

**State of New Hampshire Department of Energy**



**U.S. Department of Energy  
Building Infrastructure Law - State Energy Program  
School Energy Efficiency Development (SEED) Grant Program**

**ALN 81.041  
FAIN: DE-EE0010086**

**REQUEST FOR PROPOSALS (RFP)  
RFP #2024-008**

**Release Date: July 24, 2024  
Proposals Due: September 19, 2024 at 12:00 p.m. EST (Noon)**

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## Executive Summary

With the funding made available through the [State Energy Program Bipartisan Infrastructure Law \(SEP BIL\) Program](#), the [New Hampshire Department of Energy](#) (Department) issues this Request for Proposal (RFP) seeking applications for its [School Energy Efficiency Development \(SEED\) Grant Program](#). This program provides financial support and technical assistance for a public school in a small community to implement energy efficiency projects.

A grant or grants of up to \$120,000 will be awarded with either a 5% or 15% match requirement, depending on whether the proposer is a disadvantaged school. **Projects awarded this funding must be completed no later than June 30, 2025.**

Total funding available under this RFP will be \$120,000. The maximum grant request amount is \$120,000. The minimum grant request is \$40,000.

Non-public schools are not eligible for the SEED Grant Program. Proposers and awardees from prior SEED Grant Program funding rounds are eligible to reapply.

An electronic proposal must be submitted to the Department no later than September 19, 2024 at 12:00 p.m. EST (Noon). If the Department decides to award a contract as a result of this RFP, any award is contingent upon approval of the contract by the Department and the New Hampshire Governor and Executive Council (Governor and Executive Council).

### **I. PERTINENT DATES AND INFORMATION**

#### **A. Schedule of Events**

| <b>EVENT</b>                  | <b>DATE/DEADLINE</b> | <b>TIME</b> |
|-------------------------------|----------------------|-------------|
| RFP Issued                    | 07/24/24             |             |
| Close of Question Period      | 08/09/24             | 4:30 PM     |
| Responses to Questions Posted | 08/14/24             | 12:00 PM    |
| Proposal Due Date and Time    | 09/19/24             | 12:00 PM    |
| Anticipated Grant State Date  | November, 2024       |             |

#### **B. Written Inquiries**

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

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

Inquiries must be received no later than the Close of Question Period as specified in the Schedule of Events above. The subject of the e-mail should state the following: **RFP #2024-008, SEED Grant Program Question Period**. 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 as received and can be found here: <https://www.energy.nh.gov/rules-and-regulatory/requests-proposals>.

### **C. Proposal Submission Instructions**

Proposals submitted in response to this RFP must be received no later than the Proposal Due Date and Time as specified in the Schedule of Events, herein. Late submissions will not be accepted, nor will extensions be given. Delivery of the proposal and attachments shall be the proposer's responsibility. The Department accepts no responsibility for damaged, mislabeled, or undeliverable e-mailed proposals. Proposals that are incomplete or unsigned will not be considered. Faxed or physical proposals will not be accepted.

Proposals must be submitted electronically to [RFP@Energy.NH.Gov](mailto:RFP@Energy.NH.Gov). Proposals must be submitted in PDF format as a file attachment to an e-mail and must be searchable. In no event should a proposal be provided through a link embedded in the submitted e-mail. The file will be considered received when it is successfully submitted to the mailbox associated with the e-mail address above, and the time of submittal will be based on the time stamp in the receiver's e-mail. The Department can accept electronic files no larger than 25 MB in any one e-mail. 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 #2024-008 SEED Grant Program Proposal – (name of school)**.

To guard against proposals being overlooked due to being quarantined by the Department's spam protection software, it is strongly recommended that an e-mail with no attachment be sent to [RFP@Energy.NH.Gov](mailto:RFP@Energy.NH.Gov) initially stating that e-mail(s) containing a proposal are to follow. The subject of the e-mail should state the following: **RFP #2024-008 SEED Grant Program Intention to File – (name of school)**.

The Department shall assess completeness and responsiveness of the proposal to eliminate nonconforming proposals. The Department may waive or offer a limited opportunity to cure immaterial deviations from RFP requirements if it is determined to be in the best interests of the State. Any response that is filed shall be valid for no fewer than 150 days following the deadline for submission of proposals, or until the effective date of any resulting contract, whichever is later.

### **D. Restriction of 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 first approved by the RFP Point of

Contact, Susan Gagne, Program Specialist III, or as otherwise outlined in Section III. Department employees have been, and Evaluation Team members will be, 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 III.

## II. OVERVIEW

### A. Background and Purpose

The United States Department of Energy's (USDOE) [State Energy Program](#) (SEP) (ALN 81.041) provides funding and technical assistance to states, territories, and the District of Columbia to enhance energy security, advance state-led energy initiatives, and increase energy affordability. States have a robust role in administering program activities that can be tailored to their unique resources, delivery capacity, and energy goals.

The State of New Hampshire, through the Department, provides guidance, information, and data on energy usage. As part of its mission to build partnerships and serve New Hampshire communities, the Department has received SEP grant funds and created the SEED Grant Program to encourage schools to holistically review their energy usage and offer funding to implement energy efficiency projects. The SEED Grant Program was created in 2018 and offers a one-time competitive grant with a corresponding match to complete proposed energy efficiency projects in a public school. Since its inception, the SEED Grant Program has funded and successfully completed energy efficiency projects in public schools located in Hill, Lempster, New Boston, Berlin and Litchfield. These energy efficiency projects have created a safer, healthier learning environment for students and teachers, as well as reduced a school's energy usage and operating costs to provide a financial benefit to school district budgets and property taxpayers.

The SEED Grant Program is based upon funding supported by the United States Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE) under the State Energy Program Award Number DE-EE0010086.

On January 27, 2021, President Biden issued [Executive Order 14008, Tackling the Climate Crisis at Home and Abroad](#). Section 223 of Executive Order 14008 established the [Justice40 Initiative](#), which directs that 40% of the overall benefits of certain federal investments – including investments in clean energy and energy efficiency; clean transit; affordable and sustainable housing; training and workforce development; the remediation and reduction of legacy pollution and the development of clean water infrastructure – to flow to disadvantaged communities. To advance the Justice40 Initiative, the Department opened a solicitation of written public comment in February 2023, and solicited additional stakeholder input on topics of program eligibility and scoring criteria. The Department revised its SEED Grant Program based on stakeholder feedback to prioritize disadvantaged communities.

