

# **State of New Hampshire Public Utilities Commission**



## **Utility Cost of Capital Consultant**

**REQUEST FOR PROPOSALS (RFP)**

**RFP #2021-003**

**Release Date: January 15, 2021**

**Application Due: 4:30 p.m. EST February 12, 2021**

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## Executive Summary

The New Hampshire Public Utilities Commission (Commission) issues this Request for Proposals (RFP) from qualified consultants to provide utility technical consulting services.

Electronic proposals must be received at the Commission no later than 4:30 p.m. EST on February 12, 2021. If the Commission decides to award a contract as a result of this RFP process, any award is contingent upon approval of the contract by the Chairwoman of the Commission, with payment subject to the Commission's special utility assessment process. See RSA 365:37, II.

### Pertinent Dates and Information

1. Written Inquiries about this RFP must be submitted by e-mail to [PUC-RFP@nh.gov](mailto:PUC-RFP@nh.gov) no later than 4:30 p.m. EST on January 29, 2021. The subject of the email should state the following: RFP #2021-003, Utility Cost of Capital Consultant. **No phone calls please.** It is highly recommended that respondents review the RFP as soon as possible and submit any questions promptly to allow the Commission Staff (Staff) time to answer questions and to allow the proposer time to complete the proposal. Please note that responses to questions are carefully considered and responses may require several days. Responses will be posted as available, at: [www.puc.nh.gov/Home/requestforproposal.htm](http://www.puc.nh.gov/Home/requestforproposal.htm).
2. Electronic proposals **must be received** at the Commission by no later than 4:30 p.m. EST on February 12, 2021. Proposals must be typed and double-sided. The strongly preferred format includes 12 point font size with 1-inch page margins. Page numbers should be included. Electronic copy must be in PDF (portable document file) format and must be searchable. Proposals must be submitted electronically to: [PUC-RFP@nh.gov](mailto:PUC-RFP@nh.gov). The file will be considered received based on the timestamp in the receiver's email. The Commission can accept electronic files no larger than 8 MB. Staff shall assess completeness and responsiveness of the proposal to eliminate nonconforming proposals. Staff may waive or offer a limited opportunity to cure immaterial deviations from RFP requirements if it is determined to be in the best interests of the State. Any response that is filed shall be valid for not fewer than 180 days following the deadline for submission of proposals, or until the effective date of any resulting contract, whichever is later.
3. Schedule of Events

Event	Date/Deadline	Time
RFP Issued	01/15/21	4:30 PM
Question Period Closes	01/29/21	4:30 PM
Responses to Questions Posted	02/02/21	4:30 PM
Proposal Due Date and Time	02/12/21	4:30 PM
Anticipated Contract Start Date	Early March 2021	
4. Paper copies are also required. In addition to the electronic submission, proposers must submit one (1) paper copy to the RFP point of contact:

Juli Pelletier,  
Business Office Director  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301-2429  
[PUC-RFP@nh.gov](mailto:PUC-RFP@nh.gov)

The paper copy shall be sent by first class U.S. mail and postmarked no later than 4:30 p.m. February 12, 2021, or sent by 1-day overnight express delivery service (UPS, Federal Express, etc.), no later than 4:30 p.m. February 12, 2021, or hand-delivered no later than 4:30 p.m. February 12, 2021. Hard copies must be identical to the submitted electronic copy in text and pagination. In the alternative, the electronic copy shall be controlling.

5. Interviews may be scheduled as described herein. In the event an interview is scheduled, proposers will be contacted by Ms. Pelletier.
6. **Restriction on Contact with State Employees:**  
From the date of the release of this RFP until awards are made and announced regarding the selection, all communications with personnel employed by or under contract with the State regarding this RFP is forbidden, unless first approved by the point of contact, Juli Pelletier, Business Office Director. Commission 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.

