

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
Technical Monitor
ALN 81.041
FAIN: DE- EE0010086

REQUEST FOR PROPOSALS (RFP)
RFP #2024-010

Release Date: August 1, 2024
Proposal Deadline: October 3, 2024 at 12:00 p.m. EST (Noon)

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Executive Summary

Through the School Energy Efficiency Development (SEED) Grant Program, the New Hampshire Department of Energy (Department) provides support and technical assistance to schools in small communities to implement energy efficiency projects and make necessary upgrades to their school buildings. The Department intends to provide at least one grant to one school for energy efficiency projects (Projects) in 2024-2025. The Department is seeking proposals from qualified professionals with expertise on energy efficiency projects and improvements to provide technical monitoring related to the projects. Women-owned and/or minority-owned businesses are strongly encouraged to apply.

The Department will only consider bids in response to this RFP that propose a total cost of no more than \$9,000.

Electronic proposals must be received at the Department no later than 12:00 p.m. EST (Noon) on October 3, 2024. If the Department decides to award a contract at the conclusion of this Request for Proposals (RFP), any contract award is contingent upon approval of the contract by the New Hampshire Governor and Executive Council (Governor and Executive Council).

I. PERTINENT DATES AND INFORMATION

1. Schedule of Events

| EVENT | DATE/DEADLINE | TIME |
|---------------------------------|----------------------|-----------------|
| RFP Issued | 08/01/24 | |
| Close of Question Period | 09/04/24 | 4:30 PM |
| Responses to Questions Posted | 09/12/24 | 12:00 PM (Noon) |
| Proposal Due Date and Time | 10/03/24 | 12:00 PM (Noon) |
| Anticipated Contract Start Date | November, 2024 | |

2. 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

Inquiries must be received no later than the Close of Question Period as specified in the Schedule of Events above. The subject of the email should state the following: **RFP #2024-010 SEED Grant Program Technical Monitor RFP Question Period**. No phone calls. 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: [Requests for Proposals | NH Department of Energy](#).

3. Proposal Submission Instructions

Proposals submitted in response to this RFP must be received no later than the Proposal Due Date and Time as specified in the Schedule of Events, above. Late submissions will not be accepted, nor will extensions be given. Delivery of the proposals 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 and physical proposals will not be accepted.

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

Paper copies are not required and will not be accepted.

3.1 Electronic Proposals

Proposals must be submitted electronically to RFP@Energy.NH.Gov. Proposals must be submitted in portable document format (PDF) as a file attachment to an email and must be searchable. In no event should a proposal be provided through a link embedded in the submitted email. The file will be considered received when it is successfully submitted to the mailbox associated with the email address above, and the time of submittal will be based on the time stamp in the receiver's e-mail. The Department can accept electronic files no larger than 25 MB. Proposals may consist of multiple PDF attachments or one PDF with all attachments combined. The subject of the e-mail should state the following: **RFP #2024-010 SEED Grant Program Technical Monitor RFP Proposal**.

To guard against proposals potentially being overlooked due to being quarantined by the agency's spam protection software, it is strongly recommended that an email with no attachment be sent to the RFP Contact Person at RFP@Energy.NH.Gov initially stating that email(s) containing a proposal are to follow. The subject of the e-mail should state the following: **RFP #2024-010 SEED Grant Program Technical Monitor RFP Intention to File**.

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 proposal submitted in response to this RFP shall be valid for not fewer than 150 days following the deadline for submission of proposals, or until the effective date of any resulting contract, whichever is later.

4. Restriction 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 approved by the RFP Point of Contact, Susan Gagne, Program Specialist III, or as otherwise outlined in Section VII.

Department employees have been, and Evaluation Team members will be, directed not to hold conferences or discussions concerning this RFP with any potential proposer during the selection process, unless otherwise authorized by the RFP Point of Contact, or as otherwise outlined in Section VII. Communications with state personnel not bearing on this RFP are permitted.

II. BACKGROUND

The United States Department of Energy (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 Department, a state executive branch agency, 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 a proposed energy efficiency project 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.

On July 24, 2024, the Department issued a separate RFP #2024-008, seeking applications for a grant from the SEED Grant Program to fund a project during 2024-2025. The Department expects to select a project and finalize a grant award in November 2024.

