

**State of New Hampshire Department of Energy**



**United States Department of Energy  
Home Electrification and Appliance Rebate Program (Sec. 50122)  
Implementer  
ALN: 81.041  
FAIN: DE-SE0000106**

**REQUEST FOR PROPOSALS (RFP)  
RFP #2024-007**

**Release Date: July 12, 2024  
Proposals Due: September 10, 2024 at 12:00 p.m. (Noon) EST**

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## EXECUTIVE SUMMARY

The New Hampshire Department of Energy (the “Department”) issues this Request for Proposals (the “RFP”) seeking proposals for one or more program implementers to implement New Hampshire’s Home Electrification and Appliances Rebate (HEAR) Program. The Program Implementer will provide program support and technical assistance to deliver effective HEAR Program benefits to New Hampshire’s low, moderate, or low and moderate income (LMI) single-family homes and multifamily buildings.

The Department is seeking proposals from qualified entities, or consortium of entities (each, a “Implementer”) with expertise in implementing and inspecting energy efficiency projects and home improvements; to develop (or leverage existing) robust user interfaces, tools, websites, and systems for implementation and oversight of rebate program delivery and lifecycles; to develop (or leverage existing) income verification methods or software to determine program eligibility; to fulfill data preparation, review, reporting, and analysis; to network and create (or leverage existing) communication channels for program outreach and education to promote program offerings to homeowners and contractors; to partner with community based agencies, retailers, installers, and organizations (or leverage existing programs) to improve access to appliances, workforce, and rebates, facilitating the integration of program funds and/or any other financing mechanisms, to reduce cost for low-income household projects; to assess program effectiveness and satisfaction for completed projects and carry out any additional program implementation requirements. Women-owned and/or minority-owned businesses are strongly encouraged to apply.

Total funding available under this RFP is not to exceed \$4,616,300.99. Projects awarded this funding must be completed by December 31, 2031 or until funds are fully expended, whichever comes first. Any contract awarded under this RFP will also include a three-year post servicing period for technical support, data retention, and records management to assist with Department requests as needed. No additional funding will be awarded for the three-years post program period. Be advised that the provision of funding is subject to the reception of an award from the United States Department of Energy (USDOE). In the event that said award is not conferred, the need for an implementer will no longer be applicable.

Electronic proposals must be received by the Department no later than 12:00 p.m. EST on September 10, 2024. If the Department decides to award a contract at the conclusion of this RFP, any contract award is contingent upon approval by the United States Department of Energy and Governor and Executive Council of the State of New Hampshire.

### Pertinent Dates and Information

#### 1. Schedule of Events

Event	Date/Deadline	Time
RFP Issued	07/12/2024	
Question Period Closes	08/02/2024	4:30 PM
Responses to Questions Posted	08/13/2024	12:00 PM (Noon)
Proposal Due Date and Time	09/10/2024	12:00 PM (Noon)

## 2. Implementer Inquiries

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

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

Inquiries must be received no later than Close of Question Period as specified in the Schedule of Events above. The subject of the email should state the following: **“RFP #2024-007, Home Electrification and Appliance Rebate Program.”** **No phone calls.** It is highly recommended that respondents review the RFP as soon as possible and submit any questions promptly. Responses will be posted by the above-described deadline at: [Requests for Proposals | NH Department of Energy](#).

## 3. Proposal Submission Instructions

Proposals submitted in response to this RFP must be received no later than the time and date specified in the Schedule of Events, herein. Late submissions will not be accepted. Delivery of the proposals shall be at the Implementer’s responsibility. The Department accepts no responsibility for damaged, mislabeled, or undeliverable emailed proposals.

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

Paper copies are not required and will not be accepted.

### 3.1. Electronic Proposals

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

The subject of the email should state the following: **“RFP #2024-007, Home Electrification and Appliance Rebate Program.”** Please include your company name in the Subject line.