## **I. BACKGROUND**

The Commission is an administrative agency that serves as an arbiter between the public utilities and their ratepayers. Proceedings in this regard address such areas as public utility rates, financing, terms and conditions of utility service, quality of service, safety and reliability, eminent domain matters, public utility exemptions from local zoning ordinances, public utility franchises, utility crossings of public lands and waters, wholesale relationships between utilities, rulemakings and consumer complaints.

The Commission is seeking qualified consultant(s) able to provide utility cost of capital consulting services on behalf of Staff in Docket No. DW 20-184, Aquarion Water Company of New Hampshire, Inc. (Aquarion or the Company) petition requesting an increase in its annual revenues of approximately \$1,300,000. Total contract must not exceed \$35,000.00.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are at <https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-184.html>.

## II. SCOPE OF SERVICES AND DELIVERABLES

The consultant will be hired and supervised by the Commission to perform the consulting work, and will work at the direction of, and in consultation with, Staff. The consultant will determine return on equity and overall rate of return based on multiple factors, including industry financial information relating to revenues, risk, growth, profitability, equity returns, capital structure, cost of equity and weighted average cost of capital, and expert witness testimony. Among other things, the engagement will include:

- Review of the Company's proposed rate of return and cost of capital
- Preparation of interrogatories and participation in other discovery activities
- Participation in technical sessions and settlement discussions
- Preparation and submission of direct, rebuttal, and surrebuttal testimony
- Preparation of responses to interrogatories
- Attendance at hearings for cross-examination of testimony

## III. PROPOSAL COMPONENTS

The overall proposal emphasis should be on completeness and clarity of content. Proposals that are incomplete or unsigned will be deemed disqualified and not be considered. Proposals shall include the following information, and respond to all areas listed below, in the order listed, concluding with a separate section on cost estimates for the base scope of work, and a separate description of and cost estimate for the items in Section II above.

1. Letter of Transmittal: Include the name of the proposer, contact information for, and signature of, the individual authorized to bind the proposer, (or of the proposer), and identify the proposer's point of contact for this engagement. (1 page)
2. Proposer's Corporate/Company Information: Information concerning corporate/company history, i.e., how many years in business, corporate officers or company principals, location of branch offices, professional and business association memberships, current or prior engagements involving substantive areas similar to those described in this RFP, the parties it represented in such engagements, the scope of work it performed in such engagements, and the conclusion and recommendations it made publicly in connection with such engagements. (1 page)
3. Proposed Work Plan: Detailed description of the proposer's plan to conduct and complete the consulting work, with the scope, methodologies, and timeline as specified in Appendix A.
4. Relevant Qualifications and Experience of Personnel Assigned: Detailed description of the proposer's relevant experience with respect to the proposed scope of services, including a list of all personnel who will be assigned to this engagement, and detailed resumes (in an appendix) and summaries of each

individual reflecting his or her relevant experience, the nature of his or her specific responsibilities, and the positions publicly advocated by the proposer in connection with any similar engagements. During the course of the work, any material substitutions or changes in personnel assigned to perform the work must be approved by the Commission in writing. (no more than 3 pages, not including the resumes of key personnel)

5. References: A list of at least three references for work performed by the proposer, which is similar in scope or content to that proposed, preferably within the past five years. (1 page)
6. Disclosure of Conflicts of Interest: Identification and description of any existing or potential conflicts of interest, including but not limited to those that arise as a result of relationships or affiliations with utility companies under the jurisdiction of the Commission, other industry participants, trade associations, or advocacy organizations or groups that participate in or represent active stakeholders. Contractor has a continuing obligation to update this information throughout the entire procurement process and during the term of any resulting contract.
7. Detailed Budget and Cost Proposal: A **detailed** budget and cost proposal, including, but not limited to, task-level estimates, the hourly rate for personnel and any associated expenses.

