



New Hampshire Department of  
**BUSINESS AND  
ECONOMIC AFFAIRS**



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF BUSINESS AND ECONOMIC AFFAIRS**

**Fiscal Impacts of Various Housing Types**

**RFP 2024-13**

# Table of Contents

SECTION 1 – Overview and Schedule .....	4
A. Executive Summary .....	4
B. Schedule .....	4
C. Description of Agency or Program issuing the Request for Proposals .....	4
D. Vendor Instructions .....	5
SECTION 2 – Proposed Scope of Work .....	5
SECTION 3 -- Contract Terms and Conditions .....	6
A. Non-Exclusive Contract .....	6
B. Award .....	6
C. Standard Contract Terms.....	6
SECTION 4 –Request for Proposal Process.....	6
A. Agency Point of Contact/Restriction of Contact with Agency Employees .....	6
B. Vendor Inquiries.....	7
SECTION 5 – RFP Terms and Conditions.....	7
A. Debarment .....	7
B. Proposal Preparation Cost .....	7
C. Validity of Proposal .....	8
D. RFP Addendum .....	8
E. Non-Collusion .....	8
F. Property of BEA.....	8
G. Proposal Confidentiality.....	8
H. Public Disclosure.....	8
I. Electronic Posting of RFP Results and Resulting Contract .....	9
J. Non-Commitment.....	10
K. Ethical Requirements .....	10
L. Challenges to Identification of Selected Vendor.....	10
SECTION 6 – Evaluation of Proposals .....	11
A. Criteria for Evaluation and Scoring .....	11
B. Planned Evaluations .....	11
C. Initial Screening .....	11

D.	Preliminary Technical Scoring of Proposals .....	12
E.	Oral Interviews and Product Demonstrations .....	12
F.	Final Technical Scoring of Proposals.....	12
G.	No Best and Final Offer .....	12
H.	Final Selection.....	12
I.	Rights of BEA in Accepting and Evaluating Proposals .....	12
SECTION 7 – Process for Submitting a Proposal .....		13
A.	Proposal Submission, Deadline, and Location Instructions.....	13
SECTION 8 – Proposal Content and Requirements .....		13
APPENDIX A: Form P-37, Standard Contract Form.....		15

## **SECTION 1 – Overview and Schedule**

### **A. Executive Summary**

New Hampshire’s Department of Business and Economic Affairs (“BEA” or “the Agency”) seeks proposals from qualified Vendors to create an interactive online tool that evaluates the fiscal impacts on municipal services of different housing types.

The purpose of this tool is to assist municipal officials and members of the public in determining the development decisions that will best serve their communities in meeting their housing needs from a cost and revenue standpoint.

The term of the contract will be from the first day after the next available Governor and Executive Council date in August 2024, through that date in November 2024. BEA will enter into a “Firm Fixed-Price/Not to Exceed” contract with the Vendor.

BEA seeks proposals from economic development professionals with proven abilities to provide services as described in Section 2 (Proposed Scope of Work) of this RFP. The Selected Vendor must ensure compliance with all federal guidance and regulations, including the applicable requirements of 2 Code of Federal Regulations (CFR) Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards).

### **B. Schedule**

The following table provides a Schedule of Events for this RFP through contract finalization and approval. BEA reserves the right to amend this Schedule at its sole discretion and at any time through a published Addendum. As referenced below, “Local Time” is Eastern Daylight Time.

<b>EVENT</b>	<b>DATE</b>	<b>LOCAL TIME</b>
RFP Released to the Public (Advertisement)	May 30, 2024	
Vendor Inquiry Period Ends	June 06, 2024	4:00 PM
Final Agency Responses to Inquiries	June 10, 2024	4:00 PM
Proposers Submit Proposals Due	July 1, 2024	4:00 PM
Notification of Selection and Begin Contract Negotiations	July 3, 2024	

### **C. Description of Agency or Program issuing the Request for Proposals**

The Department of Business and Economic Affairs, home of the Office of Planning and Development, is dedicated to enhancing the economic vitality of New Hampshire while promoting the state as a destination for domestic and international visitors. For more information visit [www.nheconomy.com](http://www.nheconomy.com).

"Selected Vendor" means the qualified person or entity that submits a proposal that BEA awards the highest score according to the criteria set forth in this RFP.

## **D. Vendor Instructions**

Interested Vendors must read this RFP in its entirety and submit required information and documents in the manner it prescribes. Vendors are responsible for reviewing the most updated information related to this RFP before submitting their proposals.

