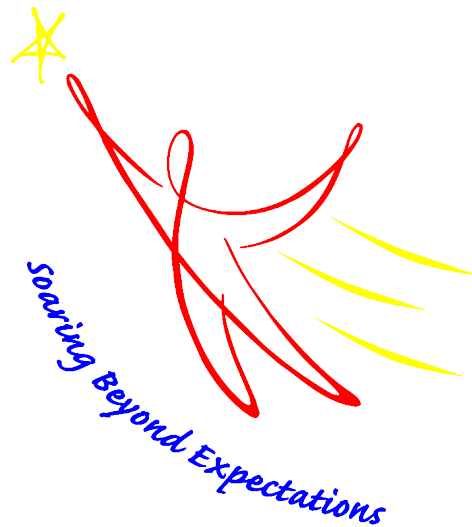




New Hampshire

Department of Education



Nita M. Lowey 21st Century Community Learning Centers (21st CCLC)

Comprehensive Statewide Evaluation Request for Proposals (RFP) 2022-2025

Published: 1/12/2022

Application Due Date: 2/02/2022

The New Hampshire Department of Education does not discriminate on the basis of race, color, religion, marital status, national/ethnic origin, age, sex, sexual orientation, or disability in its programs, activities and employment practices. This statement is a reflection of the Department of Education and refers to, but is not limited to, the provisions of the following laws: Title IV, VI and VII of the Civil Rights Act of 1964-race color, national origin, The Age Discrimination in Employment Act of 1967, The Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 (Title IX)-sex, Section 504 of the Rehabilitation Act of 1973 (Section 504)-disability, The Americans with Disabilities Act of 1990 (ADA)-disability, and NH Law against discrimination (RSA 354-A).

Auxiliary aids and services are available upon request to individuals with disabilities.

Section 1 – Overview and Schedule

A. Executive Summary

The New Hampshire Department of Education (NHDOE) is charged with ensuring performance standards are upheld by raising academic standards and measuring student performance to promote educational excellence and provide continuous improvement opportunities.

Federal legislation requires state education agencies which receive 21st CCLC funds to provide a comprehensive statewide evaluation of the effectiveness of programs, in accordance with the Measure of Effectiveness (*ESSA Section 4205(b)(1)*) and activities. The goals of the comprehensive statewide evaluation are to:

- a) identify characteristics associated with the effectiveness of 21st CCLC subgrantees and activities;
- b) collect and compile data to document the extent to which the 21st CCLC subgrantees are meeting their federal, state and local goals;
- c) analyze and disseminate statewide data findings and trends to NHDOE, its grantees, and other stakeholders to strengthen the out-of-school time field and providing a continuous improvement process; and
- d) increase the capacity of 21st CCLC subgrantees to monitor their own operation activities to improve program quality.

The NHDOE 21st CCLC Office is accepting vendor proposals to provide an annual comprehensive evaluation report incorporating the newly implemented Government and Performance Results Act (GPRA) measures (Appendix A).

B. Schedule

The following table provides a schedule of events for this RFP through contract finalization and approval. The Agency reserves the right to amend this schedule at its sole discretion and at any time through a published addendum.

EVENT	DATE	LOCAL TIME
RFP Released to Proposers (Advertisement)	1/12/2022	3:00pm
Proposer Inquiry Period Ends	1/19/2022	3:00pm
Final Agency Responses to Proposer Inquiries	1/21/2022	3:00pm
Proposers Submit Proposals	2/02/2022	3:00pm
Estimate Timeframe for Proposer Oral Presentations and Interviews (if applicable)	TBD	TBD
Estimated Notification of Selection and Begin Contract Negotiations	TBD	TBD

C. Section 2 - Description of Agency/Program Issuing the Request for Proposals

The Nita M. Lowey 21st Century Community Learning Centers (21st CCLC) program is a federal program funded under Title IV, Part B of the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA). This federal funding stream focuses on out of school time programming for expanded academic enrichment opportunities for children attending high poverty schools. Tutorial services and academic

enrichment activities are designed to help students meet local and state academic standards in subjects such as reading and math. In addition, programs may provide youth development activities, drug and violence prevention programs, technology education programs, art, music, recreation, counseling, and character education to enhance the academic component of the program.

