



New Hampshire

Department of Education

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Request for Proposal Language Assistance Services RFP 2022-EL-01

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 seeking proposals from qualified vendors to perform translation, interpretation and transcription services on an “as-needed” basis.

It is anticipated that services will be provided under contracted service arrangements, upon Governor and Council approval through June 30, 2023, with the option to renew for up to one (1) additional one-year term, if services are determined to be satisfactory and after submission and acceptance of a summary of activities completed during the previous year. The goal of this RFP is to eliminate or reduce—to the maximum extent practical—limited English proficiency as a barrier to accessing existing NHDOE resources, services and programs as required under Title VI of the Civil Rights Act of 1964 (Title VI) and the Equal Educational Opportunities Act of 1974 (EEOA).

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 posted on the same web site that contains this RFP. The Agency will not attempt to contact bidders regarding the posting of schedule changes. It is the responsibility of each bidder to visit the RFP web site regularly to obtain any alterations.

EVENT	DATE	LOCAL TIME
RFP Released to Proposers (Advertisement)	1/24/22	
Proposer Inquiry Period Ends	2/11/22	4:00 pm
Final Agency Responses to Proposer Inquiries	2/16/22	4:00 pm
Proposers Submit Proposals	3/2/22	4:00 pm
Estimated Notification of Selection and Begin Contract Negotiations	3/9/22	

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

The New Hampshire Department of Education (NHDOE) is a state agency that serves students and families with diverse cultural and linguistic backgrounds. In addition to English, Spanish, Portuguese, Arabic, Swahili and Nepali are the most commonly spoken languages in the state. While the majority of requests will be placed for the language groups most commonly spoken, there may be an additional need for language assistance across any languages spoken throughout the state. For a complete list, contact the NHDOE. In our commitment to provide limited English proficient (LEP) individuals with meaningful access to all NHDOE resources, services and programs, the agency is seeking proposals from qualified and experienced vendors in providing translation, interpretation, translated transcription and voice-over interpretation of a wide range of world languages to individuals and groups.

Vendors may be expected to provide these services for all or select languages. General language assistance services are needed in the following four categories:

- Document Translation
- Interpretation (in-person and remote on-demand)
- Translated Transcription
- Voice-Over Interpretation

Document Translation is defined as expressing written words from a source language into written words of a target language, retaining the original message. Translation from a video or audio file may also be required.

Interpretation is defined as the facilitating of oral or sign language communication, either simultaneously or consecutively, between users of different languages. The interpreter's function is to convey every semantic element and intention of the message from the source-language speaker to target-language recipients.

Translated Transcription is defined as the act of making a written, printed or typed copy of the words that have been spoken and translating from source-language to target-language.

Voice-Over Interpretation is defined as the act of orally interpreting and recording a piece of narration from an audio or video file from source-language to target-language.

In the past two years, the NHDOE has requested translation of program flyers, program applications, parent surveys and agency policies. Each request typically requires translation into the most commonly spoken top three languages (i.e., Spanish, Portuguese & Arabic respectively).

Section 3 – Proposed Scope of Work and Requirements

The purpose of this RFP is to select one or more qualified language assistance service vendors to provide NHDOE language assistance services with the goal of providing communication access to the state's students and families with limited English proficiency on an "as-needed" basis.

The following describes the scope of services and performance standards that selected vendors will be expected to meet.

Experience and demonstrated success in providing the full scope of language assistance services within the education context.

1. General Expectations:
 - a) Flexible hours are required, depending on the request. In addition to providing service during normal business hours, some evening and weekend assignments may be required. Proposals should include a stated commitment to meeting on-demand requests.
 - b) Services may be required anywhere within the State of New Hampshire. Proposals should indicate how the service provider will meet this expectation.

- c) All service providers hired by the vendor must be trained and certified according to professional and ethical standards and must be experienced in working with public officials, public organizations, program staff and students and families from a variety of cultures and backgrounds. Proposals should include a description of the in-house training and/or professional standards required of employees.
 - d) Vendor must require criminal background checks of all service providers (i.e., regular employees of the vendor) and any subcontractors. Proposals should include a description of the internal-process for meeting this standard.
 - e) Vendor should have in place an online platform to simplify scheduling and billing of services. Proposals should include a link to the online platform, along with any other related information.
 - f) Vendor must provide scheduling, notification, billing and other administrative services through a central contact. Name, email and business phone number of this contact shall be provided in the proposal.
2. Document Translation: (including Translated Transcription)
- a) Vendor must provide high quality translation of a variety of education related documents for a wide range of audiences and world languages, including those most commonly spoken in the state. Proposals should include a summary of the types of educational documents and languages the vendor has experience in translating.
 - b) Vendor must have the capacity to meet deadlines with less than 24 hours' notice. Proposals should indicate how the service provider will meet this expectation.
 - c) Vendor must have the ability to access multiple document management platforms to provide exact duplicates of documents into target-language. Proposals may include any related descriptions and must disclose any subcontractors that may be used to meet these requirements.
3. Interpretation: (including Voice-Over Interpretation)
- a) A full menu of interpretation services must be provided. Proposals should include a description of the scope of language assistance services available and a summary of prior proven performance.
 - b) Vendor must provide accurate, high quality interpreters in a wide range of world languages, including those most commonly spoken in the state. Proposals should indicate how the service providers will meet this expectation.
 - c) The Vendor must have flexibility to provide in-person or on-demand video and/or three-way audio calls. Proposals should include a description of the technological capacity available to meet this requirement.
 - d) Vendor must have the ability to access multiple media platforms to convert and relay both audio and video files. Proposals should include a description of the technological capacity available to meet this requirement and must disclose any subcontractors that may be used to meet these requirements.

