

**State of New Hampshire Department of Energy**



**U.S. Department of Energy  
Building Infrastructure Law – State Energy Program  
Davis-Bacon and Related Acts Compliance Consultant  
ALN: 81.041  
FAIN: DE-EE0010086**

**REQUEST FOR PROPOSALS (RFP)  
RFP #2024-009**

**Release Date: July 26, 2024  
Proposals Due: September 26, 2024 at 12:00 p.m. (Noon) EST**

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## EXECUTIVE SUMMARY

The New Hampshire Department of Energy (Department) is seeking proposals for consultant(s) to manage and monitor Davis-Bacon and Related Acts (DBRA) labor compliance requirements for federally funded projects on behalf of the Department. The Department has four different programs that follow DBRA compliance totaling roughly \$17 million in federal funding over a four-year period with the potential of a two-year extension. Women-owned and/or minority owned businesses are strongly encouraged to apply.

Electronic proposals must be received at the Department no later than 12:00 p.m. (Noon) EST on September 26, 2024. If the Department decides to award a contract at the conclusion of this RFP, any award is contingent upon approval by the New Hampshire Governor and Executive Council.

### Pertinent Dates and Information

#### 1. **Schedule of Events**

<b>Event</b>	<b>Date/Deadline</b>	<b>Time</b>
RFP Issued	07/26/24	
Question Period Closes	08/08/24	4:30 PM
Responses to Questions Posted	08/15/24	12:00 PM (Noon)
Proposal Due Date and Time	09/26/24	12:00 PM (Noon)
Anticipated Contract Start Date	November, 2024	

#### 2. **Vendor 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 #2024-009, Davis-Bacon and Related Acts Compliance Consultant.**" **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 proposer'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 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 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: **"2024-009, Davis-Bacon and Related Acts Consultant."** Please include the 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 proposer 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**

The Davis-Bacon Act (DBA) applies to contracts in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating, where the United States or the District of Columbia is a direct party to the contract. DBA specifies that each covered contract contain provisions, found at Title 29 CFR 5.5, requiring contractors to pay the laborers and mechanics employed on the project's site of the work, on a weekly basis, no less than the wages and benefits that are prevailing in the area as determined by the United States Secretary of Labor. Construction includes activities performed on the site of the work such as preparation for construction (e.g., demolition of existing structures, equipment and material set-up, etc.), fabrication of materials, installation of materials, and post-construction clean-up. The federal agency awarding the contract must make the determination that DBA applies to the project and must incorporate the applicable DBA clauses and wage determinations (also referred to as "wage decisions") into the requirements of the contract.

### **PROGRAMS COVERED**

The programs covered by this solicitation includes the following:

#### **State Energy Program, Bipartisan Infrastructure Law (SEP-BIL)**

- Program funding amount (estimated): \$1,150,000
- Anticipated number of subgrants (estimated): 9
- Program design background:
  - Program SEED: The Department issues a competitive solicitation each year for school districts undertaking energy efficiency projects in their buildings. It is estimated that no more than 8 projects of this type will be awarded during the duration of available funding.
  - Program: DAS MOU. The Department enters into a Memorandum of Understanding with the state's Department of Administrative Services to undertake energy efficiency projects at state owned buildings.
- Estimated timeframe of program duration: No later than June 2028.

#### **Energy Efficiency Conservation Block Grant (EECBG),**

- Program funding amount: \$1,480,000
- Anticipated number of subgrants (estimated): 7
- Program design background: Department has developed a Municipal Solar Grant Program to subgrant its EECBG Program dollars to municipalities to advance the development and construction of solar photovoltaic projects that will reduce a municipality's energy costs.
- Estimated timeframe of program end: No later than October 2026.

**Preventing Outages and Enhancing the Resilience of the Electric Grid Grant Program,** referred to in New Hampshire as Funding Local Outage Reduction Advancements Program (FLORA) also commonly referred to as 40101(d) program.

