State of New Hampshire

Department of Information Technology

Disaster Recovery Solution and COOP
RFP 2020-052

RFP ISSUED...........................................................August 24, 2020

STATE POINT of CONTACT

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CONTRACT TYPE......................................................NOT TO EXCEED

PROPOSALS DUE..................................................September 30, 2020
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**TERMS AND DEFINITIONS**

The following general contracting terms and definitions apply except as specifically noted elsewhere in this document.

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<td>Acceptance</td>
<td>Notice from the State that a Deliverable has satisfied Acceptance Test or Review.</td>
</tr>
<tr>
<td>Agreement</td>
<td>A contract duly executed and legally binding.</td>
</tr>
<tr>
<td>Appendix</td>
<td>Supplementary material that is collected and appended at the back of a document.</td>
</tr>
<tr>
<td>Certification</td>
<td>The Vendor’s written declaration with full supporting and written Documentation (including without limitation test results as applicable) that the Vendor has completed development of the Deliverable and certified its readiness for applicable Acceptance Testing or Review.</td>
</tr>
<tr>
<td>Completion Date</td>
<td>End date for the Contract</td>
</tr>
<tr>
<td>Confidential Information</td>
<td>Information required to be kept Confidential from unauthorized disclosure under the Contract.</td>
</tr>
<tr>
<td>Contract</td>
<td>This Agreement between the State of New Hampshire and a Vendor, which creates binding obligations for each party to perform as specified in the Contract Documents.</td>
</tr>
<tr>
<td>Contract Conclusion</td>
<td>Refers to the conclusion of the Contract, for any reason, including but not limited to, the successful Contract completion, termination for convenience, or termination for default.</td>
</tr>
<tr>
<td>Contract Documents</td>
<td>Documents that comprise this Contract (See Statement of Work, Section 1.1).</td>
</tr>
<tr>
<td>Contract Managers</td>
<td>The persons identified by the State and the Vendor who shall be responsible for all contractual authorization and administration of the Contract. These responsibilities shall include but not be limited to processing Contract Documentation, obtaining executive approvals, tracking costs and payments, and representing the parties in all Contract administrative activities. (See Section 4: Contract Management)</td>
</tr>
<tr>
<td>Contracted Vendor</td>
<td>The vendor whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and Deliverables of the Contract.</td>
</tr>
<tr>
<td>Continuity of Operations Plan (COOP)</td>
<td>Continuity of Operations Plan: To ensure DoIT supported agencies are able to continue performance of essential functions under a broad range of unexpected circumstances.</td>
</tr>
<tr>
<td>Custom Software</td>
<td>Software developed by the Vendor specifically for this project for the State of New Hampshire.</td>
</tr>
<tr>
<td>Data</td>
<td>State’s records, files, forms, Data and other documents or information, in either electronic or paper form, that will be used converted by the Vendor during the Contract Term.</td>
</tr>
<tr>
<td>Deliverable</td>
<td>A Deliverable is a fully qualified IT consultant provided by the Vendor to the State under the terms of a Contract requirement.</td>
</tr>
<tr>
<td>Department</td>
<td>An agency of the State</td>
</tr>
<tr>
<td><strong>Department of Information Technology (DoIT)</strong></td>
<td>The Department of Information Technology established under RSA 21-R by the Legislature effective September 5, 2008.</td>
</tr>
<tr>
<td><strong>Disaster Recovery Services Plan (DRP)</strong></td>
<td>A DRP is an essential part of a business continuity plan (BCP). It describes how an organization can quickly resume work after an unplanned incident. It is applied to the aspects of an organization that depend on a functioning IT infrastructure.</td>
</tr>
<tr>
<td><strong>Documentation</strong></td>
<td>All information that describes the installation, operation, and use of the Software, either in printed or electronic format.</td>
</tr>
<tr>
<td><strong>Effective Date</strong></td>
<td>The Contract and all obligations of the parties hereunder shall become effective on the date the Governor and the Executive Council of the State of New Hampshire approves the Contract.</td>
</tr>
<tr>
<td><strong>Governor and Executive Council</strong></td>
<td>The New Hampshire Governor and Executive Council.</td>
</tr>
<tr>
<td><strong>Implementation</strong></td>
<td>The process for making the System fully operational for processing the Data.</td>
</tr>
<tr>
<td><strong>Information Technology (IT)</strong></td>
<td>Refers to the tools and processes used for the gathering, storing, manipulating, transmitting, sharing, and sensing of information including, but not limited to, Data processing, computing, information systems, telecommunications, and various audio and video technologies.</td>
</tr>
<tr>
<td><strong>Invoking Party</strong></td>
<td>In a dispute, the party believing itself aggrieved.</td>
</tr>
<tr>
<td><strong>Licensee</strong></td>
<td>The State of New Hampshire</td>
</tr>
<tr>
<td><strong>Non Exclusive Contract</strong></td>
<td>A contract executed by the State that does not restrict the State from seeking alternative sources for the Deliverables or Services provided under the Contract.</td>
</tr>
<tr>
<td><strong>Notice to Proceed (NTP)</strong></td>
<td>The State Contract Manager’s written direction to the Vendor to begin work on the Contract on a given date and time.</td>
</tr>
<tr>
<td><strong>Order of Precedence</strong></td>
<td>The order in which Contract/Documents control in the event of a conflict or ambiguity. A term or condition in a document controls over a conflicting or ambiguous term or condition in a document that is lower in the Order of Precedence.</td>
</tr>
<tr>
<td><strong>Project</strong></td>
<td>The planned undertaking regarding the entire subject matter of an RFP and Contract and the activities of the parties related hereto.</td>
</tr>
<tr>
<td><strong>Project Team</strong></td>
<td>The group of State employees and contracted Vendor’s personnel responsible for managing the processes and mechanisms required such that the Services are procured in accordance with the Work Plan on time, on budget and to the required specifications and quality.</td>
</tr>
<tr>
<td><strong>Project Management Plan</strong></td>
<td>A document that describes the processes and methodology to be employed by the Vendor to ensure a successful project.</td>
</tr>
<tr>
<td><strong>Project Managers</strong></td>
<td>The persons identified who shall function as the State’s and the Vendor’s representative with regard to Review and Acceptance of Contract Deliverables, invoice sign off, and review and approval of Change Requests (CR) utilizing the Change Control Procedures (CCP).</td>
</tr>
<tr>
<td><strong>Proposal</strong></td>
<td>The submission from a Vendor in response to the Request for a proposal or statement of work.</td>
</tr>
<tr>
<td><strong>Review</strong></td>
<td>The process of reviewing Deliverables for Acceptance.</td>
</tr>
<tr>
<td><strong>RFP (Request for Proposal)</strong></td>
<td>A Request For Proposal solicits Proposals to satisfy State requirements by supplying data processing Service resources according to specific terms and conditions.</td>
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</tr>
<tr>
<td><strong>Schedule</strong></td>
<td>The dates described in the Work Plan for deadlines for performance of Services and other Project events and activities under the Contract.</td>
</tr>
<tr>
<td><strong>Services</strong></td>
<td>The work or labor to be performed by the Vendor on the Project as described in the Contract.</td>
</tr>
<tr>
<td><strong>Software</strong></td>
<td>All custom Software and COTS Software provided by the Vendor under the Contract.</td>
</tr>
<tr>
<td><strong>Software License</strong></td>
<td>Licenses provided to the State under this Contract</td>
</tr>
<tr>
<td><strong>Solution</strong></td>
<td>The Solution consists of the qualified IT personnel proposed as augmentation to State staff as a response to the RFP.</td>
</tr>
<tr>
<td><strong>Specifications</strong></td>
<td>The written Specifications that set forth the requirements which include, without limitation, this RFP, the Proposal, the Contract, any performance standards, Documentation, applicable State and federal policies, laws and regulations, State technical standards, subsequent State-approved Deliverables, and other Specifications and requirements described in the Contract Documents. The Specifications are, by this reference, made a part of the Contract as though completely set forth herein.</td>
</tr>
<tr>
<td><strong>State</strong></td>
<td>STATE is defined as: State of New Hampshire Department of Information Technology 27 Hazen Dr Concord, NH 03301 Reference to the term “State” shall include applicable agencies.</td>
</tr>
<tr>
<td><strong>Statement of Work (SOW)</strong></td>
<td>A Statement of Work clearly defines the basic requirements and objectives of a Project. The Statement of Work also defines a high level view of the architecture, performance and design requirements, the roles and responsibilities of the State and the Vendor. The SOW defines the results that the Vendor remains responsible and accountable for achieving.</td>
</tr>
<tr>
<td><strong>State’s Confidential Records</strong></td>
<td>State’s information regardless of its form that is not subject to public disclosure under applicable state and federal laws and regulations, including but not limited to RSA Chapter 91-A.</td>
</tr>
<tr>
<td><strong>State Data</strong></td>
<td>Any information contained within State systems in electronic or paper format.</td>
</tr>
<tr>
<td><strong>State Fiscal Year (SFY)</strong></td>
<td>The New Hampshire State Fiscal Year extends from July 1st through June 30th of the following calendar year.</td>
</tr>
<tr>
<td><strong>State’s Project Manager (PM)</strong></td>
<td>State’s representative with regard to Project management and technical matters. Agency Project Managers are responsible for review and Acceptance of specific Contract Deliverables, invoice sign off, and Review and approval of a Change Proposal (CP).</td>
</tr>
<tr>
<td><strong>Subcontractor</strong></td>
<td>A person, partnership, or company not in the employment of, or owned by, the Vendor, which is performing Services under</td>
</tr>
<tr>
<td>Term</td>
<td>Period of the Contract from the Effective Date through Contract End Date.</td>
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<tr>
<td>TBD</td>
<td>To Be Determined</td>
</tr>
<tr>
<td>Warranty Period</td>
<td>A period of coverage during which the contracted vendor is responsible for providing a guarantee for products and services delivered as defined in the contract.</td>
</tr>
<tr>
<td>Work Hours</td>
<td>Vendor personnel shall work normal business hours between 8:00 a.m. and 5:00 p.m., eight (8) hour days, forty (40) hour weeks, excluding State of New Hampshire holidays. Changes to this schedule may be made upon agreement with the State Project Manager. However, the State requires an unpaid lunch break of at least thirty (30) minutes be taken after five (5) consecutive hours of work. State holidays are: New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, July 4th, Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day. Specific dates will be provided upon request.</td>
</tr>
<tr>
<td>Work Plan</td>
<td>The overall plan of activities for the Project created in accordance with the Contract. The plan and delineation of tasks, activities and events to be performed and Deliverables to be produced under the Project as specified in Appendix C. The Work Plan shall include a detailed description of the Schedule, tasks/activities, Deliverables, critical events, task dependencies, and the resources that would lead and/or participate on each task.</td>
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1. INTRODUCTION