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 New Hampshire Department of Education, Division of Learner Support, no later than the time and date specified in the Schedule section, herein.

Proposals may be submitted via Email to: Ellie Riel at Eleanor.M.Riel@doe.nh.gov

Proposals must be clearly marked as follows:

**STATE OF NEW HAMPSHIRE
RESPONSE TO RFP 2022- EL-01
Language Assistance Services
New Hampshire Department of Education
Division of Learner Support**

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. 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 the Agency, in accordance with its established policies, as having been received at the location designated above. The Agency accepts no responsibility for mislabeled mail or mail that is not delivered or undeliverable for whatever reason. Any damage that may occur due to shipping shall be the Proposer's responsibility.

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

One (1) original electronic submission of the Proposal, including all required attachments contained on digital media.

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 Point of Contact:

TO: Ellie Riel at Eleanor.M.Riel@doe.nh.gov

Inquiries must be received by the Agency's RFP Point 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 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 Point 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 Point of Contact. Proposers may be disqualified for violating this restriction on communications.

D. 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.

Section 5 - Content and Requirements for a Proposal

Proposal shall consist of six parts (Attachments A, B, C, D, E & F), and the vendor's proposal shall be organized in the following order, with each section clearly indexed into one single PDF file:

Attachment A—Executive Summary

Attachment B—Summary of Experience and Demonstrated Success

Attachment C—Proposal Response to Scope of Services and Requirements

Attachment D—Cost Summary

Attachment E—References

Attachment F—Additional Required Documents

Attachment A—Executive Summary

The vendor must provide an Executive Summary of two (2) pages or less, which gives a brief summation of the proposal. Please include business name, address, point of contact and contact information.

Attachment B—Summary of Experience

This section shall contain a brief summary of the vendor’s business experience and individual experience for personnel who will provide this product or service.

Attachment C—Proposal Response to Scope of Services and Requirements

The vendor must provide a description of services and capabilities as outlined in the “Scope of Services and Requirements” section of this RFP. Clearly state any exceptions taken to the specifications outlined in this RFP. The proposal shall be clear and concise and not lengthy. If the Vendor does not have a response to a requirement, the Vendor shall state, “unable to perform.”

Attachment D—Cost Summary

The vendor shall provide information on any costs that The New Hampshire Department of Education may incur for “as needed” services. Proposals must include the Vendor’s pricing structure and any related policies. The Vendor must specify all costs (i.e., administrative fees, processing fees, rush fees, etc.) associated with providing the services herein. The Vendor must provide a complete fee and cost detail supporting all elements of the Proposal.

Attachment E—References

The vendor shall submit a minimum of three (3) verifiable references. It is recommended that if the vendor has performed related services previously, those references be listed.

Attachment F—Additional Required Documents

The vendor will complete and submit an RFP Cover Page – See Exhibit A.

Section 6 – Evaluation of Proposals**Criteria for Evaluation and Scoring**

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

If the Agency, determines to make an award, the Agency will issue an “intent to negotiate” notice to a Proposer based on these evaluations. Should the Agency be unable to reach agreement with the selected Proposer during Contract discussions, the Agency may then undertake Contract discussions with the second preferred Proposer and so on, or the Agency may reject all proposals, cancel this RFP, or solicit new Proposals under a new acquisition process.

PROPOSAL EVALUATION AND SCORING:**Language Assistance Services for the New Hampshire Department of Education (NHDOE):**

The purpose of this proposal is to provide limited English proficient (LEP) individuals with meaningful access to all NHDOE resources, services and programs. The agency is seeking proposals from vendors or firms qualified and experienced in providing translation, interpretation and transcription of world languages to individuals and groups. The goal of this

RFP is to increase communication access to all NH students and families across multiple platforms.

Evaluation Criteria Possible Points

Completeness of Proposal – proposal includes the following: **15 points**

Project and Cost Summary

Vendor Code - In order to do business with the State of New Hampshire, Department of Education, the successful bidder will need a Vendor Code. A vendor code can be obtained at this link:

[https://das.nh.gov/purchasing/vendorregistration/\(S\(lmq2fn451evlfl45mxtjir55\)\)/welcome.aspx](https://das.nh.gov/purchasing/vendorregistration/(S(lmq2fn451evlfl45mxtjir55))/welcome.aspx)

The successful bidder will receive an e-mail containing the vendor code.

Certificate of Good Standing - If contracting under a business name, the successful bidder must also register the business with the NH Secretary of State's office. Here is the link: http://sos.nh.gov/corp_div.aspx (See NH QuickStart). The successful bidder will need to provide a Certificate of Good Standing, which can be obtained after you have registered your company. If the company is an out-of-state, nonprofit, the successful bidder may submit a certificate from the applicable state and proof of nonprofit status.