### **SECTION 2 – Proposed Scope of Work**

The shortage of all types of housing throughout New Hampshire is well documented in the Statewide Housing Needs Assessment published by New Hampshire Housing in 2023, and in the Regional Housing Needs Assessments, published by the Regional Planning Commissions, also in 2023. (Both can be found online at [www.nheconomy.com](http://www.nheconomy.com)).

Municipal officials are increasingly looking for strategies to address the housing needs of their communities. To adopt effective policies, the costs on municipal services and tax revenue benefits of different development types must be better understood. BEA seeks a Vendor to develop an interactive online model that estimates costs and benefits on municipal budgets of the development of various housing types.

The model is intended to be a practical and educational tool for elected officials, municipal staff, and members of the public. The model is intended to assist municipal officials in making informed policy decisions about which types of housing would be the greatest net benefit to their communities.

The model should be accessible online, whether through an interactive tool or other more cost-effective method, if appropriate. The consultant should include a strategy for online delivery in their proposal, with multiple cost options if various strategies are envisioned.

Project deliverables should include:

- Differentiation of municipalities. New Hampshire is composed of a wide range of communities with different geographies and population sizes. The analysis should utilize a strategy that meaningfully differentiates municipalities for evaluation purposes.
- Identification of housing types. At a minimum, single family, duplex, and multifamily housing should be evaluated. Age-restricted or other housing types could be included to the degree that fiscal impacts may differ substantially.
- Defining of municipal infrastructure. The model should consider the cost of emergency services such as police, fire, and ambulance; maintenance or expansion of public works facilities such as water, sewer, and transportation systems; the impact to schools; and impacts on any other public facilities as identified by the consultant.

- Method of utilization. Explain how the information will be accessed online. Describe the inputs and outputs, if applicable. Define the output indicator, for instance whether cost per unit, cost per area of land, effect on tax rate, etc.

As a minimum requirement, vendor must demonstrate experience with providing consulting services the same as or equivalent to all of those outlined in the Scope of Work. Vendors that fail to meet this requirement will not receive further consideration.

### **SECTION 3 -- Contract Terms and Conditions**

#### **A. Non-Exclusive Contract**

Any resulting Contract from this RFP will be a non-exclusive Contract. BEA reserves the right, at its discretion, to retain other contractors to provide any of the services or deliverables identified in this RFP or make an award by item, part or portion of an item, group of items, or total Proposal.

#### **B. Award**

If BEA decides to award a contract as a result of this RFP process, any award is contingent upon approval of the contract by the Governor and Executive Council of the State of New Hampshire and upon continued appropriation of funding for the contract.

#### **C. Standard Contract Terms**

BEA will require the selected vendor to execute a contract using the Standard Terms and Conditions of the State of New Hampshire (Form P-37) which is attached as Appendix A. In no event is a vendor to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this solicitation.

The terms of this RFP and the selected Applicant's Proposal will be used to form the terms of any resulting contract. The resulting contract may incorporate some or all of the selected Applicant's Proposal. References in the P-37 to Exhibits A, B and C are references to the required structure of any resulting contract (Exhibit A – Special Provisions/Amendments to the P-37, Exhibit B – Scope of Services, and Exhibit C – Payment Terms) and are not references to sections of this RFP.

To the extent that an Applicant believes that exceptions to the contract terms in Appendix A will be necessary for the vendor to enter into the contract, the vendor must note those issues during the Vendor Inquiry Period, as further described Section 4B.

### **SECTION 4 –Request for Proposal Process**

#### **A. Agency Point of Contact/Restriction of Contact with Agency Employees**

The sole point of contact for this RFP, from the RFP issue date until the approval of the resulting contract by the Governor & Executive Council is:

[planning@livefree.nh.gov](mailto:planning@livefree.nh.gov)

From the date of release of this RFP until an award is made and announced regarding the selection of a vendor, all communication with personnel employed by or under contract with BEA regarding this RFP is prohibited unless first approved by the RFP Sole Point of Contact. Agency employees have been directed not to hold conferences and/or discussions concerning this RFP with any potential contractor during the selection process, unless otherwise authorized by the RFP Sole Point of Contact. Vendors may be disqualified for violating this restriction on communications.

### **B. Vendor Inquiries**

All inquiries concerning this RFP, including but not limited to, requests for clarifications, questions, any changes to the RFP, and any exceptions to the contract terms in Appendix A, including the Form P-37, shall be submitted via email to BEA Point of Contact specified above. Inquiries must be received by the end of vendor inquiry period (see Schedule of Events herein).