The total amount of funding available under this RFP is \$120,000. All grant awards are contingent upon final grant agreement approval by the Governor and Executive Council.

## **B. Basic Eligibility Requirements**

Proposers must meet the following minimum requirements to be eligible for the SEED Grant Program:

1. The proposer proposes to fund an energy efficiency project in **one** public school or chartered public school located in a New Hampshire municipality with a total population of 15,000 or fewer residents based on the municipality's "Total Population OPD Estimate" under the [NH Department of Business and Economic Affairs' 2022 Total Population Estimates of NH Cities and Towns published August 4, 2023](#) or authorized entity applying on behalf of an educational institution that is publicly funded;
2. The proposer proposes a project seeking to accomplish one or more of the following:
  - a. Installation of insulation.
  - b. Installation of energy efficient lighting including light poles (may also be installed within a utility easement if no trees are removed).
  - c. HVAC upgrades (to existing systems).
  - d. Weather sealing.
  - e. Purchase and installation of energy efficient or energy/water efficient appliances and equipment, including but not limited to, energy or water monitoring and control systems, thermostats, furnaces, and air conditioners.
  - f. Retrofit of energy efficient pumps and motors where it would not alter the capacity, use, mission, or operation of an existing facility.
  - g. Retrofit or replacement of windows and doors.
3. The proposer does not propose to fund any electrical generational facility (i.e. solar array, wind energy, etc.) or electric energy storage system (battery storage, etc.) as part of their proposal;
4. The proposer shall wholly own the project site location;
5. The proposer will complete their proposed project by June 30, 2025;
6. Proposers shall: 1) be registered in the Federal [System for Award Management \(SAM\)](#) before submitting a proposal, 2) provide a valid and active Unique Entity Identifier (UEI) and a printout of their registration from SAM in its proposal, and 3) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or proposal under consideration by the Department.

All contractors and subcontractors working on a proposer’s project must also obtain a UEI from SAM. Evidence of valid and active UEIs for contractors and subcontractors do not need to be provided in a proposer’s proposal but must be provided to the Department during contract negotiation if the proposer is awarded funding.

Any proposer and their contractors/subcontractors that are debarred from SAM are unable to work on projects funded with Federal funds and shall be ineligible for the SEED Grant Program.

Due to the high demand of UEI requests and SAM registrations, entity legal business name and address validations are taking longer than expected to process. Proposers should start the UEI and SAM registration process as soon as possible. Estimated processing time for a new SAM registration takes approximately six to eight weeks. If entities have technical difficulties with the UEI validation or SAM registration process, they should utilize the HELP feature on the Federal Service Desk website located here: [GSAFSD Service Portal Landing - GSA Federal Service Desk Service Portal](#). FSD.gov will work on entity service tickets in the order in which they are received and asks that entities not create multiple service tickets for the same request or technical issue. Additional entity validation resources can be found here: [GSAFSD Tier 0 Knowledge Base - Validating your Entity](#).

7. The proposer meets a 5% or 15% “cash” and/or “in-kind” match requirement for their SEED Grant Program award with firmly committed matching funds. Any cost sharing or matching shall comply with 2 CFR 200.306(b-k) and be allowable under 2 CFR 200 Subpart E – Cost Principles.

Proposers who satisfy the Disadvantaged School scoring criteria as outlined in Section IV, Part B must match 5% of the value of their award. Proposers who do not satisfy the Disadvantaged School scoring criteria as outlined in Section IV, Part B. must match 15% of the value of their award.

“Match” is subject to United States Department of Energy (USDOE) Financial Assistance Rules (2 CFR Part 200 as amended by 2 CFR Part 910 and 10 CFR Part 420).

Utility financial incentives/rebates may be used to fund a proposed project but shall not be used as evidence of a match under the SEED Grant Program. See 2 CFR Part 200.406 for more information.

“In-Kind” is defined as the value of non-cash contributions, such as property or services that: benefit a federally assisted project or program; and are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal Award. Proposers using an in-kind match should note the following:

- a. In-kind matches have to be verifiable;
- b. In-kind matches are not included as contributions for other Federal awards;
- c. In-kind matches are necessary and reasonable for the accomplishment of the project's objectives;
- d. In-kind matches are not using a federal award to match another federal award;
- e. Any in-kind match using donated property or materials must not exceed fair market value;
- f. The value of any donated land and/or buildings for an in-kind match must be established by an independent appraiser; and
- g. Any in-kind match using dedicated staff hours or volunteer hours must be necessary and reasonable for the completion of the project and of fair-market wage.

Any proposed cash or in-kind match must exclude the following costs:

- a. Revenues or royalties from the prospective operation of an activity beyond the time considered in the award;
- b. Proceeds from the prospective sale of an asset of an activity; or
- c. Other appropriated Federal funds.

Repayment of the Federal share of a cost-shared activity under *Section 988 of the Energy Policy Act of 2005* shall not be a condition of the award.

### **C. Recommended Project Design**

Due to the federal character of SEED Grant Program funding, all projects will be subject to the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). These two federal acts require the federal government and recipients of federal funding to evaluate and understand any potential adverse impacts to the environment from federally funded projects, as well as a consideration of the impacts that such projects may have on any historic and archeological characteristics of affected buildings and/or land.

Projects that meet the following siting requirements may likely not require additional levels of NEPA and NHPA review, provided that the project:

1. Is installed in or on an existing building or buildings.
2. Does not cause any level of ground disturbance.
3. Does not require tree removal or tree trimming.
4. Does not require structural reinforcement.



5. Adheres to the exemptions outlined in Appendix B of the New Hampshire executed [Historic Preservation Programmatic Agreement](#).

The Department encourages proposers to conform their project designs to the requirements listed above to prevent additional NEPA and NHPA reviews. Proposers whose projects do not meet the requirements listed above may likely be subject to additional NEPA and NHPA reviews. More information on NEPA, NHPA, and any additional review processes are outlined in Sections VII and VIII of this RFP.

### III. PROPOSAL SUBMISSION REQUIREMENTS

In order to apply to the SEED Grant Program, proposers must complete and submit the SEED Grant Program proposal form. The proposal form can be found as an attachment under RFP #2024-008 on the Department's website here: [Requests for Proposals | NH Department of Energy](#)

The SEED Grant Program proposal form must be completed in its entirety. Failure to do so, unless otherwise noted, will be considered an incomplete proposal and will be ineligible for scoring.

