is determined by the Department to be boycotting Israel shall be disqualified, and its proposal deemed ineligible.

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 total score for all criteria shall be 100 points. Cost is a consideration but may not be the determining factor in the selection of the Technical Monitor. The Department reserves the right not to consider any proposal with a total aggregate point score of less than 70 points.

- a. Quality and Clarity of Proposal: Overall responsiveness to the requirements of the RFP, including completeness, clarity, and quality of proposal. (Maximum Point Score: 10)
- b. Soundness of Proposed Plan of Approach: The 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 (and staff assigned to perform the services) possesses adequate experience, credentials, knowledge of WAP and TREAT, and staff capacity to provide T&TA services, including the ability to perform additional work should the scope of services need to be increased. (Maximum Point Score: 30)
- d. Communication Skills: The proposer has demonstrated the ability to effectively communicate with the Department, CAA, and BIL WAP clients and the ability to communicate technical information clearly, 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)

VI. TERM OF CONTRACT

The term of the contract with any selected proposer(s) will be from the date of Governor and Executive Council approval through June 30, 2027. The contract term may be extended for an additional period (not to exceed 18 months) to conduct the same or similar work, and the not-to-exceed amount may be increased, all at the sole option of the State, contingent upon satisfactory Contractor performance, projected requirements for similar consulting services, and Governor and Executive Council approval.

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 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; 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 components of the contract 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 will be expected to 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 approval of a contract. On the closing date of responses, the Department will post the number of responses received with no further information. No later than five 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 approval of any resulting contract. Copywritten materials submitted along with a proposal are subject to Chapter 91-A and will be made available to the public unless it appears that the proposer has violated the original copyright. **If a proposer copyrights its proposal materials, then by submitting the copywritten proposal, the proposer waives any copyright protections as to the state, its employees, and agents, and agrees that the state may copy and distribute the proposal for purposes such as, but not limited to, scoring, contracting, and responding to public information requests.** 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), 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(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, and any preconditions to payment. A number of additional exhibits may consist of federally required certifications by grantees of federal funds. In addition, in accordance with New Hampshire Executive Order No. 2023-05, any contract entered into as a result of this RFP shall include a provision permitting the Department to immediately terminate the contract upon making a determination that the Proposer is boycotting Israel.

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>.

In addition to the items listed in the table on pages 22 and 23 of this RFP, **at the time of contracting (do not submit with your proposal)**, the successful proposer will be required, among other things, to provide:

- i. 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).
 - ii. 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; Build America Buy America Compliance (BABA); Davis- Bacon; 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) and 10 CFR 440 Weatherization Assistance for Low Income Persons: and the USDOE terms and special conditions.
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. New Hampshire BIL 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 (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, 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 (version 2/23/2023) 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 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 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 sign 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 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 (“COI”)	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. P-37 Agreement

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

Proposer will be required to sign 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 <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.