# State of New Hampshire
# Department of Health and Human Services

REQUEST FOR PROPOSALS
RFP-2019-DBH-05-WEBSI

FOR

## Website Development
## for
## Substance Use Disorder Information and Services

Sep 14, 2018

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# 1. INTRODUCTION

## 1.1. Purpose and Overview

1.1.1. This Request for Proposals (RFP) is published to solicit proposals from vendors to design, develop, implement, ensure hosting for and provide ongoing support to a single, consolidated website that ensures the general public in New Hampshire has access to consistent and accurate information on services related to Substance Use Disorders (SUD). The Department is seeking a vendor who can ensure the website:

1.1.1.1. Includes landing pages that are specific across all areas of the SUD continuum of care, including information that focuses on prevention, treatment, recovery and harm reduction.

1.1.1.2. Includes a level of detail appropriate to ensure the general public's comprehension of the site's content.

1.1.1.3. Is available to the public no later than January 1, 2019.

1.1.2. The Department seeks a single vendor to meet the needs of this RFP.

## 1.2. Request for Proposal Terminology

**ADA** – Americans with Disabilities Act

**Application Programming Interface (API):** In computer programming, an application programming interface (API) is a set of routines, protocols, and tools for building software and applications.

**Bidder –** Organization submitting a proposal in response to the RFP

**CMS** – Content Management System

**CSS** – Cascading Style Sheets

**Days:** Days in this Agreement shall refer to business days, Monday through Friday, and do not include State observed holidays and weekends (Saturday and Sunday). State observed holidays may be found at: http://das.nh.gov/hr/index.html

**DHHS –** Department of Health and Human Services

**DNS** – Domain Name System

**HTML -** Hyper Text Markup Language; HTML is the standard markup language for creating Web pages and describes the structure of the web pages using markup.

**LEP** – Limited English Proficiency

**PI** – Personal Information

**PFI** – Personal Financial Information

**PHI** – Protected Health Information

**RFP –** Request for Proposals. A Request for Proposals means an invitation to submit a proposal to provide specified goods or services, where the particulars of the goods or services and the price are proposed by the vendor and, for proposals meeting or exceeding specifications, selection is according to identified criteria as provided by RSA 21-I:22-a and RSA 21-I:22-b.

**SAMHSA** – Substance Abuse and Mental Health Services Administration

**SEO** – Search Engine Optimization

**SFY –** State Fiscal Year, a term that begins July 1 and ends June 30

**SOR** – State Opioid Response

**SSL** – Secure Sockets Layer

**SUD** – Substance Use Disorder

**UI** – User Interface

**URL** – Uniform Resource Locator

**UX** – User Experience

**Vendor –** Contractor

**XML –** Extensible Markup Language; XML is a markup language that defines a set of rules for encoding documents in a format that is both human-readable and machine-readable.

### 1.3. Contract Period

The Contract resulting from this RFP will be effective upon Governor & Executive Council approval through September 29, 2020.

The Department may extend contracted services for up to four (4) additional years, contingent upon satisfactory vendor performance, continued funding and Governor and Executive Council approval.

## 2. BACKGROUND AND REQUIRED SERVICES

### 2.1. New Hampshire Department of Health and Human Services (DHHS) Division for Behavioral Health

2.1.1. The mission of the New Hampshire DHHS, Division for Behavioral Health, Bureau of Drug and Alcohol Services, is to assist individuals, families, and communities in reducing alcohol and other drug use disorders thereby increasing opportunities for citizens to achieve health and independence.

2.1.2. Currently, multiple Department websites contain information for individuals seeking information and services for SUD; additionally, resource information, and resource lists are found in several different areas throughout the State of New Hampshire's online presence.

## 2.2. Background

2.2.1. The State of New Hampshire submitted an application for funding through the Substance Abuse and Mental Health Services Administration (SAMHSA) State Opioid Response (SOR) grant opportunity. SAMHSA is overseeing the process for states to receive federal funding through the SOR Grants Program. This procurement is contingent upon notice of award from SAMHSA, expected in September 2018.

2.2.2. New Hampshire's application proposes to use evidence-based methods to expand treatment, recovery and prevention services to individuals with OUD in NH. These critical funds will strengthen established programs that have had a positive impact on the opioid crisis as well as expand the capacity for programs that have shown promise in helping individuals battling an opioid misuse issue and combatting the epidemic in NH.

2.2.3. In 2017, NH had 395 opioid-related deaths, 2,774 emergency naloxone (Narcan) administrations, and 6,684 emergency department opioid related visits. NH is ranked as having the third highest overdose rate in the country at 39 individuals per 100,000 population.

2.2.4. This RFP is one of the projects that will be implemented under SOR funding to ensure greater public access to consistent information and resources related to substance use disorder services and topics. The development of a consolidated website is a part of a larger approach New Hampshire is taking to re-structure the information and referral services provided to individuals seeking assistance for SUD services or information. The goal of this re-structure is to ensure that confusion around services and information access is minimized for the general public and for individuals seeking help to understand who to contact when they are ready to ask for help.

2.2.5. This RFP seeks to develop a single, consolidated website, which provides information and resources available to individuals seeking information for SUD.

# 3. STATEMENT OF WORK

## 3.1. Business Requirements

3.1.1. The selected vendor must design, develop, implement, ensure hosting for and provide ongoing management, support and maintenance for a website which shall contain information for individuals seeking information around SUD and available services.

3.1.2. The selected vendor must work directly with the Department and lead a wholly collaborative process to develop the website.

3.1.3. The selected vendor must ensure that all individuals seeking information through this website:

3.1.3.1. Receive consistent, quality web based information on a variety of topics related to substance use disorder and substance misuse that is easily accessible, and

3.1.3.2. Titles for landing pages for topics shall be provided by the Department and shall include, but not be limited to;

3.1.3.2.1. Prevention;

3.1.3.2.2. Treatment;

3.1.3.2.3. Recovery; and

3.1.3.2.4. Harm Reduction (such as, Access to Naloxone (Narcan)).

3.1.3.3. Receive immediate information and direction to call 211 or visit their Regional Hub to access services

3.1.3.4. Receive assurances that no Protected Health Information (PHI) or Personally Identifying Information (PII) will be retained by using the website

3.1.4. The selected vendor must agree that if the performance of services on behalf of the Department involves the creation, receipt, collection, transmission, maintenance, storage, or disposition of confidential information, including but not limited to PI, PHI, PFI or other confidential information, the selected vendor will be required to safeguard that information as required by the applicable state rule, and state and federal laws.