Along with the SEED Grant Program proposal form, proposers shall include other attachments in their proposal. Those attachments include:

1. A copy of the proposer's active registration in the [Federal System for Award Management \(SAM\)](#). Proposers must print out a copy of their SAM registration from the SAM website and include it with their proposal package.
2. Evidence of direct ownership of the school building by the proposer – property deed, property tax card, etc.
3. A copy of the proposer's most recent financial audit. The financial audit must be performed by an independent third-party.
4. A resume and relevant project history of the proposer's qualified project manager, including any contractors or subcontractors working with the project manager. Resumes should include years of experience, specifically including energy efficiency work in commercial buildings.
5. A project budget summary. Summary could include an itemized breakdown of all tasks to complete the project, as outlined in the contractor's bid or quote. More information can be found in Section IV, Part B. under Project Budget Summary.
6. Letters of community support for the project from:
  - a. The municipality's local governing body;

- b. The school board;
- c. Any one of the school's state elected officials.

See Section III, Part B. of RFP #2024-008 for more on letters of community support. Letters of community support are not required; however, they must be submitted with the proposal if the proposer desires to receive points for having them during the evaluation process.

- 7. Any other supporting documentation relevant to a proposer's proposed project.

#### **IV. EVALUATION PROCEDURES AND SELECTION CRITERIA**

##### **A. Proposal Evaluation Procedure**

Proposals will be reviewed and evaluated in a two-step review process, followed by a contracting phase. The evaluation will be based solely on the proposal. Therefore, insufficient or unclear information may result in a low score.

The procedure for proposal evaluation and school selection will be as follows:

**Step 1 – Proposal Screening:** The Department shall assess compliance with the submission requirements set forth in this RFP. The SEED Grant Program proposal form must be filled out completely unless otherwise noted. Incomplete SEED Grant Program proposal forms will not be reviewed. 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.

In accordance with the New Hampshire Executive Order No. 2023-5, any proposer that is determined by the Department to be boycotting Israel shall be disqualified, and its proposal deemed ineligible. More information on Executive Order 2023-05 can be found here: <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2023-05.pdf>.

Ineligible proposals will not be scored. All proposals deemed ineligible will receive notification of that determination.

**Step 2 – Evaluation:** An Evaluation Team consisting of New Hampshire state agency personnel shall review the proposals and information submitted by each proposer based upon the criteria established in this RFP.

If numerous acceptable and potentially acceptable proposals have been submitted, the Evaluation Team shall generate consensus scores for each proposal, rank the proposals, and create a "ranked list" based on the Scoring Criteria and Weight as detailed in Section IV, Part B. of this RFP. In no event shall any proposal with a consensus score of 60 or below be considered eligible for SEED Grant Program funding.

If determined to be appropriate by the Evaluation Team, proposers may be invited to interviews. The Evaluation Team retains the sole discretion to determine whether to conduct interviews, with which proposers, and the number of interviews. Proposers are advised that interviews may be conducted with fewer than all proposers. Interviews may be conducted in person or via remote access.

The purpose of the interviews is to clarify and expound upon information provided in a proposer's proposal. Proposers are prohibited from altering the basic substance of their proposal or submitting new information during the interviews. The Evaluation Team and Department staff may ask the proposer to provide written clarifications of elements in the proposal, regardless of whether the Evaluation Team intends to conduct oral interviews. Information gained from interviews or written clarifications will be used to refine scores assigned during the evaluation process.

**Step 3 – Contract Negotiation and Execution:** A letter of intent will be sent to the selected proposers' authorized submitter. The Department shall negotiate, if necessary, and develop grant agreements and related contract documents with selected proposers.

**Step 4 – Contract Approval:** The Department shall submit completed grant agreements to the Governor and Executive Council for approval. After Governor and Executive Council approval, work can begin on the proposed project. The proposed project must be completed by June 30, 2025.

Notwithstanding any other provision of this RFP, this RFP does not commit the Department to make an award. The Department reserves the right, at its sole discretion, to reject any or all proposals, or any portions thereof, for any reason, at any time, including, but not limited to, canceling the RFP, and to solicit new proposals under a new proposal process. If, for any reason, negotiations with the top scorer(s) do not result in a contact(s), despite reasonable efforts made in good faith, the Department may go to the next highest scorer(s) and seek to negotiate with that proposer(s).

## **B. Scoring Criteria and Weight**

The Department will consider the following criteria and assign a corresponding point score. A maximum score for all criteria would be 100 points:

**Quality and Clarity of Proposal:** The submitted proposal is concise, well-organized, and easy to understand.

**Maximum Point Score: 10**

**Ability to Manage Federal Funding:** The proposer includes, as a separate attachment to their proposal form, a copy of their recent financial audit performed by an independent third-party. The financial audit demonstrates the proposer's ability to handle local, state, and federal funding and does not include significant findings or deficiencies in the proposer's financial practices or standards.

**Maximum Point Score: 15**

**Project Budget and Financing:** The proposer provides, as a separate attachment to their proposal form, a project budget summary that shows fiscal responsibility and understanding of available project funds, proof of match, an expectation of financial audits, and other scrutiny. The project budget summary will include any anticipated personnel costs, contractual costs, supply/equipment costs, and other relevant costs for the proposed project. The project budget also identifies and describes the source and dollar amount of any leveraged funds for the project, including the match required to receive a SEED Grant Program award.

**Maximum Point Score: 20**

**Project Timeline:** The proposer provides a project timeline that is detailed, includes project milestones, and demonstrates that the proposed project can be completed by June 30, 2025. Contracts to be awarded funding must be approved by Governor and Executive Council, a process that takes approximately four weeks.

**Maximum Point Score: 10**

**Qualified Project Manager:** The proposer intends to work with a qualified project manager to complete their proposed project. The proposer includes in their proposal package a summary of their project manager that includes the following criteria listed below:

- A summary of the qualifications, experience, and roles of the project manager and their team, if applicable.
- Provide resumes for key personnel. List education, professional affiliations, and years of experience, specifically including experience in energy efficiency projects.
- Summaries of similar energy efficiency projects undertaken in public schools or commercial buildings, including date of project installation, summary of project, current status of project, client name, and name and phone number of contact for reference.
- A list of two references, who are familiar with the project manager's work and experience, and their contact information.

**Maximum Point Score: 15**

**Proposed Energy Savings:** The proposal proposes a project that will result in energy savings and operational cost savings. The proposal includes an explanation of the anticipated annual energy savings from the proposed project, either in dollar, electricity, or fuel (natural gas, propane, heating oil, etc.) savings, and an explanation as to how the anticipated annual energy savings was arrived at. The proposal also details how the proposed energy savings will advance other objectives or be redirected toward other initiatives.

