

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION VOCATIONAL REHABILITATION**

Independent Living Part B

RFP 2023.2-VR-IL Part B

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SECTION 1 – Overview and Schedule

A. Executive Summary

The Department of Education, Bureau of Vocational Rehabilitation, (now branded as Vocational Rehabilitation New Hampshire VRNH) seeks proposals from entities to provide Independent Living (IL), Part B services. The Independent Living Program provides funding to community not-for-profit or faith-based organizations meeting the requirements for the provision of independent living services to persons with significant disabilities. Applicants must successfully communicate a comprehensive approach to provide core and allowable independent living services to persons with a disability, and the community served by the organization as it relates to the implementation of the program’s standards.

The purpose of the IL program is to promote a philosophy of independent living, including a philosophy of client control (defined as vesting the power or authority of the organization in individuals with disabilities, including individuals who are, or have been recipients of, IL services), peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society.

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 (Advertisement)	7/14/23	
Vendor Conference (if applicable)	N/A	
Vendor Inquiry Period Ends	7/21/23	5:00 PM
Final Agency Responses to Inquiries	7/28/23	5:00 PM
Proposal Due	8/11/23	2:30 PM
Estimate Timeframe for Oral Presentations and Interviews (if applicable)	N/A	TBD
Estimated Notification of Selection	8/18/23	
Governor & Council Estimated Approval	September 2023	

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

The New Hampshire Bureau of Vocational Rehabilitation (VRNH) assists eligible New Hampshire citizens with disabilities to secure suitable employment and financial and personal independence by providing appropriate individualized rehabilitation services necessary.

Vocational Rehabilitation New Hampshire is requesting proposals for Independent Living, Part B program services to provide core services in alignment with 45 CFR 1329. VRNH is the Designated State Entity (DSE) per State Independent Living Council (SILC) request to administer the program, in collaboration with the Governor's Commission on Disability (GCD) (staff to the Council). The contract period will be from 10/1/23-9/30/27.

D. Vendor Instructions

Interested vendors must read the entire RFP and submit the required documents in the manner specified in the RFP. Vendors are responsible for reviewing the most updated information related to this RFP before submitting proposals.

SECTION 2 – Requirements and Scope of Work

Vocational Rehabilitation New Hampshire is requesting proposals for Independent Living, Part B program services to provide core services in alignment with 45 CFR 1329. Services to provide include:

1. Information and referral services;
2. Independent Living Skills Training, delivered by organizations with certified Staff, where certification for specific subject matters exist;
3. Disability-specific, comprehensive Independent Living Services (e.g., persons who are blind; vision-impaired; deaf; hard-of-hearing; neuro-diverse; physically disabled; and otherwise, disabled individuals, with uniquely identified needs to prepare them for the ability to live and function independently in the public community);
4. Peer counseling, including cross-disability peer counseling;
5. Individual and systems advocacy;
6. Services that:
 - a. Facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services;
 - b. Provide assistance to individuals with significant disabilities who are at risk of entering an institution so that the individuals may remain in the community;
 - c. Facilitate the transition of youth and students who are individuals with significant disabilities, who were eligible for individual education plans.

The contractor(s) will be responsible for maintaining consumer case records, developing and maintaining a database for federal reporting, sending required reports and billing, and filing a federal report. In an effort to promote increased quality of services in the Independent Living, Part B program, the contractor(s) shall participate in bi-annual monitoring exercises undertaken by the DSE to support the contractors' to achieve consistent, continuous compliance with the Federal requirements of the Independent Living, Part B program and to be aware of, and responsive to, measures to strengthen the quality of the services provided. Failure to actively participate in, and timely respond to, all DSE-described monitoring components shall result in the contract being subject to termination. The contractor(s) shall, at its sole expense, obtain and

maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, for the benefit of the State the following insurance: comprehensive general liability insurance

against all claims of bodily injury, death, or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. In addition, the contractor(s) must have worker's compensation insurance coverage.