The goal of the 21st CCLC program is to raise student academic achievement through the creation and expansion of community learning centers that provide students with academic enrichment opportunities as well as additional activities designed to complement their regular academic program. Centers can be located in elementary, middle or secondary schools or similarly accessible facilities. They provide a range of high quality services to support student learning and development, including tutoring and mentoring, homework help, academic enrichment (e.g., hands-on science or technology programs), and community service opportunities, as well as music, arts, sports and cultural activities (ESSA Sec. 4203(14)).

D. Section 3 – Proposed Scope of Work

The following activities can be modified as needed, based upon direction from the NHDOE, within the overall scope of effort:

Performance Indicator 1: State-wide Report Annually Beginning 2021-2022

- The vendor will create a comprehensive statewide evaluation report summarizing the data from 2021-2022 and annually thereafter, following a conceptual framework, including logic models with measures. The data will include student demographics, meeting the Federal GPRA goals (see Appendix A), as well as the results of the surveys completed by principals, program directors, staff coordinators, older youth, younger youth and parents. The report will focus on a quantitative and qualitative summary of the available data in order to meet the Measures of Effectiveness required by the USED for continuous improvement –

ESSA Section 4205(b)(1) For a program or activity developed pursuant to this part to meet the measures of effectiveness, monitored by the State educational agency, such program or activity shall -

A. be based upon an assessment of objective data regarding the need for before and after school (or summer recess) programs and activities in the schools and communities;

B. be based upon an established set of performance measures aimed at ensuring the availability of high-quality academic enrichment opportunities;

C. if appropriate, be based upon evidence-based research that the program or activity will help students meet the challenging State academic standards and any local academic standards;

D. ensure that measures of student success align with the regular academic program of the school and the academic needs of participating students and include performance indicators and measures described in section 4203(a)(14)(A); and

E. collect the data necessary for the measures of student success described in subparagraph (D).

- The vendor will create specialized executive summaries that can be shared and/or presented by the vendor with stakeholders.

- The vendor will include overall evaluation logic model development of how all the different pieces of data relate to each other based off the data provided by the NHDOE.

Performance Indicator 2: 21st CCLC Subgrantee Technical Assistance for Evaluation

Only for First Year of Contract

- The vendor will support 21st CCLC subgrantees to consider the realities of change initiatives, explore the root causes behind the data they're analyzing, consider the implications of the data for various levels of the program quality and make improvement plans based on their data.
- The vendor will follow the Measure of Effectiveness (*ESSA Section 4205(b)(1)*) to provide assistance with the continuous improvement processes to the state and 21st CCLC subgrantees.

Section 4 – Process for Submitting a Proposal

A. Proposal Submission, Deadline, and Location Instructions

Proposals submitted in response to this RFP must be received by the NHDOE, no later than the time and date specified in the schedule section, herein. Proposals are to be submitted electronically in email format as a PDF. If your RFP is too large for a single email, you may divide the RFP into as many sections as needed to email. Be sure the documents are clearly named, for example; company name and section 1 of 3. Email your proposal to Emily Fabian at Emily.A.Fabian@doe.nh.gov.

Unless waived as a non-material deviation in accordance with Section 6B, late submissions will not be accepted and will be returned to the proposers unopened. The time of receipt shall be considered when a proposal has been officially received via email by the agency, in accordance with its established policies, as having been received at the email address designated above.

All proposals submitted in response to this RFP must consist of at least:

Two electronic (email) copies of the proposal as a PDF, one with all confidential information fully redacted and one without all confidential information fully redacted, as provided for in Section 7E of this RFP.

Proposers 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 proposal.