- Program funding amount (estimated): \$13,500,000
- Anticipated number of subgrants (estimated): 5-15

- Program design background: Department has developed this program to subgrant funding to the nine electric distribution utilities in the state to improve the resilience of their electric grids.
- Estimated timeframe of program duration: No later than April 2028. However, US DOE has indicated that awards may be extended to span the amount of time necessary to complete all subgrant project efforts, up to 10 years. (i.e. April 2033).

### **Energy Efficiency Revolving Loan Fund (EERLF)**

- Program funding amount: \$748,072
- Anticipated number of subgrants: 1
- Program design background: This program will be managed by the New Hampshire Housing Finance Authority to perform energy efficiency projects on two to three multifamily residential buildings that they either own or have financed.
- Estimated timeframe of program duration: Late 2026. Federal program guidance has indicated that DBA will only apply to the initial loans made with these funds and that principal repayments and interest are not subject to DBA.

### **QUALIFICATIONS**

Proposers must meet the following minimum qualifications to be eligible:

1. Provide proof of active registration in the Federal System of Award Management (SAM) website and have a Unique Entity Identifier (UEI) number (entities that are actively registered in SAM will automatically be given a UEI);
2. Not debarred from SAM and unable to work on projects funded with Federal funds;
3. Has ability to manage Federal funds and meet reporting requirements;
4. Must have measures in place to secure Personal Identification Information;
5. At least three to five years of experience monitoring federal prevailing wage requirements;
6. Demonstrated experience using LCPtracker as required by U.S. Department of Energy (USDOE);
7. Demonstrated experience providing technical assistance on Davis-Bacon federal prevailing wage rules; and
8. Able to immediately assume services upon execution of a contract resulting from this RFP process.

Upon award, the selected proposer (Contractor) should be prepared to sign certain assurances and exhibits including: Drug Free Workplace; Lobbying; Americans with Disabilities Act (ADA) compliance; Environmental Tobacco Smoke; and Federal Funding and Accountability Act (FFATA) compliance.

## II. SCOPE OF SERVICES AND DELIVERABLES

### Davis-Bacon and Related Acts Overview

The Contractor shall perform, as agent(s) of the Department, of the Departments' responsibilities and obligations as local contracting agency, outlined below, with respect to certain projects as described or referenced in the following federal statutes, regulations, and any publications, handbooks guidance memos or letters issued respectively by U.S. Department of Labor (USDOL) or USDOE thereto:

- (1) Federal Statutes:
  - a. Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7);
  - b. Copeland Act (40 U.S.C. 276c); and
  - c. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
  
- (2) Federal Regulations:

U.S. Department of Labor (29 CFR Parts 1, 3, 5, 6 and 7).

The Contractor shall be required to provide these services for projects at multiple locations throughout the State.

### Davis-Bacon and Related Acts Process

- Submit and obtain from the website System for Award Management ([SAM.gov](https://sam.gov)) local prevailing wage determination issuances for affected trades in identified development projects.
- Ensure that the appropriate local prevailing wage decisions, as issued by USDOL, are included in project contract specifications; and provide other related services as directed by the Department.
- Indicate that employees are paid no less than the wage rate for assigned work classification.
- Ensure fringe benefits are appropriate and eligible, where appropriate request details.
- Include employee signed authorization for deductions other than official fringe and standard deductions.
- Ensure the posting, in a prominent and accessible place, of the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects, are posted at all project sites.
- Examine payroll data (timecards, tax records, evidence of fringe benefit payment) that supports Weekly Payroll Reports in LCPtracker system.
- If a subcontractor has not performed work for that week, the subcontractor must submit a 'No Work Performed' certified payroll.
- Identification of incomplete reports.
- Identify possible "red flags" compliance issues.
- Conduct on-site interviews with employees of subcontractors and/or subrecipients and maintain a record thereof.

