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**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**Alignment of State and Federal Network Adequacy Standards**

**RFP 2023-3-NHID**

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## SECTION 1 – Overview and Schedule

### 1.1. Goal of this procurement/Business needs

With funding provided under the federal State Flexibility to Stabilize the Market (Cycle II) Grant Program, the New Hampshire Insurance Department (the Agency) is requesting proposals for a Vendor to review the Agency's network adequacy rule and compare it to the QHP network adequacy rule and standards recently promulgated by CMS. The Vendor will propose and draft changes to New Hampshire's rule as necessary (1) to ensure that the Agency's review process is functioning optimally to achieve the purposes of the rule, and (2) to ensure that New Hampshire's approach to network adequacy will meet the federal stringency standard for FFE states performing Plan Management and conducting their own network adequacy reviews.

New Hampshire is an FFE state with the Agency currently performing Plan Management through its Life and Health Division. This includes certifying QHPs and providing oversight of issuers, including conducting prospective network adequacy reviews of QHP filers and network adequacy market conduct reviews of QHP issuers. New Hampshire's network adequacy rule, codified at N.H. Admin. R. Ins 2700,<sup>1</sup> is unique among states in that it uses the state's All Payer Claims Database (APCD) to verify the nature and adequacy of a filer's provider network. It also uses service categories rather than provider categories to determine whether covered persons have reasonable and equitable access to care. The Agency seeks to preserve the advantages of this more objective and less provider centric approach while also revising and improving its network adequacy review process and making any changes to its rule that are necessary to ensure that New Hampshire's rule and approach is "at least as stringent as the federal network adequacy standards established for QHPs under §156.230."<sup>2</sup>

Under this contract, the Vendor will produce a written assessment of New Hampshire's current approach to network adequacy with recommendations for improvements, produce a comprehensive, comparative analysis of New Hampshire's approach versus CMS's approach with recommendations on how to amend New Hampshire's approach to meet the stringency test, conduct a vetting of proposed changes with a stakeholder group assembled by the Agency, and produce a draft amendment to New Hampshire's network adequacy rule to implement any changes that have been recommended to the Agency and approved by the Agency.

The resulting contract will be for a **Not to Exceed amount which can be no greater than \$75,000**. The contract will commence upon New Hampshire Governor and Executive Council approval, and the expected contract termination date is February 29, 2024. The contract term may be extended beyond this date at the sole option of the Agency, subject to the parties' prior written agreement and required governmental approvals including Governor and Executive Council. The grant project period under the State Flexibility to Stabilize the Market Grant

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<sup>1</sup> [https://www.gencourt.state.nh.us/rules/state\\_agencies/ins2700.html](https://www.gencourt.state.nh.us/rules/state_agencies/ins2700.html)

<sup>2</sup> Federal Register / Vol. 87, No. 3 / Wednesday, January 5, 2022 / Proposed Rules / P. 680  
<https://www.govinfo.gov/content/pkg/FR-2022-01-05/pdf/2021-28317.pdf>

Program is currently scheduled to end on September 14, 2023. However, the Agency expects to secure a No Cost Extension of 12 months.

### **1.2. Schedule**

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

<b>EVENT</b>	<b>DATE</b>	<b>LOCAL TIME</b>
RFP Released (Advertisement)	6/1/2023	
Vendor Inquiry Period Ends	6/16/2023	4:30 PM
Final Agency Responses to Inquiries	6/23/2023	4:30 PM
Proposal Due	6/27/2023	2:30 PM
Estimated Notification of Selection	7/7/2023	4:30 PM

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

The New Hampshire Insurance Department was established in 1851 as the first insurance regulator in the nation. The laws that govern the responsibilities of the Department are set forth in Title XXXVII, codified at RSA 400 through RSA 420-N. The Insurance Commissioner is charged under Title XXXVII with the enforcement and execution of the insurance laws of New Hampshire, with the collection of premium taxes and fees, and the regulation of the insurance marketplace to ensure fair treatment of policyholders and claimants. The Department also is charged with promoting competitive and safe insurance markets.

The Department’s mission is to promote the public good by ensuring the existence of a safe and competitive insurance marketplace through the development and enforcement of New Hampshire’s insurance laws. We are committed to doing so in an honest, effective, and timely manner.

The Life and Health Division (L&H) of the Insurance Department includes several units that exist to ensure compliance with life and health insurance laws and regulations, and to provide policy/data analysis. The products regulated include life, annuities, major medical, ancillary health, long-term disability, short-term disability, Medicare supplement, dental, and long-term care insurance. The Division is the entity responsible for administering the Plan Management function for the New Hampshire Marketplace Exchange. The contract established through this RFP will be managed out of the Life and Health Division of the Insurance Department.