This Request for Proposal (“RFP”) is being issued by the State of New Hampshire’s (“SoNH”) Department of Information Technology (“DoIT”) to solicit proposals from qualified Disaster Recovery Solution providers, to propose a Disaster Recovery (“DR”) and Continuity of Operations Plan (“COOP”) solution for DoIT.

The purpose of this effort is to:

a) Assist DoIT in determining what is needed to provide DR capabilities to the primary Data Center
b) Write a DR Plan for those Core Services identified – to be defined as part of this engagement
c) Assist with the selection of a Disaster Recovery solution for Core Services
d) Develop a COOP for DoIT agency (not for all agencies)

Core Services are defined generally as those services that provide basic functionality to the State of New Hampshire such as but not limited to internet connectivity, WAN services, DNS, Active Directory, Wireless, DNS, FTP, Web Services, etc... Some services currently provided are located in the DoIT’s Virtual Environment therefore the ability to replicate VM servers and keep them in sync will be critical.

Task 1: The DR solution should include an analysis of DoIT services provided, how to provide disaster recovery for those services, costs for multiple solution options, and a written DR Plan. To identify the services needing DR will require doing analysis of the following Divisions/Departments within DoIT:

- CIO Office (Human Resources, Financials, Governance and Strategic Planning, Security Team)
- Web Support Services (Enterprise solutions such as proxy services, web application firewalls, website and application hosting services)
- Technical Support Services (Desktop support, Help Desk Support, enterprise solutions such as e-mail, file and print, anti-spam, anti-virus, patch management, software distribution and Web filtering services)
- Operations Division (Server and Storage support, Backup and Recovery Services, State Network Management, Data Center Operations, Database Services, and Telecommunication Services)

Task 2: Once Task 1 has been completed, the successful bidder shall develop a comprehensive COOP as defined in the Scope of Work, interviewing all teams necessary to determine processes and needs resulting in a comprehensive written plan for the agency.

Task 3: The successful bidder shall assist the SONH in testing the COOP plan in a manner consistent with generally accepted protocols. The successful bidder shall be responsible for developing materials for use in training staff for an actual relocation drill. The successful bidder shall conduct training for appropriate staff to successfully implement the evacuation/relocation drill. The successful bidder’s response shall include a narrative of how they intend to conduct a test evacuation drill and training, including the timing and general outline of testing protocols and procedures. The successful bidder will be expected to assist the project manager in conducting a post-exercise After Action Meeting and preparing a Lessons Learned Report.

1.1. Scope Of Work

DOIT is seeking proposals from qualified Respondents to propose a comprehensive DR Solution covering Core Services and a COOP for DoIT to be determined in the scope of this RFP. The acquired solution may fit into any of the following categories:

- Administered mainly by the DOIT personnel after installation;
A. Scope of DR Solution:
1. Rapid, Effective, and Testable Recovery of Targeted Systems, Services, or Data in a Declared Disaster
   - Provides DR capabilities for on-premises core services
   - Provides DR capabilities for cloud-based core services
   - Readily and repeatedly testable at minimal or no cost
   - Testable during regular business hours with minimal or no impact to production systems, services, or data
   - Selectable Recovery Point Objectives (RPOs)
   - Selectable Recovery Time Objectives (RTOs)
2. Backup and Restore of the Core Services identified as part of this engagement
   - Scheduled, continuous, or ad hoc backup and restore processes for scalable cloud or on-premises data across multiple types of media
   - Virtual Machine and file-level backup and restore
   - Backup set data integrity protection from malware and ransomware attacks
3. Ransomware Recovery
   - Ransomware detection, alerting, and mitigation response
   - Robust ransomware recovery processes
4. Written DR Plan which includes:
   - A list of disasters that would invoke the DR plan (ex: weather event, pandemic, ransomware)
   - An interview process to determine a list of core services to restore during a disaster
   - An RPO (Recovery Point Objective) and RTO (Recover Time Objective) analysis of each core service
   - Disaster action checklist – actions to take immediately following a disaster
   - The order in which to restore those services
   - Notification trees
   - Email and conference bridge schedules
   - Recommendations on minimizing interruption to normal operations
   - Establish alternative means of operation in advance (ex: alternate, state-owned locations; Cloud DR services)
   - Personnel emergency training plan
   - Skill sets needed to initiate the DR Plan
   - Backup and Restore procedures
   - Recovery startup procedures for use after an actual disaster
   - Recover plan for hot site
   - Disaster site plan – square footage; floor plan; power requirements; HVAC requirements
B. Scope of COOP Solution:
   1. Ensure the State of New Hampshire maintains identified core services in an emergency scenario.
   2. Analysis of mission-critical personnel and processes
   3. Implementation procedures to ensure continued operations during an emergency event
   4. Prioritize core services most essential to maintain during an emergency
   5. Describe the anticipated resources and associated costs needed for plan implementation
   6. Documented comprehensive Plan including all processes required
   7. Recognize and identify potential unique arrangements where certain critical services could be provided by other outside entities

1.2. Contract Award
The State plans to execute a Not to Exceed (NTE) Contract as a result of this RFP. The award will be based upon criteria, standards, and weighting identified in this RFP.

Any resulting Contract from this RFP will be a Non-Exclusive Contract.

The required Solution is a single company that can supply consultants with the requisite skills and experience as well as depth of experience that selected IT consultants can draw upon, and consultants with complimentary skill sets. The State reserves the right, at its discretion, to award a contract by item, part, or portion of an item, group of items, or total Proposal.

If a Contract is awarded, the Vendor must obtain written consent from the State before any public announcement or news release is issued pertaining to any Contract award. Such permission, at a minimum, will be dependent upon approval of the Contract by Governor and Executive Council of the State of New Hampshire.

1.3. Contract Term
Time is of the essence in the performance of a Vendor’s obligations under the Contract.

The Vendor’s initial term will begin upon approval of the Governor and Executive Council and extend through 12/31/2021. The term may be extended up to 1 year (“Extended Term”) at the sole option of the State, subject to the parties prior written agreement on applicable fees for each extended term, up to but not beyond 12/31/2022.

The Vendor shall commence work upon issuance of a Notice to Proceed by the State.

The State does not require the Vendor to commence work prior to the Effective Date; however, if the Vendor commences work prior to the Effective Date and a Notice to Proceed, such work shall be performed at the sole risk of the Vendor. In the event that the Contract does not become effective, the State shall be under no obligation to pay the Vendor for any costs incurred or Services performed; however, if the Contract becomes effective, all costs incurred prior to the Effective Date shall be paid under the terms of the Contract.
1.3.1. **Contract Negotiations and Unsuccessful Bidder Notice**

If a Vendor is selected, the State will notify the selected Vendor in writing of their selection and the State’s desire to enter into contract discussions. Until the State successfully completes discussions with the selected Vendor, all submitted Proposals remain eligible for selection by the State. In the event contract discussions are unsuccessful with the selected Vendor, the evaluation team may recommend another Vendor.

Pursuant to RSA 21-G:37, all responses to this RFP shall be considered confidential until the award of a contract. At the time of receipt of proposals, the Agency will post the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to Administrative Services, the Agency will post the name, rank or score of each proposer.