- Use Standard Form 1445 as the basis for all worker interviews. Individual worker interview responses shall be documented and added to the compliance file for each assigned contract in LCPtracker. If any employee is interviewed on-site, Standard Form 1445 must be completed and submitted with any monthly reports.
- Review and compare information on interview forms and returned mailed questionnaires to corresponding payrolls to determine consistency with hours and days worked, work classification and rate of pay.
- Include apprentice or trainee certifications from approved program, where appropriate.
- Review monthly certified payrolls for compliance with the Apprenticeship Act legislation.
- Review the number of apprentices by classification to ensure apprentices are registered with USDOL.

### **Compliance Issues**

- Contact the appropriate agencies to verify contractors have appropriate construction licenses.
- Verify the eligibility of the general contractor and all subcontractors to participate in federal programs. If it is discovered that a general contractor or a subcontractor is listed on the debarment list, the Contractor shall immediately notify the Department.
- Conduct investigations of general contractor and subcontractors as may be necessary to ensure compliance with federal labor standards. The Contractor shall promptly notify the Department of any investigation. Such investigation shall include, but not be limited to, the following information:
  - Promptly provide written notification to the general contractor and/or subcontractors (as applicable) to correct within 30 days of receipt of such notice any underpayments found in any Weekly Payroll Report or any other violation of federal labor standards described herein (e.g., overtime violations).
  - Within such notification, the Contractor shall provide instructions for computing the restitution to be paid (and any liquidated damages) and documenting the restitution in any corrected Weekly Payroll Report to be submitted to the Contractor. The Contractor shall promptly provide the Department with a copy of the notification. If the correction is not made within the 30-day period, then the Contractor will promptly make a recommendation to the Department with respect to further corrective action to be taken by the Department which shall include, but not be limited to, withholding of loan disbursements, establishment of deposits or escrows and/or recommendations of administrative sanctions to Department and/or USDOL including debarment or suspension proceedings;
  - The Contractor will document any compliance-related violation enforcement activity by the contracting officer and inform all parties, in writing, of any recommended action, or additional information requested. This written communication shall include information relating to issues



and/or potential violations and associated due dates for responding to these potential concerns.

- Notifying the USDOL Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; USDOL investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.
- Prepare a USDOL Section 5.7 enforcement report for the Department to be submitted to the Secretary of the USDOL on all enforcement actions including, but not limited to, cases where under payments by the general contractor or subcontractor total \$1,000 or more, or where there is reason to believe that violations are aggravated or willful. Such reports must be submitted to USDOE for review within forty-five days of completion of the investigation which will allow USDOE fifteen days to review and submit to USDOL.
- The Contractor shall fully cooperate with and assist the Department in any administrative hearing, or civil or criminal proceeding, and any appeals thereof, with respect to the compliance of the general contractor or subcontractors with federal labor standards described herein regarding the project by, among other things, making recommendations for action, gathering and interpreting information, and testifying as necessary.
- The Contractor will schedule follow-up meetings with projects subject to Davis-Bacon to discuss findings and enforcement activity, if routine reviews disclose compliance concerns.
- The Contractor will inform all parties, in writing, when all compliance-related follow-up is complete, and the matter is closed.

### **Retention Compliance**

- Maintain all Weekly Payroll Report(s) (including signed Statement(s) of Compliance) for a period of no less than three years from the date of completion of the applicable construction contract which shall be produced by the Contractor at the request of USDOL, USDOE or the Department, at any time during said three-year period.
- Employee data and employee statements received by the Contractor shall be governed by the Freedom of Information Act and the Privacy Act of 1974, NH RSA 91-A, and shall be kept confidential with the exception of the Contractor's disclosure to the Department in the course of the performance of its duties as agent thereof.

## **LCPtracker**

- Manage LCPtracker system as required by USDOE with "Full Admin" permissions and use on behalf of Department. Duties within the LCPtracker system will include but not limited to:
  - Manage project and wage determination set-up, confirm accurate and complete data has been included in LCPtracker by project contractors;
  - Approve/accept or reject submitted Certified Payroll Records each week;
  - Complete accurate and timely reporting; and
  - Maintain all additional compliance documentation in LCPtracker.

