

**REQUEST FOR PROPOSAL TO OPERATE FOOD SERVICE CONCESSION  
NEW HAMPSHIRE EMPLOYMENT SECURITY  
BID# RFP NHES2016-04  
January 8, 2016**

**I. INTRODUCTION**

A. Introduction

This is a Request for Proposal (RFP) issued by The State of New Hampshire, Department of Employment Security (“NHES” or the “Department”), in accordance with Revised Statutes Annotated 282-A:112, I, seeking proposals from interested vendors for the operation of the food service concession in the Department’s principal office located at the Tobey Building, 45 South Fruit Street, Concord, New Hampshire 03301 (the “Tobey Building”).

B. Objective

The successful respondent will provide on-site food services at the Tobey Building, serving NHES employees and visitors, and offering a range of services and products for breakfast and lunch, including food and beverages, such as, but not limited to, hot and cold beverages, hot and cold sandwiches, soups, salads, hot entrees, and pastries. This food service facility shall be operated at a reasonable cost consistent with a fair return, high-quality food and reasonable prices. Catering may also be requested. NHES is interested in contracting with a Vendor for an initial term of one (1) year, beginning on the date of approval of a contract between NHES and the successful respondent by the Governor and Executive Council.

C. Inquiries

All communications regarding this RFP should be submitted to the attention of Jill D. Revels, Business Administrator, New Hampshire Employment Security. The point of contact for all questions and submission of proposals is:

Jill D. Revels, Business Administrator  
New Hampshire Employment Security  
Fiscal Management Section  
45 South Fruit Street  
Concord, NH 03301  
TEL: (603) 229-4449  
FAX: (603) 229-4346  
EMAIL: [jill.d.revels.@nhes.nh.gov](mailto:jill.d.revels.@nhes.nh.gov)

## II. PROPOSAL INSTRUCTIONS AND CONDITIONS

### A. Deadlines for Required Information

The following are the applicable dates and deadlines related to this RFP:

RFP Issue Date	01/08/2016
Optional Site Visit	01/19/2016
Deadline for Respondent Questions and Requests to Amend or Modify the RFP	01/22/2016
Department Responses to Questions	01/25/2016
Deadline for Submission of Proposals ( <i>Must be <u>received</u> by NHES by this time</i> )	01/29/2016 @ 2 PM EST

NHES reserves the right to change any of the foregoing dates and times. If changes are made to the original RFP, the changes will be posted on the Department of Administrative Services and NHES websites. Attending the site visit is optional, but is recommended. Website addresses are as follows: <http://www.admin.state.nh.us/purchasing/bids> and [www.nhes.nh.gov](http://www.nhes.nh.gov).

**Respondents shall be responsible for monitoring the websites for changes during the RFP process.**

### B. Respondent Questions

1. Any prospective respondent with questions regarding the specifications or terms and conditions of the proposed contract, or seeking clarification of any of the information contained in this RFP, must submit such questions in writing no later than the deadline noted above. Written responses to all questions received will be posted on the websites indicated above.
2. Questions should be submitted in writing, by regular mail or e-mail to: NH Employment Security, ATTN: Jill D. Revels, Business Administrator, Fiscal Management Section, 45 South Fruit Street, Concord, NH 03301. Further details on contact information are provided at Section I, C (RFP page 1).

### C. Deadline for Submission of Proposal

1. The deadline for the receipt of the proposals at and by NHES is as noted above. Please note: **Proposals may not be submitted by e-mail or by fax.** Proposals or unsolicited amendments submitted after the deadline will not be accepted and will be returned.

2. Respondents are cautioned that it is their responsibility to mail or otherwise effect delivery of their proposals in sufficient time to insure receipt by NHES by the closing date/time shown above at Section II. A of the RFP.

D. Proposal Submission Format

1. An original and three (3) copies of each proposal are required to be submitted. All proposals shall be submitted in a sealed package and must be clearly marked as follows: "RFP NHES2016-04 – NHES FOOD CONCESSION."
2. All proposals must include:
  - a. A fully filled out, signed and notarized **Transmittal Letter** in the form attached as **Exhibit A** to this RFP.
  - b. Prior to the proposal submission deadline, the respondent shall have completed and filed a **Vendor Application and alternate W-9 Form** with the NH Bureau of Purchase and Property. These forms may be downloaded from the Bureau of Purchase and Property website at: <http://www.admin.state.nh.us/purchasing/bids>.