B. Proposal Inquiries

All inquiries concerning this RFP, including but not limited to, requests for clarifications, questions, and any changes to the RFP, shall be submitted via email to the following RFP designated points of contact:

To: Emily.A.Fabian@doe.nh.gov

Inquiries must be received by the agency's RFP points of contact no later than the conclusion of the proposer inquiry period (see schedule of events section, herein). Inquiries received later than the conclusion of the proposer inquiry period shall not be considered properly submitted and may not be considered.

The agency intends to issue official responses to properly submitted inquiries on or before the

date specified in the schedule section, herein; however, this date is subject to change at the agency's discretion. The agency may consolidate and/or paraphrase questions for sufficiency and clarity. The agency may, at its discretion, amend this RFP on its own initiative or in response to issues raised by inquiries, as it deems appropriate. Oral statements, representations, clarifications, or modifications concerning the RFP shall not be binding upon the agency. Official responses by the agency 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.

C. Restriction of Contact with Agency Employees

From the date of release of this RFP until an award is made and announced regarding the selection of a proposer, all communication with personnel employed by or under contract with the agency regarding this RFP is forbidden unless first approved by the RFP points of contact listed in the proposal inquiries section, herein. 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 Points of Contact. Proposers may be disqualified for violating this restriction on communications.

D. Validity of Proposal

Proposals must be valid for 45 days following the deadline for submission of proposals in schedule of events, or until the effective date of any resulting contract, whichever is later.

Section 5 - Content and Requirements for a Proposal

Proposals shall follow the below format and provide the required information set forth below, *proposals are asked to create a separate document with answers to each below categories and subcategories:*

1. Project Abstract (5 points)

The Project Abstract must briefly explain the overall project and the applicant's commitment and capacity in one page or less.

2. Narrative Proposal (20 points total)

A document, up to four pages in length that outlines the five-year proposal for the comprehensive annual statewide evaluation system. The evaluation system must be designed to:

- i. identify characteristics associated with the effectiveness of 21st CCLC subgrantees and activities;
- ii. collect and compile data to document the extent to which the 21st CCLC subgrantees are meeting their federal, state, and local targets and goals;
- iii. analyze and disseminate statewide data findings and trends to NHDOE, its grantees, and other stakeholders to strengthen the out-of-school time field and providing a continuous improvement process; and
- iv. increase the capacity of 21st CCLC subgrantees to monitor their own operation activities to improve program quality.

3. Scope of Work (25 points total)

Provide a scope of work addressing the following goals of the comprehensive statewide evaluation system, detail the project; goals, objectives, strategies and tasks, deliverables and outcomes, metrics and logic models, responsibilities, and timeline:

- i. collect and compile data to document the extent to which the 21st CCLC subgrantees are meeting their federal, state, and local targets and goals;
- ii. analyze and disseminate statewide data findings and trends to NHDOE, its 21st CCLC subgrantees, and other stakeholders to strengthen the out-of-school time field and develop a continuous improvement process for the state and 21st subgrantees; and
- iii. support 21st CCLC subgrantees to consider the realities of change initiatives, explore the root causes behind the data they're analyzing, consider the implications of the data for various levels of the program quality and make improvement plans based on their data. Assistance with the continuous improvement processes to 21st CCLC subgrantees and the state.

4. Quality of Personnel (10 points)

The applicant should provide a list of all full-time staff members who will be assigned to this project, include the names and professional backgrounds of each. As well, please identify which management staff who would directly handle this project and their related qualifications and background experience.

5. Resources, Commitment, and Capacity (10 points)

The applicant should describe projects that have been undertaken in the past related to 21st CCLC or another comprehensive statewide evaluation and continuous improvement technical assistance (TA) and review the infrastructure that is in place to assure the success of this project.

6. Budget (10 points)

This section provides information to demonstrate that the project has an appropriate budget for the program and is cost-effective. The applicant must submit a proposed budget outlining the cost for each year of the three (3) year proposal. The applicant must provide a budget detail identifying expenditures for each of the two (2) performance indicators of the scope of work.