The vendor must identify the RFP name and the number and include the vendor's name, telephone number, and e-mail address.

BEA will issue responses to properly submitted inquiries on or before the date specified in the Schedule of Events; however, this date is subject to change at BEA's discretion. BEA may consolidate and/or paraphrase questions for sufficiency and clarity. BEA may, at its discretion, amend this RFP on its own initiative or in response to issues raised by inquiries, as it deems appropriate. **In response to requested exceptions to P37, BEA will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion. Questions about or requested exceptions to the RFP, Form P-37 and/or any relevant attachments not raised during the inquiry period are waived.** Oral statements, representations, clarifications, or modifications concerning the RFP shall not be binding upon BEA. Official responses by BEA will be made only in writing by the process described above. Vendors shall be responsible for reviewing the most updated information related to this RFP before submitting a proposal.

## **SECTION 5 – RFP Terms and Conditions**

### **A. Debarment**

Vendors who are ineligible to bid on proposals, bids or quotes issued by the Department of Administrative Services, Division of Procurement and Support Services pursuant to the provisions of RSA 21-I:11-c shall not be considered eligible for an award under this RFP.

### **B. Proposal Preparation Cost**

By submitting a proposal, a vendor agrees that in no event shall BEA be either responsible for or held liable for any costs incurred by a vendor in the preparation of or in connection with the Proposal, or for work performed prior to the Effective Date of a resulting Contract.

**C. Validity of Proposal**

Proposals must be valid for one hundred and eighty (180) days following the deadline for submission of Proposals in Schedule of Events, or until the Effective Date of any resulting Contract, whichever is later.

**D. RFP Addendum**

BEA reserves the right to amend this RFP at its discretion, prior to the Proposal submission deadline. In the event of an addendum to this RFP, BEA, at its sole discretion, may extend the Proposal submission deadline, as it deems appropriate.

**E. 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 BEA from obtaining the best possible competitive Proposal.

**F. Property of BEA**

All material received in response to this RFP shall become the property of BEA and will not be returned to the vendor. Upon contract award, BEA reserves the right to use any information presented in any Proposal.

**G. Proposal Confidentiality**

Unless necessary for the approval of a contract, the substance of a proposal must remain confidential until the Effective Date of any Contract resulting from this RFP. A Proposer's disclosure or distribution of Proposals other than to BEA may be grounds for disqualification.

**H. Public Disclosure**

The information submitted in response to this RFP (including all materials submitted in connection with it, such as attachments, exhibits, addenda, and presentations), any resulting contract, and information provided during the contractual relationship may be subject to public disclosure under Right-to-Know law, including RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP will be made accessible to the public online via the website Transparent NH (<http://www.nh.gov/transparentnh/>).

Confidential, commercial, or financial information may be exempt from public disclosure under RSA 91-A:5, IV. If a vendor believes any information submitted in response to this RFP should be kept confidential, the vendor must specifically identify that information where it appears in the submission in a manner that draws attention to the designation and must mark/stamp each



page of the materials that the vendor claims must be exempt from disclosure as “CONFIDENTIAL.” Vendors must also provide a letter to the person listed as the point of contact for this RFP, identifying the specific page number and section of the information you consider to be confidential, commercial, or financial and providing your rationale for each designation. Marking or designating an entire proposal, attachment or section as confidential shall neither be accepted nor honored by the State. Vendors must also provide a separate copy of the full and complete document, fully redacting those portions and shall note on the applicable page or pages that the redacted portion or portions are “confidential.”

Submissions which do not conform to these instructions by failing to include a redacted copy (if necessary), by failing to include a letter specifying the rationale for each redaction, by failing to designate the redactions in the manner required by these instructions, or by including redactions which are contrary to these instructions or operative law may be rejected by the State as not conforming to the requirements of the proposal.

Pricing, which includes but is not limited to the administrative costs and other performance guarantees in Proposals or any subsequently awarded contract shall be subject to public disclosure regardless of whether it is marked as confidential.

Notwithstanding a Vendor’s designations, the State is obligated under the Right-to-Know law to conduct an independent analysis of the confidentiality of the information submitted in a proposal. If a request is made to the State to view or receive copies of any portion of the proposal, the State shall first assess what information it is obligated to release. The State will then notify the Vendor that a request has been made, indicate what, if any, information the State has assessed is confidential and will not be released, and specify the planned release date of the remaining portions of the proposal. To halt the release of information by the State, a Vendor must initiate and provide to the State, prior to the date specified in the notice, a court action in the Superior Court of the State of New Hampshire, at its sole expense, seeking to enjoin the release of the requested information.

