



New Hampshire

Department of Education

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION**

**Request for Proposal
HEARING OFFICER AND ALTERNATIVE DISPUTE RESOLUTION OFFICER**

RFP 2023-NHED-GOV-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.

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Section 1 – Overview and Schedule

Executive Summary

The New Hampshire Department of Education (NHED) through the Governance Unit is soliciting competitive sealed proposals from qualified Vendors to serve as hearing officers. Appointment of hearing officers is a statutory requirement of administrative agencies.

It is anticipated that services will be provided under contracted service arrangements, upon Governor and Council approval through June 30, 2025, with an option to renew for an additional two-year term.

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 proposers regarding the posting of schedule changes. It is the responsibility of each proposer to visit the RFP web site regularly to obtain any alterations.

EVENT	DATE	LOCAL TIME
RFP Released to Proposers (Advertisement)	12/15/22	8:00 am ET
Proposer Inquiry Period Ends	1/9/23	4:00 pm ET
Final Agency Responses to Proposer Inquiries	1/13/23	4:00 pm ET
Proposers Submit Proposals	1/25/23	4:00 pm ET
Estimated Notification of Selection and Begin Contract Negotiations	2/13/23	N/A

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

The Department of Education is an executive-branch agency of the State of New Hampshire. It is responsible for distributing state and federal monies to local districts to support elementary and secondary public education and providing regulatory direction and technical assistance to the State's elementary and secondary schools.

The department is required by State and Federal law to provide Hearing Officers to preside at Due Process Hearings and Alternative Dispute Resolution proceedings. Candidates chosen fulfill Federal and State requirements for hearing officer/mediators in the following areas: Special Education Impartial Due Process Hearings, State Board of Education Hearings, Vocational Rehabilitation Fair Hearings, Alternative Dispute Resolution (e.g. neutral conferences and mediations).

Section 3 – Proposed Scope of services and Requirements

A contract to provide the services for Hearing Officer and Alternative Dispute Resolution Officer requires Governor and Council approval. It is anticipated that the effective date for the contract will be on or after July 1, 2023. The first meeting with the Department contracting officer will be on or after July 1, 2023.

During the period of Governor and Council approval to June 30, 2025, the contractor shall provide the services as a:

- Special Education Impartial Due Process Hearings Officer as outlined in RSA 186-C:16-a and Ed 1123

<http://www.gencourt.state.nh.us/rsa/html/XV/186-C/186-C-16-a.htm>
http://www.gencourt.state.nh.us/rules/state_agencies/ed1100.html

- Hearing Officer for State Board of Education Hearings as outlined in RSA 541-A and Ed 200

<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-LV-541-A.htm>
http://www.gencourt.state.nh.us/rules/state_agencies/ed200.html

- Fair Hearing Officer for Vocational Rehabilitation Hearings 29 USC 722(c) and Ed 1004.04

[U.S. Code: Title 29 | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)
http://www.gencourt.state.nh.us/rules/state_agencies/ed1000.html

- Alternative Dispute Resolution Officer as outlined in RSA 186-C:23-b and Ed 215.02 (Neutral Conference) and RSA 186-C:24 and Ed 215.03 (Mediation)

<http://www.gencourt.state.nh.us/rsa/html/XV/186-C/186-C-23-b.htm>
http://www.gencourt.state.nh.us/rules/state_agencies/ed200.html
<http://www.gencourt.state.nh.us/rsa/html/XV/186-C/186-C-24.htm>
http://www.gencourt.state.nh.us/rules/state_agencies/ed200.html

Scope of the Work:

In the role of Hearing Officer, the contractor shall:

1. Upon assignment of a case by the Governance Unit, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Governance Unit and detailed in Hearing Officers' Guide to Administrative Process.

3. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
4. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
5. Conduct pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Governance Unit.
6. Explain subpoena process to parties. Issue subpoenas as necessary.
7. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
8. Make written findings of facts following the hearing.
9. Make written rulings of law following the hearing.
10. Issue timely responses to all motions/continuance requests of the parties.
11. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer.
12. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Governance Unit.
13. Format of Hearing Officer Orders to be in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Governance Unit.
14. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing, and accounting.
15. Provide updates on cases to the Governance Unit by no later than noon on Monday for the prior week.
16. Attend training sessions as scheduled by the Governance Unit.

Scope of the Work:

In the role of Alternative Dispute Resolution Officer (e.g. Mediator and Neutral Officer) the contractor shall:

1. Upon assignment of a case by the Governance Unit, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all Alternative Dispute Resolution proceedings as directed by the Governance Unit and detailed in Hearing Officers' Guide to Administrative Process.
3. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
4. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer.
5. Ensure timely responses to all inquiries of the parties.
6. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Governance Unit.
7. If serving as a Mediator notify the Hearing Officer and Governance Unit of the outcome of mediation sessions in a timely manner.
8. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing, and accounting.
9. Provide updates on cases to the Governance Unit by no later than noon on Monday for the prior week.
10. Attend training sessions as scheduled by the Governance Unit.