3.1.4.1. If performance of the services on behalf of the Department involves the receipt, collection, transmission, storage, or disposition of confidential information relating to an individual's substance use disorder treatment, the selected vendor must safeguard the 42 CFR Part 2 information as required, and;

3.1.4.2. The selected vendor must ensure compliance with all consent and notice requirements prohibiting re-disclosure as required by 42 CFR Part 2.

3.1.5. The selected vendor must work with the Department to establish and manage the Domain Name System (DNS) and Uniform Resource Locator (URL) for the website. (In selecting a URL for the website, the selected vendor must consider using a State URL).

3.1.6. The selected vendor must not charge visitors for accessing, redirecting to linked sites or visiting the website.

3.1.7. The selected vendor must agree not to include advertising of any kind, not approved by the Department to the website.

3.1.8. The selected vendor must develop and execute a formal project plan; which shall include, but not be limited to;

3.1.8.1. Development activities;

3.1.8.2. Testing Activities,

3.1.8.3. Implementation activities,

3.1.9. The selected vendor must design and establish a full brand re-design as a component of the website; including, but not limited to a logo re-design to promote the new service access infrastructure.

***Q1.*** *What is your approach to website development? Describe, in detail, how you will incorporate the needs of the Department and users of the defined website.*

## 3.2. Website Design

3.2.1. The selected vendor must provide a website layout proposal to the Department for approval, prior to initiating any development. This must include, but not be limited to:

3.2.1.1. Website Information Architecture.

3.2.1.2. Overall structure of the website.

3.2.1.3. Navigational flow between pages.

3.2.1.4. Elements/links available on pages.

3.2.1.5. How content will behave across the site.

3.2.1.6. Building and utilizing APIs for future system integrations

3.2.1.7. Utilizing style sheets, fonts, colors and other user interface guidelines as adopted by the State of New Hampshire

3.2.1.8. The selected vendor must ensure the web site is complaint with all federal and state laws and requirements in the provision of services under this Agreement, including but not limited to the provision for equally effective and substantially equivalent ease of use for;

3.2.1.8.1. Persons with disabilities, as required by the Americans with Disabilities Act (ADA) and Federal Rehabilitation Act, and

3.2.1.8.2. Individuals with Limited English Proficiency (LEP) as required by federal civil rights laws and Section 1557 of the Affordable Care Act (ACA) of 2010.

3.2.1.9. The selected vendor must ensure the website design is visually consistent with State of New Hampshire DHHS brand. Additionally, the website must align with website standards (https://www.nh.gov/doit/vendor/documents/nh-website-standards.pdf ).

3.2.2. The selected vendor must ensure that the design is reviewed and approved by the Department before launch. The design must;

3.2.2.1. Include a clean, professional homepage design, reflecting the design of other Department websites;

3.2.2.2. Include a look and feel which entices visitors to use the information, services and resources;

3.2.2.3. Be intuitive to users

3.2.2.4. Include the development of all related graphic assets for site launch, including;

3.2.2.4.1. Additional page templates (mobile design, contact form, style sheet, etc.);

3.2.2.4.2. Rollover effects;

3.2.2.4.3. Header images (as applicable).

3.2.2.5. Be in accordance with best practice standards, and federal and state laws, for language and communication accessibility, including, but not limited to;

3.2.2.5.1. Google Translate function:

3.2.2.5.1.1. Accessible at the top and bottom of all webpages,

3.2.2.5.1.2. For at least the top 15 languages (Department will establish the list),

3.2.2.5.1.3. Including a disclaimer statement similar to the current Department website (https://www.dhhs.nh.gov/disclaimer.htm),

3.2.2.5.1.4. If not Google, another comparable product that is at least as accurate.

3.2.2.5.2. Any vital documents available on the website must include translated versions, translated by qualified translators.

3.2.2.5.3. Publish taglines (short statements in non-English languages) in the top 15 languages (The Department will establish the list) in accordance with ACA Section 1557. (Sample: ATTENTION: If you speak [insert language], language assistance services, free of charge, are available to you. Call 1-xxx-xxx-xxxx (TTY: 1-xxx-xxx-xxxx).

3.2.2.5.4. Include the notice of nondiscrimination on the homepage (The Department shall establish the language).

3.2.2.6. Utilize Cascading Style Sheets (CSS), as well as JavaScript, if needed;

3.2.2.6.1. For accessibility compliance, all content must be available to the user without the use of client-side programming or scripting language like JavaScript.

3.2.2.7. Integrate interactive mapping capabilities for address locations within the site;

3.2.2.8. Allow for the addition, as well as removal of social media services, as needed;

3.2.2.9. Be formatted to meet any current browser and software operating systems currently available for use;

3.2.2.10. Present all content to be displayed/proportioned correctly on all standard mobile displays and devices, including, but not limited to;

3.2.2.10.1. Computers;

3.2.2.10.2. Tablets;

3.2.2.10.3. Smart devices

3.2.3. The selected vendor must ensure that cost proposals include the installation and use of a Secure Sockets Layer (SSL) certificate.

3.2.4. The selected vendor must ensure the website design is created to align with the Department's existing online presence.

3.2.5. The selected vendor must specify a non-proprietary Content Management System (CMS) to be used to support the management of the content of web pages.

3.2.6. The selected vendor must agree to ensure the timely application of patches and plugin updates to the defined CMS.

3.2.7. The selected vendor must only use images as provided by the Department, within the design of the website.

3.2.8. Any mobile interface(s) must have low page load times, which perform at mobile website speeds acceptable to the Department and which minimize data usage.