## **Training**

- Conduct Pre-Construction and On-Going Education and Training Meetings including LCPtracker trainings and technical assistance.

## **Reporting**

### Davis-Bacon Workforce Compliance Report (Quarterly & Semi-Annually)

The Contractor shall, after a thorough review, submit Quarterly and Semi-Annually reports of the findings and recommendations to the Department for workforce enforcement activities; such reports are to include the following information:

- A. Reporting Period
- B. Number of contractors/subcontractors against whom complaints were received
- C. Number of investigations completed
- D. Number of contractors/subcontractors found in violation
  - a. Name of contractor
  - b. Issue or concern
  - c. Expected response
  - d. Recommended date for requested information and/or response to question(s)
  - e. Detailed explanation, calculation and/or evidence to support Issue or Concern and expected response
- E. Amount of wage restitution found due
  - a. Davis-Bacon and Related Acts
  - b. Contract Work Hours and Safety Standards Act (Overtime Violations)
- F. Amount of back wages paid
  - a. Davis-Bacon and Related Acts
  - b. Contract Work Hours and Safety Standards Act
- G. Total number of employees due wage restitution under the Davis-Bacon and Related Acts and/or Contract Work Hours and Safety Standards Act
- H. Amount of liquidated damages assessed under Contract Work Hours and Safety Standards Act

If there are no concerns about any subcontractor or the assigned project, the Contractor shall submit, in writing, that all records have been reviewed and there are no concerns. The

Contractor will not communicate these findings and/or recommendations verbally or in writing to any other entity without expressed written consent from the Department.

The Contractor shall prepare and submit to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis-Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

### III. COMPONENTS OF THE PROPOSAL

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

1. Table of Contents: A page to indicate the location by page number of the information included.
2. Description of Proposing Entity: A brief description of the proposing entity's current practice and history, i.e., how many years in business, corporate officers or company principals, office locations, professional and business association memberships, legal and organizational structure, submission of active SAM.gov registration and proof of Unique Entity Identifier.
3. Response to the Scope of Services: A discussion of how the proposer would perform the services, the resources the proposer would utilize, the issues and challenges the proposer foresees, etc. The response must contain sufficient detail to permit a meaningful evaluation.
4. Relevant Experience: A detailed description of the relevant experience of the proposer and/or those individuals expected to work on the project, as well as a description of the anticipated division of duties among individuals, if applicable. Please ensure that all items identified in the Scoring Criteria and Weight, Section c. (Qualifications), Section d. (Communications), and Section e. (Confidence in proposer's Ability to Meet Timelines) are addressed. Also include:
  - a. Any existing data management system capabilities.
  - b. Any existing LCPtracker system capabilities as this system is required by USDOE for these federal funds.
5. References: Three current references from principles at other entities with whom the proposer was involved and that are similar in scope and content to the one being proposed. References demonstrating proposers experience with DBRA and LCPtracker are preferred.
6. Budget: Detailed cost proposals for each of the programs described in Section I, with a budget narrative explaining that proposal.

Any component of the proposal that the proposer expects to subcontract to another entity should be identified, with the estimated costs and the subcontractor's identity, if known.

Davis-Bacon and Related Acts Compliance Consultant is a reimbursement grant that requires activities to be completed and documented before payment is released.

7. Statement of Disclosure: Any existing or potential conflicts of interest that might compromise or appear to compromise the selection and delivery of training activities should be identified, including those that arise as a result of familial or financial relationships or affiliations with employees at the Department.
8. An explicit statement that the proposer shall comply with the requirements of Form P-37 (version 2/23/2023).