### **1.4. Vendor Instructions**

Interested Vendors must read the entire RFP and submit the required documents in the manner specified in the RFP. Vendors are responsible for reviewing the most updated information related

to this RFP before submitting proposals.

## **SECTION 2 – Requirements and Scope of Work**

### **2.1. Minimum Vendor Qualifications**

The Vendor must be familiar with APCDs, including the technical aspects of working with claims data, and must understand the relatively untapped potential that such databases have with respect to the enforcement of insurance regulatory standards and market transparency initiatives. The Vendor must be knowledgeable about CMS and its approach to working with states in the performance of Plan Management. The Vendor must be knowledgeable about the legal standard that CMS is likely to apply in making a federal preemption determination using an “at least as stringent as” standard, including other contexts in federal law where this standard appears. The Vendor must be experienced in assisting state agencies with respect to the performance of Plan Management functions. The Vendor must be well positioned to understand New Hampshire’s unique regulatory and institutional environment as it relates to the Agency’s conduct of the Plan Management function and network adequacy reviews.

### **2.2. Scope of Work**

This project is aimed at safeguarding and enhancing the assurance of consumer access to care that is contained in New Hampshire’s network adequacy rule. The Vendor will work to ensure that New Hampshire’s rule and network adequacy review process is functioning optimally and is sufficiently aligned with CMS’s network adequacy standards to meet the federal stringency test. At the same time, the Vendor will work to preserve the consumer access assurances in New Hampshire’s rule that constitute an improvement over the federal standard.

1. In the first phase of this project, the Vendor will produce a written assessment of New Hampshire’s network adequacy regulation and programming tool for prospective review of issuers’ provider networks which is based on the use of APCD data and keyed to specified service categories rather than provider categories. What metrics should be used to measure success? Is the rule working as designed? Is the SAS tool that the Agency uses to conduct prospective reviews appropriately designed?<sup>3</sup> Where is there room for improvement with respect to the overall goal of ensuring reasonable access to services for insureds without at the same time conferring excessive bargaining power on providers to demand higher prices—thereby inflating premiums? The written assessment of New Hampshire current network adequacy review process will include recommendations for improvement to the New Hampshire rule and tool outside of the recommendations necessary to achieve federal alignment and may include recommendations addressing network transparency and changes that will facilitate market conduct reviews of in-force networks.
2. New Hampshire’s approach will then be compared to the approach that CMS has put forward in their effort to ensure that states that have assumed the Plan Management

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<sup>3</sup> Interested Vendors may obtain a copy of the SAS programming code for the Agency’s network adequacy review tool by emailing a request to [alex.k.feldvebel@ins.nh.gov](mailto:alex.k.feldvebel@ins.nh.gov).

function are adequately reviewing networks as a part of their QHP review. CMS's approach is elucidated in the 2023 Letter to Issuers dated January 7, 2022 and the HHS Proposed Notice of Benefit and Payment Parameters for 2023 dated January 5, 2022, and finalized on May 6, 2022.<sup>4</sup> A report will be produced making specific and detailed recommendations on how to align New Hampshire's approach with the new federal Network Adequacy and Essential Community Provider standards so that New Hampshire's rule meets the federal requirement that the state network adequacy standard must be at least as stringent as the federal standard. At a minimum, the report will address the following components of the new federal standard that may require New Hampshire to change its approach in order to meet the federal stringency test:

- a. Differences between CMS's provider specialty list and New Hampshire's service categories;
- b. Differences in time and distance standards;
- c. Differences in appointment wait time standards between New Hampshire's current standard and the proposed CMS standard;
- d. The CMS requirement regarding disclosure of the availability of telehealth services;
- e. The CMS proposal to only include the lowest cost share network tier in determining network adequacy;
- f. The CMS proposal to post a ranking of issuers' network breadth as "basic," standard," or "broad;"
- g. The CMS change in the required participation level of Essential Community Providers;
- h. Differences between CMS's urban/rural classification scheme and the categories used by New Hampshire.

The report will make alignment recommendations aimed at avoiding federal preemption but, to the greatest extent practicable, without losing the consumer benefits of the current New Hampshire approach, including the use of service categories and the APCD to create an automated review process that is based on objective data rather than using exclusively issuer-reported information.

3. The project will also involve vetting any proposed changes with a stakeholder group convened by the Agency and drafting an amendment to New Hampshire's network adequacy rule as necessary to implement any recommended changes approved by the Agency that would reconcile the two approaches and that would ensure that New Hampshire's approach to network adequacy will continue to meet the federal stringency requirement as well as the underlying policy goals of network adequacy regulation. The work would include making any programming changes to New Hampshire's prospective review tool necessary to align the tool with the proposed rule changes and producing a

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<sup>4</sup> See also, the 2024 Letter to Issuers and the 2024 Notice of Benefit and Payment Parameters for CMS's latest updates to its network adequacy standards.

written explication of the amendments to the rule sufficient for the Agency’s use in the rulemaking process.