The Department shall assess completeness and responsiveness of the proposal to eliminate nonconforming proposals. The Department may waive or offer a limited opportunity to cure immaterial deviations from RFP requirements if it is determined to be in the best interests of the State. Any 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 on Contact with State Employees Regarding RFP:**

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

### **I. BACKGROUND**

Signed into law on August 16, 2022, the Inflation Reduction Act (IRA) authorized the United States Department of Energy (USDOE) to implement two residential home energy rebate programs. Specifically, IRA Section 50121 established the Home Efficiency Rebates (HER) Program, and IRA Section 50122 established the Home Electrification and Appliance Rebates (HEAR) Program. Collectively, these programs are known as the Home Energy Rebates Programs. The Home Energy Rebates Programs authorize \$8.8 billion in funds to be distributed through states, territories, and Indian Tribes for the benefit of households and home energy upgrades.

The Home Energy Rebates Program is intended to benefit households by lowering the cost of undertaking meaningful home energy upgrades. These upgrades seek to lower consumer costs and improve the health and safety of homes. This funding also aims to increase the installation of efficient, clean energy equipment in underserved and underrepresented communities.

The State of New Hampshire, through the Department, is slated to receive \$34.749 million from the HEAR Program. Key goals and objectives for the HEAR Program include:

- 1) Promote savings on energy costs and appliance upgrades.
- 2) Partner with existing NH community-based organizations or leverage existing program delivery channels serving low-income communities to streamline income eligibility requirements, increase program awareness and effectively educate households on energy efficiency, benefits, and value.

- 3) Fill funding gaps and/or partner with existing NH programs for electrification programs.
- 4) Partner with community-based organizations or leverage existing program delivery channels serving identified low-income communities to streamline the consumer application process, develop a seamless stacking, braiding and bundled funding source to reduce upfront consumer costs.
- 5) Create a user-friendly consumer experience.
  - a) Leverage existing program delivery channels or/to establish a robust website presence and/or user interface system that will promote consumer navigational ease, effectively explain program offerings, and will streamline the application/income verification program eligibility process by leveraging existing program eligibility and/or document upload ease. Partner with existing NH community-based organizations and workforce or leverage existing rebate delivery channels with retail outlets, online marketplaces, etc. to execute a seamless customer "point-of-sale" rebate consistent with program requirements.
  - b) Work with the Department to implement a streamlined customer feedback mechanism or leverage existing channels to ensure consumer satisfaction surveys, rebate communications and messages are delivered to program participants.
- 6) Prioritize homes serving low-income households, ensuring that program benefits flow to disadvantaged communities.
  - a) Partner with existing NH community-based organizations or leverage existing rebate delivery channels to target marketing communication and educational outreach efforts to identified households within the Climate and Environmental Justice Screening Tool (CEJST) New Hampshire map, which is available at <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>.
  - b) Offer project installer incentives for qualified projects completed within low-income households in disadvantaged communities.
- 7) Reduce energy burdens for low-income households and disadvantaged communities. Bundle rebate program offerings to maximize energy efficiency projects.

### **Basic Eligibility Requirements**

1. Implementers shall: 1) be registered in the Federal [System for Award Management \(SAM\) website](#) before submitting a proposal, 2) provide a valid and active Unique

Entity Identifier (UEI) in its proposal and a printout of their registration from SAM in their 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 a proposal under consideration by the Department.

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

Any implementer and their subcontractors that are debarred from SAM shall be ineligible for the Home Electrification and Appliance Rebate 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. Implementers and any subcontractors 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](#)

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

The Implementer will work at the direction of, and in consultation with, Department personnel to oversee Project progression during the 2024-2031 Home Electrification and Appliances Rebates (HEAR) program implementation. Specific tasks for the Program implementer(s) include, but are not necessarily limited to, the following:

- 1) Adhere to all programmatic requirements in the IRA Home Electrification and Appliances Rebates (Sec. 50122) Program Requirements and Application Instructions and Administrative and Legal Requirements Document (ALRD). [Home Energy Rebate Administrative and Legal Requirements Document](#).
- 2) Implement and monitor an income verification program, tool, or process to comply with program requirements this is to include manual income verification.
  - a) Use the federally issued Climate and Economic Justice Screening Tool to identify disadvantaged communities (DACs) (available here: [Explore the map - Climate & Economic Justice Screening Tool \(geoplatform.gov\)](#)).
  - b) Provide educational materials and do outreach to contractors/eligible entity representatives so that they are aware of this potential incentive and may partner with the state and community-based organizations or leverage