2. **SCHEDULE OF EVENTS**

The following table provides the Schedule of Events for this RFP through Governor and Council approval and Notice to Proceed.

<table>
<thead>
<tr>
<th>EVENT</th>
<th>DATE &amp; TIME (ET)</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Released to Vendors / Inquiry Period Begins (on or about) /</td>
<td>August 24, 2020</td>
</tr>
<tr>
<td>Notification to the State of the Number of Representatives Attending the Vendor Conference (Mandatory or Optional)</td>
<td>September 4, 2020</td>
</tr>
<tr>
<td>Vendor Conference</td>
<td>Virtual, via WebEx</td>
</tr>
<tr>
<td>Vendor Inquiry Period Ends (Final Inquiries due)</td>
<td>September 10, 2020</td>
</tr>
<tr>
<td>Final State Responses to Vendor Inquiries</td>
<td>September 25, 2020</td>
</tr>
<tr>
<td>Final Date and Time for Proposal Submission</td>
<td>September 30, 2020</td>
</tr>
<tr>
<td>Invitations for Oral Presentations</td>
<td>October 5, 2020</td>
</tr>
<tr>
<td>Vendor Presentations/Discussion Sessions/Interviews if State determines it’s necessary - Optional</td>
<td>October 7, 2020</td>
</tr>
<tr>
<td>Estimated Date of Vendor Selection</td>
<td>October 12, 2020</td>
</tr>
<tr>
<td>Anticipated Governor and Council Approval</td>
<td>TBD</td>
</tr>
<tr>
<td>Anticipated Effective Contract Date</td>
<td>TBD</td>
</tr>
</tbody>
</table>
3. SERVICES, REQUIREMENTS AND DELIVERABLES

For this Disaster Recovery Solution RFP the State seeks to procure experienced IT consultants. Therefore the main deliverable is fully qualified IT individuals that can fulfill the services and activities as described in Appendix C: Requirements and Deliverables, with the experience as defined in Appendix C: Requirements and Deliverables and Appendix E: Standards for Describing Vendor Qualifications, working on site for full business days on projects as directed by the State Project Manager.

(See Appendix C-2: Deliverables, for details about Deliverables)

4. INSTRUCTIONS

4.1. Proposal Submission, Deadline, and Location Instructions

Proposals submitted in response to this RFP must be received by the Department of Information Technology, no later than the time and date specified in Section 2: Schedule of Events.

4.2. Electronic Proposals

Electronic Proposals must be addressed to:

TO: david.s.heafey@doit.nh.gov

CC: wendy.pouliot@doit.nh.gov

Proposals must be clearly marked as follows:

Subject: RESPONSE TO RFP: DoIT – RFP 2020-052 Disaster Recovery and COOP

Electronic Submissions shall include the following:

a. One (1) Redacted Copy
b. One (1) Electronic Submission

And must be submitted using the following criteria:

a. 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.
4.3. Proposal Inquiries

All inquiries concerning this RFP, including but not limited to, requests for clarifications, questions, and any changes to the RFP, shall be emailed, citing the RFP title, RFP number, Page, Section, and Paragraph and submitted to the following RFP Point of Contact:

David Heafey
Department of Information Technology
David.S.Heafey@doit.nh.gov

During the Vendor Inquiry Period (see Section 2: Schedule of Events) Vendors are required to submit questions via email; however, the State assumes no liability for assuring accurate/complete email transmission/receipt and is not responsible to acknowledge receipt.

Inquiries must be received by the State’s RFP Point of Contact (see above) no later than the conclusion of the Vendor Inquiry Period (see Section 2: Schedule of Events). Inquiries received later than the conclusion of the Vendor Inquiry Period shall not be considered properly submitted and will not be considered.

The State intends to issue official responses to properly submitted inquiries on or before the date specified in Section 2: Schedule of Events; however, this date may be subject to change at the State’s discretion. The State may consolidate and/or paraphrase questions for sufficiency and clarity. The State 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 State. Official responses will be made in writing.

4.3.1. Restriction of Contact With State Employees

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 State regarding this RFP is forbidden unless first approved by the RFP Point of Contact listed in Section 4.2: Proposal Inquiries. State employees have been directed not to hold conferences and/or discussions concerning this RFP with any Vendor during the selection process, unless otherwise authorized by the RFP Point of Contact.

4.4. Vendor Conference

A non-mandatory Vendor Conference will be held at the following location on the date and at the time identified in Section 2: Schedule of Events:

Conference will be virtual via WebEx

All Vendors who intend to submit Proposals are encouraged to attend the Vendor Conference. Attendance by teleconference is permitted. Conference numbers will be emailed to registrants upon request. Vendors are requested to RSVP via email by the date identified in Section 2: Schedule of Events, indicating the number of individuals who will attend the Vendor Conference. Vendors are allowed to send a maximum number of 2 representatives.

Vendors will have an opportunity to ask questions about the RFP and the State will make a reasonable attempt to answer questions it deems appropriate. Questions may include, without limitation, a request for clarification
of the RFP; a request for changes to the RFP; suggestions or changes to the RFP that could improve the RFP competition or lower the offered price; and to Review any applicable Documentation.

Vendors must email inquiries at least twenty-four (24) hours prior to the Vendor Conference. No responses will be given prior to the Vendor Conference. Oral answers will not be binding on the State. The State’s final response to Vendor inquiries and any requested changes to terms and conditions raised during the Vendor Inquiry Period will be posted to the website by the date specified as the final State responses to Vendor inquiries as specified in Section 2: Schedule of Events. Vendors are responsible for any costs associated with attending the Vendor Conference.

4.5. Alteration of RFP
The original RFP document is on file with the State of New Hampshire, Department of Administrative Services. Vendors are provided an electronic version of the RFP. Any alteration to this RFP or any file associated with this RFP is prohibited. Any such changes may result in a Proposal being rejected.

4.6. RFP Addendum
The State 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 State, at its sole discretion, may extend the Proposal submission deadline, as it deems appropriate. All addendums will be posted to the Department of Administrative Services website.

4.7. Non-Collusion
The Vendor’s signature on a Proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and services quoted have been established without collusion with other vendors and without effort to preclude the State from obtaining the best possible competitive Proposal.

4.8. Validity of Proposal
Proposals must be valid for one hundred and eighty (180) days following the deadline for submission of Proposals in Section 2: Schedule of Events, or until the effective date of any resulting Contract, whichever is later.

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

4.10. Confidentiality of a Proposal
A Proposal must remain confidential until the Effective Date of any resulting Contract as a result of this RFP. A Vendor’s disclosure or distribution of Proposals other than to the State will be grounds for disqualification.

4.11. Public Disclosure
Subject to applicable law or regulations, the content of each Vendor’s Proposal shall become public information upon the effective date 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 chapter 91-A: Access to Governmental Records and Meetings. In addition, in accordance with RSA chapter 21-G:37: Financial Information Regarding Requests for Bids and Proposals, 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/). Accordingly, business financial information and proprietary information such as trade secrets, business and financial models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA chapter 91-A:5, IV: Exemptions. If you believe any information being submitted in response to a Request for Proposal, bid or information should be kept confidential as financial or proprietary information; you must specifically identify that information in a letter to the agency, and should mark/stamp the materials as such. 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, Vendor pricing will be subject to disclosure upon approval of the Contract by Governor and Council.

Generally, each Proposal shall become public information upon the approval of Governor and Council of the resulting Contract, as determined by the State, including but not limited to, RSA chapter 91-A: Access to Governmental Records and Meetings (Right to Know Law). The State 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 State to view portions of a Proposal that the Vendor has properly and clearly marked confidential, the State will notify the Vendor of the request and of the date and the State plans to release the records. A designation by the Vendor of information it believes exempt does not have the effect of making such information exempt. The State will determine the information it believes is properly exempted from disclosure. By submitting a Proposal, Vendors agree that unless the Vendor obtains a court order, at its sole expense, enjoining the release of the requested information, the State may release the requested information on the date specified in the State’s notice without any liability to the Vendors.

4.12. Security
The State must ensure that appropriate levels of security are implemented and maintained in order to protect the integrity and reliability of its information technology resources, information, and services.

4.13. Non-Commitment
Notwithstanding any other provision of this RFP, this RFP does not commit the State to award a contract. The State 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.

By submitting a Proposal, a Vendor agrees that in no event shall the State 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.

4.15. Oral Presentations/Interviews and Discussion
The State reserves the right to require Vendors to make available for oral presentations/interviews the IT consultants proposed. Any and all costs associated with oral presentations/interviews shall be borne entirely by the Vendor.

4.16. Required Contract Terms and Conditions
By submitting a Proposal, the Vendor agrees that the State of New Hampshire Terms and Conditions, contained in Appendix H: State of New Hampshire Terms and Conditions- P-37 and RFP Section 6: General
Contract Requirements, herein, shall form the basis of any contract resulting from this RFP. In the event of any conflict between the State’s Terms and Conditions and any portion of the Vendor’s Proposal, the State’s Terms and Conditions shall take precedence and supersede any and all such conflicting terms and conditions contained in the Vendor’s Proposal.