E. RFP Requirements

Proposals must meet all of the requirements set forth in this RFP. Standard brochures and manuals are accepted only as supplemental material. Proposals that do not specifically address and include all RFP requirements may not be evaluated.

F. Proposal Acceptance

NHES may accept or reject any and all proposals, or parts of proposals, submitted for consideration with or without cause. NHES reserves the right to waive technicalities to assure the greatest benefit to the State. All proposal materials will be retained by the Department and not returned to the respondents. The successful respondent will be required to provide the services in accordance with the specifications, to charge prices for services that do not exceed prices quoted and to pay overhead costs and percentage of gross receipts as provided for in the proposal and resulting contract. Respondents submitting proposals will not be compensated for their proposal efforts.

G. Rejection of Proposals

A proposal may be rejected for one or more of the following reasons or for any other reason deemed to be in the best interest of NHES:

- The failure of the respondent to comply with one or more provision(s) established in this RFP.

- The failure of the respondent to submit required information in the format specified in this RFP.
- The failure of the respondent to adhere to generally accepted ethical and professional principles during this RFP process.

#### H. Clarification of Information

NHES reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal or any part thereof. Failure of a respondent to respond to a request for additional information or clarification could result in rejection of that respondent's proposal.

#### I. Confidentiality

1. Except as otherwise provided by law, all proposals will be kept sealed and safe until the date, time and place of opening. The successful proposal will be incorporated into the resulting contract and will become a matter of public record. Vendors should, to the greatest extent possible, not include information considered privileged, proprietary or confidential in their proposal.
2. If the proposal includes material which is considered by the bidder to be privileged, proprietary and/or confidential, the bidder shall clearly designate the material as such, explaining why such material should be considered confidential. The bidder must identify each page or section of the proposal that it believes contains privileged, proprietary or confidential material with sufficient grounds to justify each requested exemption from release. NHES does not guarantee confidentiality of material submitted.

#### J. Contract

NHES reserves the right to incorporate standard contract provisions into any contract negotiated as a result of any proposal submitted in response to this RFP ("Contract"), including, without limitation, all provisions of the New Hampshire State Contract Form P-37. See Exhibit C.

#### K. Term & Extension

The Contract will be for a one (1) year term beginning on the date it is approved by the Governor and Executive Council. Thereafter, the Contract may be extended from year to year by mutual agreement of the Vendor and NHES for a period of up to three (3) years.

L. Sub-contracting

The successful respondent shall not assign, subcontract or otherwise transfer any duty obligation, or written performance required by the Contract without the express written prior consent of NHES. Any and all proposed subcontractors must be listed on the bid page of this document for pre-approval.

M. Criminal Record Authorization

The successful respondent and all of its employees working within the Tobey Building, and any approved sub-contractors and their employees working within the Tobey Building, will be required to sign a Criminal Record Authorization Form (Form No. DES 2135). These forms are to be returned to NH Employment Security prior to the start of any work. During the course of the Contract, any additional personnel scheduled to enter the NH Employment Security facility must be reported to a NH Employment Security official and a Criminal Record Authorization Form submitted for processing by NHES prior to their entrance into the facility.

### **III. SELECTION CRITERIA**

- A. This procurement process shall conform in all applicable ways with the provisions of RSA 21-I:22-a and 22-b and to the extent that there is any conflict between the terms or language of this RFP and RSA 21-I:22-a and/or 22-b, the statute or statutes shall in all instances control
1. All proposals will be reviewed by the Commissioner or his designee, and other appropriate staff comprising the proposal evaluation team. The successful proposal will be the proposal, which in the opinion of NHES, best satisfies the criteria listed below, best meets the Department's needs and is deemed to be in the best interest of the Department. In evaluating proposals, the Department will consider:
    - a. The experience of the respondent in the field of food service or related activities, including: (i) the nature of such experience; (ii) years of such experience; (iii) the breadth of the experience; and (iv) the respondent's particular qualifications for running the food service concession at the Tobey Building.
    - b. The proposed items/menu to be offered by the respondent as part of its food service;
    - c. The manner in which the respondent proposes to operate the food service, including an appropriate management/operations plan and staffing;
    - d. The financial condition of the respondent as disclosed in the RFP process;
    - e. The proposed pricing of food and other items offered by the food service; and the respondent's willingness to commit to the proposed pricing structure for a defined period of time.