- existing program delivery channels serving identified low-income communities to do so.
- c) Leverage existing rebate delivery channels or establish a method to incentivize contractors to work in the CEJST identified disadvantaged communities.
- 3) Establish or leverage an electronic rebate processing system to integrate with the USDOE Rebate Tracking System, tools, and workflows to verify program eligibility and issue rebate coupons (applied at point of sale or installation) within 30 calendar days of receipt of a rebate reimbursement request.
    - a) The Implementer will need to notify all homeowners or building owners (and others if applicable (e.g., contractor)) that the rebate cannot be combined with other Federal grants and rebates, but the household may still be eligible for a federal tax credit per Internal Revenue Service (IRS) guidelines.
  - 4) Work with the Department to develop and implement a streamlined rebate process flow for single-family and multifamily households based on income and program eligibility through new methods of leveraging existing rebate delivery channels.
  - 5) Work with the Department to develop and implement a streamlined rebate point-of-sale transaction and reimbursement process through new methods of leveraging existing rebate delivery channels.
  - 6) Perform or subcontract to perform post installation inspections and data collection of the Projects for purposes of quality control, program compliance as identified in the [IRA Home Energy Rebates: Data And Tools Requirements Guide. \\*Part 2 is the Home Electrification & Appliances Rebates guide\\*](#).
    - a) Inspection requirements (not comprehensive):
      - i) A visual inspection of the site and work conditions.
      - ii) Unique project identifier & address.
      - iii) Year built and type.
      - iv) Components to be upgraded.
      - v) Proof of quality installation (geotagged photo).
      - vi) Method to establish income qualification.
      - vii) Conditioned Floor Area (sq ft).



- viii) Prior rebated amounts.
  - ix) Amount of rebate & amount deducted upon installation.
  - x) Number of people in household.
  - xi) Utility company & Utility Account #.
  - xii) Permission from customer to share energy data with State and USDOE.
  - xiii) Project Costs (including, without limitation, equipment, materials, and installation).
  - xiv) Income bracket estimated household energy costs post-installation.
  - xv) List of upgrades for which a rebate was applied.
  - xvi) Invoices.
  - xvii) In "Disadvantaged Community"
  - xviii) All "home assessment" data.
  - xix) Installer name, phone, email.
  - xx) Signature of Owner.
- 7) Support the [US Department of Energy's Education and Outreach Plan](#) to create, establish and/or leverage existing educational materials, community relationships and delivery channels.
  - 8) Support the [US Department of Energy's Community Benefits Plan](#) to establish, monitor and achieve communication and marketing strategies, outreach, and education goals.
    - a) Can leverage existing community relationships and delivery channels.
  - 9) Support the [US Department of Energy's Consumer Protection Plan](#) to establish, monitor and work from a qualified statewide contractor list.
  - 10) Assist the Department to ensure HEAR Rebate Program regulations and requirements and reports 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.*

- 11) Meet with the Project manager for further Project details, following the Contractor(s)'s selection.
- 12) Complete and submit data per the Department/USDOE requests for reports, invoice/project audits, etc. The Implementer shall, on a biweekly basis, submitting reporting to the Department.
- 13) The Implementer will be responsible for developing (or leveraging existing) user interfaces and systems for applicant to use for the rebate processing. The Implementer and any sub-contracted providers (e.g., income verification services, installer/inspectors) will also be required to fulfill data reporting and analysis per contract(s).
- 14) The Implementer will conduct consumer surveys to assess the effectiveness of program outreach and delivery, and satisfaction regarding the rebate products and process.
- 15) The Implementer will have the option to use provided software for data review and reporting. The Implementer will leverage existing programs to assist in making low-cost financing available to rebate applicants and providers through braiding.
- 16) The Implementer may provide technical assistance directly or through specialized organizations to assist focused on serving disadvantaged communities and other priority populations.
  - a) Development of tools and systems, including websites, applications, rebate processing, and reporting.
    - i) The Implementer and any other sub- contracted providers (e.g., income verification services, installer/inspectors) will also be required to fulfill data reporting and analysis per contract.
  - b) Program evaluation and consumer satisfaction survey.

