

**STATE OF NEW HAMPSHIRE
OFFICE OF THE CONSUMER ADVOCATE
REQUEST FOR PROPOSALS FOR LITIGATION SERVICES**

RFP 2021-02

Section 1 – Overview and Schedule

A. Executive Summary

The Office of the Consumer Advocate (OCA or Office) seeks proposals from qualified firms or individuals to provide the OCA with expert services in connection with administrative proceedings that are, or may be, pending before the New Hampshire Public Utilities Commission. The Office’s principal needs for consulting help concern matters related to ratepayer-funded energy efficiency programs, grid modernization, least-cost integrated resource planning, advanced metering infrastructure, advanced rate design, utility customer data sharing, and (in the context of rate cases) cost-of-service studies, rate design, revenue decoupling, and alternative forms of regulation. It is the intention of the OCA to contract with one or more consultants to meet these needs.

B. Schedule

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

EVENT	DATE	LOCAL TIME
RFP Released to Proposers	4/13/2021	
Proposer Inquiry Period Ends	5/06/2021	4:00 PM
Final OCA Responses to Proposer Inquiries	5/10/2021	4:00 PM
Proposers Submit Proposals	5/21/2021	4:00 PM
Estimate Timeframe for Proposer Oral Presentations and Interviews (if applicable)	6/01/2021 to 6/03/2021	
Estimated Notification of Selection and Begin Contract Negotiations	6/09/2021	

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

Pursuant to RSA 363:28, the OCA represents the interests of New Hampshire's residential utility customers before the New Hampshire Public Utilities Commission (PUC) and elsewhere. The OCA employs a professional staff of four including two attorneys, an economist and a financial expert. However, the Office lacks in-house expertise in certain areas on matters that arise before the PUC that are critical to the interests of residential customers. Those areas are: (1) ratepayer-funded energy efficiency and the state's Energy Efficiency Resource Standard, (2) grid modernization (as investigated by the PUC in its Docket No. IR 15-296 and any follow-up proceedings), (3) least cost integrated resource planning for electric and natural gas utilities pursuant to N.H. RSA 378:37-40, (4) the transition of electric utilities to full deployment of Advanced Metering Infrastructure (AMI), (5) advanced rate design (including, in particular, time-of-use rates), (6) the development and operation of a statewide utility customer data-sharing platform pursuant to N.H. RSA 378:50-54, and, (7) in the context of specific rate cases, cost-of-service studies, rate design, revenue decoupling, and alternative forms of regulation. Accordingly, this RFP seeks to fill these resource gaps to the maximum practicable extent.

Section 3 – Proposed Scope of Work

The contractor(s) selected through this RFP shall deliver services at the direction of and in a manner prescribed by the OCA. The contractor(s) chosen will be expected to assist the OCA in the review and analysis of issues impacting residential customers, and the development of positions and strategies to represent residential customers' interests. To a significant extent, this will consist of the evaluation of proposals from utilities and other stakeholders, but it may also be useful and appropriate for the OCA to initiate its own proposals. The successful candidate(s) will have demonstrated expertise in: energy efficiency (program design, program implementation, financing, as well as evaluation, measurement, and verification (EM&V)); grid modernization, distribution system and distributed resource planning processes; issues related to system and customer data (collection, customer access, third-party access, security, privacy, etc.); performance-based rates and incentives, rate design, analysis of cost-of-service studies (both marginal and embedded); and revenue decoupling (i.e., regulatory initiatives that adjust revenues of electric and natural gas utilities to account for certain fluctuations in commodity sales). A successful bidder will not necessarily have expertise in all categories.