- f. The proposed percentage commission rate to be paid on gross retail sales of all food and beverage items, including catering.
  - g. Whether a respondent has been subject to any fine or administrative action with respect to its existing food service activities (including, without limitation, fines or administrative actions arising from violation of health and safety laws, rules or regulations), and the nature and date of any infraction or issue which resulted in such fine or administrative action.
- B. The Department shall score bids as follows:
- Criterion a will be weighted at 20 points.
  - Criteria b and c will each be weighted at 10 points.
  - Criterion d shall be weighted at 10 points.
  - Criteria e and f will each be weighted at 20 points.
  - Criterion g (administrative compliance) will be weighted at 10 points.
  - The maximum point value will be 100 and the minimum point value will be 0
  - The bidder with the highest score ranking will be awarded the contract.
- C. NHES reserves the right to reject any and all proposals, or to cancel this request altogether in its sole discretion.

#### **IV. SCOPE OF SERVICES**

A. Operation of Food Service Facility

The Scope of Services includes provision of on-site food services at the Tobey Building by the successful respondent (hereinafter, the “Vendor”), serving NHES employees and visitors, and offering a range of services and products for breakfast and lunch, including food and beverages, such as, but not limited to, hot and cold beverages, hot and cold sandwiches, soups, salads, hot entrees, and pastries. This food service facility shall be operated at a reasonable cost consistent with a fair return, high-quality food and reasonable prices. Services to be provided shall also include catering as agreed by the Vendor and NHES.

B. Operation – Principal Services

1. Vendor shall operate a food service facility in the area of the Tobey Building designated as the “Cafeteria” in accordance with the terms and conditions of the Contract
2. The operation of the food service facility and performance of the contract shall be carried out by the Vendor and employees of the Vendor. The Vendor shall, at Vendor's own expense, provide all personnel necessary to operate the facility and carry out the terms of the contract.

3. The Vendor will provide high-quality food at a reasonable cost consistent with a fair return, and reasonable prices.
4. The food service facility shall be in operation during the following times: from 7 a.m. to 2 p.m., Monday through Friday, throughout the year, excluding official State holidays.
5. The Vendor may, from time to time, at the request of NHES and at compensation to be agreed upon by NHES and the Vendor, provide catering services at locations throughout the Tobey Building.

C. Operation – Articles Sold

In addition to the articles and services specified in Section IV, Paragraph B, articles sold at the food service facility may consist of newspapers, periodicals, publications, and any other articles or services mutually agreed by NHES and the Vendor to be suitable for the location.

D. Equipment, Accessories, Facility

1. Vendor shall properly maintain the food service facility and all associated areas to ensure that they are clean and sanitary in conformity with best practices of the food service industry and all applicable municipal, state and federal health and safety regulations.
2. Vendor shall ensure that the food service facility and all associated areas are operated and maintained in conformity with all applicable municipal, state and federal occupational safety and health regulations, including, without limitation, all applicable provisions of the federal Occupational Safety and Health Act of 1970 (OSHA), Public Law 91-596, as amended; 29 C.F.R. Part 1910.
3. In furtherance of the goals of paragraphs D.1 and D.2, Vendor shall provide certified pest control in the food service facility area, as necessary and required.
4. Vendor shall make no structural repairs, renovations, or modifications to the food service facility without prior written approval of the State
5. NHES has furnished or installed certain equipment and accessories in the Cafeteria prior to the commencement of the Contract, as listed in **Exhibit B**. Vendor and NHES shall inspect all such equipment and accessories to determine that they are in good working order following execution of the Contract and prior to performance of the work.
6. Following the initial inspection, Vendor shall properly maintain and repair, at Vendor's own expense, all facility equipment and accessories, including the equipment and accessories installed or furnished by NHES, and shall ensure that all equipment and accessories are kept clean, and in an attractive appearance and in good working order throughout the term of the Contract. NHES shall not be responsible for repair and

maintenance of any equipment or accessories located or used in the food service facility after the commencement of the Contract and the Vendor shall bear all such responsibility.

7. All equipment and accessories, title of which is vested in the State, shall be returned to the State in good and working order upon termination of the Contract.