3.2.9. The selected vendor must define Search Engine Optimization (SEO) as a component of their design proposal. This must include, but not be limited to;

3.2.9.1. Identification of main keywords for each page in the sitemap.

3.2.9.2. Research of US search query information, to develop proper URL naming conventions and language-appropriate metadata, including page titles, meta descriptions and other page metadata.

3.2.10. The selected vendor must ensure that individual or identifiable data is not collected or scraped, including individual Internet Protocol (IP) addresses, unique individuals, which visit the website.

3.2.10.1. Unless specifically required by the contract and unless clear notice is provided to users of the website or social media, the selected vendor must agree that site visitation will not be tracked, disclosed or used for website or social media analytics or marketing.

***Q2.*** *Please provide a sample website incorporating design elements described within this RFP.*

## 3.3. Website content

3.3.1. The selected vendor must present a detailed project plan, defining how existing content from other Department sponsored or endorsed sites (including, but not limited to: page content, text, images, videos, other media) will be inventoried and migrated to the new website.

3.3.2. The selected vendor must establish a process to ensure any video media includes closed captioning.

3.3.3. The selected vendor must ensure that both an HTML sitemap page, as well as an XML sitemap file are components of the new site. Sitemaps must also be uploaded to Google and Bing.

3.3.4. The selected vendor must agree that if performance of services on behalf of the Department involve using social media or a website to solicit information of individuals, or Department data, the selected vendor shall work with the Department's Communications Bureau to ensure that;

3.3.4.1. Any website designed, created, or managed on behalf of the Department meets all NH DoIT website and social media requirements and or policies,

3.3.4.2. Any protected health information (PHI), personal information (PI), or other confidential information solicited either by social media or the website, must not be maintained, stored or captured and must not be further disclosed except as expressly provided for in the contract.

3.3.4.3. The solicitation or disclosure of any PHI, PI, or other confidential information shall be subject to the requirements in the contract Exhibit K, Exhibit I, and all applicable state rules, or state or federal law.

## 3.4. Functionality.

3.4.1. The selected vendor must define the core functionality of the website; including, but not limited to;

3.4.1.1. Direct contact phone call from mobile; and

3.4.1.2. Language and communication accessibility.

3.4.2. The selected vendor must ensure the Department retains local Administrator rights to the website upon implementation.

## 3.5. Ongoing Management, Support and Maintenance

3.5.1. The selected vendor must provide ongoing management, support and maintenance for the site, to include, but not be limited to;

3.5.1.1. Immediate resolution of any design defects, errors, bugs, project and/or content omissions and website failures;

3.5.1.2. Ongoing phone and email support to the Department;

3.5.1.3. Support for plugin updates, customization and/or script and/or content changes, which require updates.

3.5.2. The selected vendor must have in place practices and procedures, and provide its staff, subcontractors, and/or end users, as defined in Appendix B, Exhibit K, with periodic training in practices and procedures to ensure compliance with Department, information security, privacy and confidentiality rules and state and federal laws.

## 3.6. Business Analysis

3.6.1. The selected vendor must:

3.6.1.1. Facilitate and document discovery sessions for identification of current websites and programs to be linked incorporated for content or connected to the site;

3.6.1.2. Facilitate and document additional requirements for site design and use;

3.6.1.3. Identify site content and system migration methodology and implement based on department approval.

***Q3.*** *Describe your experience with providing business analysis and delivery of website content and design along with references and currently deployed site URL's.*

## 3.7. Testing and Acceptance

3.7.1. The selected vendor must establish a test environment to conduct User Acceptance Testing.

3.7.2. The selected vendor must provide a test plan for the conduct of User Acceptance Testing that includes the ability to conform to the standards in Sections 3.2.3 through 3.2.12.

3.7.3. The selected vendor must correct all deficiencies noted by the State and provide the opportunity for retesting of the corrected test pages.

3.7.4. The selected vendor agrees Acceptance must be determined when the State verifies all of the deliverables are met.

3.7.5. The selected vendor must test for ADA compliance, using Web Content Accessibility Guidelines (WCAG) 2.0 AA;

3.7.5.1. The selected vendor must provide a report defining any issues uncovered through testing, and

3.7.5.2. The selected vendor must define its resolution plan to address uncovered issues.

***Q4.*** *Provide a sample test plan*

## 3.8. Intellectual Property (Ownership and Control)

3.8.1. The selected vendor must agree that all logos and brands developed and delivered through this contract are owned by the Department and may only be released or shared with other entities with the written approval of the Department.

3.8.2. The selected vendor must agree the Department is the sole owner of all data and solutions and must approve all access accordingly.

## 3.9. Project Management

3.9.1. The selected vendor must coordinate and manage the project plan.

3.9.2. The selected vendor must conduct a project kick-off meeting within five (5) business days of the contract effective date.

3.9.3. The selected vendor must provide a work plan/timeline that defines the milestones, activities, deliverables, and due dates within five (5) business days of the kick-off meeting.

3.9.4. The selected vendor must provide a written weekly progress report that provides at a minimum a summary of the key work performed during the weekly period; encountered and foreseeable key issues and problems; and scheduled work for the upcoming period including progress against the work plan

3.9.5. The selected vendor must identify potential risks and issues and include a mitigation strategy for each, in the weekly progress report.

3.9.6. The selected vendor must be responsible for scheduling weekly project status meetings, and providing notes from the meetings to the Department within two (2) business days from the date of the meeting.

3.9.7. The selected vendor must provide weekly demonstrations to DHHS identified project team of the site for review and changes to User Experience (UX) or User Interface (UI) and plan for the following week's product delivery

***Q5.*** *Provide your proposed work plan.*

## 3.10. Delegation and Subcontractors

3.10.1. If any services required in the Scope of Services are provided, in whole or in part, by a subcontracted agency or provider, the Department must be notified in writing prior to the initiation of the subcontract (See Appendix B, Exhibit C, #19 for more information).