Deliverables may include, but not be limited to:

- Review and analysis of filings, focusing on the impacts of such filings and proposals on residential customers;
- Development of alternatives or revisions to utility proposals in the areas of rate design, energy efficiency program design, distribution system planning, grid modernization investments, performance incentives, cost allocation, cost recovery, as well as the design and operation of utility customer data platforms;
- Assistance in the preparation of discovery requests related to the filings and the relief requested;

- Review and analysis of the companies’ responses to discovery requests;
- Preparation of pre-filed written testimony on behalf of the OCA;
- Responses to discovery requests on testimony;
- Review and analysis of rebuttal testimony, if any;
- Assistance with possible settlement discussions;
- Assistance with hearing preparation including drafting questions for cross examination;
- Attendance at technical sessions and/or hearings as needed to assist the OCA;
- Assistance with the preparation of legal pleadings, including motions to compel responses to discovery requests and post-hearing briefs;
- Participation in task forces, working groups and committees when these become appropriate forums for presenting and discussing policy options.

It is the preference of the OCA to enter into a single contract with a bidder that is able to provide services on an as-needed basis across all subject areas described above. The OCA is also willing to consider proposals from bidders that are able to provide services across a more limited range of subject areas, provided this is clearly specified in the bid. Bidders are encouraged to combine resources and submit joint bids, as appropriate. The OCA reserves the right to enter into more than one contract in the event a combination of winning bidders provides the best option for obtaining the services that are being sought via this RFP.

Section 4 – Process for Submitting a Proposal

A. Proposal Submission, Deadline, and Location Instructions

Proposals submitted in response to this RFP must be received by the Office of the Consumer Advocate no later than the time and date specified in the Schedule section, herein. Proposals may be submitted by U.S. Mail, Delivery Service, or In Person, with an accompanying electronic copy transmitted via e-mail. Proposals must be addressed to:

State of New Hampshire
Office of the Consumer Advocate
 Attn. Jamie A. Breen, Legal Assistant
 21 South Fruit Street, Suite 18
 Concord, New Hampshire 03301
oca@oca.nh.gov

Proposals must be clearly marked as follows:

STATE OF NEW HAMPSHIRE
RESPONSE TO RFP 2021-02
Request for Proposals Litigation Services

Unless waived as a non-material deviation in accordance with Section 6B, late submissions will not be accepted and will be returned to the proposers unopened. Delivery of the Proposals shall be at the Proposer's expense. The time of receipt shall be considered when a Proposal has been officially documented by the OCA, in accordance with its established policies, as having been received at the location designated above. The OCA accepts no responsibility for mislabeled mail or mail that is not delivered or undeliverable for whatever reason. Any damage that may occur due to shipping shall be the Proposer's responsibility.

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

- a) One (1) original clearly identified Proposal, including all required attachments;
- b) One electronic copy of the Proposal with all Confidential Information fully redacted, as provided for in Section 7E of this RFP.

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

B. Proposal Inquiries

All inquiries concerning this RFP, including but not limited to, requests for clarifications, questions, and any changes to the RFP, shall be submitted via email to the following RFP designated Points of Contact:

TO: jamie.a.breen@oca.nh.gov

CC: donald.m.kreis@oca.nh.gov

Inquiries must be received by the OCA's RFP Points of Contact no later than the conclusion of the Proposer Inquiry Period (see Schedule of Events section, herein). Inquiries received later than the conclusion of the Proposer Inquiry Period shall not be considered properly submitted and may not be considered.

The OCA intends to issue official responses to properly submitted inquiries on or before the date specified in the Schedule section, herein; however, this date is subject to change at the OCA's discretion. The Agency may consolidate and/or paraphrase questions for sufficiency and clarity. The OCA may, at its discretion, amend this RFP on its own initiative or in response to issues raised by inquiries, as it deems appropriate. Oral statements, representations, clarifications, or modifications concerning the RFP shall not be binding upon the OCA. Official responses by the OCA will be made only in writing by the process described above. Vendors shall be responsible for reviewing the most updated information related to this RFP before submitting a proposal.

C. Restriction of Contact with Agency Employees

From the date of release of this RFP until an award is made and announced regarding the selection of a Proposer or Proposers, all communication with personnel employed by or under contract with the OCA regarding this RFP is forbidden unless first approved by Consumer Advocate Kreis, who is listed in the Proposal Inquiries section, herein. OCA 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 Mr. Kreis. Proposers may be disqualified for violating this restriction on communications.