III. SCOPE OF SERVICES AND DELIVERABLES

The technical monitor will work at the direction of, and in consultation with, Department personnel to oversee Project progression during the 2024-2025 SEED grant funding round. It is anticipated that there will be one grant awarded in the grant funding round. Specific tasks for the technical monitor include, but are not necessarily limited to, the following:

- Perform periodic inspections of the Projects for purposes of quality control; program compliance; and to observe and interview workers regarding project health and safety.
- Assist the Department to ensure SEED Grant Program regulations are followed, including, but not limited to ensuring that: all appropriate measures are included on work orders; installed measures are allowed, effective, and of good quality workmanship; installed measures are relative to the work plan; and all installed measures meet New Hampshire building codes and best practices.
- Meet with the Project manager for further Project details, following the Technical Monitor's selection.
- Write and submit reports to the Department following all Project inspections. All reports will include photographs that visually document Project progress. At a minimum, site visits will be conducted before the Project begins and at the Project's conclusion. An all-encompassing final report on the Projects for the grant period will need to be submitted to the Department on or before July 15, 2025. Final reports will include a description on the quality of work, the scope of work completed, energy savings effectiveness of the implemented measures, and pictures documenting project completion.
- As necessary, make additional site evaluations in the event of a poor project report.

The technical monitor will commence work upon approval of its own contract with the Department and the New Hampshire Governor and Executive Council (Governor and Executive Council) and of a contract to award SEED Grant Program funding to fund a proposed project. The technical monitor will continue their work until July 15, 2025, until services are no longer required, or federal funding has been exhausted.

The maximum funds allocated to this RFP is \$9,000 for the grant period, which will include time traveled, cost of each visit, price per hour, and any other cost relative to services to conduct oversight of the project(s).

The technical monitor will be supervised by the Department State Energy Program Manager.

IV. GENERAL QUALIFICATIONS

1. Minimum three years of experience performing inspections on commercial buildings;
2. Familiarity with regulations governing federal programs, including [Build America, Buy America](#) and [the National Environmental Policy Act and Historic Preservation](#);
3. Ability to communicate and report on the Department project deficiencies;
4. Ability to communicate technical information well, both verbally and in writing;
5. Have an active Unique Entity Identifier (UEI) on SAM.gov and not be disbarred from receiving federal grant money; and
6. Must act and communicate professionally at all times.

V. COMPONENTS OF THE PROPOSAL

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

1. **Cover Letter:** Provide a brief (maximum of two pages) submittal cover letter that includes a summary describing the proposer's commercial building knowledge and technical monitoring experience and how the proposer proposes to provide the required services.
2. **Description of proposer:** A brief description of the proposer and, if applicable, the proposer's firm, its current practice and history, i.e. how many years in business, corporate officers or company principals, office locations, professional and business association memberships, legal and organizational structure. Proof of UEI and active registration must be submitted.
3. **Response to the Scope of Services:** A brief discussion of how the proposer would perform the services, the resources the proposer would use, the issues and challenges the proposer foresees, etc.
4. **Qualifications and Relevant Experience:** A detailed description of the proposer's qualifications and relevant experience, including areas of expertise, accomplishments, current and previous employers/clients, etc. The proposer's resume that includes years of experience, education, professional affiliations, etc. If the proposer chooses to work with a sub-contractor, they will have to provide the name, qualifications, and relevant experience of the group or person with their proposals.
5. **References and Work Samples:** A list of two references, who are familiar with the proposer's work and experience, and their contact information. Relevant work samples are not required but may be provided electronically if desired.
6. **Budget:** A detailed schedule of fees and estimated costs for completion of the work scope, including details on key personnel positions, rates, fees, and hours. The detailed cost estimates should encompass the full scope of work described in this RFP, including time, travel, and any other costs necessary to complete Scope of Services and Deliverables as described in Section III above.
7. **Additional Information:** The submittal of additional information that would be beneficial to the Department in the technical monitor selection process is allowed.
8. **Disclosure:** An explicit statement regarding whether any existing or potential conflicts of interest exist, including those that arise because of relationships or affiliations with parties at the Department.
9. **Compliance with Form P-37:** An explicit statement that the proposer shall comply with the terms of the Form P-37.

VI. SELECTION PROCESS AND SCORING CRITERIA

A. Selection Process

Proposals will be reviewed and evaluated, and an award will be made according to the criteria set forth in Section VII, Part B. of the RFP. The evaluation will be based solely on the proposals. Therefore, insufficient or unclear information may result in a low score.

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

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

Step 2 – Evaluation: An Evaluation Team consisting of Department, and possibly other New Hampshire State agency personnel, will review the proposals and information submitted by each proposer based upon the criteria established in the RFP.

If determined to be appropriate by the Evaluation Team, proposers may be invited to oral interviews. The Department retains the sole discretion to determine whether to conduct interviews, with which proposers, and the number of interviews. Some or all proposers may participate in a detailed oral interview to more fully discuss their approach to this project.