4.17. Proposal Format

Proposals should follow the following format:

- A Proposal should use Times New Roman font with a size of eleven (11).
- Each page of a Proposal must include a page number and the number of total pages and identification of the vendor in the page footer.
- Identifiers should separate each Section of the Proposal.

4.18. Proposal Organization

Proposals should adhere to the following outline and should not include items not identified in the outline.

- Cover Page
- Transmittal Form Letter
- Table of Contents
- Section I: Executive Summary
- Section II: Glossary of Terms and Abbreviations
- Section III: Responses to Requirements and Deliverables
- Section IV: Corporate Qualifications
- Section V: Qualifications of IT Consultant Staff
- Section VI: Cost Proposal
- Section VII: Copy of the RFP and any signed Addendum (a)-in the Original Proposal only

4.19. Proposal Content

4.19.1. Cover Page

The first page of the Vendor’s Proposal must be a cover page containing the following text:

STATE OF NEW HAMPSHIRE
Department of Information Technology

RESPONSE TO
Disaster Recovery Solution and COOP RFP 2020-052

The cover page must also include the Vendor’s name, contact person, contact telephone number, address, city, state, zip code, fax number, and email address.

4.19.2. Transmittal Form Letter

The Vendor must submit a signed Transmittal Form Letter with their response using the Transmittal Form Letter Template provided herewith. Any electronic alteration to this Transmittal Form Letter is prohibited. Any such changes will result in a Proposal being rejected.
State of New Hampshire Proposal Transmittal Form Letter

Company Name__________________________

Address________________________________

To: NH Department of Information Technology
   Point of Contact: David Heafey
   Telephone: (603) 227-0093
   Email: David.Heafey@dor.nh.gov

RE: Proposal Invitation Name: Disaster Recovery Solution and COOP
    Proposal Number: 2020-052
    Proposal Opening Date and Time: xxxxxxxxxxxxxx

Dear Sir:

Company Name: _________________________ hereby offers to sell to the State of New Hampshire the services indicated in RFP NH Department of Information Technology 2020-052 DoIT Disaster Recovery Solution at the price(s) quoted in Vendor Response Section VI: Cost Proposal, and Appendix F: Pricing Worksheets, in complete accordance with all conditions of this RFP and all Specifications set forth in the RFP and in the State of New Hampshire Terms and Conditions outlined in RFP Section 6: General Contract Requirements and Appendix H: State of New Hampshire Terms and Conditions.

Company Signor: _________________________ is authorized to legally obligate Company Name: _________________________.

We attest to the fact that:
   The company has reviewed and agreed to be bound by all RFP terms and conditions including but not limited to the State of New Hampshire Terms and Conditions in Appendix H and General Contract Requirements in Section 6, which shall form the basis of any Contract resulting from this RFP. No new terms and conditions have been added and no existing terms and conditions have been deleted in this RFP Proposal.

   The proposal is effective for a period of 180 days or until the Effective Date of any resulting contract, whichever is later;

   That the prices quoted in the proposal were established without collusion with other eligible vendors and without effort to preclude the State of New Hampshire from obtaining the best possible competitive price;

   The Vendor has read, signed, and included a copy of this RFP and any subsequent signed addendum (a).

   Our official point of contact is ________________________________.
   Title ________________________________, Email ________________________________

Authorized Signature Printed ________________________________,
Authorized Signature ________________________________
4.19.3. **Table of Contents**
The Vendor must provide a table of contents with corresponding page numbers relating to its Proposal. The table of contents must conform to the outline provided in Section 4.16: *Proposal Organization*, but should provide detail, e.g., numbering, level of detail.

4.19.4. **Section I: Executive Summary**
The Executive Summary, which must not exceed five (5) pages, must identify how the Vendor satisfies the minimum standards for consideration, which are described in Appendix B: *Minimum Standards for Proposal Consideration*, to this Request for Proposals. The executive summary shall also provide an overview of the Vendor’s proposed Solution and Services. Vendors are encouraged to highlight those factors that they believe distinguish their Proposal.

4.19.5. **Section II: Glossary of Terms and Abbreviations**
The Vendor must provide a glossary of all terms, acronyms, and abbreviations used in its Proposal.

4.19.6. **Section III: Responses to Requirements and Deliverables**
Requirements are provided in Appendix C: *Requirements and Deliverables* for this RFP. Requirements describe specific features that the State is seeking in this RFP document.

Using the response template in Appendix C: *Requirements and Deliverables: Vendor Requirement Response Template, Requirements and Deliverables*, the Vendor must document the ability to meet the requirements and deliverables of this RFP.

4.19.7. **Section IV: Corporate Qualifications**
Section IV should provide corporate qualifications of all firms proposed to participate in the Project. Specific information to be provided is described in Section E-1: *Required Information on Corporate Qualifications* of Appendix E: *Standards for Describing Vendor Qualifications*.

4.19.8. **Section V: Qualifications of IT Consultant Staff**
To evaluate qualifications of IT consultant staff, the State shall consider the experience and qualifications of candidates proposed. Section V must be used to provide this required information. Specific information to be provided is described in Appendix E: *Standards for Describing Vendor Qualifications and Section E-2 Candidates for Vendor IT Consultant Staff Roles*.

4.19.9. **Section VI: Cost Proposal**
The Cost Proposal must include the following:
A *Vendor Proposed Position Rates Pricing Worksheet* prepared using the format provided in Table F-1 of Appendix F: *Pricing Worksheets* and any discussion necessary to ensure understanding of data provided;

A *Future Vendor Rates Pricing Worksheet* prepared using the format provided in Table F-2 of Appendix F: *Pricing Worksheets* and any discussion necessary to ensure understanding of data provided.
4.19.10. Section VII: Copy of the RFP and Any Signed Addendum (a)
Required in the original Proposal only.

Remainder of this page intentionally left blank
5. PROPOSAL EVALUATION PROCESS

5.1 Scoring Proposals

Each Proposal shall be evaluated and considered with regard to the services proposed, qualifications of the Vendor and any Subcontractors, experience and qualifications of proposed candidates and cost.

The State shall issue an intent to award notice to a Vendor based on these evaluations. Should the State be unable to reach agreement with the Vendor during Contract discussions, the State may then undertake Contract discussions with the second preferred Vendor and so on. Such discussions may continue at the sole option of the State, until an agreement is reached, or all proposals are rejected.

The State shall use a scoring scale of 100 points, which shall be applied to the Solution as a whole. Points will be distributed among three (4) factors:

- 25 points – Appendix C: Requirements and Deliverables
- 20 points - Appendix E: Standards for Describing Corporate Qualifications
- 25 points – Process and timeline proposed by Vendor to develop the COOP and DR Plan and Recommendation for Solution Vendor plan and timeline; and
- 30 points - Pricing/Rates

<table>
<thead>
<tr>
<th>Scoring Factors</th>
<th>Number of Points</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td><strong>30</strong></td>
</tr>
<tr>
<td>30 points for the lowest priced proposal. For example, lowest bidder is $100,000, (100,000/100,000 * 30) = 30 points. Another bidder is $120,000, (100,000/120000 * 30) = 25 points.</td>
<td></td>
</tr>
<tr>
<td><strong>Qualifications of Staff</strong></td>
<td><strong>20</strong></td>
</tr>
<tr>
<td>Number of staff assigned to project</td>
<td>5</td>
</tr>
<tr>
<td>Qualifications of Staff</td>
<td>10</td>
</tr>
<tr>
<td>Corporate Qualifications</td>
<td>5</td>
</tr>
<tr>
<td><strong>Requirements</strong></td>
<td><strong>25</strong></td>
</tr>
<tr>
<td>Response to C-1.1</td>
<td>5</td>
</tr>
<tr>
<td>Response to C-1.2</td>
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</tr>
<tr>
<td>Response to C-1.3</td>
<td>5</td>
</tr>
<tr>
<td>Response to C-1.4</td>
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</tr>
<tr>
<td>Response to C-1.5</td>
<td>5</td>
</tr>
<tr>
<td><strong>Process and Timeline</strong></td>
<td><strong>25</strong></td>
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<tr>
<td>Timeline of Project</td>
<td>10</td>
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<tr>
<td>Approach to Project</td>
<td>5</td>
</tr>
<tr>
<td>Approach to Training</td>
<td>5</td>
</tr>
<tr>
<td>Approach to Testing COOP</td>
<td>5</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>
5.2 Rights of the State in Evaluating Proposals
The State reserves the right to:
- Consider any source of information in evaluating Proposals;
- Omit any planned evaluation step if, in the State’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 Vendor, if the State is unable to reach an agreement on Contract terms with the highest scoring Vendor.