The Implementer will conduct consumer surveys to assess the effectiveness of program outreach and delivery, and satisfaction regarding the rebate process and process.

- 18). The Implementer shall complete and submit data per the Department/USDOE requests for reports, invoice/project audits, etc. The Implementer shall, on a biweekly basis, submit reporting to the Department.

The Implementer will leverage existing communication channels and community-based partnerships to develop marketing and education information for homeowners, tenants, retailers, implementers, and others as needed. The implementer may conduct separate outreach to retailers, product manufacturers, and distributors.

### **III. GENERAL QUALIFICATIONS**

1. Minimum three years of experience performing inspections on residential single or multi-family buildings.
2. Ability to communicate and report on the Department project deficiencies.
3. Ability to communicate technical information well, both verbally and in writing.
4. Ability to leverage existing or established community relationships, technologies, and rebate delivery channels.
5. Not be disbarred from receiving federal grant money.
6. Must always act and communicate professionally.
7. Must have experience with an electronic rebate tracking system.
8. Must have working knowledge of federal and state program regulations.
9. Must have measures in place to secure Personal Identification Information.

### **IV. FUNDING**

The implementer will receive a total of \$4,616,300.99 for services provided throughout the program. Funds will be distributed either on an achievement basis or as a percentage of funds every two years, whichever comes first. Such payment is contingent upon the Department's receipt and acceptance of federal funds for this program.

### **V. COMPONENTS OF THE PROPOSAL**

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

1. Letter of Transmittal: Include name of implementer, contact information for, and signature of, proposed Implementer. (1 page)
2. Corporate/Company/Consultant Information: Information concerning its corporate/company/consultant history; i.e., how many years in business, corporate officers or company principals, location of branch offices, professional

and business association memberships, current or prior engagements involving substantive areas similar to those described in this RFP, the parties it represented in such engagements, the scope of work it performed in such engagements, and the conclusion and recommendations it made publicly in connection with such engagements. (1 page)

3. Proposed Scope of Work and Schedule: A discussion of how the Implementer would perform the services, the resources the implementer would utilize, the issues and challenges the Implementer foresees, etc. The response must provide sufficient content regarding technical detail to permit a meaningful evaluation.
4. Relevant Qualifications and Experience of Personnel Assigned: Detailed description of the Implementer's relevant experience with respect to the proposed scope of services. A list of all personnel who would be assigned to this engagement, including the project manager and subcontractors' personnel (if applicable), with detailed resumes (in an appendix) and summaries of each individual reflecting their relevant experience with respect to the proposed scope of services and the nature of their specific responsibilities. Identify any proposed subcontractors and their key personnel. Sample work may be requested during the scoring process. During the course of the work, the Department must approve in writing any substitutions or changes in personnel, including any subcontractor personnel, assigned to perform the work. (No more than 3 pages, not including the resumes of the key personnel.)
5. References: A list of up to three references, including the name of the reference along with a telephone number and email address, for work performed that is similar in scope or content to that proposed, preferably undertaken within the past 3 years. (1 page)
6. Statement of Disclosure: Identification and description of any existing or potential conflicts of interest, including those that arise as a result of relationships or affiliations with utility companies
7. Project Fee and Cost Estimates: Provide a detailed schedule of fees, rates for key personnel, and estimated total range of hours available under the budget.
8. An explicit statement that the Implementer shall comply with the requirements of Form P-37 (version 2/23/2023).

## **VI. SELECTION PROCESS AND SCORING CRITERIA**

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

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

A. Selection Process

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

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

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

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

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

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

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

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

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

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

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

- Filing of a timely electronic proposal containing all mandatory elements; and
- Identification of personnel proposed to perform the work, and potential subcontractors, if applicable.