E. Compliance with Laws and Nondiscrimination

1. In connection with its operation of the food service facility, the Vendor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Vendor, including, but not limited to civil rights and equal opportunity laws.
2. During the term of the Contract, the Vendor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, sexual orientation, marital status, disability, veteran status, or national origin and will take affirmative action to prevent such discrimination.
3. During the term of the Contract, Vendor shall not discriminate against any person(s) in furnishing or refusing to furnish to such person(s) the use of the food service facility, including all services, privileges, accommodations and activities provided thereby.

F. Insurance and Indemnification:

1. The Vendor shall, at the Vendor's sole expense, obtain and maintain in force throughout the term of the Contract, both for the benefit of the Vendor and the State, the following insurance:
  - Statutory Workers' Compensation and employee's liability insurance for all employees employed in connection with the food service facility.
  - Comprehensive General Liability Insurance against all claims of bodily injuries, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. The policies of insurance described in this paragraph F shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by NHES. NHES shall be named as additional insured on the policies.
3. Vendor shall deliver to NHES certification of the insurance coverage described in this paragraph F upon execution of this contract; (ii) annually on the same date as the date of execution of the Contract; and (iii) upon demand by NHES.

#### G. Supervision and Cooperation

1. NHES shall have the right to oversee the management and operation of the food service facility for the purposes of insuring compliance with contract requirements.
2. NHES shall have the right to enter without notice into the cafeteria, the food preparation areas and any storage or delivery areas maintained in the Tobey Building by or for the benefit of the Vendor at any time during operating hours or otherwise.
3. The Vendor shall cooperate fully with the State and its duly authorized representatives in the performance of the Contract and the operation and maintenance of the food service, the food service facility, all equipment and accessories, and all storage and delivery areas associated with the food service.

#### H. Commission and Reports

1. Vendor shall pay to the Department a commission based upon a percentage of the total gross sales of each month for food service and catering, which amount shall be paid to NHES no later than ten (10) days after the end of the preceding calendar month or the termination of the contract.
2. The successful respondent shall deliver to NHES monthly Gross Sales Statements for each calendar month of the Contract period. Each statement shall be delivered to NHES no later than ten (10) days after the end of the prior calendar month, including following termination of the Contract. The statement shall list the monthly gross sales from the food service operation for the prior month. Monthly register tapes shall be submitted with each monthly statement, as well as the commission check required by paragraph H.1 of this RFP.

#### I. Vendor's Relation to the State

1. The relationship of the successful respondent/vendor to NHES under the Contract will be that of an independent contractor.
2. In its performance of the Contract the Vendor shall be neither an agent nor an employee of the State. Neither the Vendor nor any of its officers, employees, or members shall be entitled to any of the benefits, workers' compensation, or emoluments provided by the State to its employees. No third party is intended to benefit by the Contract.
3. Nothing in this RFP or in the Contract is intended to establish a landlord-tenant relationship between the Vendor and NHES with respect to the food service facility and associated areas within the Tobey Building.

J. Indemnification and Waiver of Claims

1. The Vendor shall defend, indemnify and hold harmless the State of New Hampshire, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Vendor. Notwithstanding the foregoing, nothing in this RFP or in the Contract 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 the termination of the Contract.

2. Termination by Either Party:

Either Vendor or NHES may terminate the Contract at any time without cause by giving sixty (60) days advance written notice to the other party.

V. STATUTORY PROVISIONS

A. This procurement process shall conform in all applicable ways with the provisions of RSA 21-G:36 and 37, and to the extent that there is any conflict between the terms or language of this RFP and the provisions of RSA 21-G, the statute shall in all instances control.

VI. ETHICAL PROVISIONS

This procurement process shall conform in all applicable ways with the provisions of RSA 21-G:38 and to the extent that there is any conflict between the terms or language of this RFP and RSA 21-G:38, the statute shall in all instances control.

1. From the time this RFP is issued until a contract is awarded:

- a. No bidder shall offer or give, directly or indirectly, any gift, expense reimbursement or honorarium, as defined by RSA 15-B to any employee or official of NHES, who will select, evaluate or award a contract or other agreement pursuant to this RFP, nor to any family member or any such employee or official; and
- b. No employee or official of NHES nor any family member of any such employee or official who will select, evaluate or award a contract or other agreement pursuant to this RFP, may accept any gift, expense reimbursement or honorarium, as defined by RSA 15-B from a bidder.