SECTION 3 -- Contract Terms and Conditions

A. Non-Exclusive Contract

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

B. Award

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

C. Standard Contract Terms

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

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

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

SECTION 4 –Request for Proposal Process

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

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

TO: Lisa Hinson-Hatz; Lisa.K.Hatz@doe.nh.gov

CC: VRNHRFP@DOE.NH.GOV

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

B. Vendor Inquiries

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

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

The Agency will issue responses to properly submitted inquiries on or before the date specified in the Schedule of Events; however, this date is subject to change at 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. **In response to requested exceptions to P37, 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. Questions about or requested exceptions to the RFP, Form P-37 and/or any relevant attachments not raised during the inquiry period are waived.** Oral statements, representations, clarifications, or modifications concerning the RFP shall not be binding upon 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.

SECTION 5 – RFP Terms and Conditions

A. Debarment

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

B. Proposal Preparation Cost

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

C. Validity of Proposal

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

D. RFP Addendum

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.

E. Non-Collusion

The vendor'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 Vendors and without effort to preclude the Agency from obtaining the best possible competitive Proposal.

F. Property of the Agency

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

G. Proposal Confidentiality

Unless necessary for the approval of a contract, the substance of a proposal must remain confidential until the Effective Date of any Contract resulting from this RFP. A vendor's

disclosure or distribution of Proposals other than to the Agency may be grounds for disqualification.

H. Public Disclosure

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

Confidential, commercial or financial information may be exempt from public disclosure under RSA 91-A:5, IV. If a vendor believes any information submitted in response to this RFP should be kept confidential, the vendor must specifically identify that information where it appears in the submission in a manner that draws attention to the designation and must mark/stamp each page of the materials that the vendor claims must be exempt from disclosure as “CONFIDENTIAL.” Vendors must also provide a letter to the person listed as the point of contact for this RFP, identifying the specific page number and section of the information you consider to be confidential, commercial or financial and providing your rationale for each designation. Marking or designating an entire proposal, attachment or section as confidential shall neither be accepted nor honored by the State. Vendors must also provide a separate copy of the full and complete document, fully redacting those portions and shall note on the applicable page or pages that the redacted portion or portions are “confidential.”

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

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

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

By submitting a proposal, vendors acknowledge and agree that:

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

I. Electronic Posting of RFP Results and Resulting Contract

At the time of receipt of proposals, 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, the Agency will post the ranks or scores of each responding vendor. In the event that the contract does not require Governor & Executive Council approval, the Agency will disclose the rank or score at least 5 business days before final approval of the contract.

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

J. Non-Commitment

Notwithstanding any other provision of this RFP, this RFP does not commit 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.

K. Ethical Requirements

From the time this RFP is published until a contract is awarded, no vendor shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any vendor that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any vendor who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from bidding on the RFP, or similar request for submission and every such vendor shall be disqualified from bidding on any RFP or similar

request for submission issued by any state agency. A vendor that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the department of administrative services, which shall note that information on the list maintained on the state’s internal intranet system, except in the case of annulment, the information, shall be deleted from the list.

L. Challenges to Identification of Selected Vendor

Within 5 business days of the Agency’s posting of the rank or score on its website, vendors may, in accordance with RSA 21-G:37, request that the agency review its selection process. The request must be in writing and must specify all points on which the vendor believes the agency erred in its process and shall contain such argument in support of its position as the vendor seeks to present. In its request for review, a vendor shall not submit, and an agency will not accept nor consider, any substantive information that was not included in the original proposal. The agency will respond to the request within 5 business days of its receipt.