#### IV. SELECTION PROCESS AND SCORING CRITERIA

Overall cost is a consideration but may not be the determining factor in the Commission's decision. In addition to cost, the Commission will consider the following criteria:

- a. Knowledge and practical experience that the organization possesses, including that of the staff and any subcontractors assigned to the engagement.
- b. Experience and qualifications in providing similar services in New Hampshire as well as other states and to other utility commissions or regulatory agencies.
- c. Availability and accessibility of staff assigned to the engagement, including physical proximity to New Hampshire.
- d. Ability to perform all of the major disciplines necessary to perform the work.
- e. Cost of consulting services and expenses, including the competitiveness of the proposed hourly rates and any proposed discounts or other cost-effective benefits. (The Commission reserves the right to negotiate lower fees or a different fee structure than proposed, with any selected firms).
- f. The experience, commitment and role of the firm's proposed manager in charge of providing quality services to the Commission.

- g. Overall responsiveness to the requirements of the RFP, including completeness, clarity and quality of the proposal.
- h. Interviews, if performed.

A. Selection Process

Proposals will be reviewed and evaluated in a three-tier review process, followed by a contracting phase. The four steps are summarized below:

Step 1 Preliminary Review: The Commission shall assess completeness and responsiveness of proposals to eliminate non-conforming proposals. The Commission may waive or offer a limited opportunity to cure immaterial deviations from RFP requirements if it is determined to be in the best interests of the State.

Step 2 Preliminary Evaluation: An Evaluation Team consisting of Staff members shall initially score conforming proposals and conduct interviews, if requested, as described below. Broadly, the Commission will evaluate all qualified proposals for clarity, quality of the proposal, how well the proposal meets the approved Scope and Timeline requirements, reasonableness of cost, the qualifications and relevant experience of the consulting team, and the likelihood of the consulting completion within the contract period. All qualified proposals will be scored based upon the specific the pre-published scoring criteria set forth in this RFP and a score for each proposal from 0-100 points will be developed by the Team.

Step 3 Final Evaluation: If determined to be appropriate by the Commission, proposers may be invited to oral interviews. The Commission retains the sole discretion to determine whether to conduct oral interviews, with which proposers, and the number of interviews. Proposers are advised that interviews may be conducted with fewer than all proposers.

The purpose of oral interviews is to clarify and expound upon information provided in the written proposals. Proposers are prohibited from altering the basic substance of their proposal during the oral interviews. Proposers may be asked to provide written clarifications of elements in their proposals, regardless of whether an oral interview will be conducted.

References will be reviewed and/or contacted during Step 3.

Information gained from oral interviews and references will be used to refine scores assigned during the Step 2 review of the Proposal.

The Evaluation Team shall generate final consensus scores for each proposal, rank all proposals, and submit its recommendation to the Commissioners. Selection is subject to review and approval by the Commission.

Step 4: The Commission shall negotiate, if necessary, and develop a contract and related documents consistent with the RFP, then submit the completed contract(s) to the Chairwoman of the Commission for approval.

Notwithstanding any other provision of this RFP, this RFP does not commit the Commission to make an award of a contract. The Commission reserves the right, at its sole discretion, to reject any or all proposals, or any portions thereof, for any reason, at any time, including, but not limited to, canceling the RFP, and to solicit new proposals under a new acquisition process. If, for any reason, negotiations with the top scorer(s) do not result in a contract(s), the Commission may go to the next highest scorer(s) and seek to negotiate with that proposer(s).

Proposals shall be deemed incomplete and disqualified if information that is essential to the scoring evaluation is not included in the proposal. Proposals that fail to meet the following application requirements will be automatically deemed disqualified:

- Filing of a timely proposal, with the correct number of paper and electronic copies, and all mandatory elements;
- Identification of key personnel, and potential contractors or subcontractors, if applicable, or a detailed process and timeline to identify and engage any such contractors or subcontractors;
- Inclusion of a detailed budget plan and cost information.

Contractors whose proposals are deemed ineligible shall receive notification of this determination.