**Maximum Point Score: 20**

**Disadvantaged School:** The proposer proposes a project that will benefit a disadvantaged public school or chartered public school. A proposer shall be considered

disadvantaged if it satisfies at least one of the criteria listed below. Proposers that do not meet any of the criteria listed below shall not be considered disadvantaged.

1. The public school or chartered public school has 24% or more of their total 2022-2023 student population eligible for free/reduced lunch based on the [New Hampshire Department of Education's Free/Reduced School Lunch Eligibility for 2023-2024](#); or
2. The public school or chartered public school is located within a New Hampshire census tract that is labeled disadvantaged based on the USDOE's [Energy Justice Mapping Tool](#).

Proposers considered disadvantaged must match 5% of their SEED Grant Program award and shall receive full points in this criterion. Proposers that do not meet any of the criteria listed above must match 15% of their SEED Grant award and shall not receive any points in this criterion. No partial points will be awarded in this criterion.

**Maximum Point Score: 10**

**Letters of Community Support (OPTIONAL):** The proposal can include letters of support for the proposer's project from the following for an additional 5 extra points:

1. The municipality's governing body (i.e., selectboard or city council).
2. The local school board.
3. Any one of the school's state elected officials. Such officials shall include the municipality's state Representative(s), state Senator, or Executive Councilor. Proposers can find their state representative(s) and state senator on the NH General Court website here: <https://www.gencourt.state.nh.us/house/members/>. Proposers can find their executive councilor here: <https://www.nh.gov/council/districts/index.htm>.

## V. GENERAL CONDITIONS

- A. Reservation of Rights:** The Department reserves the right to: reject 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; to make funding decisions, including partial awards, solely as it deems to be in the best interests of the State; and to negotiate with any party in any manner deemed necessary to best serve the interests of the State. 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.

- B. Requests for Additional Information:** The Department reserves the right to request additional information from any or all parties submitting proposals to assist in the evaluation process.
- C. Confidentiality of Proposals and Information Provided to Proposers:** Pursuant to RSA 21-G:37, VII, proposals must remain confidential until the effective date of any grant agreement resulting from this RFP. A proposer's disclosure or distribution of proposals other than to the Department may be grounds for disqualification, unless disclosure was made to other funding sources to obtain funding. Each proposer also agrees to maintain as confidential all information to which it has access in the course of this RFP and any related contracting process, until such time as it is instructed otherwise by the Department.
- D. Public Disclosure:** Pursuant to RSA 21-G:37, VII, all responses to this RFP shall be considered confidential until the award of the contract.

On the closing date for proposals, 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 New Hampshire 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, at least five business days before final approval of the contract, the Department shall disclose the name of each proposer and rank or score of each proposal eligible to be scored. All such postings may be viewed on the Department's website at: <https://www.energy.nh.gov/rules-and-regulatory/requests-proposals>.

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. 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: (<https://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 packet 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 packet itself. Marking the entire proposal packet or entire sections of the proposal (e.g., costs) 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 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.

If 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 that 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).

- E. Proposers’ Costs:** 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 a resulting grant agreement.
- F. Equal Employment Opportunity and Non-Discrimination:** 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.

- G. Amendment, Extension, or Cancellation of RFP:** The Department reserves the right to amend, extend or cancel this RFP at any time at its sole discretion. Any changes to this RFP will be made in writing and made available to the public on the Department’s website. No oral modifications will be binding. Proposers should check the Department website at [Requests for Proposals | NH Department of Energy](#) for any addenda to this RFP before submitting their proposals, and for answers to questions other proposers may have submitted, if any.
- H. Vendor Registration Requirements:** Recipients of funds will be required to submit their 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.
- I. Federal Funding Requirements:** Proposers must adhere to all Federal funding requirements, including but not limited to, United States Department of Energy (USDOE) Financial Assistance Rules under 2 CFR Part 200 as amended by 2 CFR Part 910 and 10 CFR Part 420.
- J. Grant Agreement General Provisions:** The terms and conditions set forth in the State’s “General Provisions” for grant agreements, attached hereto as Appendix A, will apply to the grant award and funding agreement that the Department will enter into with grantees. In addition, each agreement will be supplemented by several exhibits: Exhibit A will include any special provisions, including any additions to or modifications of the General Provisions; Exhibit B will set forth the scope of services and reporting requirements in detail; and Exhibit C will set forth the amount of the grant, any required milestones, preconditions to reimbursement, the amount of grant holdback or retainage, and the documentation requirements for, and conditions of, grant payments.

Several exhibits shall consist of federally required certifications by grantees of federal funds. Upon award, the grantee should be prepared to sign certain assurances and exhibits including: Drug Free Workplace; Lobbying; Americans with Disabilities Act (ADA) compliance; Environmental Tobacco Smoke; Federal Funding Accountability and Transparency Act (FFATA); Build America, Buy America Act (Buy America); Davis Bacon and Related Acts; National Environmental Policy Act (NEPA); and National Historic Preservation Act (NHPA) compliance.

In addition, in accordance with New Hampshire Executive Order No. 2023-05, any grant agreement entered into as a result of this RFP shall include a provision permitting the Department to immediately terminate the agreement and withhold funding upon making a determination that the proposer is boycotting Israel, and permitting the Department to withhold payment of any and all funding pending that determination. More information on New Hampshire Executive Order No. 2023-05 can be found here:



- K. Project Changes:** Once a grant agreement becomes effective, any subsequent material changes or modifications to the project or agreement terms, including, but not limited to, changes in project site plan, design, equipment, or other major components, overall project budget, key project personnel, project funding or financing model, project administration, management, or communications, or proposed technical details, must be submitted for review and evaluation by the Department. Amendments to the Grant Agreement are subject to approval by the Department and the Governor and Executive Council.
- L. Nature of RFP:** 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 written grant award agreement is executed between the Department and the proposer and is approved by the Governor and Executive Council. No award executed as a result of this RFP will be considered legally binding until duly authorized and approved by the Governor and Executive Council of the State of New Hampshire.
- M. Reporting, Notification, and Inspection:** The Department and the USDOE reserve the right to conduct the following: inspect and monitor financial and payroll records and transactions; inspect project/program sites and interview workers; approve RFPs for sub-recipients and provide input on programs; issue periodic notices, memos, and updated reporting forms and information; request notification about media inquiries, responses, and copies of published clippings; participate in meetings and publicize progress of the SEED Grant Program; and pull back SEED Grant Program funding, if appropriate.
- All electronic or physical program and financial records pertaining to a grantee's project shall be securely stored and retained by the grantee for three years from the date of project completion.
- N. 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. Upon grant award and agreement, 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.
- O. Technical Monitor:** The Department shall retain the services of a technical monitor to oversee project progress for the duration of the awarded project using funding separate from the grantee's award from the SEED Grant Program. Upon acceptance of award, the selected grantee is consenting to the use of a technical monitor for the duration of the proposed project. Reasonable access must be provided to the technical monitor to all administrators, vendors, facilities, work sites, employees and subcontractors of the grantee, financial or other records, and

assistance to ensure the safety and convenience for the performance of site visits and project evaluations.