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

In addition to cost, the Department will consider many other criteria when reviewing proposals. Knowledge and practical experience that the proposer possesses, including that of its staff and any subcontractors assigned to the engagement. Experience and qualifications in providing similar services in New Hampshire, as well as other states. Proposed scope of work and overall responsiveness to the requirements of the RFP, including completeness, clarity, and quality of the proposal. Interviews, if performed and references, if contacted.

##### **A. Selection Process**

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

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

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

Step 3 Final Evaluation: If determined to be appropriate by the Evaluation Team, proposers may be invited to oral interviews. The Department retains the sole discretion to determine whether to conduct oral interviews, with which proposers, and the number of interviews. proposers are advised that interviews may be conducted with fewer than all proposers.

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

If determined to be appropriate by the Evaluation Team, references will be reviewed and/or contacted during Step 3. The information gained from oral interviews and references will be used to refine scores assigned during the Step 2 review and evaluation of the proposal.

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

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

Notwithstanding any other provision of this RFP, this RFP does not commit the Department to make an award of a contract. The Department reserves the right, at its sole discretion, to reject any or all proposals, or any portions thereof, for any reason, at any time, including, but not limited to, canceling the RFP, and soliciting new proposals under a new procurement process. Proposals shall be deemed incomplete and ineligible if information essential to the scoring evaluation is not included. Proposals that fail to meet the following requirements will be deemed ineligible:

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

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

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 Contractor. 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: 10**
- b. **Soundness of Proposed Plan of Approach:** The proposal discusses in detail how the proposer plans to perform the services and how resources will be deployed.  
**Maximum Point Score: 20**
- c. **Qualifications of proposer; Knowledge and Experience; Capacity:** The proposer (and staff assigned to perform the services) possesses adequate experience, credentials, knowledge of DBRA and LCPtracker software, and staff capacity to provide training and technical assistance services, including the ability to perform additional work should the scope of services need to be increased.  
**Maximum Point Score: 30**
- d. **Communication Skills:** The proposer has demonstrated the ability to effectively communicate with Program Grantees, Subgrantees, and Program clients and the ability to communicate technical information clearly, verbally, and in writing.  
**Maximum Point Score: 15**
- e. **Confidence in proposer's Ability to Meet Timelines:** The proposer has demonstrated the capacity to meet project deadlines, including report submission.  
**Maximum Point Score: 10**
- f. **Budget:** Shows fiscal responsibility, reasonableness of costs, and understanding of available project funds.  
**Maximum Point Score: 15**

## V. **TERM OF CONTRACT**

The term of the contract with any selected proposer(s) will be for a period of four years. The contract term may be extended up to two additional one-year periods to conduct the same or similar work and the not-to-exceed amount may be increased, all at the sole option of the State, contingent upon satisfactory Contractor performance, projected requirements for similar consulting services, and Governor and Executive Council approval.

## VI. 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(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.
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 proposer is boycotting Israel.
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.

## VII. 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 indicate that the proposer shall comply with the requirements of Form P-37.** To the extent a proposer believes that an exception to the standard form will be necessary for the proposer to enter into a contract, the proposer should raise that issue during the 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 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 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 (2/23/2023) General Provisions, Paragraph 14, "Insurance," please note that proposers may be allowed to substitute professional liability insurance for part or all of the per occurrence comprehensive general liability insurance coverage. In addition, excess liability insurance in an equal amount may be substituted for up to \$1,000,000 of the per occurrence comprehensive general liability or professional liability insurance coverage. The State reserves the right to consider further waiving or modifying the insurance requirements in Paragraph 14 based on inquiries and proposals submitted, consistent with the procedure described above.

**A proposer will be required to fill in the P-37 Form (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 Governor and Executive Council.**

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

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	<p>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.</p> <p>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.</p>

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 for review and approval by the Commissioner of the Department and the New Hampshire Governor and Executive Council.

### **VIII. ETHICAL REQUIREMENTS**

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

**APPENDIX A. FORM P-37**

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

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/SUBCONTRACT S.**

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.