The purpose of oral interviews is to clarify and expound upon information provided in the written proposals. Proposers are advised that interviews may be conducted with fewer than all proposers. Proposers are prohibited from altering the basic substance of their proposal during the oral interviews. Proposers may be asked to provide written clarifications of elements in their proposals. Interviews may be conducted in person or by remote access.

Step 3 – Contract Negotiation and Execution: Following the conclusion of the evaluation process, a conditional award letter will be sent to the selected proposer's authorized submitter. The Department shall negotiate, if necessary, and develop contracts and related documents with the selected proposer consistent with this RFP, then submit the completed contract to the Governor and Council for approval and execution. After Governor and Executive Council approval, work can begin on the scope of work.

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 applications, or any portions thereof, for any reason, at any time,

including, but not limited to, canceling the RFP, and to solicit new applications under a new application process. If, for any reason, negotiations with the top scorer(s) do not result in a contract(s), despite reasonable efforts made in good faith, the Department may go to the next highest scorer(s) and seek to negotiate with that applicant(s).

B. Scoring Criteria and Weight

The Evaluation Team shall consider all the following criteria, and assign a corresponding point score, where a maximum score for all criteria shall be 100 points. Cost is a consideration but may not be the determining factor in the selection of the technical monitor. The Department reserves the right not to consider any proposal with a total aggregate point score of less than 60 points.

- (a) Quality and Clarity of Proposal: Overall responsiveness to the requirements of the RFP, including completeness, clarity, and quality of proposal. (Maximum Point Score: 15)
- (b) Essential Proposal Requirements: proposer meets all eligibility requirements, general requirements and conditions, and proposal submission requirements. (Maximum Point Score: 10)
- (c) Qualifications of proposer: The proposer has provided work experience, references, and description of the Technical Monitor. (Maximum Point Score: 15)
- (d) Relative Project Experience: The proposer has relative project experience to the proposed project. (Maximum Point Score: 35)
- (e) Confidence in proposer's Ability to Meet General Requirements and Conditions. (Maximum Point Score: 10)
- (f) Budget: Shows fiscal responsibility and understanding of available project funds. (Maximum Point Score: 15)

VII. TERM OF CONTRACT

The term of the contract with any selected proposer will be for a period beginning with contract approval by the Commissioner of the Department and, if applicable, Governor and Executive Council and ending June 30, 2025.

VIII. GENERAL CONDITIONS

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

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

1. If the Department decides to award a contract as a result of this RFP process, any award is contingent upon approval of the contract by the Commissioner of the Department and the Governor and Executive Council with payment subject to the Department's special utility assessment process. Payments hereunder are contingent upon the availability of federal funds. General funds will not be requested to support the contract resulting from this RFP. Payment to contractor under the SEED Grant Program Technical Monitor is on a cost-reimbursable basis, unless otherwise approved.
2. The Department reserves the right to request additional information from any or all proposers to assist in the evaluation process.
3. Confidentiality of Proposal Materials; Public Disclosure:

A proposer's disclosure or distribution of proposals other than to the Department may be grounds for disqualification. Each proposer also agrees to maintain as confidential all information to which it has access in the course of this RFP and contracting process until such time as it is instructed otherwise by the Department.

Furthermore, pursuant to RSA 21-G:37, all responses to this RFP shall be considered confidential until the resulting contract is approved by the Governor and Executive Council of the State of New Hampshire. After the closing date for responses to this RFP, the Department will post the number of responses received on its website with no further information.

After the award of the contract under this RFP, and no later than five business days prior to submission of the contract to the Department of Administrative Services, the Department will post the rank or score assigned to each proposal on its website. All such postings may be viewed on the Department's website at: [Requests for Proposals | NH Department of Energy](#).

By submitting a proposal, the proposer acknowledges that the Department is subject to the Right-to-Know Law, RSA Chapter 91-A. The content of each proposer's proposal shall become public information upon the award of any resulting contract. Copywritten materials submitted along with a proposal are subject to Chapter 91-A and will be made available to the public unless it appears

that the proposer has violated the original copyright. **If a proposer copyrights its proposal materials, then by submitting the copywritten proposal, the proposer waives any copyright protections as to the state, its employees, and agents, and agrees that the state may copy and distribute the proposal for purposes such as, but not limited to, scoring, contracting, and responding to public information requests.** Any information submitted as part of a response to this RFP may be subject to public disclosure unless otherwise exempt. *See* RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP may be made accessible to the public online through the website Transparent NH: (<http://www.nh.gov/transparentnh>). However, business financial information, confidential information, such as personally identifiable information, including, but not limited to, social security numbers, taxpayer identification numbers, employer identification numbers, and account numbers, proprietary information such as trade secrets, financial models and forecasts, and proprietary formulas, may be exempt from public disclosure under RSA 91-A:5, IV.