## B. Scoring Criteria

The Commission shall consider all of the following criteria, and assign a corresponding point score, where a maximum score for all criteria shall be 100 points. Cost is a consideration, but may not be the determining factor in the selection of the consultant. The Commission reserves the right not to consider any proposal with a total aggregate point score of less than 65 points.

1. Qualifications, technical expertise, certifications, knowledge and practical experience that the consultant possesses, including that of the staff and any subcontractors assigned to the engagement, providing services directly relevant to the specified scope of services. (Maximum Point Score: 30)
2. Clarity and appropriateness of proposed general approaches, and demonstrated knowledge of relevant subject matter. (Maximum Point Score: 25)
3. General experience and qualifications in providing similar services in New Hampshire as well as other states and to other utility commissions or regulatory agencies, including similar current or prior engagements and the positions



publicly advocated in connection with such engagements. (Maximum Point Score: 20)

4. Cost of consulting services and expenses, including the competitiveness of the proposed fees and/or hourly rates and any proposed discounts or other benefits, and the overall quality of the proposed budget estimate. (The Commission reserves the right to negotiate lower fees and/or a different hourly rate structure than proposed, with any selected consultants.) (Maximum Point Score: 20)
5. Overall responsiveness to the requirements of the RFP, including completeness, clarity, and quality of proposal, including proposed allocation of resources and time to critical tasks. (Maximum Point Score: 5)

## **V. TERM OF CONTRACT**

The term of the contract will be for a period of 12 months from the effective date of the contract.

## **VI. GENERAL CONDITIONS**

1. The Commission reserves the right to reject any or all proposals, or any part thereof, to determine what constitutes a conforming proposal, to waive irregularities that it considers non-material to the proposal, solely as it deems to be in the best interests of the State, and to negotiate with any party in any manner deemed necessary to best serve the interests of the State. This RFP and all information relating to this RFP (including, but not limited to, fees, contracts, agreements, and prices), are subject to the laws of the State of New Hampshire regarding public information and state procurement of goods and services.
2. If the Commission decides to award a contract as a result of this RFP process, any award is contingent upon approval of the contract by the Chairwoman of the Commission with payment subject to the Commission's special utility assessment process. Payments hereunder are contingent upon the availability of funds assessed pursuant to RSA 365:37, II. The Commission shall assess the costs of the contract to the appropriate party(ies) and upon payment of the assessment, will process payment to the consultant. (General funds will not be requested to support the contract resulting from this RFP.)
3. The Commission reserves the right to request additional information from any or all consultants submitting proposals to assist in the evaluation process.
4. Confidentiality of Proposal and Information Provided to Proposers:

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 Commission may be grounds for disqualification.

Each proposer also agrees to maintain as confidential all information received from the Commission in the course of this RFP and contracting process until such time as it is instructed otherwise by the Commission.

5. 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 Commission 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 Commission will post the name of each proposer, and rank or score of each proposal eligible to be scored. In the event that the contract does not require Governor and Executive Council approval, the Commission shall disclose the name of each proposer and rank or score of each proposal eligible to be scored at least five (5) business days before final approval of the contract. All such postings may be viewed on the Commission's website at: [www.puc.nh.gov/Home/requestforproposal.htm](http://www.puc.nh.gov/Home/requestforproposal.htm).

By submitting a proposal, the proposer acknowledges that the Commission is subject to the Right-to-Know Law, RSA Chapter 91-A. 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 RFP may be subject to public disclosure unless otherwise exempt. See RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP may be made accessible to the public online through the website Transparent NH: (<http://www.nh.gov/transparentnh/>). However, business financial information, confidential information, such as personally identifiable information, including, but not limited to, social security numbers, taxpayer identification numbers, employer identification numbers, and account numbers, proprietary information such as trade secrets, financial models and forecasts, and proprietary formulas, may be exempt from public disclosure under RSA 91-A:5, IV.