## LIST OF ATTACHMENTS

Appendix A. Standard Form Transmission Letter

Appendix B. List of Equipment

Appendix C. New Hampshire State Contract Form P-37

**EXHIBIT A**

**STATE OF NEW HAMPSHIRE RFP TRANSMITTAL LETTER**

Date: \_\_\_\_\_ Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**Contact:** Jill Revels, Business Administrator, Fiscal Management Section, New Hampshire  
Employment Security, 45 South Fruit Street, Concord, NH 03301  
**Telephone:** (603) 229-4449  
**Email:** [Jill.D.Revels@nhes.nh.gov](mailto:Jill.D.Revels@nhes.nh.gov)

**RE:** **RFP Name:** Food Services at and for New Hampshire Employment Security) at the Tobey  
Building, 45 S. Fruit Street, Concord, NH 03301  
**RFP Number:** RFP NHES2016-04  
**Opening Date and Time:** January 29, 2016 at 3:00 PM E.S.T.

Dear Ms. Revels:

[Insert Name of signor \_\_\_\_\_], on behalf of [Insert name of  
company submitting a Proposal \_\_\_\_\_] (collectively referred to as  
“Vendor”) hereby submits a proposal as contained in the written Proposal submitted herewith to the State  
in response to RFP NHES2016-XX for provision of food services at and for New Hampshire  
Employment Security (“NHES”) at the Tobey Building, 45 S. Fruit Street, Concord, NH 03301 under the  
terms and conditions listed in the Proposal in complete accordance with the RFP specifications.

[Print Signor Name \_\_\_\_\_] is authorized to legally obligate [Print  
Company Name \_\_\_\_\_].

*Vendor attests to the fact that:*

1. The Vendor has reviewed and agreed to be bound by all RFP terms and conditions.
2. The Vendor has not altered any of the language or other provisions contained in the RFP document.
3. The Vendor’s Proposal is effective from the RFP submission deadline of \_\_\_\_\_, 2016 until the  
contract effective date.
4. The prices Vendor has quoted in the Proposal were established without collusion with other eligible  
vendors.
5. The Vendor has read and fully understands this RFP.

Vendor's official point of contact is : \_\_\_\_\_

Title \_\_\_\_\_

Telephone \_\_\_\_\_

Email \_\_\_\_\_

Authorized Signor [Printed Name] \_\_\_\_\_

Authorized Signor Signature \_\_\_\_\_

CERTIFICATION

COUNTY: \_\_\_\_\_

STATE: \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_, 2016, there appeared before me [ Name]  
\_\_\_\_\_ known to me or satisfactorily proved to be the same and  
acknowledged that he/she executed this document on behalf of and with authority to bind  
[Name of Bidder] \_\_\_\_\_

\_\_\_\_\_  
Notary Public/Justice of the Peace

My commission expires:

**EXHIBIT B**

**List of Equipment**

<b>Convection Oven</b>	<b>Ice Machine</b>	<b>Sandwich Prep. Unit</b>
<b>Fryolator</b>	<b>Refrigerators</b>	<b>Slicer</b>
<b>Counter Top Griddle</b>	<b>Freezer</b>	<b>Utility Cart</b>
<b>Counter Top Fryer</b>	<b>Dish Washer</b>	<b>Mobile Work Table</b>
<b>Grill</b>	<b>Shelving</b>	<b>Coffee Brewer</b>
<b>Two Burner Hot Plate</b>	<b>Coffee Brewer</b>	

**Note: Vending Equipment Not included in Contract – 1 snack machine, 1 glass front beverage machine**

**EXHIBIT C**

**STATE OF NEW HAMPSHIRE STANDARD CONTRACT FORM P-37**

**See Attachment #1**

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

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature		1.12 Name and Title of Contractor Signatory	
1.13 Acknowledgement: State of _____, County of _____  On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature  Date:		1.15 Name and Title of State Agency Signatory	
1.16 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By: _____ On: _____			
1.18 Approval by the Governor and Executive Council <i>(if applicable)</i>  By: _____ On: _____			

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

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

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

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

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

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

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

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

Agreement. This provision shall survive termination of this Agreement.

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

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

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

#### **9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

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

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

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

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

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

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

#### **14. INSURANCE.**

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

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

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

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

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

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

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

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

such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

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

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

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

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

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.