## 3.11. Reporting and Deliverable Requirements

3.11.1. The selected vendor must work with DHHS to implement a business associate agreement to provide website analytics including:

3.11.1.1. Total number of individuals who have accessed the website

3.11.1.2. Most common link utilized

3.11.1.3. Language(s) by which the website is accessed

3.11.1.4. Average time spent on page

3.11.1.5. Referral information

3.11.1.6. Peak visit hours

3.11.1.7. Visitor Geographic Location

3.11.1.8. Bounce rate

3.11.2. The selected vendor must agree that reporting requirements of a resulting contract will state whether information to be reported will be;

3.11.2.1. De-identified,

3.11.2.2. Aggregate,

3.11.2.3. Include PHI, PII or PFI, or

3.11.2.4. Other confidential information

3.11.3. The selected vendor must agree that all reporting of confidential information, PHI, PII and/or PFI shall comply with all state or federal laws and comply with the “minimum necessary requirement” found in 45 CFR 164 using the minimum confidential information needed to accomplish the goals of the RFP.

3.11.4. The selected vendor must agree to safeguard the 42 CFR Part 2 information as required and shall ensure compliance with all consent and notice requirements prohibiting re-disclosure.

3.11.5. The selected vendor must agree to Department and state standards and guidance regarding state owned devices, systems and/or network usage; as well as standards defined from the Department of Information Technology, the Department Information Security Office and Privacy Office.

## 3.12. Culturally and Linguistically Appropriate Services

3.12.1. The New Hampshire Department of Health and Human Services (DHHS) is committed to reducing health disparities in New Hampshire. DHHS recognizes that culture and language can have a considerable impact on how individuals access and respond to health and human services. Culturally and linguistically diverse populations experience barriers in their efforts to access services. As a result, DHHS is strongly committed to providing culturally and linguistically competent programs and services for its clients, and as a means of ensuring access to quality care for all. As part of that commitment DHHS continuously strives to improve existing programs and services, and to bring them in line with current best practices.

3.12.2. DHHS requires all contractors and sub-recipients to provide culturally and linguistically appropriate programs and services in compliance with all applicable federal civil rights laws, which may include: Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and the Rehabilitation Act of 1973. Collectively, these laws prohibit discrimination on the grounds of race, color, national origin, disability, age, sex, and religion.

3.12.3. There are numerous resources available to help recipients increase their ability to meet the needs of culturally, racially and linguistically diverse clients. Some of the main information sources are listed in the Bidder's Reference Guide for Completing the Culturally and Linguistically Appropriate Services Section of the RFP, and, in the Vendor/RFP section of the DHHS website.

3.12.4. A key Title VI guidance is the National Standards for Culturally and Linguistically Appropriate Services in Health Care (CLAS Standards), developed by the U.S. Department of Health and Human Services in 2000. The CLAS Standards provide specific steps that organizations may take to make their services more culturally and linguistically appropriate. The enhanced CLAS standards, released in 2013, promote effective communication not only with persons with Limited English Proficiency, but also with persons who have other communication needs. The enhanced Standards provide a framework for organizations to best serve the nation's increasingly diverse communities.

3.12.5. Bidders are expected to consider the need for language services for individuals with Limited English Proficiency as well as other communication needs, served or likely to be encountered in the eligible service population, both in developing their budgets and in conducting their programs and activities.

3.12.6. Successful applicants will be:

3.12.6.1. Required to submit a detailed description of the language assistance services they will provide to LEP persons to ensure meaningful access to their programs and/or services, within 10 days of the date the contract is approved by Governor and Council;

3.12.6.2. Monitored on their Federal civil rights compliance using the Federal Civil Rights Compliance Checklist, which can be found in the Vendor/RFP section of the DHHS website.

3.12.7. The guidance that accompanies Title VI of the Civil Rights Act of 1964 requires recipients to take reasonable steps to ensure meaningful access to their programs and services by persons with Limited English Proficiency (LEP persons). The extent of an organization's obligation to provide LEP services is based on an individualized assessment involving the balancing of four factors:

3.12.7.1. The number or proportion of LEP persons served or likely to be encountered in the population that is eligible for the program or services (this includes minor children served by the program who have LEP parent(s) or guardian(s) in need of language assistance);

3.12.7.2. The frequency with which LEP individuals come in contact with the program, activity or service;

3.12.7.3. The importance or impact of the contact upon the lives of the person(s) served by the program, activity or service;

3.12.7.4. The resources available to the organization to provide language assistance.

3.12.7.5. **Bidders are required to complete the TWO (2) steps listed in the Appendix C to this RFP, as part of their Proposal.** Completion of these two items is required not only because the provision of language and/or communication assistance is a longstanding requirement under the Federal civil rights laws, but also because consideration of all the required factors will help inform Bidders' program design, which in turn, will allow Bidders to put forth the best possible Proposal.

3.12.8. For guidance on completing the two steps in Appendix C, please refer to Bidder's Reference Guide for Completing the Culturally and Linguistically Appropriate Services Addendum of the RFP, which is posted on the DHHS website. http://www.dhhs.nh.gov/business/forms.htm.

### 3.13. Contract Monitoring Provisions

3.13.1. All Bidders must complete Appendix F Contract Monitoring Provisions.

3.13.2. The Department will determine if enhanced monitoring is necessary for any selected Vendor(s).

# 4. FINANCE

## 4.1. Financial Standards:

4.1.1. The State has applied for the State Opioid Response (SOR) Grant – SAMHSA, (FOA) No. TI-18-015, and will continue to perform due diligence in the application process. However, the State makes no representation that it will receive the funds. In no event shall the State be liable for costs incurred or payment of any services performed by the Contractor prior to the State's receipt of federal funds applied for in the SOR Grant.

4.1.2. Federal funds to support this project are identified as US Department of Health and Human Services, Substance Abuse and Mental Health Administration, Catalog of Federal Domestic Assistance (CFDA) #93.778.