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

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

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

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

4. By submitting a proposal, a proposer agrees that in no event shall the Department be either responsible for or held liable for any costs incurred by the proposer in preparation of or in connection with the proposal, or for work performed prior to the effective date of any resulting contract.
5. All parties submitting proposals shall be Equal Opportunity Employers. The selected proposer will be expected to comply with all federal, state, and local laws respecting non-discrimination in employment.
6. The Department reserves the right to amend or cancel this RFP at any time. Proposers should check [Requests for Proposals | NH Department of Energy](#) for any addenda to this RFP before submitting their proposals, and for answers to any questions submitted by others.
7. The selected proposer shall be required to submit a Taxpayer Identification Number (TIN), Employer Identification Number (EIN), or Social Security Number (SSN), proof of active registration in SAM.gov and submission of UEI, and to register as a vendor with the State of New Hampshire during the contracting process.
8. The terms and conditions set forth in the State's Form P-37 (version 2/23/2023) "Agreement, General Provisions" (General Provisions) for contracts, attached hereto as Appendix A, shall apply to the contract to be entered into with the selected Contractor. In addition, each contract shall be supplemented by three exhibits: Exhibit A will include any special provisions, including any modifications to the General Provisions regarding insurance coverage and other matters; Exhibit B will set forth in detail the Scope of Services; and Exhibit C will set forth in detail the price limitation, the source of payment (special utility assessment), and any preconditions to payment. In addition, in accordance with New Hampshire Executive Order No. 2023-05, any contract entered into as a result of this RFP shall include a provision permitting the Department to immediately terminate the contract upon making a determination that the Contractor is boycotting Israel.

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.

9. Once a contract becomes effective, any subsequent material changes or modifications to the contract terms must be submitted for review and prior approval by the Commissioner of the Department and, if applicable, the Governor and Executive Council.
10. This RFP is not an offer. Neither the Department nor this RFP shall create any commitment on the part of the State or confer any rights on the part of the proposer unless and until a binding written contract is executed between the Department and the selected proposer and approved by the Governor and Executive Council.
11. 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 contract award, the State reserves the right to use any information presented in any proposal, provided that its use does not violate any copyrights, or other provisions of law, including RSA 91-A.
12. Non-Collusion: The proposer's signature on a proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and work quoted have been established without collusion with other proposers and without effort to preclude the Department from obtaining the best possible competitive proposal. Proposers who wish to submit joint proposals with other consultants must clearly identify that the proposal is a "joint proposal" and must identify all proposers in the first instance.
13. 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 no later than five business days after the rank or score for all proposals is posted on the Department's website, by sending written notice to the RFP Point of Contact.
14. 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.
15. 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 SEED Grant Program Technical Monitor.

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.

16. As with all contracts made with the State of New Hampshire or using federal funding, certain requirements apply, including registration with the NH Secretary of State's Office. These requirements can be found at the State's Vendor Resource Center at <https://das.nh.gov/purchasing/vendorresources.aspx>.

Additionally, the successful proposer will be required, among other things to provide:

- i. The NH Secretary of State Certificate of Good Standing (CGS);
- ii. The Certificate/Vote of Authority (CVA) from a governing body of the proposer if applicable;
- iii. The completion of a State of New Hampshire Vendor Application form;
- iv. Proof of sufficient liability and workers' compensation insurance (Certificate of Insurance (COI)) unless a waiver is requested and approved;
- v. Proof of active registration in the Federal System for Award Management (SAM) and have a Unique Entity Identifier (UEI) number of proposer and sub-contractor(s);
- vi. Sign certain assurances including but not limited to: Drug Free Workplace; Lobbying; Americans with Disabilities Act Compliance; Environmental Tobacco Smoke; and Federal Funding and Accountability Act (FFATA) Compliance, National Environmental Policy Act (NEPA), Build America, Buy America (BABA), and Davis Bacon and Related Acts.