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

All proposals deemed ineligible shall receive notification of that determination.

Broadly, the Department will evaluate all proposals received and deemed eligible based upon completeness, clarity, quality of the proposal, how well the proposal meets the specified work scope and applicable timeline requirements, the qualifications and relevant experience of the consulting team, and the likelihood of the completion of all consulting work within the contract period. All proposals deemed eligible for consideration will be evaluated based upon the specific criteria identified.

## B. Scoring Criteria

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 Program Implementer(s). The

Department reserves the right not to consider any proposal with a total aggregate point score of less than 70 points.

- (a) Quality and Clarity of Proposal: Overall responsiveness to the requirements of the RFP, including completeness, clarity, and quality of proposal. (Maximum Point Score:5)
- (b) Essential Proposal Requirements: Implementer meets all eligibility requirements, general requirements and conditions. (Maximum Point Score: 10)
- (c) Qualifications of Implementer: The implementer has provided work experience, references, and description of Program Implementation. (Maximum Point Score: 20)
- (d) Relative Project Experience: The implementer has relative project experience to the proposed project. (Maximum Point Score: 35)
- (e) Current Resources: Implementer's capacity to fulfill standard requirements and conditions, supported by a track record of success and established tools for achievement. (Maximum Point Score: 15)
- (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 Implementer will be for a period of four years for fulfilling the scope of services describe above, plus an additional three-year post servicing period for technical support, data retention, and records management to assist with Department requests as needed. The contract term for fulfilling the scope of services described above may be extended for an additional four-year period or two two-year periods, to conduct the same or similar work and the not-to-exceed amount and hourly rates may be renegotiated, all at the sole option of the State, contingent upon satisfactory implementer performance, projected requirements for similar services, and New Hampshire Governor and Executive Council approval. Each such contract extension shall be accompanied by a three-year post servicing period. The term of the contract with any Implementer for fulfilling the scope of services described above will be from the date the New Hampshire Governor and Executive Council approval through December 30, 2028.

## **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 non-material to the proposal, solely as it deems to be in the best interests of the State; to negotiate with any selected firm or individual 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 implementer. In the event that the Department determines to contract with more than one implementer, the Department reserves the right to assign components of the contract 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 New Hampshire Governor and Executive Council with payment subject to and contingent upon State receipt and acceptance of federal funds for this program. General funds will not be requested to support the contract resulting from this RFP.
2. The Department reserves the right to request additional information from any or all Implementers to assist in the evaluation process.
3. Confidentiality of Proposal Materials; Public Disclosure:

A Implementer's disclosure or distribution of proposals other than to the Department may be grounds for disqualification. Each Implementer 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 Implementer acknowledges that the Department is subject to the Right-to-Know Law, RSA Chapter 91-A. The content of each Implementer'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 implementer has violated the original copyright. **If a Implementer copyrights its proposal materials, then by submitting the copywritten proposal, the Implementer 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 Implementer asserts is exempt from public disclosure, **the Implementer 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 Implementer’s response to this RFP. The Implementer 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 implementer 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 implementer 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 implementer has properly and clearly marked “confidential,” the Department shall notify the Implementer 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 Implementer’s responsibility at the Implementer’s sole expense. If the implementer 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 Implementer, or in its notice to any other relevant parties, without any liability to the Implementer.

4. By submitting a proposal, a Implementer agrees that in no event shall the Department be either responsible for or held liable for any costs incurred by the implementer 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 Implementer 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. Implementers 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 Implementer shall be required to submit a Taxpayer Identification Number (TIN), Employer Identification Number (EIN), or Social Security Number (SSN), and to register as a vendor with the State of New Hampshire.
8. Federal Funding Requirements: Implementers 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 Public Law 117-169 Inflation Reduction Act (IRA)
9. The terms and conditions set forth in the State’s Form P-37 (version 2/23/2023) “Agreement, General Provisions” (General Provisions) for contracts, attached hereto as Appendix A, shall apply to the contract to be entered into with the selected Implementer. 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.

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); 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 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 deciding that the Implementer 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 here: <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2023-05.pdf>.