D. Validity of Proposal

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

SECTION 5 - Content and Requirements for a Proposal

Proposals shall follow the below format and provide the required information set forth below, in the order listed:

1. *Corporate/Company Information.* Contractor must provide the OCA with information concerning its corporate/company history; *i.e.*, how many years in business, corporate officers or company principals, location of main and any branch offices, professional and business association memberships, etc.
2. *Personnel Assigned.* Contractor must provide the OCA with a list of all personnel who may be assigned to this project, including the project manager (if applicable), and the contractor shall provide detailed resumes and summaries of each individual reflecting their relevant experience and the nature of their specific responsibilities. During the course of the contract, the OCA must approve in writing any substitutions or changes in personnel assigned to perform the work.
3. *Detailed Budget Proposal.* Contractor must provide the OCA with a detailed budget proposal, as an attachment to the proposal, which identifies the hourly rate for personnel and the rates for any associated expenses, an estimate of the time allocated for each task related to the project(s), any travel expenses, and a not-to-exceed budget amount.
4. *References.* Contractor must provide the OCA with a list of three references for work performed which is similar in scope or content to the services sought through this RFP, preferably work performed within the last 5 years.
5. *Relevant Writing Samples.* Contractor must provide writing samples. Electronic links to documents are preferred over hard copies.

6. *Statement of Disclosure.* Contractor must identify any existing or potential conflicts of interest including those that arise as a result of relationships or affiliations with utility companies under the jurisdiction of the PUC or their affiliates.
7. *Schedule Conflicts.* Contractor must identify any pre-existing professional and personal obligations during the second half of 2021, as well as 2022 and the first half of 2023, which may interfere with meeting the obligations in the contract.

SECTION 6 – Evaluation of Proposals

A. Criteria for Evaluation and Scoring

Cost is a primary consideration, as the OCA has a very limited budget for expert assistance, but cost will not necessarily be the determinative factor in the selection of a winning Proposal or Proposals. Each responsive Proposal will be evaluated and considered with regard to the following criteria:

- a. Knowledge and practical skills and experience that the organization or individual possesses, including that of the staff and any subcontractors assigned to work under the Contract.
- b. Experience and qualifications in providing similar services in New Hampshire, New England, and other states as well as to other state utility consumer advocates or regulatory agencies.
- c. Availability and accessibility of staff assigned to the project, including physical proximity to New Hampshire and travel costs.
- d. Ability to perform and complete the work requested.
- 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 OCA reserves the right to negotiate lower fees or a different fee structure than proposed with any selected firm(s) or individual(s).)

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

The OCA will use a scoring scale of 100 points, which will be distributed as set forth in the table below.

CATEGORIES	POINTS
TECHNICAL PROPOSAL with the following potential maximum scores for each Technical Proposal category:	
Knowledge and practical skills	30
Experience and qualifications	25
Availability and accessibility	10
Ability to perform and complete work	10
PRICE PROPOSAL POTENTIAL MAXIMUM POINTS	25
TOTAL POTENTIAL MAXIMUM POINTS AWARDED	100

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

B. Planned Evaluations

The OCA plans to use the following process:

- Initial screening to ensure that the Proposals are in compliance with submission requirements;
- Preliminary evaluation of the Proposals;
- Oral interviews and Product Demonstrations (if necessary);
- Final Evaluation of Technical Proposals and scoring;
- Re-scoring of Technical Proposals in the event of a determination that subject areas and tasks should be divided among separate contractors;
- Review of Price Proposals and final scoring;
- Select the highest scoring Proposer(s) and begin contract negotiation.