If any part of its proposal contains information that a proposer asserts is exempt from public disclosure, **the proposer must specifically identify all relevant text in a letter to the Commission, and must mark or stamp each page of the materials claimed to be exempt from disclosure as "confidential,"** and provide support for such assertion(s) as part of proposer's response to this RFP. The proposer shall explain, in writing, what measures it has taken to keep such information confidential, and the personal privacy or competitive business interests that would be harmed if such information were to be publicly disclosed. The explanation shall also identify by page number and proposal section number the specific information the proposer claims to be exempt from public disclosure pursuant to RSA 91-A:5. It is helpful if the text claimed to be confidential is also highlighted, underlined, or otherwise identified in the actual proposal itself.

Marking the entire proposal or entire sections of the proposal (e.g., costs) as “confidential” will neither be accepted nor honored.

The Commission shall maintain the confidentiality of information contained in proposals, insofar as doing so is consistent with RSA Chapter 91-A. Any information a proposer identifies as exempt from disclosure shall be kept confidential until the Commission has determined, as necessary, whether such information is exempt from public disclosure pursuant to RSA 91-A.

In the event that the Commission receives a request to view portions of a proposal that the proposer has properly and clearly marked “confidential,” the Commission shall notify the proposer and specify the date the Commission intends to release the requested information, redacting any information the Commission independently concludes is exempt, consistent with applicable laws and regulations. Any effort to prohibit or enjoin the release of the information the Commission identifies for release shall be the proposer’s responsibility at the proposer’s sole expense. If the proposer fails to obtain a court order enjoining the disclosure, the Commission may release the information on the date the Commission specified in its notice to the proposer(s), or in its notice to any other relevant parties, without any liability to the proposer(s).

6. By submitting a proposal, a proposer agrees that in no event shall the Commission be either responsible for or held liable for any costs incurred by the proposer in preparation of or in connection with the proposal, or for work performed prior to the effective date of any resulting contract.
7. All parties submitting proposals shall be Equal Opportunity Employers. The selected consultant will be expected to comply with all federal, state, and local laws respecting non-discrimination in employment.
8. The Commission reserves the right to amend or cancel this RFP at any time. Proposers should check <https://www.puc.nh.gov/Home/requestforproposal.htm> for any addenda to this RFP before submitting their proposals, and for answers to any questions other parties may have submitted.
9. The selected consultant shall be required to submit a Taxpayer Identification Number (TIN), Employer Identification Number (EIN), or Social Security Number (SSN), and to register as a vendor with the State of New Hampshire.
10. The terms and conditions set forth in the State’s Form P-37 (version 12/11/2019) “Agreement, General Provisions” (General Provisions) for contracts, attached hereto as Appendix A, shall apply to the contract to be entered into with the winning proposer(s). In addition, each contract shall be supplemented by three exhibits: Exhibit A will include any special provisions, including any modifications to the General Provisions regarding insurance coverage and other matters; Exhibit B will set forth in detail the Scope of Services and reporting

requirements; and Exhibit C will set forth in detail the price limitation, the source of payment (special utility assessment), and any preconditions to payment.

11. Once a contract becomes effective, any subsequent material changes or modifications to the contract terms must be submitted for review and prior approval by the Chairwoman of the Commission.
12. This RFP is not an offer. Neither the Commission nor this RFP shall create any commitment on the part of the State or confer any rights on the part of the proposer unless and until a binding written contract is executed between the Commission and the proposer, and approved by the Chairwoman.
13. Property of the State: All materials and data submitted or received in response to this RFP will become the property of the State and will not be returned to the proposer(s). Upon contract award, the State reserves the right to use any information presented in any proposal, provided that its use does not violate any copyrights, or other provisions of law, including RSA 91-A.
14. 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 Commission from obtaining the best possible competitive proposal. Proposers who wish to submit joint proposals with other consultants must clearly identify that the proposal is a "joint proposal" and must identify all proposers in the first instance.
15. Challenges on Form or Process of the RFP

Any challenge 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 Commission at least ten (10) business days prior to the proposal submission deadline, by sending written notice to the RFP Point of Contact, Ms. Juli Pelletier, the Commission's Business Office Director. By submitting a proposal, the proposer is deemed to have waived any challenges to the Commission's authority to conduct this procurement and the form and procedures of this RFP.