5.3 Planned Evaluation
The State plans to use the following process:
- Initial screening;
- Preliminary scoring of the Proposals and reference and background checks;
- Oral interviews; and
- Final evaluation of Proposals.

5.3.1 Initial Screening
The State shall conduct an initial screening step to verify Vendor compliance with submission requirements and to confirm that the Proposal satisfies the conditions defined in Appendix B: Minimum Standards for Proposal Consideration. A Proposal that fails to satisfy either submission requirements or minimum standards may be rejected without further consideration.

5.3.2 Preliminary Scoring of Proposals and Reference Checks
The State shall establish an evaluation team to initially score Proposals and conduct reference checks.

5.3.3 Oral Interviews
Preliminary scores from the initial evaluation of the Proposals shall be used to select Vendors to invite to oral interviews.

The purpose of oral interviews 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. For each invited Vendor, the oral interview shall be two (2) hours in length. A highly structured agenda shall be used for oral interviews to ensure standard coverage of each invited Vendor. Information gained from oral interviews shall be used to refine scores assigned from the initial review of the Proposals.

5.3.4 Final Evaluation
The State shall conduct final evaluations as a culmination of the entire process of reviewing Vendor Proposals and information gathering.
6. GENERAL CONTRACT REQUIREMENTS

6.1 State of New Hampshire Terms and Conditions and Contract Requirements
The Contract terms set forth in Section 6: General Contract Requirements, herein and Appendix H: State of New Hampshire Terms and Conditions P-37 shall constitute the core for any Contract resulting from this RFP.

6.2 Vendor Responsibilities
The Vendor shall be solely responsible for meeting all requirements and terms and conditions specified in this RFP, its Proposal, and any resulting Contract, regardless of whether or not it proposes to use any subcontractor.

The Vendor may subcontract Services subject to the provisions of the RFP, including but not limited to, the terms and conditions in Section 6: General Contract Requirements herein and Appendix H: State of New Hampshire Terms and Conditions-P-37. The Vendor must submit with its Proposal all information and documentation relating to the subcontractor necessary to fully respond to the RFP, which must include terms and conditions consistent with this RFP. The Vendor shall remain wholly responsible for performance of the entire Contract regardless of whether a subcontractor is used. The State shall consider the Vendor to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from any Contract.

6.3 Project Budget/Price Limitation
The State has funds budgeted for this Project, subject to Appendix H: State of New Hampshire Terms and Conditions, P-37, General Provision - Section 4: Conditional Nature of Agreement, and P-37, General Provision - Section 5: Contract Price/Price Limitation/Payment.

6.4 State Contracts
The State of New Hampshire intends to use, wherever possible, existing statewide software and hardware contracts to acquire supporting software and hardware, if required during the period of staff augmentation.

6.5 Vendor Staff
In the Proposal, the Vendor shall assign and identify proposed IT Consultant Staff in accordance with the Requirements and Deliverables of Appendix C: Requirements and Deliverables and Appendix E: Standards for Describing Vendor Qualifications.

Any changes to the Vendor’s IT Consultant Staff shall require the prior written justification submitted by the Vendor, and prior written approval of the State. State approvals for changes in the Vendor’s IT Consultant Staff will not be unreasonably withheld. Replacement IT Consultant Staff shall have comparable or greater skills with regard to performance of the work as the staff being replaced and subject to the provisions of this RFP and any resulting Contract. The State reserves the right to require immediate removal of the Vendor’s IT Consultant Staff found unacceptable to the State.

The State may conduct reference and background checks on the Vendor’s IT Consultant Staff. The State reserves the right to reject the Vendor’s IT Consultant Staff as a result of such reference checks.

Notwithstanding any provision in this RFP, or any resulting Contract to the contrary, the State shall have the option to terminate the Contract, at its discretion, if the State is dissatisfied with any of the proposed IT consultants.
6.6 Warranty

6.6.1 Professional Services
The Vendor shall warrant that all services to be provided under the Contract shall be provided expediently and in a professional manner in accordance with the RFP; and that Services will comply with Appendix H: State of New Hampshire Terms and Conditions-P.37 and Section 6 General Contract Requirements.

6.6.2 Warranty Period
The Vendor shall warrant all services and personnel, engaged under Contract as a result of the RFP, for the duration of the Contract period.

6.7 Administrative Specifications

6.7.1 Travel Expenses
The Vendor must assume all travel and related expenses by “fully loading” the proposed labor rates to include, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out-of-pocket expenses.

6.7.2 Shipping and Delivery Fee Exemption
The State will not pay for any shipping or delivery fees unless specifically itemized in the Contract.

6.7.3 Project Workspace and Office Equipment
The State Agency will provide workspace and required office equipment, including State issued laptop for the Vendor’s staff. If a Vendor has specific requirements, they must be included in the Vendor’s Proposal.

6.7.4 Work Hours
Vendor personnel shall work normal business hours between 8:00 a.m. and 5:00 p.m., eight (8) hour days, forty (40) hour weeks, excluding State of New Hampshire holidays. Changes to this schedule may be made upon agreement with the State Project Manager. However, the State requires an unpaid lunch break of at least thirty (30) minutes be taken after five (5) consecutive hours of work.

6.7.5 Access/Cooperation
As applicable, and reasonably necessary, and subject to the applicable State and federal laws and regulations and restrictions imposed by third parties upon the State, the State will provide the Vendor with access to all program files, libraries, personal computer-based systems, software packages, network systems, security systems, and hardware as required to complete the contracted Services.

The State will use reasonable efforts to provide approvals, authorizations, and decisions reasonably necessary to allow the Vendor to perform its obligations under the Contract.
6.7.6 State-Owned Documents and Data
The Vendor shall provide the State access to all Documents, State Data, materials, reports, and other work in progress relating to the Contract (“State Owned Documents”). Upon expiration or termination of the Contract with the State, Vendor shall turn over all State-Owned Documents, State Data, material, reports, and work in progress relating to this Contract to the State at no additional cost to the State. State-Owned Documents must be provided in both printed and electronic format.

6.7.7 Intellectual Property
The State shall hold ownership, title, and rights in any Custom Software developed in connection with the performance of obligations under the Contract, or modifications to the software and their associated Documentation.

The Vendor shall be free to use its general knowledge, skills, experience, and any other ideas, concepts, know-how, and techniques that are acquired or used in the course of its performance under the Contract.

6.7.8 Work for Hire
In performing its obligations under the Contract, the State and the Vendor shall agree that any work created or prepared by the Vendor’s personnel within the scope of their employment, or a work specially ordered or commissioned for use as a contribution to a collective work, shall be considered a work for hire. As such, it shall be considered the sole property of the State.

6.7.9 IT Required Work Procedures
All work done must conform to standards and procedures established by the Department of Information Technology and the State.

6.7.10 Computer Use
In consideration for receiving access to and use of the computer facilities, network, licensed or developed software, software maintained or operated by any of the State entities, systems, equipment, Documentation, information, reports, or data of any kind (hereinafter “Information”), Vendor understands and agrees to the following rules:

a. Every Authorized User has the responsibility to assure the protection of Information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.

b. That information shall be used solely for conducting official State business, and all other use or access is strictly forbidden including, but not limited to, personal, or other private and non-State use and that at no time shall Vendor access or attempt to access any information without having the express authority to do so.

c. That at no time shall Vendor access or attempt to access any information in a manner inconsistent with the approved policies, procedures, and/or agreements relating to system entry/access.

d. That all software licensed, developed, or being evaluated by the State cannot be copied, shared, distributed, sub-licensed, modified, reverse engineered, rented, or sold, and that at all times Vendor must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other Agreement executed by the State. Only equipment or
software owned, licensed, or being evaluated by the State, can be used by the Vendor. Personal software (including but not limited to palmtop sync software) shall not be installed on any equipment.

e. That if the Vendor is found to be in violation of any of the above-stated rules, the User may face removal from the State Contract, and/or criminal or civil prosecution, if the act constitutes a violation of law.

6.7.11 Email Use
Mail and other electronic communication messaging systems are State of New Hampshire property and are to be used for business purposes only. Email is defined as “internal Email systems” or “State-funded Email systems”. Vendors understand and agree that use of email shall follow State standard policy (available upon request).

6.7.12 Internet/Intranet Use
The Internet/Intranet is to be used for access to and distribution of information in direct support of the business of the State of New Hampshire according to State standard policy (available upon request).

6.7.13 Regulatory/Governmental Approvals
Any Contract awarded under the RFP shall be contingent upon the Vendor obtaining all necessary and applicable regulatory or other governmental approvals.

6.7.14 Force Majeure
Neither Vendor nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, block outs, riots, and acts of War, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.

Except in the event of the foregoing, Force Majeure events shall not include Vendor’s inability to hire or provide personnel needed for the Vendor’s performance under the Contract.