Section 6 – Evaluation of Proposals

A. Criteria for Evaluation and Scoring

Each proposal will be evaluated and considered with regard to the following criteria:

If the agency, determines to make an award based on these evaluations, the agency will notify the selected proposer. Should the agency be unable to reach agreement with the selected proposer during contract discussions, the agency may then undertake contract discussions with the next preferred proposer and so on, or the agency may reject all proposals, cancel this RFP, or solicit new proposals under a new acquisition process.

The agency will use a scoring scale of 100 points, a maximum of 80 points awarded based on the proposal categories, a maximum of 20 points awarded for the price proposal, which will be distributed as set forth in the table below:

The agency will select a proposer 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 the agency, will be used to refine and finalize scores.

B. Planned Evaluations

The agency plans to use the following process:

1. Initial screening to ensure that the proposals are in compliance with submission requirements;
2. Preliminary evaluation of the proposals;

PROPOSAL CATEGORY MAXIMUM POINTS	POINTS
1. Project Abstract	5
2. Narrative Proposal	20
3. Scope of Work	25
4. Quality of Personnel	10
5. Resources, Commitment, and Capacity	10
6. Budget	<u>10</u>
	80
<hr/>	
PRICE PROPOSAL POTENTIAL MAXIMUM POINTS	20
<hr/>	
TOTAL POTENTIAL MAXIMUM POINTS AWARDED	100

3. Oral interviews and product demonstrations (if necessary);
4. Final evaluation of qualifications, experience and scoring;
5. Select the highest scoring proposer and begin contract negotiation.

C. Initial Screening

The agency will conduct an initial screening step to verify proposer compliance with the qualifications and experience submission requirements set forth in the RFP and the minimum content set forth in Section 5 of this RFP. The agency 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

The agency will establish an evaluation team to initially score the proposals. This evaluation team will review the proposals points awarded based on the proposal categories and given a preliminary score out of 80 points under the guidelines set forth in Section 6A. Criteria for evaluation and scoring. Proposers 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 proposal categories to determine the overall highest scoring proposer. Should a proposer fail to achieve 60 points in the preliminary scoring, it will receive no further consideration from the evaluation team.

Note: The following formula will be used to assign points for costs:

Proposer's Price Score = (Lowest Proposed Price/Proposer's Proposed Price) x Number of Points for Score

E. Oral Interviews and Product Demonstrations

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

The purpose of oral interviews and product demonstrations is 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 and product demonstrations. The agency may ask the proposer 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 the agency, the evaluation team will determine a final score for each proposal.

G. No Best and Final Offer

The proposal should be submitted initially on the most favorable terms which the proposer can offer. There will be no best and final offer procedure. The proposer should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the proposal.

H. Final Selection

The agency will conduct a final selection based on the final evaluation of the proposals and begin contract negotiations with the selected proposer.

I. Rights of the Agency in Accepting and Evaluating Proposals

The Agency reserves the right to:

1. Make independent investigations in evaluating Proposals;
2. Request additional information to clarify elements of a Proposal;
3. Waive minor or immaterial deviations from the RFP requirements, if determined to be in the best interest of the State;
4. Omit any planned evaluation step if, in the Agency's view, the step is not needed;
5. At its sole discretion, reject any and all Proposals at any time; and
6. Open contract discussions with the second highest scoring Proposer and so on, if the Agency is unable to reach an agreement on Contract terms with the higher scoring proposer(s).

Section 7 – Terms and Conditions Related to the RFP Process

A. RFP Addendum

The agency 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, the agency, at its sole discretion, may extend the proposal submission deadline, as it deems appropriate.

B. 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 agency from obtaining the best possible competitive proposal.

C. Property of the Agency

All material received in response to this RFP shall 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.

D. Confidentiality of a Proposal

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 the agency will be grounds for disqualification.

E. Public Disclosure

Pursuant to RSA 21-G:37, all responses to this RFP shall be considered confidential until the award of a contract. At the time of receipt of proposals, the agency will post the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the Department of Administrative Services pursuant to this RFP, the agency will post the name, rank or score of each proposer. In the event that the contract does not require Governor & Executive Council approval, the agency shall disclose the rank or score of the proposals at least five (5) business days before final approval of the contract.