By submitting a proposal, Vendors acknowledge and agree that:

- The State may disclose any and all portions of the proposal or related materials that are not marked as confidential and/or which have not been specifically explained in the letter to the person identified as the point of contact for this RFP;
- The State is not obligated to comply with a Vendor’s designations regarding confidentiality and must conduct an independent analysis to assess the confidentiality of the information submitted in your proposal; and
- The State may, unless otherwise prohibited by court order, release the information on the date specified in the notice described above without any liability to a Vendor.

#### **I. Electronic Posting of RFP Results and Resulting Contract**

At the time of receipt of proposals, BEA will post the number of responses received with no further information. No later than five business days prior to submission of a contract to the Department of Administrative Services, BEA will post the ranks or scores of each responding Vendor. In the event that the contract does not require Governor & Executive Council approval,

BEA will disclose the rank or score at least five business days before final approval of the contract.

Pursuant to RSA 91-A and RSA 9-F:1, the Secretary of State will post to the public any document submitted to G&C for approval, including contracts resulting from this RFP, and posts those documents on its website (<https://sos.nh.gov/administration/miscellaneous/governor-executive-council/>). By submitting a proposal, vendors acknowledge and agree that, in accordance with the above-mentioned statutes and policies, (and regardless of whether any specific request is made to view any document relating to this RFP), any contract resulting from this RFP that is submitted to G&C for approval will be made accessible to the public online.

#### **J. Non-Commitment**

Notwithstanding any other provision of this RFP, this RFP does not commit BEA to award a contract. BEA reserves the right, at its sole discretion, to reject any and all proposals, or any portions thereof, at any time; to cancel this RFP; and to solicit new proposals under a new acquisition process.

#### **K. Ethical Requirements**

From the time this RFP is published until a contract is awarded, no vendor shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any vendor that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any vendor 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 the RFP, or similar request for submission and every such vendor shall be disqualified from bidding on any RFP or similar request for submission issued by any state agency. A vendor 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.

#### **L. Challenges to Identification of Selected Vendor**

Within five business days of BEA's posting of the rank or score on its website, vendors may, in accordance with RSA 21-G:37, request that BEA review its selection process. The request must be in writing and must specify all points on which the Vendor believes BEA erred in its process and shall contain such argument in support of its position as the vendor seeks to present. In its request for review, a Vendor shall not submit, and an agency will not accept nor consider, any substantive information that was not included in the original proposal. BEA will respond to the request within five business days of its receipt.

## SECTION 6 – Evaluation of Proposals

### A. Criteria for Evaluation and Scoring

BEA will evaluate each responsive Proposal using a scoring scale of 100 points, which will be distributed as set forth in the table below.

CATEGORIES	POINTS
TECHNICAL PROPOSAL with the following potential maximum scores for each Technical Proposal category;	<b>100</b>
Experience and qualifications of key staff and subcontractors	30
Overall strategy and approach, methodology	40
Creativity/Innovation	10
Budget approach and cost effectiveness	20
<b>TOTAL MAXIMUM POINTS</b>	<b>100</b>

BEA will select a Vendor based upon the criteria and standards contained in this RFP and from applying the weighting in this section. Oral interviews and reference checks, to the extent they are utilized by BEA, will be used to refine and finalize scores.

If the Agency decides to make an award based on these evaluations, BEA will notify the selected Proposer(s). Should BEA be unable to reach agreement with the selected vendor(s) during Contract discussions, BEA may then undertake Contract discussions with the next preferred vendor and so on, or BEA may reject all proposals, cancel this RFP, or solicit new Proposals under a new acquisition process.

### B. Planned Evaluations

BEA plans to use the following process:

- Initial screening to ensure that the Proposals are in compliance with submission requirements;
- Preliminary evaluation of the Proposals;
- Oral interviews and/or product demonstrations (if necessary);
- Final scoring of Proposal; and
- Final Selection: Select the highest scoring vendor and begin contract execution.

### C. Initial Screening

BEA will conduct an initial screening to verify Vendor compliance with the proposal submission requirements set forth in Sections 4 and 7. BEA may waive or offer a limited opportunity to cure immaterial deviations from the RFP requirements if it is determined to be in the best interest of the State.

#### **D. Preliminary Technical Scoring of Proposals**

BEA will establish an evaluation team to review for compliance of the minimum requirements as set forth in Section 2. This evaluation team will then review the technical proposals and give a preliminary score to the technical proposals under the guidelines set forth in Section 6. Price proposals **will** be considered during this review under the “budget approach/cost effectiveness of work” category. Vendors should provide, **at a minimum**, a lump sum price for all work.