- P. Reimbursement of Project Costs:** Payment to grantees under the SEED Grant Program 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(b). Costs incurred prior to final grant agreement approval by the Governor and Executive Council are not eligible for reimbursement. Reimbursement may be 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 10% of any grant award until final completion of the project and submission of a final inspection report from the technical monitor.
- Q. Ethical Requirements:** From the time this RFP is published until a grant is awarded, no proposer shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by 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 a grant pursuant to a RFP, or contract pursuant to a similar submission. Any proposer that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any proposer, or member of a proposer's board or senior management, 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 applying for the RFP, or similar requests 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 that, in the case of annulment, the information shall be deleted from the list.
- R. 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 deadline for submission of proposals, 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 award and the form and procedures of this RFP.

- S. State Fire Marshal’s Office Project Review:** Per administrative rule [Ed 321.13](#), all construction of school facilities shall meet the requirements of the state fire code under SAF-C 6000 as adopted by the Commissioner of the Department of Safety under RSA 153 and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control. The drawings and specifications of public school construction shall be evaluated by the state fire marshal according to the state fire code. Pursuant to RSA 153, the state fire marshal shall judge the drawings and specifications according to other related parts and standards of the Life Safety Code under NFPA Doc. No. 101, and the state building code under RSA 155-A.

Any proposer selected to receive a SEED Grant Program award shall be required to have a review of their proposed project completed by the State Fire Marshal’s Office and shall provide evidence of approval by the State Fire Marshal’s Office before the Department enters a contract with any SEED Grant Program grantee.

Any SEED Grant Program grantee must submit an application to the State Fire Marshal’s Office using the following link: [State of New Hampshire Division of Fire Safety | Public Portal \(mygov.us\)](#). Grantees will need to create an account for log in, choose “New Permit,” scroll down to the Plan Review Request category, and choose “Plan Review Request – Educational Facility.” Grantees must be prepared to upload electronic plans upon submittal of the request. The State Fire Marshal’s Office has 30 days to respond to the initial request.

SEED Grant Program grantees should contact the State Fire Marshal’s Office using the following e-mail address ([dos.fmo.inspec@dos.nh.gov](mailto:dos.fmo.inspec@dos.nh.gov)) only if a funding award is given. This should be done to ensure that the State Fire Marshal’s Office is aware of the incoming application request and so they may answer any questions that the grantee has on the application process.

## **VI. BUILD AMERICA, BUY AMERICA**

Pursuant to the provisions of the Build America, Buy America Act (Buy America) Pub. L. No. 117-58, §§ 70901-52 under the Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, federally assisted projects that involve infrastructure work undertaken by applicable recipient types, require that 1) all iron, steel, and manufactured products used in the infrastructure work are produced in the United States, and 2) all construction materials used in the infrastructure work are manufactured in the United States. For this RFP, all projects are considered “infrastructure” and are subject to the Build America, Buy America provision of the Infrastructure Investment and Jobs Act. More information regarding this requirement can be found below.

### **A. Definitions**

For purposes of the Buy America Requirement, the following definitions apply:

**Components** are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

**Construction Materials** are an article, material, or supply – other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives – that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

**Domestic Content Procurement Preference Requirement** means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless

- (A) all iron and steel used in the project are produced in the United States;
- (B) the manufactured products used in the project are produced in the United States; or
- (C) the construction materials used in the project are produced in the United States.

Also referred to as the **Buy America Requirement**.

**Grantee** means the eligible recipient awarded SEED Grant Program funding.

**Infrastructure** includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy – including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

**Manufactured Products** are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

**Primarily of iron or steel** means greater than 50% iron or steel, measured by cost.

**Project** means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**Public** – The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

**B. Buy America Requirement for Infrastructure Projects (Buy America Requirement)**

None of the award funds (includes federal share and Recipient cost share) may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project is produced in the United States – this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States – this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials are manufactured in the United States – this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does the Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

The grantee is responsible for flowing the Buy America Requirement down to all sub-awards, all contracts, subcontracts, and purchase orders for work performed under the proposed infrastructure project, including to For-Profit Entities when the For-Profit Entity is a sub-recipient or sub-grantee. Grantees must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this award. Grantees must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are

produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all sub-grantees, contractors, and vendors to the Department and grantees. The Department and the grantee must keep these certifications with the award/project files and be able to produce them upon request from the USDOE, auditors or Office of Inspector General.

### **C. Buy America Resources**

Federal guidance and resources on the Buy America Requirement continue to evolve. To assist Municipal Solar Grant Program grantees find products that satisfy the Buy America Requirement, grantees are encouraged to utilize the New Hampshire Manufacturing Extension Partnership (NHMEP). The Manufacturing Extension Partnership, part of the U.S. Department of Commerce's National Institute of Standards and Technology, seeks to enhance the productivity and technological performance of U.S. manufacturing. More information on the NHMEP may be found here: <https://www.nhmep.org/>

In an effort to overcome supply chain challenges and to enhance U.S. manufacturing, the Manufacturing Extension Partnership National Network utilizes a supplier scouting service that can be applied on a national, regional, or local scale. This service identifies manufacturers with production and technical capabilities and connects them with larger and more diverse supply chains of larger companies and government agencies. Additionally, the supplier scouting service identifies and connects suppliers with purchasers, responding to the specific needs of agencies and funding recipients to meet the Buy America Requirement.

The NHMEP's Supplier Scouting and Matching Program connects businesses with sources that manufacture or distribute products across the country to meet demand. The Department encourages grantees that may have difficulty finding iron, steel, manufactured products, or construction materials that satisfy the Buy America Requirement to use NHMEP's Supplier Scouting and Matching Program. This is a free referral program and there is no cost to manufacturers or participants. More information on the NHMEP's Supplier Scouting and Matching Program can be found here: <https://www.nhmep.org/supplierscouting/>.

