



New Hampshire

# Department of Education

## REQUEST FOR PROPOSALS (RFP)

### **Transcription and Meeting Minute Preparation Services New - NHED-RFP 2024**

## **Section 1 – Overview and Schedule**

### **A. Goal of this procurement/Business needs:**

The New Hampshire Department of Education (NHED) is seeking a vendor for transcription services and preparation of meeting minutes for hearings and statewide board meetings.

### **B. Schedule**

The following table provides a Schedule of Events for this RFP through contract finalization and approval. NHED reserves the right to amend this Schedule at its sole discretion and at any time through a published Addendum.

| <b>EVENT</b>  | <b>DATE</b> | <b>LOCAL TIME</b> |
|---|-------------|-------------------|
| RFP Released to Vendors (Advertisement)   | 3/15/2024   |                   |
| Vendor Inquiry Period Ends  | 3/29/2024   | 4:30 PM           |
| Final Agency Responses to Vendor Inquiries                                      | 3/29/2024   | 4:30 PM           |
| Vendors Submit Proposals  | 4/12/2024   | 4:30 PM           |
| Estimate Timeframe for Vendor Oral Presentations and Interviews (if applicable) | NA          | NA                |
| Estimated Notification of Selection and Begin Contract                          | 4/26/2024   | 4:30 PM           |

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

NHED is responsible for providing administrative support to various statewide boards and commissions that are required, pursuant to RSA 91A, to prepare minutes of board meetings. In addition, NHED must obtain verbatim transcription services for certain hearings and statutory mandated proceedings conducted by NHED contractors.

The purpose of this RFP is to seek proposals from individuals, agencies, or organizations (hereafter referred to as “vendor(s)”) to work in conjunction with the NHED to include various bureaus within NHED, to prepare the applicable meeting minutes or verbatim transcriptions of hearings using MP3 or MPEG-4 audio recordings of the meetings and hearings resulting in minutes or transcripts in Microsoft Word documents or Microsoft Compatible file formats. The file format for recordings and output may vary over the period of this contract but will include generally commercially available technology platforms.

### **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**

Supported Boards and Bureaus pursuant to the terms of the contract shall include, but not be limited to the following:

### **A. State Board of Education**

- Transcription summarization into meeting minutes of the monthly State Board of Education meetings. consistent with NH RSA 91-A (see information below). Monthly meetings average 4 ½ hours in length.
- Upon request, verbatim transcription of State Board of Education adjudicative hearings.

### **B. Governance Unit**

- Verbatim transcription, as requested, and regulations for hearing officer pre-hearing conferences and due process hearings and for the following adjudicative hearings:
  - Special Education Impartial Due Process Hearings as outlined in RSA 186-C:16-a and Ed 1123 State Board of Education Hearings as outlined in RSA 541-A and Ed 200Vocational Rehabilitation Fair Hearings 29 USC 722 (c) and Ed 1004.04

### **C. Higher Education Commission**

- Transcription summarization into meeting minutes of Higher Education Commission meetings consistent with RSA 91-A (see information below). Meetings are held 4-6 times a year and average 1-2 hours per meeting.

### **D. Council for Teacher Education**

- Transcription summarization into meeting minutes of the monthly Council for Teacher meetings consistent with RSA 91-A. Per statutory requirements of RSA 91-A (see information below). Monthly meetings average 3-4 hours in length.

### **E. Professional Standards Board**

- Transcription summarization into meeting minutes of the monthly Professional Standards Board meetings. Per statutory requirements of RSA 91-A (see information below). Monthly meetings average 3-4 hours in length.

### **F. Various Advisory Boards, Commissions, and Committees administratively supported by the NHED.**

The selected vendor must be able to complete the following tasks:

- Have the ability to receive audio files via a secure method of transmission.
- For audio files that require the production of a summarization into meeting minutes consistent with the standard form used by the appropriate board, commission or committee, the vendor must summarize such meeting minutes consistent with the statutory requirements of [RSA 91-A](#) and record all motions and the votes on all motions. Such summary minutes shall be transmitted to the NHED through a secure method of transmission no later than 4 business days after receipt of the audio file.
- For audio files that require verbatim transcription, the vendor must transcribe the audio files to text and transmit back to the department in a file format that is editable in Microsoft Word. Text files must be transmitted to NHED by secure method of

transmission no later than 10 business days after receipt of such file.