SECTION 6 – Evaluation of Proposals

A. Criteria for Evaluation and Scoring

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

CATEGORIES							POINTS
TECHNICAL PROPOSAL with the following potential maximum scores for each Technical Proposal category;							
APPROACH – Statement outlining the overall approach to be employed by the bidder.							15
PROJECT SUMMARY							20
RESOURCE LEVERAGING AND PARTNERS							15
ORGANIZATIONAL CAPABILITIES - Description of the bidder’s organizational capabilities to deliver the services, including a brief description of their company, a history of their firms and/or personal experience in implementing similar projects, including at least once example if a completed project of comparable scope. A description of related experience in the field, and comprehensive résumés for all staff who will work on this project and three references along with your proposal.							25
BUDGET PROPOSAL- The budget will explain how all costs listed in the budget are necessary, reasonable, and allocable to deliver the outcomes specified in the proposal. All expenditures should be clearly connected to an activity related to the services to be provided.							25
Must show (in state fiscal years):							
Budget Item	FY24 (10/1/23-6/30/24)	FY25 (7/1/24-6/30/25)	FY26 (7/1/25-6/30/26)	FY27 (7/1/26-6/30/27)	FY28 (7/1/28-9/30/28)	Total	

TOTAL MAXIMUM POINTS	100

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

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

B. Planned Evaluations Steps

The Agency plans to use the following process:

- Step 1. Initial screening to ensure that the Proposals follow submission requirements.
- Step 2. Preliminary evaluation of the Technical Proposals.
- Step 3. Oral interviews and Product Demonstrations (if necessary);
- Step 4. Final Scoring of Technical Proposals.
- Step 5. Price Proposals review.
- Step 6. Final Selection: Select the highest scoring vendor(s) and begin contract execution.

C. Step 1: Initial Screening

The Agency will conduct an initial screening to verify vendor compliance with the proposal submission requirements set forth in Sections 4 and 7. 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. Step 2: Preliminary Technical Scoring of Proposals

The Agency will establish an evaluation team to review for compliance of the minimum requirements as set forth in Section 2. This evaluation team will then review the technical proposals and give a preliminary score to the technical proposals under the guidelines set forth in Section 6. Should a vendor fail to achieve 60 Points in the preliminary technical scoring, it will receive no further consideration from the evaluation team and the vendor’s price proposal will be returned unopened. Price proposals will not be reviewed by the evaluation team during the preliminary technical review.

E. Step 3: Oral Interviews and Product Demonstrations

If the Agency determines that it is appropriate, vendors may be invited to oral interviews and/or product demonstrations including demonstrations of any proposed automated systems or

technology components. The Agency retains the sole discretion to determine whether to conduct oral interviews, with which vendors; and the number of interviews. Vendors are advised that the Agency may decide to conduct interviews with less than all responsive vendors.

The purpose of oral interviews and product demonstrations is to clarify and expound upon information provided in the written proposals. Vendors are prohibited from altering the basic substance of their proposals during the oral interviews and product demonstrations. The Agency may ask the vendor to provide written clarifications of elements in their technical proposal regardless of whether it intends to conduct oral interviews. Information gained from oral interviews and product demonstrations will be used to refine technical review scores assigned from the initial review of the proposals.

F. Step 4: 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 technical proposal.

G. Step 5: Price Proposal Review

Price proposals will be reviewed upon completion of the final technical scoring of proposals. The vendor's price proposal will be allocated a maximum potential score of 100 points. Vendors are advised that this **is not a low bid award** and that the scoring of the price proposal will be combined with the scoring of the technical proposal to determine the overall highest scoring vendor.

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

Vendor's Price Score = (Lowest Proposed Price / Vendor's Proposed Price) x 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 vendor who has scored above the minimum necessary for consideration on the Technical Score.

H. No Best and Final Offer

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

I. Final Selection

The Agency will conduct a final selection based on the final evaluation of the proposals and begin contract discussions with the selected vendor(s).

J. Rights of the Agency in Accepting and Evaluating Proposals

The Agency reserves the right, at its sole discretion, to:

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

SECTION 7 – Process for Submitting a Proposal

A. Proposal Submission, Deadline, and Location Instructions

Proposals submitted in response to this RFP must be received no later than the Proposal Due Date specified in the Schedule of Events, herein.