4.1.3. Funds are anticipated to be available in the following amounts:

4.1.3.1. State Fiscal Year (SFY) 2019: $150,000

4.1.3.2. State Fiscal Year (SFY) 2020: $50,000

# 5. PROPOSAL EVALUATION

## 5.1. Technical Proposal

| | | |
|---|---|---|
| 5.1.1. | Development Approach | 50 Points |
| 5.1.2. | Design Proposal (Q1) | 75 Points |
| 5.1.3. | Website Management Experience (Q2) | 75 Points |
| 5.1.4. | Test Plan (Q3) | 50 Points |
| 5.1.5. | Work Plan (Q4) | 50 Points |

## 5.2. Cost Proposal

| | | |
|---|---|---|
| 5.2.1. | Budget (Appendix D) & Budget Narrative | 75 Points |
| 5.2.2. | Program Staff List (Appendix E) | 25 Points |

Total Cost Proposal Points Available 100 Points

# 6. PROPOSAL PROCESS

## 6.1. Contact Information – Sole Point of Contact

The sole point of contact, the Procurement Coordinator, relative to the bid or bidding process for this RFP, from the RFP issue date until the selection of a Bidder, and approval of the resulting contract by the Governor and Executive Council is:

State of New Hampshire
Department of Health and Human Services
Brian Owens, Contract Specialist
Brown Building
129 Pleasant St.
Concord, New Hampshire 03301
Email: brian.owens@dhhs.nh.gov
Fax: 603-271-4232
Phone: 603-271-9634

Other personnel are NOT authorized to discuss this RFP with Bidders before the proposal submission deadline. Contact regarding this RFP with any State personnel not listed above could result in disqualification. The State will not be held responsible for oral responses to Bidders regardless of the source.

## 6.2. Procurement Timetable

**Procurement Timetable**

**(All times are according to Eastern Time. DHHS reserves the right to modify these dates at its sole discretion.)**

| Item | Action | Date |
|---|---|---|
| 1. | Release RFP | 9/14/18 |
| 2. | Optional Letter of Intent Submission Deadline | 9/21/18 |
| 4. | RFP Questions Submission Deadline | 9/21/18 |
| 5. | DHHS Response to Questions Published | 9/28/18 |
| 6. | Technical and Cost Bids Submission Deadline | 10/4/18<br>2:00 pm |

## 6.3. Letter of Intent

A Letter of Intent to submit a Proposal in response to this RFP is optional, but highly recommended.

Receipt of the Letter of Intent by DHHS will be required in order to receive any correspondence regarding this RFP, any RFP amendments, in the event such are produced, or any further materials on this project, including electronic files containing tables required for response to this RFP, any addenda, corrections, schedule modifications, or notifications regarding any informational meetings for Bidders, or responses to comments or questions.

The Letter of Intent may be transmitted by e-mail to the Procurement Coordinator identified in Section 6.1, but must be followed by delivery of a paper copy within two (2) business days to the Procurement Coordinator identified in Section 6.1.

The potential Bidder is responsible for successful e-mail transmission. DHHS will provide confirmation of receipt of the Letter of Intent if the name and e-mail address or fax number of the person to receive such confirmation is provided by the Bidder.

The Letter of Intent must include the name, telephone number, mailing address and e-mail address of the Bidder's designated contact to which DHHS will direct RFP related correspondence.

## 6.4. Bidders' Questions and Answers

### 6.4.1. Bidders' Questions

All questions about this RFP, including but not limited to requests for clarification, additional information or any changes to the RFP must be made in writing, citing the RFP page number and part or subpart, and submitted to the Procurement Coordinator identified in Section 6.1.

DHHS may consolidate or paraphrase questions for efficiency and clarity. Questions that are not understood will not be answered. Statements that are not questions will not receive a response.

The questions may be submitted by fax or e-mail; however, DHHS assumes no liability for assuring accurate and complete fax and e-mail transmissions.

Questions must be received by DHHS by the deadline given in Section 6.2, Procurement Timetable.

### 6.4.2. DHHS Answers

DHHS intends to issue responses to properly submitted questions by the deadline specified in Section 6.2, Procurement Timetable. Written answers to questions asked will be posted on the DHHS Public website (http://www.dhhs.nh.gov/business/rfp/index.htm). Vendors will be sent an email (to the contact identified in accepted Letters of Intent) that the Questions and Answers have been posted on the DHHS Public website. This date may be subject to change at DHHS discretion.

## 6.5. RFP Amendment

DHHS reserves the right to amend this RFP, as it deems appropriate prior to the Proposal Submission Deadline on its own initiative or in response to issues raised through Bidder questions. In the event of an amendment to the RFP, DHHS, at its sole discretion, may extend the Proposal Submission Deadline. Bidders who submitted a Letter of Intent will receive notification of the amendment, and the amended language will be posted on the DHHS Internet site.

## 6.6. Proposal Submission

Proposals submitted in response to this RFP must be received no later than the time and date specified in Section 6.2, Procurement Timetable. Proposals must be addressed for delivery to the Procurement Coordinator specified in Section 6.1, and marked with RFP-2019-DBH-05-WEBSI/2019-020.

Late submissions will not be accepted and will remain unopened. Disqualified submissions will be discarded if not re-claimed by the bidding Bidder by the time the contract is awarded. Delivery of the Proposals shall be at the Bidder's expense. The time of receipt shall be considered when a Proposal has been officially documented by DHHS, in accordance with its established policies, as having been received at the location designated above. The State accepts no responsibility for mislabeled mail. Any and all damage that may occur due to shipping shall be the Bidder's responsibility.

## 6.7. Compliance

Bidders must be in compliance with applicable federal and state laws, rules and regulations, and applicable policies and procedures adopted by the Department of Health and Human Services currently in effect, and as they may be adopted or amended during the contract period.

## 6.8. Non-Collusion

The Bidder's required signature on the Transmittal Cover Letter for 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 Bidders and without effort to preclude DHHS from obtaining the best possible competitive proposal.

## 6.9. Collaborative Proposals

Proposals must be submitted by one organization. Any collaborating organization must be designated as subcontractor subject to the terms of Exhibit C Special Provisions (see Appendix B: Contract Minimum Requirements).