## **SECTION 3 -- Contract Terms and Conditions**

### **3.1. Non-Exclusive Contract**

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

### **3.2. Award**

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

### **3.3. Standard Contract Terms**

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

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

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

## **SECTION 4 –Request for Proposal Process**

### **4.1. Agency Point of Contact/Restriction of Contact with Agency Employees**

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

Alexander K. Feldvebel      Alex.K.Feldvebel@ins.nh.gov

From the date of release of this RFP until an award is made and announced regarding the selection of a



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

#### **4.2. Vendor Inquiries**

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

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

The Agency will issue responses to properly submitted inquiries on or before the date specified in the Schedule of Events; however, this date is subject to change at the Agency's discretion. The Agency may consolidate and/or paraphrase questions for sufficiency and clarity. The Agency may, at its discretion, amend this RFP on its own initiative or in response to issues raised by inquiries, as it deems appropriate. **In response to requested exceptions to P-37, the Agency will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion. Questions about or requested exceptions to the RFP, Form P-37 and/or any relevant attachments not raised during the inquiry period are waived.** Oral statements, representations, clarifications, or modifications concerning the RFP shall not be binding upon the Agency. Official responses by the Agency will be made only in writing by the process described above. Vendors shall be responsible for reviewing the most updated information related to this RFP before submitting a proposal.

## **SECTION 5 – RFP Terms and Conditions**

### **5.1. Debarment**

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

### **5.2. Proposal Preparation Cost**

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

### **5.3. 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.

#### **5.4. RFP Addendum**

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

#### **5.5. Non-Collusion**

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

#### **5.6. Property of the Agency**

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

#### **5.7. Proposal Confidentiality**

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

#### **5.8. Public Disclosure**

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

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

applicable page or pages that the redacted portion or portions are “confidential.”

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

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

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

By submitting a proposal, vendors acknowledge and agree that:

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

### **5.9. Electronic Posting of RFP Results and Resulting Contract**

At the time of receipt of proposals, the Agency will post the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the Department of Administrative Services, the Agency will post the ranks or scores of each responding vendor. In the event that the contract does not require Governor & Executive Council approval, the Agency will disclose the rank or score at least 5 business days before final approval of the contract.

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

this RFP that is submitted to G&C for approval will be made accessible to the public online.

### **5.10. Non-Commitment**

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

### **5.11. Ethical Requirements**

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

### **5.12. Challenges to Identification of Selected Vendor**

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

## **SECTION 6 – Evaluation of Proposals**

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

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

CATEGORIES	POINTS
TECHNICAL PROPOSAL, with the following potential maximum scores for each Technical Proposal category:	

PROPOSED APPROACH TO THE PROJECT	30
QUALIFICATIONS AND EXPERIENCE	30
TECHNICAL EXPERTISE	30
PRICE PROPOSAL, with the following potential maximum score:	10
TOTAL MAXIMUM POINTS	100

- Proposed Approach to the Project: The proposal must include a Work Plan and specify a timeframe in which the Vendor commits to specified project deliverables as they are developed. The proposal should be specific about the steps that will be taken by the vendor and about how the Vendor intends to meet the Goals of this RFP and the Scope of Work. The proposed project approach will be evaluated in terms of the goals of this RFP specified in Section 1 and the Scope of Work specified in section 2 and the perceived likelihood that the project approach will achieve those goals and work requirements.
- Qualifications and Experience: The proposal should detail the general qualifications and related experience of the Vendor as an organization and of the individuals who will be carrying out the work outlined in the Vendor’s proposal. The proposal should include a summary of experience, including a current resume for each individual expected to perform work under the proposal.
- Technical Expertise: The proposal should include a narrative description of the technical expertise that the Vendor will bring to bear on the project, including, at a minimum, expertise about state APCDs, CMS and the approach CMS takes to working with states on Plan Management and Exchange Marketplaces, federal preemption under the ACA and specifically with respect to CMS’s network adequacy standards, and demonstrated ability to work collaboratively with state agencies and other vendors. The proposal should include a listing of 2 references from former engagements by the Vendor that reflect the skills appropriate for this project, including telephone numbers and specific persons to contact.
- Price Proposal: The proposal should include the hourly rate for each individual working on the project and an estimate of the amount of time each person is expected to expend on the project. Proposals will be evaluated with emphasis on the per hour rate, project timeline estimates, and the hours associated with staff possessing crucial expertise. The price proposal should be sufficiently detailed to create a reasonable expectation that the Vendor will be able to complete the tasks within the Not to Exceed amounts provided. The price must be stated as a Not to Exceed amount which can be no greater than \$75,000.