The content of each proposer's proposal shall become public information upon the award of any resulting contract. Any information submitted as part of a response to this request for proposal (RFP) may be subject to public disclosure under 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/>). However, business financial information and proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV. If you believe any information being submitted in response to this request for proposal, bid or information should be kept confidential as financial or proprietary information; you must specifically identify that information in a letter to the agency, and must mark/stamp each page of the materials that you claim must be exempt from disclosure as "CONFIDENTIAL". A designation by the proposer of information it believes exempt does not have the effect of making such information exempt. The agency will determine the information it believes is properly exempted from disclosure. Marking of the entire proposal or entire sections of the proposal (e.g. pricing) as confidential will neither be accepted nor honored.

Notwithstanding any provision of this RFP to the contrary, proposer pricing will be subject to disclosure upon approval of the contract. The agency will endeavor to maintain the confidentiality of portions of the proposal that are clearly and properly marked confidential.

If a request is made to the agency to view portions of a proposal that the proposer has properly and clearly marked confidential, the agency will notify the proposer of the request and of the date the agency plans to release the records. By submitting a proposal, proposers agree that unless the proposer obtains a court order, at its sole expense, enjoining the release of the requested information, the agency may release the requested information on the date specified in the agency's notice without any liability to the proposers.

The successful bidder will be required to provide the Department with the following information:

1. A Vendor Code. You can apply for a code at this link:
[https://das.nh.gov/purchasing/vendorregistration/\(S\(lmq2fn451evlfl45mxtjir55\)\)/welcome.aspx](https://das.nh.gov/purchasing/vendorregistration/(S(lmq2fn451evlfl45mxtjir55))/welcome.aspx)
2. You will receive an e-mail containing the vendor code.
3. If you are contracting under a business name, you must also register your business with the Secretary of State's office. Here is the link:
<https://quickstart.sos.nh.gov/online/Account/LandingPage> (See NH QuickStart). You will need to provide a Certificate of Good Standing, dated after April 1, which you can obtain after you have registered your company.
4. Certificate of Insurance (see Section 14 of the General Provisions, P-37, for the necessary coverage). Please note, the NHDOE will need to be the "Certificate Holder".

F. Non-Commitment

Notwithstanding any other provision of this RFP, this RFP does not commit the agency to award a contract. The agency 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.

G. Proposal Preparation Cost

By submitting a proposal, a proposer agrees that in no event shall the agency be either responsible for or held liable for any costs incurred by a proposer in the preparation of or in connection with the proposal, or for work performed prior to the effective date of a resulting contract.

H. Ethical Requirements

From the time this RFP is published until a contract is awarded, no bidder 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 bidder that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any bidder 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 bidder shall be disqualified from bidding on any RFP or similar request for submission issued by any state agency. A bidder 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.

I. Challenges on Form or Process of the RFP

Any challenges 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 agency at least ten (10) business days prior to the proposal submission deadline. By submitting a proposal, the proposer is deemed to have waived any challenges to the agency's authority to conduct this procurement and the form and procedures of this RFP.

Section 8 – Contract Terms and Award

A. Award

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

B. Standard Contract Terms

The agency will require the successful bidder to execute a firm fixed price contract using the Standard Terms and Conditions of the State of New Hampshire which is attached as Appendix B.

The term of the contract will be for three (3) years from the date of approval, based on receipt of federal appropriations and Governor and Executive Council approval.

To the extent that a proposer believes that exceptions to the standard form contract will be necessary for the proposer to enter into the agreement, the proposer should note those issues during the proposer inquiry period. The agency will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion. If the agency accepts a proposer's exception the agency will, at the conclusion of the inquiry period, provide notice to all potential proposers of the exceptions which have been accepted and indicate that exception is available to all potential proposers. Any exceptions to the standard form contract that are not raised during the proposer inquiry period 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 solicitation.

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 Number	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 as indicated in block 1.17, 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. 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 affected 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. 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, 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 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. The State shall have no liability to the Contractor other than the contract price.

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 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.

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. 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 race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 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 all rules, regulations and orders, and 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 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State’s representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer’s decision shall be final for the State.