IX. GENERAL PROVISIONS, FORM P-37, AND CERTIFICATES

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

When responding to this RFP, each proposer must explicitly state that the proposer shall comply with the requirements of Form P-37. To the extent a proposer believes that an exception to the standard form will be necessary for the proposer to enter into a contract, the proposer should raise that issue during the proposer question period. The Department will review the question regarding the requested exception(s) and respond that the exception is accepted, rejected, or note that the Department is open to negotiation regarding the requested exception(s) at the Department's sole discretion. If a proposer's

exception is accepted, or is open to negotiation, the Department will, by means of posting the answer to the proposer’s question, and prior to the conclusion of the question response period, provide notice to all potential proposers of the exception(s) which has been accepted, or is open to negotiation, and indicate that exception is available to all potential proposers. Any exceptions to the standard form contract that are not received before the Close of Question Period as specified in the Schedule of Events are waived. In no event is a proposer to submit its own standard contract terms and conditions as a replacement for the State’s terms in response to this RFP. The question period begins when the RFP is posted and ends at the Close of Question Period as specified in the Schedule of Events. All inquiries must be in writing and must be sent to the RFP Point of Contact identified above.

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

A proposer will be required to sign the P-37 Form ONLY upon the Department’s selection of its proposal, and prior to submission of the final contract for review and approval by the Department Commissioner and, if applicable, the Governor and Executive Council.

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

| | |
|--|--|
| Certificate of Good Standing (CGS) | Domestic business entities shall provide a CGS from the Secretary of State for the State of New Hampshire. Foreign business entities shall provide a certificate of good standing, or the equivalent, from the entity's state of formation as well as a certificate of authority to transact business in New Hampshire from the Secretary of State of the State of New Hampshire. |
| Corporate Resolution (Certificate of Vote/ Authority or CVA) | Business entities shall provide a corporate resolution or other similar document that substantiates its authority to enter into the transactions contemplated by the contract awarded hereunder. Individuals contracting in their own name do not need a CVA. |
| Certificate of Insurance (COI) | Certificate of Insurance form attached with insurance coverages required under the contract. Modifications of insurance coverage required will be specified in the contract. |

| | |
|----------------------------------|---|
| Workers' Compensation | Contractor must demonstrate compliance with or exemption from RSA 281-A (and if applicable, RSA 228:4-b and RSA 21-I:80, and any other applicable laws or rules). |
| 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. 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. |

The selected proposer will be required to provide the above certificates ONLY upon the Department's selection of their proposal, with the exception of proof of active SAM.gov registration, and prior to submission of the final contract(s) for review and approval by the Department Commissioner and the Governor and Executive Council.

X. ETHICAL REQUIREMENTS

From the time this RFP is published until a contract is awarded, no proposer shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined in RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any proposer that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any proposer who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from bidding on this RFP, or similar request for submission and every such proposer shall be disqualified from bidding on any RFP or similar request for submission issued by any State agency. A proposer that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the Department of Administrative Services, which shall note that information on the list maintained on the State's internal intranet system, except in the case of annulment the information shall be deleted from the list.

Attachment A. Form P-37

A copy of the State of New Hampshire's General Provisions to be executed by the parties can be found substantially in the form posted at

https://www.das.nh.gov/purchasing/docs/info/doj/P-37_Standard_Contract_Form.pdf

proposer will be required to sign this form ONLY if and when its proposal is selected by the Department.

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

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|--|----------------------------|---|----------------------|
| 1.1 State Agency Name | | 1.2 State Agency Address | |
| 1.3 Contractor Name | | 1.4 Contractor Address | |
| 1.5 Contractor Phone Number | 1.6 Account Unit and Class | 1.7 Completion Date | 1.8 Price Limitation |
| 1.9 Contracting Officer for State Agency | | 1.10 State Agency Telephone Number | |
| 1.11 Contractor Signature <div style="text-align: right;">Date:</div> | | 1.12 Name and Title of Contractor Signatory | |
| 1.13 State Agency Signature <div style="text-align: right;">Date:</div> | | 1.14 Name and Title of State Agency Signatory | |
| 1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i> By: _____ On: _____ | | | |
| 1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i> By: _____ On: _____ | | | |
| 1.17 Approval by the Governor and Executive Council <i>(if applicable)</i> G&C Item number: _____ G&C Meeting Date: _____ | | | |

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 (“Effective Date”).

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

3.3 Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance

hereof, and shall be the only and the complete compensation to the Contractor for the Services.

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

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

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws and the Governor’s order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

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

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

6.4. The Contractor agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with this Agreement and all rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

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

7.2 The Contracting Officer specified in block 1.9, or any successor, shall be the State’s point of contact pertaining to this Agreement.

8. EVENT OF DEFAULT/REMEDIES.

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

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

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

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

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

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

9. TERMINATION.

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

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.

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

10.2 All data and any Property which has been received from the State, or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned

to the State upon demand or upon termination of this Agreement for any reason.

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

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

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

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

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

14. INSURANCE.

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

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than

\$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the Property.

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

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

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

16. WAIVER OF BREACH. A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

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

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or

discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

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

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

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

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

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

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

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

26. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.