Section 4 – Process for Submitting a Proposal & Content and Requirements for a Proposal

Proposal Submission, Deadline, and Location Instructions

An original and two copies of the proposal must be received at the Department of Education no later than 4:00 P.M. on January 25, 2023. Late bids shall not be considered, no exceptions.

The proposal shall include (1) a signed and written statement explaining knowledge in specific areas of law and a comprehensive resume; (2) a plan for services that details how the candidate anticipates maintaining electronic and telephonic security, communicating in a timely manner, adhering to Department dispute resolution procedures as outlined in the Hearing Officers' Guide to Administrative Process, ensuring adherence to statutory timelines, and how the candidate anticipates advancing cooperation and teamwork with the Department of Education, and (3) a short essay on how to deal with challenging participants in the adjudicative process.

Incomplete proposals shall not be considered; no exceptions.

Proposals shall be reviewed by a committee of department staff members knowledgeable about the services needed and, if deemed necessary, interviews shall be arranged with candidates to determine applicant qualification. For incumbent candidates, job performance evaluations shall be reviewed to ensure they have met position requirements during their tenure as hearing officers.

The Governance Unit shall notify all bidders of the status of their proposal no later than February 13, 2023. The Governance Unit shall then prepare a contract for contractor signature prior to submission to Governor and Council for approval.

With the exception of individuals submitting a proposal, each bidder (i.e. companies or organizations) shall submit the following information, as appropriate, with the formal proposal:

- For profit corporations must submit a certificate of good standing from the New Hampshire Secretary of State testifying that the corporation is registered to do business in New Hampshire.
- Nonprofit corporations must submit a certificate of good standing from their home state.
- Proof of personal automobile insurance during term of contract.

In order to provide all bidders with the opportunity to present a detailed and comprehensive proposal, no page limitation has been established for the formal proposal. The formal proposal shall address the three factors specified in the second paragraph under **Bid Procedures** above.

Unless waived as a non-material deviation in accordance with Section 6B, late submissions via email or hardcopy 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 by the person designated above. The Agency accepts no responsibility for mislabeled mail or email that is not delivered or undeliverable for whatever reason.

Proposers who are ineligible to bid on proposals, bids or quotes issued by the federal government and 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.

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:

Stephen W. F. Berwick via e-mail Stephen.W.Berwick@doe.nh.gov, via phone (603)271-2299 or FAX (603) 271-1953.

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 Inquiry Period shall not be considered properly submitted and may not be considered. The deadline for submitting written questions by email is January 9, 2023.

Copies of all questions submitted and the responses shall be posted on the NHED website here: <https://www.education.nh.gov/partners/working-nh-doe/requests-proposals> and the Department of Administrative Services website here: <https://apps.das.nh.gov/bidscontracts/bids.aspx>. The NHED's responses shall be available to the general public no later than January 13, 2023. Questions and answers shall become part of the final Contract as an attachment. Written responses provided for the questions are binding.

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.

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.

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 – Evaluation of Proposals

Criteria for Evaluation and Scoring

All written proposals received by the deadline shall be reviewed and rated by a panel consisting of members of the NHED according to the criteria below. Applicants may be contacted for further information and/or clarification. Proposals shall be reviewed to determine the extent to which they provide information to demonstrate the following:

30 Points Expertise/Experience in the field of Administrative Hearings.

20 Points Demonstrated competency in written and verbal communication.

30 Points Experience with Special Education, General Education and Vocational Rehabilitation law.

20 Points Training and experience as a mediator.

Each reviewer's score of all criteria listed will be totaled for each proposal received. All total scores for each proposal shall be computed. Contracts shall be offered to individuals based on their total score. Awards shall be made to individuals based on the aggregate score of the panel.

Breakdown of Scoring:

Expertise/Experience in the field of Administrative Hearings (0-30 points)

Experience with Special Education, General Education, and Vocational Rehabilitation Law (0-30 points)

Scoring shall be broken down only as 0, 10, 20 or 30 points not in lesser numbers.

30 available points:

- 0 meets none of the requirements
- 10 meets some of the requirements
- 20 meets most of the requirements
- 30 meets all of the requirements

Training and experience as a mediator (0-20 points)

Demonstrated Competency in written and verbal communication (0-20 points)

Scoring shall be broken down only as 0, 10, 15 or 20 points not in lesser numbers.