## **VII. GENERAL PROVISIONS, FORM P-37 (version 12/11/2019), AND CERTIFICATES**

The successful proposer(s) will be expected to enter into a contract with the State of New Hampshire. The terms and conditions set forth in Form P-37 (version 12/11/2019) General Provisions (available at: <http://www.puc.nh.gov/Home/requestforproposal.htm>) are mandatory and will apply to any contract awarded to the proposer. In addition, engagement specific terms and conditions will be negotiated with the proposer and included in the final contract. For the

convenience of the proposers, Form P-37 (version 12/11/2019) has been included in Appendix A.

When responding to this RFP, each proposer must explicitly indicate that the proposer shall comply with the requirements of Form P-37 (version 12/11/19). To the extent a proposer believes that an exception to the standard form will be necessary for the proposer to enter into a contract, the proposer should raise that issue *during the proposer inquiry period*. Exceptions to the standard form are generally not granted. The Commission will review the inquiry regarding the requested exception(s) and respond that the exception is accepted, rejected, or note that the Commission is open to negotiation regarding the requested exception(s) at the Commission’s sole discretion. If a proposer’s exception is accepted, or is open to negotiation, the Commission will, by means of posting the answer to the proposer’s inquiry, and prior to the conclusion of the inquiry response period, provide notice to all potential proposers of the exception(s) which has been accepted, or is open to negotiation, 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 RFP. The proposer inquiry period begins when the RFP is posted, and ends at the conclusion of the RFP’s written inquiry period. All inquiries must be in writing, and must be sent to the RFP point of contact identified above.

With regard to Form P-37 (12/11/2019) General Provisions, Paragraph 14, “Insurance,” please note that proposers may be allowed to substitute professional liability insurance for part or all of the per occurrence comprehensive general liability insurance coverage. In addition, excess liability insurance in an equal amount may be substituted for up to \$1,000,000 of the per occurrence comprehensive general liability or professional liability insurance coverage. The State reserves the right to consider further modifying the insurance requirements in Paragraph 14 based on proposals submitted, consistent with the procedure described above.

**A proposer will be required to fill in the P-37 Form (version 12/11/2019) ONLY upon the Commission’s selection of the winning proposal(s), and prior to submission of the final contract(s) for review and approval by the Chairwoman of the Commission.**

The successful proposer(s) will be required to provide the following certificates prior to entering into a contract with the Commission:

Secretary of State’s Office Certificate of Good Standing (“CGS”)	Business organizations and businesses using trade names need a CGS, except for nonresident nonprofit corporations. Individuals contracting in their own names do not need a CGS.
Certificate of Vote/ Authority (“CVA”)	Business entities and businesses using trade names need a CVA. Individuals contracting in their own name do not need a CVA.

Certificate of Insurance	Certificate of Insurance form attached with insurance coverages required under the contract. Modifications of insurance coverage required will be specified in the contract.
Workers' Compensation	Contractor must demonstrate compliance with or exemption from RSA 281-A (and if applicable, RSA 228:4-b and RSA 21-I:80, and any other applicable laws or rules).

The successful proposer(s) will be required to provide the above certificates ONLY upon the Commission's selection of the **winning proposal(s), and prior to submission of the final contract(s) for review and approval by the Governor and Executive Council.**

### VIII. 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 in 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 this 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.

APPENDIX A

STATE OF NEW HAMPSHIRE FORM P-37 (version 12/11/2019)  
AGREEMENT, GENERAL PROVISIONS

**FORM NUMBER P-37 (version 12/11/2019)**

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  <p align="right">Date:</p>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  <p align="right">Date:</p>		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 *(if applicable)*  
  
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.