- Expedited requests: Vendor must be able to provide a completely transcribed audio file in a file format that is editable in Microsoft Word within forty-eight (48) hours of receiving an expected request from NHED.
- Provide an accurate transcript that is verbatim being typographically or grammatically free of error.
- Ensure the word “unintelligible” is used for portions of a recording that is incomprehensible.
- Utilize the following format for hearings when multiple people are speaking:

Hearing Examiner Smith: Which day of the week did the injury occur?

Respondent: Monday.

Hearing Examiner Smith: How did you fall?

Respondent: I was walking and tripped over a box.

- Ensure each verbatim transcript begins with a cover page that includes:
  1. The title and number(s) of the proceeding;
  2. The date and place of the proceeding;
  3. The name of the transcription service.
- Have the ability to transcribe meetings and provide accurate minutes for meetings that may involve three (3) or more individuals and accurately reflect the speaker in the transcription or the minutes of the meeting.
- Transcribe hearing proceedings that include testimony from several parties.
- Have the ability to receive audio files from recorded hearings in formats that may include:
  1. MP3 or MP4 files;
  2. Audio/video files from recorded Microsoft Teams Meetings;
  3. Recorded digital audio files
- Make all necessary corrections requested by NHED to ensure a complete and correct verbatim transcript or complete and accurate meeting minutes.
- Provide corrected copies to NHED within seven (7) calendar days from notification of deficiency at no additional charge.
- Maintain the confidentiality of all audio files, draft meeting minutes, and verbatim transcription to provide adequate protection against unauthorized disclosure, copying access, or use.
- Ensure compliance with all applicable privacy laws for transmitted data including the Federal Law on Student Education Records (“FERPA”).
- Data Location: The Vendor shall provide its Services to the State and its end users solely from data centers within the Continental United States. All storage, processing and transmission of State Data shall be restricted to information technology systems within the Continental United States. The Vendor shall not allow its personnel or sub-contractors to store State data on portable devices, including personal computers, except as specified and allowed by the Contract, and then only on devices that are used and kept

at its data centers within the Continental United States. The Vendor shall permit its personnel and contractors to access State data remotely only to provide technical support and as specified or required by the Contract.

- The vendor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty.
- The vendor shall promote and maintain an awareness of the importance of securing the State's information among the vendor's employees and agents.

### **Section 3 – Contract Terms and Conditions**

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

Any resulting Contract from this RFP will be a non-exclusive Contract. NHED 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 NHED 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.

NHED anticipates that the resulting contract from this RFP will be for the term of (5) years from the date of approval of the Governor and Executive Council and will include optional extension terms, as determined by NHED subject to the parties' prior written agreement and required governmental approvals including Governor and Executive Council.

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

NHED 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 identify those 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:

Angela Adams ([Angela.Adams@doe.nh.gov](mailto:Angela.Adams@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 NHED 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 NHED 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.

NHED 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 NHED's discretion. NHED may consolidate and/or paraphrase questions for sufficiency and clarity. NHED 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, NHED 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 NHED. Official responses by NHED 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 NHED 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**

NHED 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, NHED, 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 NHED from obtaining the best possible competitive Proposal.

### **F. Property of NHED**

All material received in response to this RFP shall become the property of NHED and will not be returned to the vendor. Upon contract award, NHED 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 NHED 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, NHED 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, NHED will post the ranks or scores of each responding vendor. In the event that the contract does not require Governor & Executive Council approval, NHED 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 Governor & Executive Council 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 Governor & Executive Council 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 NHED to award a contract. NHED 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 NHED's posting of the rank or score on its website, vendors may, in accordance with RSA 21-G:37, request that NHED review its selection process. The request must be in writing and must specify all points on which the vendor believes NHED 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. NHED will respond to the request within 5 business days of its receipt.