6.7.15 Confidential Information

6.7.15.1 In performing its obligations under the Contract, the Vendor may gain access to information of the State, including State Confidential Information. “State Confidential Information” shall include, but not be limited to, information exempted from public disclosure under New Hampshire RSA Chapter 91-A: Access to Public Records and Meetings (see e.g. RSA Chapter 91-A:5 Exemptions). The Vendor shall not use the State Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Contract, except as is directly connected to and necessary for the Vendor’s performance under the Contract, unless otherwise permitted under the Contract.

6.7.15.2 The Vendor agrees to maintain the confidentiality of and to protect from unauthorized use, disclosure, publication, and reproduction (collectively “release”), all State Confidential Information that becomes available to the Vendor in connection with its performance under the Contract, regardless of its form.
6.7.15.3 Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which: (i) shall have otherwise become publicly available other than as a result of disclosure by the receiving party in breach hereof; (ii) was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party; (iii) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party; or (iv) is disclosed with the written consent of the disclosing party. A receiving party also may disclose Confidential Information to the extent required by an order of a court of competent jurisdiction.

6.7.15.4 Any disclosure of the State’s Confidential Information shall require prior written approval of the State. The Vendor shall immediately notify the State if any request, subpoena or other legal process is served upon the Vendor regarding the State’s Confidential Information, and the Vendor shall cooperate with the State in any effort it undertakes to contest the subpoena or other legal process at no additional cost to the State.

6.7.15.5 In the event of unauthorized release of the State’s Confidential Information, the Vendor shall immediately notify the State, and the State shall immediately pursue any remedy at law and in equity, including, but not limited to injunctive relief.

6.7.15.6 Insofar as the Vendor seeks to maintain the confidentiality of its confidential or proprietary information, the Vendor must clearly identify in writing the information it claims to be confidential or proprietary. The Vendor acknowledges that the State is subject to the Right to Know law, RSA Chapter 91-A. The State shall maintain the confidentiality of the identified Confidential Information insofar as it is consistent with applicable laws or regulations, including but not limited to, New Hampshire RSA Chapter 91-A. In the event the State receives a request for the information identified by the Vendor as confidential, the State shall notify the Vendor and specify the date the State will be releasing the requested information. Any effort to prohibit or enjoin the release of the information shall be the Vendor’s sole responsibility and at the Vendor’s sole expense. At the request of the State, the Vendor shall cooperate and assist the State with collection and review of the Vendor’s information at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be the Vendor’s sole responsibility and at the Vendor’s sole expense. If the Vendor fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State’s notice to the Vendor without any State liability to the Vendor.

This Section 6.7.15: Confidential Information shall survive termination or Contract conclusion.

6.7.16 Data Breach

In the event of a Data Breach, the Vendor shall comply with provisions of NH RSA chapter 359C:20.

6.7.17 Change of Ownership

In the event that the Vendor should change ownership for any reason whatsoever, the State shall have the option of continuing under the Contract with the Vendor, its successors or assigns for the full remaining term of the Contract; continuing under the Contract with the Vendor, its successors or
assigns for such period of time as determined necessary by the State; or immediately terminate the Contract without liability to the Vendor, its successors or assigns.

6.7.18 Assignment, Delegation and Subcontracts

6.7.18.1 The Vendor shall not assign, delegate, subcontract, or otherwise transfer any of its interest, rights, or duties under the Contract without the prior written consent of the State. Such consent will not be unreasonably withheld. Any attempted transfer, assignment, delegation, or other transfer made without the State’s prior written consent shall be null and void, and may constitute an event of default at the sole discretion of the State.

6.7.18.2 The Vendor shall remain wholly responsible for performance of the entire Contract regardless of whether assignees, delegates, Subcontractors or other transferees (“Assigns”) are used, unless otherwise agreed to in writing by the State and the Assigns fully assumes in writing any and all obligations and liabilities under the Contract from the Effective Date. In the absence of a written assumption of full obligations and liabilities of the Contract, any permitted assignment, delegation, subcontract or other transfer shall not relieve the Vendor of any of its obligations under the Contract; nor affect any remedies available to the State against the Vendor that may arise from any event of default; and the State will consider the Vendor to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

6.7.19 Venue and Jurisdiction

The Contract 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 successor and assigns. Any action may only be brought in the State of New Hampshire, Merrimack County Superior Court.

6.8 Pricing

6.8.1 Pricing

The Vendor must provide, within the fixed rate for IT Consultant services, pricing for each individual skill level proposed. A worksheet is provided in Appendix F, Table F-1: Vendor Proposed Pricing Worksheet.

6.8.2 Invoicing

The Vendor shall submit monthly invoices based upon the actual hours worked in a month by the IT Consultant personnel, as supplied by the Vendor and permitted by the Contract and the terms listed herein. All invoices shall be subject to the State’s prior written approval, which shall not be unreasonably withheld.

The Vendor shall only submit invoices for Services as permitted by the Contract. Invoices must be in a format as determined by the State and contain detailed information, including without limitation: itemization of each Service and identification of the Service for which payment is sought.

Upon acceptance of a properly documented invoice, the State will pay the invoice within thirty (30) days of invoice issuance. Invoices will not be backdated and shall be promptly dispatched.
If the State receives an invoice and the amount on the invoice is calculated incorrectly, the State shall notify the Vendor of the alleged error prior to the due date of such payment. The State and the Vendor agree to use commercially reasonable efforts to resolve the invoicing error within fifteen (15) days from such notification to the Vendor. The State shall promptly pay upon resolution of such dispute or within such fifteen (15) day period of an agreed-upon amount, whichever is later, and no late charges shall apply to that amount or the originally invoiced amount.

6.8.3 Overpayments to the Vendor
The Vendor shall promptly, but no later than fifteen (15) business days, return to the State the full amount of any overpayment or erroneous payment upon discovery or notification from the State.

6.8.4 Credits
The State may apply credits due to the State, arising out of the Contract, against the Vendor’s invoices with appropriate information attached.

6.8.5 Retention and Access Requirements
The Vendor shall agree to the conditions of all applicable State laws and regulations, which are incorporated herein by this reference, regarding retention and access requirements, including without limitation, retention policies consistent with the Federal Acquisition Regulations (FAR) Subpart 4.7 Contractor Records Retention.

The Vendor and its Subcontractors shall maintain books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs, invoiced in the performance of their respective obligations under the Contract. The Vendor and its Subcontractors shall retain all such records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract shall be kept for one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeals period.

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and federal officials so authorized by law, rule, regulation or Contract, as applicable. During the term of this Contract, access to these items shall be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records shall be at no cost to the State during the three (3) year period following termination of the Contract and one (1) year term following litigation relating to the Contract, including all appeals or the expiration of the appeal period. The Vendor shall include the record retention and review requirements of this section in any of its subcontracts.

The State agrees that books, records, documents, and other evidence of accounting procedures and practices related to the Vendor’s cost structure and profit factors shall be excluded from the State’s review unless the cost or any other Services or Deliverables provided under the Contract is calculated or derived from the cost structure or profit factors.

6.8.6 Accounting Requirements
The Vendor shall maintain an accounting system in accordance with generally accepted accounting principles. The costs applicable to the Contract shall be ascertainable from the accounting system.
6.9 Dispute Resolution

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights), the party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by written notice to the other party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement.

The parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

Dispute Resolution Responsibility and Schedule Table

<table>
<thead>
<tr>
<th>LEVEL</th>
<th>&lt;VENDOR&gt;</th>
<th>THE STATE</th>
<th>CUMULATIVE ALLOTTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary</td>
<td>&lt;NAME&gt;</td>
<td>David Heafey Asst. Director, Operations Division Department of Information Technology</td>
<td>5 Business Days</td>
</tr>
<tr>
<td>First</td>
<td>&lt;NAME&gt;</td>
<td>Wendy Pouliot Director, Operations Division Department of Information Technology</td>
<td>10 Business Days</td>
</tr>
<tr>
<td>Second</td>
<td>&lt;NAME&gt;</td>
<td>Ken Dunn Deputy Commissioner Department of Information Technology</td>
<td>15 Business Days</td>
</tr>
</tbody>
</table>

The allotted time for the first level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is days from the date that the original Invoking Party's notice is received by the other party.

6.10 Termination

6.10.1 Termination for Default

Any one or more of the following acts or omissions of the Vendor shall constitute an Event of Default hereunder ("Event of Default"):

- a. Failure to perform the Services satisfactorily or on Schedule;
- b. Failure to submit any report required; and/or
- c. To perform any other covenant, term or condition of the Contract.