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) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) 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.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

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) 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) 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. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State’s discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, 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 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data 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 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, 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.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. 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. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. 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 sovereign immunity of the State, 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 his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. 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 his or her 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. 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.

17. 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.

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. 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.

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

23. 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.

24. 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.

EXHIBIT A

Special Provisions

Additional Exhibits D-G

Federal Certification 2 CFR 200.415

Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).

EXHIBIT B
Scope of Services

EXHIBIT C
Method of Payment

EXHIBIT D

Contractor Obligations

Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address **administrative, contractual, or legal remedies** in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Reference: 2 C.F.R. § 200.326 and 2 C.F.R. 200, Appendix II, required contract clauses.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

The Contractor, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Breach

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Fraud and False Statements

The Contractor understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Contractor represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Contractor and any company that the Contractor represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

Environmental Protection

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)

The Contractor is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement.

Procurement of Recovered Materials

In accordance with Section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), State agencies and agencies of a political subdivision of a state that are using appropriated Federal funds for procurement must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Revised 6-25-21

Contractor Initials _____
Date _____

Exhibit E

Federal Debarment and Suspension

- a. By signature on this Contract, the Contractor certifies its compliance, and the compliance of its Sub-Contractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
 - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
 - 2. Does not have a proposed debarment pending;
 - 3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
 - 4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Where the Contractor or its Sub-Contractor is unable to certify to the statement in Section a.1. above, the Contractor or its Sub-Contractor shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Contractor or Sub-Contractor is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Contractor or its Sub-Contractor shall submit a written explanation to the DOE. The certification or explanation shall be considered in connection with the DOE's determination whether to enter into Contract.
- d. The Contractor shall provide immediate written notice to the DOE if, at any time, the Contractor or its Sub-Contractor, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

Exhibit F

Anti-Lobbying

The Contractor agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, execute the following Certification:

The Contractor certifies, by signing and submitting this contract, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions

<https://www.gsa.gov/forms-library/disclosure-lobbying-activities>

- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The DOE shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

Exhibit G

Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

Rights to Inventions Made Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the DOE.

Any discovery or invention that arises during the course of the contract shall be reported to the DOE. The Contractor is required to disclose inventions promptly to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

Confidentiality

All Written and oral information and materials disclosed or provided by the DOE under this agreement constitutes Confidential Information, regardless of whether such information was provided before or after the date on this agreement or how it was provided.

The Contractor and representatives thereof, acknowledge that by making use of, acquiring or adding to information about matters and data related to this agreement, which are confidential to the DOE and its partners, must remain the exclusive property of the DOE.

Confidential information means all data and information related to the business and operation of the DOE, including but not limited to all school and student data contained in NH Title XV, Education, Chapters 186-200.

Confidential information includes but is not limited to, student and school district data, revenue and cost information, the source code for computer software and hardware products owned in part or in whole by the DOE, financial information, partner information (including the identity of DOE partners), Contractor and supplier information, (including the identity of DOE Contractors and suppliers), and any information that has been marked "confidential" or "proprietary", or with the like designation. During the term of this contract the Contractor agrees to abide by such rules as may be adopted from time to time by the DOE to maintain the security of all confidential information. The Contractor further agrees that it will always regard and preserve as confidential information/data received during the performance of this contract. The Contractor will not use, copy, make notes, or use excerpts of any confidential information, nor will it give, disclose, provide access to, or otherwise make available any confidential information to any person not employed or contracted by the DOE or subcontracted with the Contractor.

Ownership of Intellectual Property

The DOE shall retain ownership of all source data and other intellectual property of the DOE provided to the Contractor in order to complete the services of this agreement. As well the DOE will retain copyright ownership for any and all materials, patents and intellectual property produced, including, but not limited to, brochures, resource directories, protocols, guidelines, posters, or reports. The Contractor shall not reproduce any materials for purposes other than use for the terms under the contract without prior written approval from the DOE.

Revised 6-25-21

Contractor Initials _____
Date _____