C. Initial Screening

The OCA will conduct an initial screening step to verify Proposer compliance with the technical submission requirements set forth in the RFP and the minimum content set forth in Section 5 of this RFP. The OCA 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. Preliminary Technical Scoring of Proposals

The OCA will establish an evaluation team to initially score the Technical Proposals. This evaluation team will review the technical proposals and give a preliminary score to the technical proposals under the guidelines set forth in Section 6. Should a Proposer fail to achieve 50 Points in the preliminary scoring, it will receive no further consideration from the evaluation team and the Proposer's Price Proposal will be returned unopened. Price Proposals will remain sealed during the preliminary technical review.

E. Oral Interviews

If the OCA determines that it is appropriate, proposers may be invited to oral interviews. The OCA retains the sole discretion to determine whether to conduct oral interviews, with which proposers; and the number of interviews. Proposers are advised that the OCA may decide to conduct interviews with less than all responsive 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 Proposals during the oral interviews. The OCA may ask the Proposer to provide written clarifications of elements in their Technical Proposal regardless of whether it intends to conduct Oral Interviews.

Information gained from oral interviews will be used to refine technical review scores assigned from the initial review of the Proposals.

F. Final Technical Scoring of Proposals

Following Oral Interviews, Reference Checks (if appropriate) and/or review of written clarifications of proposals requested by the OCA, the evaluation team will determine a final score for each Technical Proposal. If the OCA determines that it is desirable to divide subject areas and tasks among more than one contractor, the OCA will then determine a separate final score for each Technical Proposal accordingly.

G. Price Proposal Review

Price proposals will be reviewed upon completion of the final technical scoring of proposals. The Proposer's Price Proposal will be allocated a maximum potential score of 25 points. Proposers are advised that this **is not a low bid award** and that the scoring of the price proposal will be combined with the scoring of the technical proposal to determine the overall highest scoring Proposer. In reviewing Price Proposals, the OCA will consider the competitiveness of the hourly rates to be the primary consideration.

H. No Best and Final Offer

The Proposal should be submitted initially on the most favorable terms which the proposer can offer. There will be no best and final offer procedure. The Proposer should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Proposal.

I. Final Selection

The OCA will conduct a final selection based on the final evaluation of the initial proposals and begin contract negotiations with the selected Proposer(s).

J. Rights of the OCA in Accepting and Evaluating Proposals

The OCA reserves the right to:

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

SECTION 7 – Terms and Conditions Related to the RFP Process

A. RFP Addendum

The OCA reserves the right to amend this RFP at its discretion, prior to the Proposal submission deadline. In the event of an addendum to this RFP, the OCA, at its sole discretion, may extend the Proposal submission deadline, as it deems appropriate.

B. Non-Collusion

The Proposer's signature on a Proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and Work quoted have been established without collusion with other Proposers and without effort to preclude the OCA from obtaining the best possible competitive Proposal.

C. Property of the OCA

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

D. Confidentiality of a Proposal

Unless necessary for the approval of a contract, the substance of a proposal must remain confidential until the Effective Date of any Contract resulting from this RFP. A Proposer's disclosure or distribution of Proposals other than to the OCA will be grounds for disqualification.

E. Public Disclosure

Pursuant to RSA 21-G:37, all responses to this RFP shall be considered confidential until the award of a contract. At the time of receipt of proposals, the OCA 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 OCA will post the name, rank or score of each proposer.

The content of each Proposer's Proposal shall become public information upon the award of any resulting Contract. Any information submitted as part of a response to this request for proposal (RFP) may be subject to public disclosure under RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP will be made accessible to the public online via the website Transparent NH (<http://www.nh.gov/transparentnh/>). However, business financial information and proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV. If you believe any information being submitted in response to this request for proposal, bid or information should be kept confidential as financial or proprietary information; you must specifically identify that information in a letter to the OCA, and must mark/stamp each page of the materials that you claim must be exempt from disclosure as "CONFIDENTIAL". A designation by the Proposer of information it believes exempt does not have the effect of making such information exempt. The OCA will determine the information it believes is properly exempted from disclosure. Marking of the entire Proposal or entire sections of the Proposal (e.g. pricing) as confidential will neither be accepted nor honored. Notwithstanding any provision of this RFP to the contrary, Proposer pricing will be subject to disclosure upon approval of the contract. The OCA will endeavor to maintain the confidentiality of portions of the Proposal that are clearly and properly marked confidential.