20 Available points:

- 0 meets none of the requirements
- 10 meets some of the requirements
- 15 meets most of the requirements
- 20 meets all of the requirements

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.

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 Proposal.

Payment Terms:

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2025. This schedule was developed based upon the median and average costs of all hearings and mediations held during a one-year time span.

Mediation/Neutral Conference		Date	
Upon acceptance of case - \$150*			
<ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$300 (example 9-4) • Less than 3 hours - \$200 (example: 9-noon; noon - 3) • Second Day - \$175 			
Prior to Pre-Hearing		Date	
Upon acceptance of case - \$150*			
Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery; etc.) <i>Total allowable for case: \$200</i>			
Sufficiency hearing - \$225			
Hearing		Date	
Pre-Hearing - \$200			
Hearing –			
<ul style="list-style-type: none"> • 1st Day – More than 3 hours \$325; Less than 3 hours - \$205 • 2nd Day - More than 3 hours \$325; Less than 3 hours - \$205 			
Post-Hearing		Date	
Prepare decision (Non-State Board) - \$305			
<ul style="list-style-type: none"> • Hearing Decision • Summary Judgment 			
Report and Recommendation - \$250 (State Board)			
State Board – Findings of Fact/Rulings of Law - \$105 (State Board)			
Miscellaneous	Date	Details (mileage, time, other information necessary)	Payment (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$50			
Mileage - \$0.625/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			
<ul style="list-style-type: none"> • ½ day (four hours or less) - \$200.00 • Full day - \$350.00 			Not Applicable
Evaluation meeting \$50.00			

File Preparation (includes Indexes, Admin file, Pre-hearing checklists) – \$50 per case if at close of settlement; withdrawal; dismissal <i>or</i> \$100 per case after full hearing and decision rendered			
Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE)**			
Consultation (court, OSEP, OCR, DOE) \$60.00**			
OTHER - Describe			

Items not covered in this schedule - *From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task (or training in or out of state for compliance with federal statutes) for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out above for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.*

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized.*

***Only with prior approval from the office of legislation and hearings. Mileage is if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venue (see contract Exhibit C for details).*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90*

Terms and Conditions:

1. Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$155,000 for the biennium - \$77,500 for FY 24 and \$77,500 for FY 25. (50,000 state; 7,500 VR; 20,000 SPED per annum)
2. If the Department chooses to award a contract in response to this RFP, the successful bidders shall be notified by letter. The Department shall then develop a contract for Governor and Council approval, relying on the State Standard P-37 Contract. The contract shall incorporate, by reference, all provisions of this RFP, the Hearing Officers’ Guide to Administrative Process and the successful bidder’s proposal, as determined by the Department. In preparing a contract with the successful bidder, the Department reserves the right to clarify any terms and conditions contained in the proposal.
3. All obligations of the State, including the continuance of payments under an approved contract shall be contingent upon the availability and continued appropriation of funds and in no event shall the State be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate or amend the contract immediately upon giving the contractor notice of such termination or amendment.
4. Contractor shall consult Hearing Officers’ Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Governance Unit.

5. When delivering services under an approved contract, the contractor shall work under the direct supervision of the Administrator, Dispute Resolution and Constituent Complaints in the Governance Unit for this project.
6. At the conclusion of proceedings, the Administrator, Dispute Resolution and Constituent Complaints in the Governance Unit shall mail an evaluation to each party. The evaluations shall be used by the Administrator, Dispute Resolution and Constituent Complaints in the Governance Unit as one of the components of the annual evaluation of contracted Hearing Officer performance.
7. All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance, or nonfeasance.

Conflicts of Interest:

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Tentative Work Schedule:

The successful contractor will be notified in writing after the approval of the contract by the Governor and Council.

First meeting with Department contracting officer will be on or after July 1, 2023.

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 6 – 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 proposer 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 proposer that violates RSA 21-G:38 shall be subject to prosecution for an offense

under RSA 640:2. Any proposer who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from bidding on the RFP, or similar request for submission and every such proposer shall be disqualified from bidding on any RFP or similar request for submission issued by any state agency. A proposer that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the department of administrative services, which shall note that information on the list maintained on the state's internal intranet system, except in the case of annulment, the information, shall be deleted from the list.

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 7 – 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.

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 proposer to execute a 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, 2025. The contract term may be extended by one additional two-year term 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.

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

Standard Terms and Conditions of the State of New Hampshire (P-37)

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

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

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 (“Effective Date”).

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

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

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

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

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

7. PERSONNEL.

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

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

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

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

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

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

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

9. TERMINATION.

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

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State’s discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State’s discretion, the Contractor shall, within 15 days of notice of early termination, develop and

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

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. “Change of Control” means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

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

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

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

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

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

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

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

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

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

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

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

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

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

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