### **Section 6 – Evaluation of Proposals**

#### **A. Criteria for Evaluation and Scoring**

NHED will evaluate each responsive Transcription and Meeting Minute Preparation Proposal using a scoring scale of 100 points, which will be distributed as set forth below.

|           |  |
|-----------|--|
| 50 Points | Plan for services that details how vendor anticipates providing services and demonstrated ability to meet the needs of the agency as set forth in Section 2 above. The ability to produce meeting minutes and verbatim transcripts are equally important and successful vendor must be able to demonstrate ability to complete both types of work product. |
| 30 Points | Expertise/experience in producing high quality transcripts and accurate meeting minutes  |
| 20 Points | Price Proposal   |

NHED will select a vendor based upon the criteria and standards contained in this RFP and from applying the weighting in this section.

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

#### **B. Planned Evaluations Steps**

NHED plans to use the following process:

- Step 1. Initial screening to ensure that the Transcription and Meeting Minute Preparation Proposals are in compliance with submission requirements;
- Step 2. Preliminary evaluation of Transcription and Meeting Minute Preparation Proposals;

- Step 3. Price Proposals review;
- Final Selection: Select the highest scoring vendor(s) and begin contract execution.

### **C. Step 1: Initial Screening**

NHED will conduct an initial screening to verify vendor compliance with the proposal submission requirements set forth in Sections 4 and 7. NHED 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: Scoring of Proposals**

NHED 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 proposals and give a preliminary score to the proposals under the guidelines set forth in Section 6. Should a vendor fail to achieve 50 Points in the preliminary scoring, it will receive no further consideration from the evaluation team.

### **E. Step 3: Price Proposal Review**

Price proposals, in a format of vendors choosing, will be reviewed upon completion of the scoring of the transcription proposals. The vendor's price proposal will be allocated a maximum potential score of 20 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 Transcription and Meeting Minute Preparation Proposal Score.

### **F. 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.

### **G. Final Selection**

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

### **H. Rights of NHED in Accepting and Evaluating Proposals**

NHED 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 NHED’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 NHED 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 electronically 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 transcription and meeting minute preparation 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. 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 NHED, in accordance with its established policies, as having been received at the location designated below. NHED accepts no responsibility for damaged, mislabeled, or undeliverable emailed proposals.

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

#### **Electronic Proposals:**

Electronic proposals must be addressed to: Angela Adams at [Angela.Adams@doe.nh.gov](mailto:Angela.Adams@doe.nh.gov) and clearly marked as follows “RESPONSE TO RFP: NHED-RFP 2024-TRANSCRIPTION AND MEETING MINUTE PREPARATION SERVICES”

Electronic submissions must abide by the following criteria:

- Searchable PDF format
- Files must be less than 20 MB in size
  - Exception: If files are greater than 20MB 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.

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

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

- **Table of Contents:** The RFP should include a Table of Contents which will allow the Selection Committee to easily access different information within the document.
- **Company Profile/Background.** Please include a section which gives an overview of the company or individual including number of years in business, number of employees, location(s), expertise, local presence, etc. This section should not exceed two (2) pages.
- **Key Personnel:** Include abbreviated resumes or short biographic information on the key proposed candidates that will be fulfilling the services needed.
- **Transcription and Meeting Minute Preparation Services:** Primary section detailing/outlining services to be provided as required in Section 2 of this RFP.
- **References:** Provide a minimum of three (3) references for similar projects completed in the past. State of NH personnel can be included within references; however, should not be used to meet the minimum number of references for a proposal.

## **Appendix A**

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 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<br><br><div style="text-align: right;">Date:</div>  |                            | 1.12 Name and Title of Contractor Signatory   |                      |
| 1.13 State Agency Signature<br><br><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><br><br>By: _____ Director, On: _____ |                            |   |                      |
| 1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i><br><br>By: _____ On: _____                   |                            |   |                      |
| 1.17 Approval by the Governor and Executive Council <i>(if applicable)</i><br><br>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.