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

If the Agency, decides to make an award based on these evaluations, the Agency will notify the selected vendor(s). Should the Agency be unable to reach agreement with the selected vendor(s)

during Contract discussions, the Agency may then undertake Contract discussions with the next preferred vendor and so on, or the Agency may reject all proposals, cancel this RFP, or solicit new Proposals under a new acquisition process.

## **6.2. Planned Evaluations Steps**

The Agency plans to use the following process:

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

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

The Agency will conduct an initial screening to verify vendor compliance with the proposal submission requirements set forth in Sections 4 and 7. The Agency may waive or offer a limited opportunity to cure immaterial deviations from the RFP requirements if it is determined to be in the best interest of the State.

### **6.4. Step 2: Preliminary Technical Scoring of Proposals**

The Agency will establish an evaluation team to review for compliance with the minimum requirements as set forth in Section 2. This evaluation team will then review the technical proposals and give a preliminary score to the technical proposals under the guidelines set forth in Section 6. Price proposals will not be reviewed by the evaluation team during the preliminary technical review.

### **6.5. Step 3: Oral Interviews**

If the Agency determines that it is appropriate, vendors may be invited to oral interviews. The Agency retains the sole discretion to determine whether to conduct oral interviews, with which vendors, and the number of interviews. Vendors are advised that the Agency may decide to conduct interviews with less than all responsive vendors. The purpose of oral interviews and product demonstrations is to clarify and expound upon information provided in the written proposals. Vendors are prohibited from altering the basic substance of their proposals during the oral interviews and product demonstrations. The Agency may ask the vendor to provide written clarifications of elements in their technical proposal regardless of whether it intends to conduct oral interviews.

Information gained from oral interviews and product demonstrations will be used to refine technical review scores assigned from the initial review of the proposals.

### **6.6. Step 4: Final Technical Scoring of Proposals**

Following oral interviews, product demonstrations, reference checks (if appropriate) and/or

review of written clarifications of proposals requested by the Agency, the evaluation team will determine a final score for each technical proposal.

#### **6.7. Step 5: Price Proposal Review**

Price proposals will be reviewed upon completion of the final technical scoring of proposals. The vendor's price proposal will be allocated a maximum potential score of 10 points. Vendors are advised that this **is not a low bid award** and that the scoring of the price proposal will be combined with the scoring of the technical proposal to determine the overall highest scoring vendor.

#### **6.8. No Best and Final Offer**

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

#### **6.9. Final Selection**

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

#### **6.10. Rights of the Agency in Accepting and Evaluating Proposals**

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

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

## **SECTION 7 – Process for Submitting a Proposal**

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

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

Unless waived as a non-material deviation in accordance with Section 6, late submissions will not be accepted. Delivery of the Proposals shall be at the vendor's expense. The time of receipt shall be considered when a Proposal has been officially documented by the Agency, in accordance with its established policies, as having been received at the email address designated below.

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

Proposals must be clearly marked as follows:

STATE OF NEW HAMPSHIRE

**RESPONSE TO RFP 2023-3-NHID**

Proposals must be submitted electronically, by email, and must be addressed to:

**TO:** Alex.K.Feldvebel@ins.nh.gov

**CC:** Jason.G.Dexter@ins.nh.gov

*Subject line must include:* RESPONSE TO RFP 2023-3-NHID

Submissions must be submitted using the following criteria:

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

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

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

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

- Cover page
- Transmittal letter
- Technical Proposal, including narratives that contain the following elements as described in Section 6 of this RFP and that respond to the Goals and Scope of Work as described in Sections 1 and 2 of this RFP:
  - Proposed Approach to the Project
  - Qualifications and Experience
  - Technical expertise
- Price Proposal, as described in Section 6 and stated separately from the Technical Proposal.



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

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

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

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

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

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

**4. CONDITIONAL NATURE OF AGREEMENT.**

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

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

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

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

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

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

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

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

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

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

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

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

**7. PERSONNEL.**

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

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

**8. EVENT OF DEFAULT/REMEDIES.**

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

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

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

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

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

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

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

**9. TERMINATION.**

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

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

**10. PROPERTY OWNERSHIP/DISCLOSURE.**

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

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

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

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

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

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

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

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

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

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

**14. INSURANCE.**

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

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

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

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

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

**15. WORKERS' COMPENSATION.**

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

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

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

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

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

**19. CHOICE OF LAW AND FORUM.**

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

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

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

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

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

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

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

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

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