## 6.10. Validity of Proposals

Proposals submitted in response to this RFP must be valid for two hundred forty (240) days following the Technical and Cost Proposal Submission Deadline specified in Section 6.2, Procurement Timetable or until the effective date of any resulting contract, whichever is later. This period may be extended by mutual written agreement between the Bidder and DHHS.

## 6.11. Property of Department

All material property submitted and received in response to this RFP will become the property of DHHS and will not be returned to the Bidder. DHHS reserves the right to use any information presented in any Proposal provided that its use does not violate any copyrights or other provisions of law.

## 6.12. Proposal Withdrawal

Prior to the Technical and Cost Proposal Submission Deadline specified in Section 6.2, Procurement Timetable, a submitted Letter of Intent or Proposal may be withdrawn by submitting a written request for its withdrawal to the Procurement Coordinator specified in Section 6.1.

## 6.13. Public Disclosure

The content of a bidder's Proposal must remain confidential until the Governor and Executive Council have approved a contract as a result of this RFP. A Bidder's disclosure or distribution of the contents of its Proposal, other than to the State, will be grounds for disqualification at the State's sole discretion.

The content of each Bidder's Proposal, and addenda thereto, will become public information once the Governor and Executive Council have approved a contract. Any information submitted as part of a bid in response to this RFP may be subject to public disclosure under RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP will be made accessible to the public online via the website Transparent NH (www.nh.gov/transparentnh/). Accordingly, business financial information and proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV.

Insofar as a Bidder seeks to maintain the confidentiality of its confidential commercial, financial or personnel information, the Bidder must clearly identify in writing the information it claims to be confidential and explain the reasons such information should be considered confidential. This should be done by separate letter identifying by page number and proposal section number the specific information the Bidder claims to be exempt from public disclosure pursuant to RSA 91-A:5.

Each Bidder acknowledges that DHHS is subject to the Right-to-Know Law New Hampshire RSA Chapter 91-A. DHHS 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 DHHS receives a request for the information identified by a Bidder as confidential, DHHS shall notify the Bidder and specify the date DHHS intends to release the requested information. Any effort to prohibit or enjoin the release of the information shall be the Bidder's responsibility and at the Bidder's sole expense. If the Bidder fails to obtain a court order enjoining the disclosure, DHHS may release the information on the date DHHS specified in its notice to the Bidder without incurring any liability to the Bidder.

## 6.14. Non-Commitment

Notwithstanding any other provision of this RFP, this RFP does not commit DHHS to award a contract. DHHS reserves the right to reject any and all Proposals or any portions thereof, at any time and to cancel this RFP and to solicit new Proposals under a new bid process.

## 6.15. Liability

By submitting a Letter of Intent to submit a Proposal in response to this RFP, a Bidder agrees that in no event shall the State be either responsible for or held liable for any costs incurred by a Bidder in the preparation or submittal of or otherwise in connection with a Proposal, or for work performed prior to the Effective Date of a resulting contract.

## 6.16. Request for Additional Information or Materials

During the period from the Technical and Cost Proposal Submission Deadline, specified in Section 6.2, Procurement Timeline, to the date of Contractor selection, DHHS may request of any Bidder additional information or materials needed to clarify information presented in the Proposal. Such a request will be issued in writing and will not provide a Bidder with an opportunity to change, extend, or otherwise amend its Proposal in intent or substance. Key personnel shall be available for interviews.

## 6.17. Oral Presentations and Discussions

DHHS reserves the right to require some or all Bidders to make oral presentations of their Proposal. Any and all costs associated with an oral presentation shall be borne entirely by the Bidder. Bidders may be requested to provide demonstrations of any proposed automated systems. Such a request will be in writing and will not provide a Bidder with an opportunity to change, extend, or otherwise amend its proposal in intent or substance.

## 6.18. Contract Negotiations and Unsuccessful Bidder Notice

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

In order to protect the integrity of the bidding process, notwithstanding RSA 91-A:4, no information shall be available to the public, or to the members of the general court or its staff, concerning specific responses to requests for bids (RFBs), requests for proposals (RFPs), requests for applications (RFAs), or similar requests for submission for the purpose of procuring goods or services or awarding contracts from the time the request is made public until the closing date for responses except that information specifically allowed by RSA 21-G:37.

## 6.19. Scope of Award and Contract Award Notice

DHHS reserves the right to award a service, part of a service, group of services, or total Proposal and to reject any and all Proposals in whole or in part. The notice of the intended contract award will be sent by certified mail or overnight mail to the selected Bidder. A contract award is contingent on approval by the Governor and Executive Council.

If a contract is awarded, the Bidder must obtain written consent from the State before any public announcement or news release is issued pertaining to any contract award.

## 6.20. Site Visits

The Department may, at its sole discretion, at any time prior to contract award, conduct a site visit at the bidder's location or at any other location deemed appropriate by the Department, in order to determine the bidder's capacity to satisfy the terms of this RFP/RFB/RFA. The Department may also require the bidder to produce additional documents, records, or materials relevant to determining the bidder's capacity to satisfy the terms of this RFP/RFB/RFA. Any and all costs associated with any site visit or requests for documents shall be borne entirely by the bidder.

## 6.21. Protest of Intended Award

Any challenge of an award made or otherwise related to this RFP shall be governed by RSA 21-G:37, and the procedures and terms of this RFP. The procedure set forth in RSA 21-G:37, IV, shall be the sole remedy available to challenge any award resulting from this RFP. In the event that any legal action is brought challenging this RFP and selection process, outside of the review process identified in RSA 21-G:37,IV, and in the event that the State of New Hampshire prevails, the challenger agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation.

## 6.22. Contingency

Aspects of the award may be contingent upon changes to State or federal laws and regulations.

# 7. PROPOSAL OUTLINE AND REQUIREMENTS

## 7.1. Presentation and Identification

7.1.1. Overview

7.1.1.1. Bidders are expected to examine all documentation and other requirements. Failure to observe the terms and conditions in completion of the Proposal are at the Bidder's risk and may, at the discretion of the State, result in disqualification.