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

- a. The State shall provide the Vendor written notice of default and require it to be remedied within, in the absence of a greater or lesser Specification of time, within thirty (30) days from the date of notice, unless otherwise indicated within by the State ("Cure Period"). If
the Vendor fails to cure the default within the Cure Period, the State may terminate the Contract effective two (2) days after giving the Vendor notice of termination, at its sole discretion, treat the Contract as Breached and pursue its remedies at law or in equity or both;

b. The State shall provide the Vendor written notice of default and the State shall have the option to terminate the Contract immediately, at its discretion, if the State is dissatisfied with any of the proposed IT consultants;

c. Give the Vendor a written notice specifying the Event of Default and suspending all payments to be made under the Contract and ordering that the portion of the Contract price which would otherwise accrue to the Vendor during the period from the date of such notice until such time as the State determines that the Vendor has cured the Event of Default shall never be paid to the Vendor;

d. Set off against any other obligations the State may owe to the Vendor any damages the State suffers by reason of any Event of Default;

e. Treat the Contract as breeched and pursue any of its remedies at law or in equity, or both; and

f. Procure Services that are the subject of the Contract from another source and the Vendor shall be liable for reimbursing the State for the replacement Services, and all administrative costs directly related to the replacement of the Contract and procuring the Services from another source, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; all of which shall be subject to the limitations of liability set forth in the Contract.

In the Event of Default by the State, the Vendor shall provide the State with written notice of default, and the State shall cure the default within thirty (30) days.

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 shall survive termination or Contract Conclusion.

6.10.2 Termination for Convenience

The State may, at its sole discretion, terminate the Contract for convenience, in whole or in part, by thirty (30) days written notice to the Vendor. In the event of such termination for convenience, the State shall pay the Vendor the agreed upon price, if separately stated, for Deliverables for which Acceptance has been given by the State. Amounts for Services or Deliverables provided prior to the date of termination for which no separate price is stated will be paid, in whole or in part, generally in accordance with Appendix F: Pricing Worksheets.

During the thirty (30) day period, the Vendor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on the State from such winding down and cessation of Services.

6.10.3 Termination for Conflict of Interest

The State may terminate the Contract by written notice if it determines that a conflict of interest exists, including but not limited to, a violation by any of the parties hereto of applicable laws regarding ethics in public acquisitions and procurement and performance of Contracts.
In such case, the State shall be entitled to a pro-rated refund of any current development, support and maintenance costs. The State shall pay all other Contracted payments that would have become due and payable if the Vendor did not know, or reasonably did not know, of the conflict of interest.

In the event the Contract is terminated as provided above pursuant to a violation by the Vendor, the State shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a default of the Contract by the Vendor.

6.10.4 Termination Procedure

Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require the Vendor to deliver to the State any property, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated.

After receipt of a notice of termination, and except as otherwise directed by the State, Vendor shall:

a. Stop work under the Contract on the date, and to the extent specified, in the notice;
b. Promptly, but in no event longer than thirty (30) days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent required, which approval or ratification shall be final for the purpose of this Section;
c. Take such action as the State directs, or as necessary to preserve and protect the property related to the Contract which is in the possession of Vendor and in which State has an interest;
d. Transfer title to the State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to State and which has been accepted or requested by the State; and
e. Provide written Certification to the State that Vendor has surrendered to the State all said property.

6.10.5 Survival

This section 6.10 shall survive termination or Contract Conclusion.

6.11 LIMITATION OF LIABILITY

6.11.1 State

Subject to applicable laws and regulations, in no event shall the State be liable for any consequential, special, indirect, incidental, punitive, or exemplary damages. Subject to applicable laws and regulations, the State’s liability to the Vendor shall not exceed the total Contract price set forth in Appendix H: State of New Hampshire Terms and Conditions, Contract Agreement P-37 General Provisions - Section 1.8: Price Limitation.

Notwithstanding the foregoing and any provision of this Contract to the contrary, in no event does the State waive its sovereign immunity or any applicable defenses or immunities.
6.11.2 The Vendor
Subject to applicable laws and regulations, in no event shall the Vendor be liable for any consequential, special, indirect, incidental, punitive or exemplary damages and the Vendor’s liability to the State shall not exceed two times (2X) the total Contract price set forth in Appendix H: State of New Hampshire Terms and Conditions, Contract Agreement P-37 General Provisions - Section 1.8: Price Limitation. Notwithstanding the foregoing, the limitation of liability shall not apply to the Vendor’s indemnification obligations set forth in Appendix H: State of New Hampshire Terms and Conditions, Contract Agreement P-37 General Provisions - Section 1.8: Price Limitation, and Appendix H: State of New Hampshire Terms and Conditions, Contract Agreement P-37 General Provisions - Sections 13: Indemnification, and confidentiality obligations in Section 6.7.15: Confidential Information, and obligations in Section 6.7.16: Data Breach which shall be unlimited.

6.11.3 State’s Immunity
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 shall survive termination or Contract Conclusion.

6.11.4 Survival
This Contract Agreement, Section 6.11: Limitation of Liability shall survive termination or Contract Conclusion.

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APPENDIX A: BACKGROUND INFORMATION

A-1 Department of Information Technology
The Mission of the Department of Information Technology is to support the strategic business objectives of State agencies; to create and sustain a secure and reliable information technology environment; and to ensure careful and responsible management of the State’s information technology resources.

Project Overview/Justification:

This Request for Proposal (“RFP”) is being issued by the State of New Hampshire’s Department of Information Technology (“DOIT”) to solicit proposals from qualified Disaster Recovery Solution providers, to propose a Disaster Recovery (“DR”) and Continuity of Operations Plan (“COOP”) solution for DOIT.

A-2 State Project Team
State staffing will include senior management sponsoring the effort and allocated IT and business staff members that will be defined as part of a pre-project kickoff activities. It is anticipated that Vendor IT consultants will participate in initial team definition and project governance meetings and will be directed by a senior State manager responsible for project oversight. Resources will be allocated in collaboration with senior operations management as part of pre-project commencement planning and anticipated project activities. State staff will work with vendor consultants to assist with agency coordination and collection of templates, processes and governance practices and other various coordination efforts.

A-3 Related Documents Required at Contract Award
The following documents are not required for the response of the RFP but will be required at contract award:

a. Certificate of Good Standing – available from the NH Secretary of State

b. Certificate of Vote – dated the same day or later than the contract/amendment signature

c. Certificate of Insurance
   i. Comprehensive general liability insurance against all claims of bodily injury, death or property damage ($1,000,000 per occurrence and $2,000,000 aggregate)
   ii. Certificate Holder must be: State of NH, Department of Information Technology, ATTN: Denis Goulet, 27 Hazen Drive, Concord, NH, 03301

d. Workers Compensation
   i. Workers Compensation coverage may be indicated on the insurance form described above.
   ii. Workers Compensation coverage must comply with State of NH RSA 281-A

See APPENDIX G – SAMPLE CERTIFICATES for additional information and samples.

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APPENDIX B:  MINIMUM STANDARDS FOR PROPOSAL CONSIDERATION

The State seeks proven, experienced IT consultants to work with State personnel in accordance with the Schedule and the requirements and Deliverables of Appendix C: Requirements and Deliverables and Appendix E: Standards for Vendor Qualifications.

For IT Consultant - Staff Support Proposals, the minimum standards for proposal consideration include:

B-1 Proposal Submission
The Proposal submitted on time, as defined in this RFP in Section 2: Schedule of Events;

B-2 Compliance with Requirements
Compliance with mandatory requirements in Appendix C-1: Requirements; and

B-3 Transmittal Form Letter
Inclusion of the properly completed Transmittal Form Letter contained in Section 4.17.2: Transmittal Form Letter of this RFP.

B-4 Experience and References
Qualified candidates with proven experience in the area of Disaster Recovery.

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APPENDIX C: REQUIREMENTS AND DELIVERABLES

C-1 Requirements (M=Mandatory / O=Optional)

Requirements for Disaster Recovery Solution and COOP for this RFP Proposal include:

Table C-1 Requirements

<table>
<thead>
<tr>
<th>REQ #</th>
<th>Disaster Recovery and COOP Requirements</th>
<th>M or O</th>
<th>Met</th>
<th>Not Met</th>
<th>Description of how Vendor will Accomplish Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Gains understanding of DoIT business strategies, its customer base, and the core services used to support that customer base.</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Thorough understanding of I&amp;O disciplines including NetOps, ServerOps, Telecommunications, Database technologies, and Backup/Restore methodologies.</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Thorough understanding of the use of internal sites, co-lo and Cloud vendors, and a hybrid approach in support of DR activities.</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Familiarity with Ransomware and the use of recovery technologies to mitigate loss of data.</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Analyzes and evaluates current DR capabilities and identifies gaps.</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

C-2 Deliverables

The Deliverables is fully qualified IT Consultant personnel with knowledge and experience as declared in Appendix E, Section E-2: Candidates for Vendor IT Consultant Roles, capable of fulfilling the Requirements stated in Appendix C, Section C-1: Requirements, working on site for full business days on projects as directed by the State Project Manager.

In addition to fulfilling the requirements outlined in Section C-1: Requirements, the Vendor shall provide the following:
Vendors shall complete a checklist based on the following format. Indicate whether the Requirement/Deliverable can be met by the Vendor.