To use this program, grantees must contact the NHMEP by e-mail at [briank@nhmep.org](mailto:briank@nhmep.org). The NHMEP will supply a Supplier Scouting template to collect required information from a grantee and open a supplier scouting opportunity through the Supplier Scouting and Matching Program. Manufacturers connected with the Manufacturing Extension Partnership may respond and indicate if they offer products that satisfy the open supplier scouting opportunity.

The Department makes no guarantee that the NHMEP will connect grantees with manufacturers who offer iron, steel, manufactured products, or construction materials that satisfy the Buy America Requirement. In the event grantees are unable to find products through their own due diligence or through the NHMEP's Supplier Scouting and

Matching Program, grantees may need to apply for a waiver from the Buy America Requirement.

#### **D. Waivers**

When necessary, a grantee may apply for, and the USDOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be made in writing to the Department for submission to the USDOE. Waiver requests are subject to review by the USDOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days. Waiver requests may take up to 120-180 calendar days to process.

Waivers must be based on one of the following justifications:

- (1) applying the Buy America requirements would be inconsistent with the public interest (Public Interest);
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (Non-Availability); or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (Unreasonable Cost).

The USDOE will only process waiver requests after an award has been made and for which the requests have been submitted in accordance with the terms and conditions of the award. Waiver requests must be reviewed by the Department before submission to the USDOE.

The Department, the USDOE, or Office of Management and Budget may request additional information for consideration of the waiver. The USDOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from the Office of Management and Budget or the public. The USDOE's final determination regarding approval or rejection of the waiver request may not be appealed by the Department or the grantee.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Grantee name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and grantee cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and grantee cost share breakdowns;

- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the grantee seeks to waive from the Buy America Requirement, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential to the project;
- A certification that the grantee made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above – as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the grantee to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The following principles should be incorporated as minimum requirements in any waiver request:

- Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the grantee should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).
- Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- Conditional: The grantee may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.

More information on Build America, Buy America can be found here:  
<https://www.energy.gov/management/build-america-buy-america>

## **VII. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

SEED Grant Program grantees agree to comply with the provisions of the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 et seq., rules promulgated thereunder (40 CFR Parts 1500-1508), guidance documents issued by the Office of Management and Budget or the United States Department of Energy (USDOE), New Hampshire’s executed [Historic](#)



[Preservation Programmatic Agreement](#), and USDOE’s Office of Energy Efficiency and Renewable Energy (EERE) NEPA Determination GFO-SEP-IIJA-ALRD-2022A (NEPA Determination). The NEPA Determination only applies to activities funded by the SEP-IIJA-ALRD-2022A, Administrative and Legal Requirements Document.

The Department’s decision whether and how to distribute SEED Grant Program funding is subject to NEPA. NEPA requires federal agencies and recipients of federal funding to integrate environmental values into their decision-making processes by considering the potential environmental impacts of their proposed actions. For additional background on NEPA, please see the USDOE’s NEPA website at: <https://www.energy.gov/nepa>

The USDOE has determined that the following projects are categorically excluded from further NEPA review, absent extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with “integral elements” (as contained in [10 CFR Part 1021, Appendix B](#)) as they relate to a particular project:

Funding commercially available energy or energy/water efficiency or renewable energy upgrades, provided that the projects adhere to the requirements of New Hampshire’s executed [Historic Preservation Programmatic Agreement](#), are installed in or on existing buildings or within the boundaries of a facility (defined as an already disturbed area due to regular ground maintenance), do not require structural reinforcement, no trees are removed, are appropriately sized, and are limited to:

1. Installation of insulation.
2. Installation of energy efficient lighting including light poles (may also be installed within a utility easement if no trees are removed).
3. HVAC upgrades (to existing systems)
4. Weather sealing.
5. Purchase and installation of energy efficient or energy/water efficient home and commercial appliances and equipment (including but not limited to, energy and water monitoring control systems, thermostats, furnaces, and air conditioners).
6. Retrofit of energy efficient pumps or motors for such uses as (but not limited to) wastewater treatment plants, where it would not alter the capacity, use, mission or operation of an existing facility.
7. Retrofit and replacement of windows and doors.

All SEED Grant Program grantees shall adhere to the terms and restrictions of New Hampshire’s [State Historic Preservation Programmatic Agreement](#) with the USDOE.

Projects not in conformance with those listed above, including ground disturbing activities outside the boundaries of a facility (defined as an already disturbed area due to regular ground maintenance), structural improvements to facilities, and tree removal, are subject to additional NEPA review and approval by USDOE. If any SEED Grant Program grantee wants to fund projects not in conformance with those listed above, then the SEED Grant Program grantee agrees to notify the Department and seek NEPA review. Projects requiring NEPA review cannot

be funded or undertaken unless and until the USDOE, through the Department, provides written authorization for those projects.

All SEED Grant Program grantees is responsible for identifying and promptly notifying the Department of extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with the “integral elements” (as contained in [10 CFR Part 1021, Appendix B](#)) as they relate to a particular project; and projects/activities restricted elsewhere in Award No. DE-EE0010086.

The Department shall document conformance with NEPA before commencement of any project.

All SEED Grant Program grantee agree to complete the online USDOE training on NEPA and Historic Preservation at [www.energy.gov/node/4816816](http://www.energy.gov/node/4816816).

While NEPA compliance is a federal agency responsibility and the ultimate decisions remain with the federal agency, the Department and all SEED Grant Program grantees will be required to assist in the timely and effective completion of the NEPA process in the manner most pertinent to their proposed project. If the USDOE determines certain records must be prepared to complete the NEPA review process (e.g., biological evaluations or environmental assessments), the SEED Grant Program grantee may be required to prepare the records at cost for the NEPA review process. 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 NEPA review process. Any costs incurred by the grantee to undertake the NEPA review process will not be covered by the Department, nor is it an allowable expense of the SEED Grant Program.

### **VIII. NATIONAL HISTORIC PRESERVATION ACT (NHPA)**

All projects under the SEED Grant Program are subject to review under Section 106 of the National Historic Preservation Act (NHPA). Reviews are conducted by the New Hampshire State Historic Preservation Office (SHPO), which is the New Hampshire Division of Historical Resources (DHR). Under state and federal law, the DHR works with other governmental agencies to review publicly assisted projects (those that are federally licensed, permitted, or funded) that may affect historical or archeological resources. The DHR works to identify these resources in the planning stage of projects/activities so that any harm to those resources can be mitigated, minimized, or avoided.