7.1.1.2. Proposals must conform to all instructions, conditions, and requirements included in the RFP.

7.1.1.3. Acceptable Proposals must offer all services identified in Section 3 - Statement of Work, unless an allowance for partial scope is specifically described in Section 3, and agree to the contract conditions specified throughout the RFP.

7.1.1.4. Proposals should be received by the Technical and Cost Proposal Submission Deadline specified in Section 6.2, Procurement Timetable, and delivered, under sealed cover, to the Procurement Coordinator specified in Section 6.1.

7.1.1.5. Fax or email copies will not be accepted.

7.1.1.6. Bidders shall submit a Technical Proposal and a Cost Proposal.

7.1.2. Presentation

7.1.2.1. Original copies of Technical and Cost Proposals in separate three-ring binders.

7.1.2.2. Copies in a bound format (for example wire bound, coil bound, saddle stitch, perfect bound etc. at minimum stapled) NOTE: loose Proposals will not be accepted.

7.1.2.3. Major sections of the Proposal separated by tabs.

7.1.2.4. Standard eight and one-half by eleven inch (8 ½” x 11”) white paper.

7.1.2.5. Font size of 10 or larger.

7.1.3. Technical Proposal

7.1.3.1. Original in 3 ring binder marked as “Original.”

7.1.3.2. The original Transmittal Letter (described in Section 7.2.2.1) must be the first page of the Technical Proposal and marked as “Original.”

7.1.3.3. 7 copies in bound format marked as “Copy.”

7.1.3.4. 1 electronic copy (divided into folders that correspond to and are labeled the same as the hard copies) on CD or Memory Card/Thumb Drive. NOTE: In the event of any discrepancy between the copies, the hard copy marked “Original” will control.

7.1.3.5. Front cover labeled with:

7.1.3.5.1. Name of company / organization;

7.1.3.5.2. RFP#; and

7.1.3.5.3. Technical Proposal.

7.1.4. Cost Proposal

7.1.4.1. Original in 3 ring binder marked as “Original.”

7.1.4.2. A copy of the Transmittal Letter marked as “Copy” as the first page of the Cost Proposal.

7.1.4.3. 7 copies in bound format marked as “Copy.”

7.1.4.4. 1 electronic copy (divided into folders that correspond to and are labeled the same as the hard copies). NOTE: In the event of any discrepancy between the copies, the hard copy marked “Original” will control.

7.1.4.5. Front cover labeled with:

7.1.4.5.1. Name of company / organization;

7.1.4.5.2. RFP#; and

7.1.4.5.3. Cost Proposal.

## 7.2. Outline and Detail

7.2.1. Proposal Contents – Outline

Each Proposal shall contain the following, in the order described in this section. Each of these components must be separate from the others and uniquely identified with labeled tabs.

7.2.2. Technical Proposal Contents – Detail

7.2.2.1. Transmittal Cover Letter. The Transmittal Cover Letter must be:

7.2.2.1.1. On the Bidding company’s letterhead;

7.2.2.1.2. Signed by an individual who is authorized to bind the Bidding Company to all statements, including services and prices contained in the Proposal; and

7.2.2.1.3. Contain the following:

7.2.2.1.3.1. Identify the submitting organization;

7.2.2.1.3.2. Identify the name, title, mailing address, telephone number and email address of the person authorized by the organization to contractually obligate the organization;

7.2.2.1.3.3. Identify the name, title, mailing address, telephone number and email address of the fiscal agent of the organization;

7.2.2.1.3.4. Identify the name, title, telephone number, and e-mail address of the person who will serve as the Bidder's representative for all matters relating to the RFP;

7.2.2.1.3.5. Acknowledge that the Bidder has read this RFP, understands it, and agrees to be bound by its requirements;

7.2.2.1.3.6. Explicitly state acceptance of terms, conditions, and general instructions stated in Section 8 Mandatory Business Specifications, Contract Terms and Conditions;

7.2.2.1.3.7. Confirm that Appendix A Exceptions to Terms and Conditions is included in the proposal;

7.2.2.1.3.8. Explicitly state that the Bidder's submitted Proposal is valid for a minimum of two hundred forty (240) days from the Technical and Cost Proposal Submission Deadline specified in Section 6.2;

7.2.2.1.3.9. Date Proposal was submitted; and

7.2.2.1.3.10. Signature of authorized person.

7.2.2.2. Table of Contents

The required elements of the Proposal shall be numbered sequentially and represented in the Table of Contents.

7.2.2.3. Executive Summary The Bidder shall submit an executive summary to:

7.2.2.3.1. Provide DHHS with an overview of the Bidder's organization and what is intended to be provided by the Bidder;

7.2.2.3.2. Demonstrate the Bidder's understanding of the services requested in this RFP and any problems anticipated in accomplishing the work;

7.2.2.3.3. Show the Bidder's overall design of the project in response to achieving the deliverables as defined in this RFP; and

7.2.2.3.4. Specifically demonstrate the Bidder's familiarity with the project elements, its solutions to the problems presented and knowledge of the requested services.

7.2.2.4. Proposal Narrative, Project Approach, and Technical Response

The Bidder must answer all questions and must include all items requested for the Proposal to be considered. The Bidder must address every section of Section 3 Statement of Work, even though certain sections may not be scored.

Responses must be in the same sequence and format as listed in Section 3 Statement of Work and must, at a minimum, cite the relevant section, subsection, and paragraph number, as appropriate.

7.2.2.5. Description of Organization

Bidders must include in their Proposal a summary of their company's organization, management and history and how the organization's experience demonstrates the ability to meet the needs of requirements in this RFP.