SAM Registration

Proposal Cost Summary – completed and signed

Scope of Services 30 points

Proposal addresses the range of language assistance outlined in RFP—comprehensiveness

Proposal includes resources for managing requests in a timely and efficient manner

Proposal includes overview of technology available to meet the needs outlined in the RFP

Cost Effectiveness 15 points

Project staff and salaries are appropriate/reasonable

Project costs are reasonable, and clearly and directly related to the project

Summary of Experience, Professional Training & Staffing Levels 25 points

Proposal includes assurance of staffing levels to meet the language demands of the state's diverse linguistic population

Proposal includes summary of service provider qualifications

Proposal includes information about quality assurance

Proposal includes strong references, preferably from other educational agencies

Proposer's Price Score 15 points

TOTAL POSSIBLE POINTS 100 points

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

$$\text{Proposer's Price Score} = (\text{Lowest Proposed Price} / \text{Proposer's Proposed Price}) \times \text{Number of Points for Score}$$

For the purpose of use of this formula, the lowest proposed price is defined as the lowest price proposed by a Proposer who has scored above the minimum necessary for consideration on the Technical Score.

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.

Planned Evaluations

The Agency plans to use the following process:

- Initial screening to ensure that the Proposals are in compliance with submission requirements;
- Final Evaluation of Technical Proposals and scoring;
- Review of Price Proposals and final scoring; and
- Select the highest scoring Proposer (s) and begin contract negotiation.

Initial Screening

The Agency will conduct an initial screening step to verify Proposer compliance with the technical 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.

Final Technical Scoring of Proposals

Following review of written clarifications of proposals requested by the Agency (if necessary), the evaluation team will determine a final score for each Technical Proposal.

Price Proposal Review

Price proposals will be reviewed upon completion of the final technical scoring of proposals. The Proposer's Price Proposal will be allocated a maximum potential score of 15 points.

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 technical proposal to determine the overall highest scoring Proposer.

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

$$\text{Proposer's Price Score} = (\text{Lowest Proposed Price} / \text{Proposer's Proposed Price}) \times \text{Number of Points for Score}$$

For the purpose of use of this formula, the lowest proposed price is defined as the lowest price proposed by a Proposer who has scored above the minimum necessary for consideration on the Technical Score.

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.

Final Selection

The Agency will conduct a final selection based on the final evaluation of the initial proposals or, if requested, as a result of the Best and Final Offer and begin contract negotiations with the selected Proposer(s).

Rights of the Agency in Accepting and Evaluating Proposals

The Agency reserves the right to:

- Make independent investigations in evaluating Proposals;
- Request additional information to clarify elements of a Proposal;
- Waive minor or immaterial deviations from the RFP requirements, if determined to be in the best interest of the State;
- Omit any planned evaluation step if, in the Agency's view, the step is not needed;
- At its sole discretion, reject any and all Proposals at any time; and
- 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 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.

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. Non-Exclusive Contract

Any resulting Contract from this RFP will be a non-exclusive Contract. The State reserves the right, at its discretion, to retain other Contractors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal.

(*If an Agency believes that an exclusive contract is necessary to attract bidders and get competitive pricing, this section should be deleted.)

B. 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.

C. Standard Contract Terms

The Agency will require the successful bidder to execute a Firm Fixed Price/Not to Exceed 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 upon Governor and Council approval through June 30, 2023. The contract term may be extended by an additional term of one (1) year at the sole option of the State, subject to the parties' prior written agreement on terms and applicable fees for each extended term. contingent upon satisfactory vendor performance, continued funding 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.

D. Additional Documents Required at Time of Contract Signing

Certificate of Authority - granting the person signing the contract documents the authority to do so. The person signing the contract cannot be the same person signing the Certificate of Authority. Please note, if the Certificate of Authority makes mention of the company By-laws, a copy of the By-laws will also need to be provided.

Certificate of Insurance - See Section 14. and 15. of the General Provisions, P-37 (Appendix B), for the necessary coverage. Please note, the Department of Education will need to be the "Certificate Holder".

**APPENDIX A
COVER SHEET**



New Hampshire

Department of Education

RFP Number:		Bureau:	
Applicant (Organization) Name:			
Applicant Main Contact	Address	Phone Number	Email Address
Summary of Attachments			
Attachment	Number of Pages		
Total Number of Pages in this Packet Including Coversheet:			
Comments			
<p><i>I certify that I have reviewed this application and that information given is complete and accurate to the best of my knowledge.</i></p> <p>Signature of Applicant _____ Date _____</p>			
NHDOE Official Use Only		Received Date _____	
<input type="checkbox"/> Complete, received by NHDOE by required Deadline: accepted	<input type="checkbox"/> Not received by NHDOE by required Deadline: rejected		
<input type="checkbox"/> Incomplete, returned to Applicant	<input type="checkbox"/> Other _____		
First Reviewer _____	Second Reviewer _____		
Comments:			

Appendix B

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 Initials _____
Date _____

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.