Table C.2-1 Vendor Response Template – Requirements and Deliverables (M=Mandatory / O=Optional)

<table>
<thead>
<tr>
<th>REQ#</th>
<th>Deliverables</th>
<th>M or O</th>
<th>Met</th>
<th>Not Met</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Initial discovery meetings with necessary teams, document requirements, and kickoff meeting with delivery of project plan</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Documented defined core services and processes</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Documented DR requirements</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Documented COOP Processes and Needs</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Documented optional solutions and costs, and assistance with DR vendor selection</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
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APPENDIX D: TOPICS

Appendix D is not applicable to this RFP

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APPENDIX E:  STANDARDS FOR DESCRIBING VENDOR QUALIFICATIONS

Vendor qualifications are an important factor in selecting the Vendor IT Consultants. To facilitate evaluation of Vendor qualifications, the State seeks information about the corporate qualifications of each Vendor proposed to participate in the Project and the individual qualifications of candidates for IT Consultant staff roles. This appendix identifies specific information that must be submitted.

E-1 Required Information on Corporate Qualifications

The Vendor submitting a Proposal to this RFP must identify any Subcontractor(s) and provide the following for the Vendor and each Subcontractor identified:

E-1.1 Corporate Overview (2 Page Limit)

Identify the proposed role of the Vendor or Subcontractor firm as related to this RFP request. Describe the major business areas of the firm. Provide a high-level description of the firm’s organization and staff size. Discuss the firm’s experience with the requested skills and in New Hampshire.

Overview should include:

- A summary document of services provided in the DR and COOP space, with references to other customers who have contracted for these services.
- At least 2 examples of a COOP written specifically for SLED organizations; 1 each MUST be at the State level.
- At least 2 reference customers in SLED organizations (1 MUST be at the State level) who have contracted the vendor for DR Service vendor selection.
- At least 2 reference customers in SLED organizations (1 MUST be at the State level) who have contracted the vendor to write a COOP.

E-1.2 Financial Strength

Provide the following:

- The current Dunn & Bradstreet report
- The firm’s two most recent audited financial statements; and
- The firm’s most recent un-audited, quarterly financial statement or
- The firms most recent income tax return

E-1.3 Litigation

Identify and describe any claims made by clients during the last ten (10) years. Discuss merits, current status and, if available, outcome of each matter.

E-1.4 Subcontractor Information

Vendors must provide information on any subcontractors proposed to work on this project. Required information shall include but not be limited to:

1. Identification of the proposed Subcontractor and a description of the major business areas of the firm and their proposed role on the Project.
2. A high-level description of the Subcontractor’s organization and staff size.
3. Discussion of the Subcontractor’s individual qualifications of candidates for IT Consultant staff roles; and
4. Two references from companies or organizations where they performed similar services, if requested by the State.

E-2 Candidates for Vendor IT Consultant Staff Roles
Provide a resume not to exceed three (3) pages for each Vendor IT Consultant staff position proposed. Each resume should address the following:

- The individual’s educational background;
- An overview of the individual’s work history;
- The individual’s project experience, including project type, project role and duration of the assignment;
- Any significant certifications held by or honors awarded to the candidate;
- A history of the individual’s application experience; and
- At least three (3) references, with contact information that can address the individual’s performance on past projects.

Although the State recognizes that staff availability is somewhat uncertain, qualifications of Vendor IT Consultant staff assigned to the Project are critical. Specific named resumes are required, representative resumes will not be acceptable. IT Consultant Staff must be available full time, on site, for the duration of the Contract.

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APPENDIX F: PRICING WORKSHEETS

A Vendor’s Cost Proposal must be based on the worksheets formatted as described in Appendix F.

The resulting Contract shall be a Not-To-Exceed Contract.

F-1  Vendor Proposed Pricing Worksheet

<table>
<thead>
<tr>
<th>Activity, Deliverable or Milestone</th>
<th>Proposed Date</th>
<th>Pricing/Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial discovery meetings with necessary teams, document requirements, and kickoff meeting with delivery of project plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Documented defined core services and processes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Documented DR requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Documented COOP Processes and Needs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Documented optional solutions and costs, and assistance with DR vendor selection</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL PROPOSAL COST</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

F-2  Vendor Proposed Position Rates Pricing Worksheet in Event Contract is Extended

<table>
<thead>
<tr>
<th>Position Title</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tbody>
</table>

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APPENDIX G – SAMPLE CERTIFICATES

A. CERTIFICATE OF GOOD STANDING
As a condition of Contract award, the Vendor, if required by law, must furnish a Certificate of Authority/Good Standing dated after April 1, 2017, from the Office of the Secretary of State of New Hampshire. If your company is not registered, an application form may be obtained from:

Secretary of State
State House Annex
25 Capitol Street
Concord, New Hampshire 03301
603-271-3244

If your company is registered, a Certification thereof may be obtained from the Secretary of State.

B. CERTIFICATE OF AUTHORITY/VOTE
The Certificate of Authority/Vote authorizes, by position, a representative(s) of your corporation to enter into an Agreement or amendment with the State of New Hampshire. This ensures that the person signing the Agreement is authorized as of the date he or she is signing it to enter into Agreements for that organization with the State of New Hampshire.

The officer’s signature must be either notarized or include a corporate seal that confirms the title of the person authorized to sign the Agreement. The date the Board officer signs must be on or after the date the amendment is signed. The date the notary signs must match the date the Board officer signs.

You may use your own format for the Certificate of Authority/Vote as long as it contains the necessary language to authorize the Agreement signatory to enter into Agreements and amendments with the State of New Hampshire as of the date they sign.

B.1 CERTIFICATE OF AUTHORITY/VOTE CHECKLIST

B.1.1 SOURCE OF AUTHORITY
Authority must come from the governing body, either:
1. A majority voted at a meeting; or
2. The body provided unanimous consent in writing; or
3. The organization’s policy or governing document.

B.1.2 SOURCE OF AUTHORITY WAS IN EFFECT ON DAY AGREEMENT OR AMENDMENT WAS SIGNED
Certificate must show that the person signing the Contract had authority when they signed the Agreement or Amendment, either:
1. Authority was granted the same day as the day the Agreement or Amendment was signed; or
2. Authority was granted after the day the Agreement or amendment was signed and the governing body ratifies and accepts the earlier execution; or
3. Authority was granted prior to the day the Agreement or amendment was signed and it has not been amended or repealed as of the day the Contract was signed.

B.1.3 APPROPRIATE PERSON SIGNED THE CERTIFICATE
The person signing the certificate may be the same person signing the Agreement or Amendment only if the certificate states that the person is the sole director (for corps) or sole member (for LLCs).

C. CERTIFICATE OF INSURANCE
C.1 Comprehensive general liability insurance against all claims of bodily injury, death or property damage ($1,000,000 per occurrence and $2,000,000 aggregate)
C.1.2 Certificate Holder must be: State of NH, Department of Information Technology, ATTN: Chief Information Officer, 27 Hazen Drive, Concord, NH, 03301

D. WORKERS COMPENSATION
D.1 Workers Compensation coverage may be indicated on the insurance form described above.
D.1.2 Workers Compensation coverage must comply with State of NH RSA 281-A

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APPENDIX H – STATE OF NEW HAMPSHIRE TERMS AND CONDITIONS

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

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

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

GENERAL PROVISIONS

1. IDENTIFICATION.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1.1 State Agency Name</td>
<td>1.2 State Agency Address</td>
</tr>
<tr>
<td>1.3 Contractor Name</td>
<td>1.4 Contractor Address</td>
</tr>
<tr>
<td>1.5 Contractor Phone Number</td>
<td>1.6 Account Number</td>
</tr>
<tr>
<td>1.9 Contracting Officer for State Agency</td>
<td>1.10 State Agency Telephone Number</td>
</tr>
<tr>
<td>1.11 Contractor Signature</td>
<td>1.12 Name and Title of Contractor Signatory</td>
</tr>
<tr>
<td>Date:</td>
<td></td>
</tr>
<tr>
<td>1.13 State Agency Signature</td>
<td>1.14 Name and Title of State Agency Signatory</td>
</tr>
<tr>
<td>Date:</td>
<td></td>
</tr>
<tr>
<td>1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)</td>
<td></td>
</tr>
<tr>
<td>By:</td>
<td>Director, On:</td>
</tr>
<tr>
<td>1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable)</td>
<td></td>
</tr>
<tr>
<td>By:</td>
<td>On:</td>
</tr>
<tr>
<td>1.17 Approval by the Governor and Executive Council (if applicable)</td>
<td></td>
</tr>
<tr>
<td>G&amp;C Item number:</td>
<td>G&amp;C Meeting Date:</td>
</tr>
</tbody>
</table>
2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 (“Effective Date”).
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3. The Contractor agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

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

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

9. TERMINATION.

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

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

10. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.

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

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

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.
11. CONTRACTOR'S RELATION TO THE STATE.
In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers’ compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTIONS.
12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. “Change of Control” means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.
12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.
14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:
14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than $1,000,000 per occurrence and $2,000,000 aggregate or excess; and
14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.
14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.
14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

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

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

Page 48 of 49
Contractor Initials ________
Date ________
17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

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

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

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

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

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

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

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