SEED Grant Program grantees may be exempt from SHPO review if their proposed project conforms with the exemptions outlined in Appendix B of the [State Historic Preservation Programmatic Agreement](#). Such projects do not have the potential to cause effects on historic properties.

All SEED Grant Program grantees shall adhere to the terms and restrictions of the New Hampshire [State Historic Preservation Programmatic Agreement](#) with the USDOE and agrees to complete the online USDOE training on Historic Preservation at [www.energy.gov/node/4816816](http://www.energy.gov/node/4816816).

Proposers who propose a project that causes any level of ground disturbance or does not conform with the exemptions outlined in Appendix B of the [State Historic Preservation Programmatic Agreement](#) are required to complete a [Request for Project Review Form](#) and submit to SHPO for formal review and approval.

The Department shall document conformance with the NHPA before the commencement of any project.

While NHPA compliance is a federal agency responsibility and the ultimate decisions remain with the federal agency, the Department and all SEED Grant Program grantees will be required to assist in the timely and effective completion of the NHPA process in the manner most pertinent to their proposed project. If the USDOE or SHPO determine that certain records must be prepared to complete the NHPA review process, the SEED Grant Program grantee may be required to prepare the records at cost for the NHPA review process. 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 NHPA review process. Any costs incurred by the grantee to undertake the NHPA review process will not be covered by the Department, nor is it an allowable expense of the SEED Grant Program.

## **IX. DAVIS-BACON PREVAILING WAGE REQUIREMENTS**

Compliance with the [Davis-Bacon Wage Act](#) and Related Acts (DBRA) is required, and it applies to contracts in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating. DBRA is applicable to all laborers and mechanics, subrecipients, contractors, or subcontractors who must be paid wages at rates not less than those prevailing on similar projects in the locality. If a project involves work at multiple sites, with a different DBRA wage determination, the DBRA wage determination appropriate for each locality must be inserted in each contract. The prevailing wage rates are determined by the Secretary of Labor in accordance with subchapter [IV of chapter 31 of title 40, United States Code](#) and published by the US Department of Labor (USDOL).

Cost shall include payroll costs for employees in the direct employ of Contractor in the performance of the work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the work. Payroll costs for employees not employed full time on the Work shall be apportioned based on their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

By accepting an award as a result of this RFP, the proposer is acknowledging the DBRA requirements and confirming that the laborers and mechanics performing construction, alteration, or repair work on projects funded in whole or in part by awards made as a result of this RFP are paid or will be paid wages at rates not less than those prevailing on projects of a character similar

in the locality as determined by subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

Projects funded, in whole or in part, by the Bipartisan Infrastructure Law (BIL) that involve construction, alteration or repair are required to follow Davis-Bacon Act (DBA) standards ([BIL Section 41101](#)). Employers subject to the Davis-Bacon and Related Acts must submit weekly, certified payrolls. To help employers stay in compliance and ensure the process is as easy and accessible as possible, DOE provides a free software, [LCPtracker](#), to recipients of BIL funding.

Proposers shall provide assurance of their compliance with DBRA by signing the Department's Davis-Bacon assurance letter. The assurance letter can be found here under RFP 2024-**XXX**: [Requests for Proposals | NH Department of Energy](#). By submitting the letter, proposers acknowledge that they will comply with all the Davis-Bacon Act requirements, including but not limited to:

1. Ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
2. Ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from contracts and subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.
3. Being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
4. Receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues through [LCPtracker](#).
5. Maintaining original certified weekly payrolls for three years after the completion of the project and must make those payrolls available to the Department, USDOE, or the USDOL upon request, as required by 29 CFR 5.6(a)(2).
6. Cooperating with any authorized representative of the Department, USDOE, or USDOL conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients.
7. Cooperating with any authorized representative of the Department, USDOE, or USDOL in their inspection of records, interviews with employees, and other actions undertaken as part of a USDOL investigation.

8. Posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: [WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects](#).
9. Notifying the USDOL Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

Recipients of funding under this RFP will also be required to undergo DBRA compliance training and to maintain competency in DBRA compliance. The Contracting Officer will notify the recipient of any USDOE, USDOL, or other sponsored DBRA compliance trainings.

The USDOL offers free Prevailing Wage Seminars several times a year that meet this requirement. More information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

For additional guidance on how to comply with the DBRA provisions and clauses, see the following resources:

1. <https://www.dol.gov/agencies/whd/government-contracts/construction>.
2. <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

See Section III for additional DBRA requirements and related compliance.

## **X. GRANT AGREEMENT AND CERTIFICATES**

A successful proposer will be expected to enter into a grant agreement with the State of New Hampshire. A copy of the General Provisions of the grant agreement to be signed by the parties is included as Appendix A to this RFP. In addition, project-specific terms and conditions will be negotiated with the proposer and included as exhibits in the grant agreement, and several exhibits shall consist of federally required certifications by grantees of federal funds.

**Proposers will be required to sign this form ONLY upon the Department's approval of the proposal for SEED Grant Program funding. This form will be completed by the Department.**

Successful proposers will also be required to provide the following certificates prior to entering into a grant agreement with the Department:

|   |   |
|---|---|
| Certificate of Vote /Authority (CVA)            | Individuals contracting in their own names do not need a CVA. Business entities and trade names need a CVA.   |
| Certificate of Insurance (COI)                  | Certificate of Insurance form attached with insurance coverage required under the grant agreement. Modifications of insurance coverage required will be specified in Exhibit A to the agreement. The New Hampshire Department of Energy must be listed as the Certificate Holder.   |
| Workers' Compensation                           | Proposer 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).  |
| Proof of active SAM registration                | Proposer must provide proof of active SAM registration and a valid UEI number. This must remain active throughout the lifetime of the project. Proposer must not be debarred from working on projects funded with Federal funds.<br><br>Subcontractors, if used, that have UEI numbers must be submitted to the Department upon entering into contract. These subcontracts must not be disbarred from working on projects with Federal Funds. |
| State Fire Marshal's Office review and approval | Proposer must provide written documentation demonstrating that the State Fire Marshal's Office has reviewed and approved the grantee's proposed project to ensure the project is in accordance with the state fire code.  |
| NEPA review and approval                        | Proposer will be required to undergo a NEPA review by the USDOE if their project does not conform with the activities detailed in Section VI.   |
| NHPA review and approval                        | Proposer will be required to undergo a NHPA review by the DHR if their project is not exempt under Appendix B of the <a href="#">State Historic Preservation Programmatic Agreement</a> .   |

**Proposers will be required to provide these certificates ONLY upon selection of the proposer, with the exception for Proof of active SAM Registration, to receive SEED Grant Program funding by the Department.**

## **XI. ETHICAL REQUIREMENTS**

From the time this RFP is published until a grant is awarded, no proposer shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by 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 a grant pursuant to a RFP, or contract pursuant to a similar submission. Any proposer that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any proposer, or member of a proposer's board or senior management, 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 applying for the RFP, or similar requests 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 that, in the case of annulment, the information shall be deleted from the list.