If a request is made to the OCA to view portions of a Proposal that the Proposer has properly and clearly marked confidential, the OCA will notify the Proposer of the request and of the date the OCA plans to release the records. By submitting a Proposal, Proposers agree that unless the Proposer obtains a court order, at its sole expense, enjoining the release of the requested

information, the OCA may release the requested information on the date specified in the OCA's notice without any liability to the Proposers.

F. Non-Commitment

Notwithstanding any other provision of this RFP, this RFP does not commit the OCA to award a Contract. The OCA reserves the right, at its sole discretion, to reject any and all Proposals, or any portions thereof, at any time; to cancel this RFP; and to solicit new Proposals under a new acquisition process.

G. Proposal Preparation Cost

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

H. Ethical Requirements

From the time this RFP is published until a contract is awarded, no bidder shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any bidder that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any bidder who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from bidding on the RFP, or similar request for submission and every such bidder shall be disqualified from bidding on any RFP or similar request for submission issued by any state agency. A bidder that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the department of administrative services, which shall note that information on the list maintained on the state's internal intranet system, except in the case of annulment, the information, shall be deleted from the list.

I. Challenges on Form or Process of the RFP

Any challenges regarding the validity or legality of the form and procedures of this RFP, including but not limited to the evaluation and scoring of Proposals, shall be brought to the attention of the OCA at least ten (10) business days prior to the Proposal Submission Deadline. By submitting a proposal, the Proposer is deemed to have waived any challenges to the OCA's authority to conduct this procurement and the form and procedures of this RFP.

Section 8 – Contract Terms and Award

A. Non-Exclusive Contract

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

Award

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

B. Standard Contract Terms

The OCA will require the successful bidder(s) to execute a Firm Fixed Price/Not to Exceed Contract using the Standard Terms and Conditions of the State of New Hampshire which is attached as Appendix A.

The Term of the Contract(s) will be from the date of approval through June 30, 2023. The contract term may be extended by an additional term of two (2) years at the sole option of the OCA, subject to the parties' prior written agreement on terms and applicable fees for each extended term. contingent upon satisfactory vendor performance, continued funding and Governor and Executive Council approval.

To the extent that a Proposer believes that exceptions to the standard form contract will be necessary for the Proposer to enter into the Agreement, the Proposer should note those issues during the Proposer Inquiry Period. The OCA will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion. If the OCA accepts a Proposer's exception the OCA will, at the conclusion of the inquiry period, provide notice to all potential proposers of the exceptions which have been accepted and indicate that exception is available to all potential proposers. Any exceptions to the standard form contract that are not raised during the proposer inquiry period are waived. In no event is a Proposer to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this solicitation.

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		1.12 Name and Title of Contractor Signatory	
1.13 Acknowledgement: State of _____, County of _____ On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace			
[Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature		1.15 Name and Title of State Agency Signatory	
Date:			
1.16 Approval by the N.H. Department of Administration, Division of Personnel (<i>if applicable</i>)			
By: _____		Director, On: _____	
1.17 Approval by the Attorney General (Form, Substance and Execution) (<i>if applicable</i>)			
By: _____		On: _____	
1.18 Approval by the Governor and Executive Council (<i>if applicable</i>)			
By: _____		On: _____	

2. EMPLOYMENT OF CONTRACTOR/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 A 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 1.18, 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 1.14 (“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, and 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 terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account 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 B 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 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 opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright 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 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 (“Equal Employment Opportunity”), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further 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 remedied, 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 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 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 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.

9.2 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.

9.3 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.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall 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 A.

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. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. 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 maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive 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 ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 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 thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

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. 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. WAIVER OF BREACH. 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.

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. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be 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.

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 provisions set forth in the attached EXHIBIT C 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 relating hereto.