The Price proposal must be labeled clearly and submitted separately from the technical proposal.

Unless waived as a non-material deviation in accordance with Section 6, late submissions will not be accepted and will be returned to the vendors unopened. Delivery of the Proposals shall be at the vendor'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 below. The Agency accepts no responsibility for damaged, mislabeled, or undeliverable mailed or emailed proposals. Any damage that may occur due to shipping shall be the vendor's responsibility.

Proposals must include one electronic copy of the Proposal with all Confidential Information fully redacted, as provided for in Section 5H of this RFP.

Proposals must be clearly marked as follows:

STATE OF NEW HAMPSHIRE

RESPONSE TO RFP VR2023-IL Part B

Independent Living Part B

It is recommended to send electronic version proposals and if choosing to send hard copies below are instructions and send 5 (five) hard copies.

Electronic Proposals

Electronic Proposals must be addressed to:

TO: christine.a.langille-lewis@doe.nh.gov

CC: VRNHRFP@DOE.NH.GOV

Subject line must include: RESPONSE TO RFP VR2023-VR-IL Part B:
Independent Living, Part B FY24-FY28 (state fiscal years)

Electronic Submissions must be submitted using the following criteria:

- a. Searchable PDF Format
- b. Files must be less than 10MB in size.

Exception: If files are greater than 10MB in size, the vendor will be required to submit their proposal in parts. It is the vendors responsibility to ensure a complete proposal is submitted

Physical Proposals

Physical Proposals must be addressed to:

STATE OF NEW HAMPSHIRE

Vocational Rehabilitation of New Hampshire

21 S. Fruit Street, Suite 20

Concord, NH 03301

Physical Submissions shall include:

- a) One original and 5 (five) clearly identified copies of the Proposal including required attachments; and
- b) One (1) Electronic submission via email attachment or USB drive.

SECTION 8 – Proposal Content and Requirements

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

- Cover page of interest and general description of recommended approaches, scope of work, processes, and deliverables for this project.
- Glossary of Common Terms, to include any technical terms and acronyms.
- Implementation Plan including tentative schedule, region(s) to be served, estimated amount to be served, and the date reporting plan.
- Company Profile/Background, overview of the company including

- Number of years in business
 - Number of employees
 - Location(s)
 - Expertise
 - Key Personnel
- Technical Proposal:
 - Executive summary and proposal summary
 - A description of the bidder's organizational capabilities to deliver the services.
 - A description of related experience in the field, and comprehensive
 - Project Plan - Description of the bidder's plan for project implementation, timeframe, and strategies for meeting the deliverables.
 - Three (3) References
 - At least once example of a completed project of comparable scope.
 - Résumés for all staff who will work on this project
- Price Proposal: must be submitted separately
 - Personnel Costs
 - Transportation Costs
 - Other costs
- Other attachments – N/A

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 New Hampshire Department of Education (NHED)		1.2 State Agency Address 25 Hall Street Concord, NH 03301	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Unit and Class	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature <div style="text-align: right;">Date:</div>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature <div style="text-align: right;">Date:</div>		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i> By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i> By: _____ On: _____			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i> G&C Item number: _____ G&C Meeting Date: _____			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance

hereof, and shall be the only and the complete compensation to the Contractor for the Services.

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

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

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

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

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

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

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

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

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

8. EVENT OF DEFAULT/REMEDIES.

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

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

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

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

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

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

9. TERMINATION.

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

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

10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word “Property” shall mean all data, information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

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

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

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

13. INDEMNIFICATION. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys’ fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State’s sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

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

19. CHOICE OF LAW AND FORUM.

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

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

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

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

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

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

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

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

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

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.

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.

Contractor Initials _____
Date _____

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 (<http://www.whitehouse.gov/omb/grants/sfillin.pdf>).
- 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.

Contractor Initials _____
Date _____

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.

Contractor Initials _____
Date _____