#### **E. Oral Interviews and Product Demonstrations**

If BEA determines that it is appropriate, vendors may be invited to oral interviews and/or product demonstrations including demonstrations of any proposed automated systems or technology components. BEA retains the sole discretion to determine whether to conduct oral interviews, with which vendors; and the number of interviews. Vendors are advised that BEA may decide to conduct interviews with less than all responsive vendors.

The purpose of oral interviews and product demonstrations is to clarify and expound upon information provided in the written proposals. Vendors are prohibited from altering the basic substance of their proposals during the oral interviews and product demonstrations. BEA may ask the vendor to provide written clarifications of elements in their technical proposal regardless of whether it intends to conduct oral interviews.

Information gained from oral interviews and product demonstrations will be used to refine technical review scores assigned from the initial review of the proposals.

#### **F. Final Technical Scoring of Proposals**

Following oral interviews, product demonstrations, reference checks (if appropriate) and/or review of written clarifications of proposals requested by BEA, the evaluation team will determine a final score for each technical proposal. Vendors are advised that this **is not a low bid award** and that the scoring of the price proposal will be combined with the scoring of the technical proposal to determine the overall highest scoring vendor.

#### **G. No Best and Final Offer**

The Proposal should be submitted initially on the most favorable terms which the vendor can offer. There will be no best and final offer procedure.

#### **H. Final Selection**

BEA will conduct a final selection based on the final evaluation of the proposals or, if requested, as a result of the Best and Final Offer, and begin contract discussions with the selected vendor(s).

#### **I. Rights of BEA in Accepting and Evaluating Proposals**

BEA reserves the right, at its sole discretion, to:

- Make independent investigations in evaluating proposals

- Request additional information to clarify elements of a proposal
- Waive minor or immaterial deviations from the RFP and contract requirements, if determined to be in the best interest of the State
- Omit any planned evaluation step if, in BEA’s view, the step is not needed
- Reject any and all proposals at any time, and
- Open contract discussions with the second highest scoring vendor and so on, if BEA is unable to reach an agreement on contract terms with the higher scoring vendor(s).

## **SECTION 7 – Process for Submitting a Proposal**

### **A. Proposal Submission, Deadline, and Location Instructions**

Proposals submitted in response to this RFP must be received by the BEA no later than the Proposal Due Date and time specified in the Schedule of Events, herein. **Proposals must be submitted electronically** to the State’s designated Point of Contact:

[planning@livefree.nh.gov](mailto:planning@livefree.nh.gov)

Emails pertaining to this proposal must be clearly marked in the subject line as follows:

#### **Response To RFP: Fiscal Impacts of Various Housing Types DBEA 2024-13**

Unless waived as a non-material deviation in accordance with Section 6, late submissions will not be accepted. Delivery of the Proposals shall be at the Proposer’s expense. The time of receipt shall be considered when a Proposal has been officially documented by BEA, in accordance with its established policies, as having been received at the location designated above. BEA accepts no responsibility for misaddressed or mislabeled documents not delivered or undeliverable for whatever reason.

Files must be less than 10MB in size. If files are greater than 10MB in size, the vendor will be required to submit their proposal in parts. It is the vendors responsibility to ensure a complete proposal is submitted. It is recommended that an email with no attachments be sent to the contact person initially stating that email(s) containing the proposal are to follow.

## **SECTION 8 – Proposal Content and Requirements**

Proposals shall follow the format below and provide the information set forth:

- An introductory statement, not to exceed two (2) pages including:
  - Experience in providing services as described in the Section 2: Scope of Work

- Summary of technical proposal (with price and activities the Vendor will undertake to respond to the Scope of Work)
- Background and experience in providing consulting services to state governments
- Technical proposal addressing items listed in Section 2: Scope of Work
- Budget and proposed schedule, including for various online delivery options, if appropriate
- Resumes/portfolios of individuals or subcontractors performing major duties and functions, including role, responsibility, and qualifications.
- Relevant case studies of equivalent work and or online tools (no more than 2)

**APPENDIX A: Form P-37, Standard Contract Form**

**SAMPLE FORM TO BE COMPLETED UPON AWARD**

**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 Click or tap here to enter text.		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Unit and Class	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature  <div style="text-align: right;">Date:</div>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  <div style="text-align: right;">Date:</div>		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ 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.