10. The Department and the USDOE reserve the right to issue updated reporting forms and information. Inspect and conduct monitoring of the Implementer's work. All electronic or physical program and financial records pertaining to a grantee's project shall be securely stored and retained for a minimum of three years post program end date.
11. 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 New Hampshire Governor and Executive Council.
12. 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 Implementer unless and until a binding written contract is executed between the Department and the Implementer, and approved by the New Hampshire Governor and Executive Council.
13. 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 Implementer. 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.
14. Non-Collusion: The Implementer'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 Implementers and without effort to preclude the Department from obtaining the best possible competitive proposal. Implementers who wish to submit joint proposals with others must clearly identify that the proposal is a "joint proposal" and must identify all Implementers in the first instance.
15. 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.

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

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

**When responding to this RFP, each implementer must explicitly indicate that the implementer shall comply with the requirements of Form P-37. To the extent a implementer believes that an exception to the standard form will be necessary for the implementer to enter into a contract, the implementer should raise that issue during the implementer question period.** The Department will review the question regarding the requested exception and respond that the exception is accepted, rejected, or note that the Department is open to negotiation regarding the requested exception at the Department's sole discretion. If a Implementer's exception is accepted, or is open to negotiation, the Department will, by means of posting the answer to the Implementer's question, and prior to the conclusion of the question response period, provide notice to all potential Implementers of the exception which has been accepted, or is open to negotiation, and indicate that exception is available to all potential implementers. 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 Implementer 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 (2/23/2023) General Provisions, Paragraph 14, "Insurance," please note that excess liability insurance in an equal amount may be substituted for up to \$1,000,000 of the per occurrence comprehensive general liability 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 Implementer will be required to fill in the P-37 Form (version 2/23/2023) ONLY upon the Department's selection of its proposal, and prior to submission of the final contract for review and approval by the Commissioner of the Department and, if applicable, the New Hampshire Governor and Executive Council.**

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

Certificate of Good Standing (CGS)	<p>Domestic business entities shall provide a certificate of good standing from the New Hampshire Secretary of State.</p> <p>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 New Hampshire Secretary of State.</p>
Corporate resolution (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	Implementer 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	<p>Implementers must obtain a UEI from SAM and provide proof of active SAM registration and a valid UEI number throughout the lifetime of the project.</p> <p>All implementers and subcontractors involved in a implementer's project must also obtain a UEI from SAM and provide the UEI to the implementer during contract negotiation.</p> <p>Implementers, contractor, and subcontractors must not be debarred from working on projects with Federal funds.</p>

With the exception of proof of active and valid SAM registration, the selected Implementer will be required to provide the above certificates ONLY upon the Department's selection of their proposal, and prior to submission of the final contract for review and approval by the Commissioner of the Department and the New Hampshire Governor and Executive Council.

**X. ETHICAL REQUIREMENTS**

From the time this RFP is published until a contract is awarded, no implementer 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 implementer that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any implementer 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 implementer shall be disqualified from bidding on any RFP or similar request for submission issued by any State agency. A implementer that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the Department of Administrative Services, which shall note that information on the list maintained on the State's internal intranet system, except in the case of annulment the information shall be deleted from the list.

**APPENDIX A. FORM P-37**

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

**FORM NUMBER P-37 (version 2/23/2023)**

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  <p align="right">Date:</p>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  <p align="right">Date:</p>		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By: _____ On: _____			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i>  G&C Item number: _____ G&C Meeting Date: _____			



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

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

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

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

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

**4. CONDITIONAL NATURE OF AGREEMENT.**

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

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

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

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The

payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services.

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

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

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

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

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

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

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

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the

Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

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

## 8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

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

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

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

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

## 9. TERMINATION.

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

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

## 10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word "Property" shall mean all data, information and things developed or obtained during the performance of, or acquired or developed by reason of, this

Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

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

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

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

## 12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

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

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

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

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

contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

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

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

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

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

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

**15. WORKERS' COMPENSATION.**

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

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

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

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

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CHOICE OF LAW AND FORUM.**

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

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

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

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

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

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

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

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

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