## **Appendix A. SEED Grant Program Application**

The required SEED Grant Program application is posted on the NHDOE's website at:  
<https://www.energy.nh.gov/rules-and-regulatory/requests-proposals>.



## Appendix B. G-1 Agreement

A copy of the State of New Hampshire's G-1 Agreement form to be executed by the parties can be found below. **Proposers will be required to sign this form ONLY if and when its proposal is selected by the Department to receive SEED Grant Program funding.**

GRANT AGREEMENT

The State of New Hampshire and the Grantee hereby  
Mutually agree as follows:  
GENERAL PROVISIONS

1. Identification and Definitions.

|  |                            |   |                                 |
|--|----------------------------|---|---------------------------------|
| <b>1.1. State Agency Name</b>  |                            | <b>1.2. State Agency Address</b>                        |                                 |
| <b>1.3. Grantee Name</b>   |                            | <b>1.4. Grantee Address</b>                             |                                 |
| <b>1.5 Grantee Phone #</b>   | <b>1.6. Account Number</b> | <b>1.7. Completion Date</b>                             | <b>1.8. Grant Limitation \$</b> |
| <b>1.9. Grant Officer for State Agency</b>   |                            | <b>1.10. State Agency Telephone Number</b>              |                                 |
| If Grantee is a municipality or village district: "By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b." |                            |   |                                 |
| <b>1.11. Grantee Signature 1</b>   |                            | <b>1.12. Name &amp; Title of Grantee Signor 1</b>       |                                 |
| <b>Grantee Signature 2</b>   |                            | <b>Name &amp; Title of Grantee Signor 2</b>             |                                 |
| <b>Grantee Signature 3</b>   |                            | <b>Name &amp; Title of Grantee Signor 3</b>             |                                 |
| <b>1.13 State Agency Signature(s)</b>  |                            | <b>1.14. Name &amp; Title of State Agency Signor(s)</b> |                                 |
| <b>1.15. Approval by Attorney General (Form, Substance and Execution) (if G &amp; C approval required)</b><br>By: Assistant Attorney General, On: / /  |                            |   |                                 |
| <b>1.16. Approval by Governor and Council (if applicable)</b><br>By: On: / /   |                            |   |                                 |

2. **SCOPE OF WORK:** In exchange for grant funds provided by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as “the State”), the Grantee identified in block 1.3 (hereinafter referred to as “the Grantee”), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT B (the scope of work being hereinafter referred to as “the Project”).

3. AREA COVERED. Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the State of New Hampshire.
4. EFFECTIVE DATE: COMPLETION OF PROJECT.
- 4.1 This Agreement, and all obligations of the parties hereunder, shall become effective on the date on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.16), or upon signature by the State Agency as shown in block 1.14 ("the Effective Date").
- 4.2 Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (hereinafter referred to as "the Completion Date").
5. GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT.
- 5.1 The Grant Amount is identified and more particularly described in EXHIBIT C, attached hereto.
- 5.2 The manner of, and schedule of payment shall be as set forth in EXHIBIT C.
- 5.3 In accordance with the provisions set forth in EXHIBIT C, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.
- 5.4 The payment by the State of the Grant amount shall be the only, and the complete payment to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.
- 5.5 Notwithstanding anything 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 Grant limitation set forth in block 1.8 of these general provisions.
6. COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Grantee shall comply with all statutes, laws regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits and RSA 31-95-b.
7. RECORDS and ACCOUNTS.
- 7.1 Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency, the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.
- 7.2 Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency pursuant to subparagraph 7.1, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these provisions.
8. PERSONNEL.
- 8.1 The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.
- 8.2 The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.
- 8.3 The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.
9. DATA: RETENTION OF DATA: ACCESS.
- 9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, paper, and documents, all whether finished or unfinished.
- 9.2 Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.
- 9.3 No data shall be subject to copyright in the United States or any other country by anyone other than the State.
- 9.4 On and after the Effective Date 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, whichever shall first occur.
- 9.5 The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.
10. CONDITIONAL NATURE OR AGREEMENT. Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.
11. EVENT OF DEFAULT: REMEDIES.
- 11.1 Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):
  - 11.1.1 Failure to perform the Project satisfactorily or on schedule; or
  - 11.1.2 Failure to submit any report required hereunder; or
  - 11.1.3 Failure to maintain, or permit access to, the records required hereunder; or
  - 11.1.4 Failure to perform any of the other covenants and conditions of this Agreement.
- 11.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
  - 11.2.1 Give the Grantee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and
  - 11.2.2 Give the Grantee 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 Grant Amount which would otherwise accrue to the Grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and
  - 11.2.3 Set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and
  - 11.2.4 Treat the agreement as breached and pursue any of its remedies at law or in equity, or both.
12. TERMINATION.
- 12.1 In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.
- 12.2 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.
- 12.3 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.
- 12.4 Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.
13. CONFLICT OF INTEREST. No officer, member of employee of the Grantee, and no representative, officer or employee of the State of New Hampshire or

- of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.
15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit B without the prior written consent of the State.
16. INDEMNIFICATION. The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.
17. INSURANCE.
- 17.1 The Grantee shall, at its own expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:
- 17.1.1 Statutory workers' compensation and employees liability insurance for all employees engaged in the performance of the Project, and
- 17.1.2 General liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and
- 17.2 The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Grantee shall furnish to the State, certificates of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy.
18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.
19. 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 first above given.
20. 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 Council of the State of New Hampshire, if required or by the signing State Agency.
21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intend of the parties hereto.
22. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.
23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.
24. SPECIAL PROVISIONS. The additional or modifying provisions set forth in Exhibit A hereto are incorporated as part of this agreement.