7.2.2.5.1. At a minimum respond to:

7.2.2.5.1.1. General company overview;

7.2.2.5.1.2. Ownership and subsidiaries;

7.2.2.5.1.3. Company background and primary lines of business;

7.2.2.5.1.4. Number of employees;

7.2.2.5.1.5. Headquarters and Satellite Locations;

7.2.2.5.1.6. Current project commitments;

7.2.2.5.1.7. Major government and private sector clients; and

7.2.2.5.1.8. Mission Statement.

7.2.2.5.2. This section must include information on:

7.2.2.5.2.1. The programs and activities of the organization;

7.2.2.5.2.2. The number of people served; and

7.2.2.5.2.3. Programmatic accomplishments.

7.2.2.5.3. And also include:

7.2.2.5.3.1. Reasons why the organization is capable of effectively completing the services outlined in the RFP; and

7.2.2.5.3.2. All strengths that are considered an asset to the program.

7.2.2.5.4. The Bidder should demonstrate:

7.2.2.5.4.1. The length, depth, and applicability of all prior experience in providing the requested services;

7.2.2.5.4.2. The skill and experience of staff and the length, depth and applicability of all prior experience in providing the requested services.

7.2.2.6. Bidder's References

The Proposal must include relevant information about at least three (3) similar or related contracts or subcontracts awarded to the Bidder. Particular emphasis should be placed on previous contractual experience with government agencies. DHHS reserves the right to contact any reference so identified. The information must contain the following:

7.2.2.6.1. Name, address, telephone number, and website of the visitor;

7.2.2.6.2. A description of the work performed under each contract;

7.2.2.6.3. A description of the nature of the relationship between the Bidder and the customer;

7.2.2.6.4. Name, telephone number, and e-mail address of the person whom DHHS can contact as a reference; and

7.2.2.6.5. Dates of performance.

7.2.2.7. Staffing and Resumes

Each Bidder shall submit an organizational chart and a staffing plan for the program. For persons currently on staff with the Bidder, the Bidder shall provide names, title, qualifications and resumes. For staff to be hired, the Bidder shall describe the hiring process and the qualifications for the position and the job description. The State reserves the right to accept or reject dedicated staff individuals.

7.2.2.8. Subcontractor Letters of Commitment (if applicable)

If subcontractors are part of this proposal, signed letters of commitment from the subcontractor are required as part of the RFP. The Bidder 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 it proposes to use any subcontractors. The Bidder and any subcontractors shall commit to the entire contract period stated within the RFP, unless a change of subcontractors is specifically agreed to by the State. The State reserves the right to approve or reject subcontractors for this project and to require the Bidder to replace subcontractors found to be unacceptable.

7.2.2.9. License, Certificates and Permits as Required

This includes: a Certificate of Good Standing or assurance of obtaining registration with the New Hampshire Office of the Secretary of State. Required licenses or permits to provide services as described in Section 3 of this RFP.

7.2.2.10. Affiliations – Conflict of Interest

The Bidder must include a statement regarding any and all affiliations that might result in a conflict of interest. Explain the relationship and how the affiliation would not represent a conflict of interest.

7.2.2.11. Required Attachments

The following are required statements that must be included with the Proposal. The Bidder must complete the correlating forms found in the RFP Appendices and submit them as the "Required Attachments" section of the Proposal.

7.2.2.11.1. Bidders Information and Declarations: Exceptions to Terms and Conditions, Appendix A

7.2.2.11.2. CLAS Requirements, Appendix C

7.2.2.11.3. Contract Monitoring Provisions, Appendix F, pages 3 and 4

7.2.3. Cost Proposal Contents – Detail

7.2.3.1. Cost Bid Requirements

Cost proposals may be adjusted based on the final negotiations of the scope of work. See Section 4, Finance for specific requirements.

7.2.3.2. Statement of Bidder's Financial Condition

The organization's financial solvency will be evaluated. The Bidder's ability to demonstrate adequate financial resources for performance of the contract or the ability to obtain such resources as required during performance under this contract will be considered.

Each Bidder must submit audited financial statements for the four (4) most recently completed fiscal years that demonstrate the Bidder's organization is in sound financial condition. Statements must include a report by an independent auditor that expresses an unqualified or qualified opinion as to whether the accompanying financial statements are presented fairly in accordance with generally accepted accounting principles. A disclaimer of opinion, an adverse opinion, a special report, a review report, or a compilation report will be grounds for rejection of the proposal.

Complete financial statements must include the following:

7.2.3.2.1. Opinion of Certified Public Accountant

7.2.3.2.2. Balance Sheet

7.2.3.2.3. Income Statement

7.2.3.2.4. Statement of Cash Flow

7.2.3.2.5. Statement of Stockholder's Equity of Fund Balance

7.2.3.2.6. Complete Financial Notes

7.2.3.2.7. Consolidating and Supplemental Financial Schedules

A Bidder, which is part of a consolidated financial statement, may file the audited consolidated financial statements if it includes the consolidating schedules as supplemental information. A Bidder, which is part of a consolidated financial statement, but whose certified consolidated financial statements do not contain the consolidating schedules as supplemental information, shall, in addition to the audited consolidated financial statements, file unaudited financial statements for the Bidder alone accompanied by a certificate of authenticity signed by an officer of the corporation, partner, or owner under penalty of unsworn falsification which attests that the financial statements are correct in all material respects.

If a bidder is not otherwise required by either state or federal statute to obtain a certification of audit of its financial statements, and thereby elects not to obtain such certification of audit, the bidder shall submit as part of its proposal:

7.2.3.2.8. Uncertified financial statements; and

7.2.3.2.9. A certificate of authenticity which attests that the financial statements are correct in all material respects and is signed by an officer of the corporation, partner, or owner under penalty of unsworn falsification.

7.2.3.3. Required Attachments

The following are required statements that must be included with the Proposal. The Bidder must complete the correlating forms found in the RFP Appendices and submit them as the "Required Attachments" section of the Proposal.

7.2.3.3.1. Budget, Appendix D

7.2.3.3.2. Budget Narrative

7.2.3.3.3. Personnel Sheet, Appendix E

# 8. MANDATORY BUSINESS SPECIFICATIONS

## 8.1. Contract Terms, Conditions and Liquidated Damages, Forms

8.1.1. Contract Terms and Conditions

The State of New Hampshire sample contract is attached; Bidder shall agree to contractual requirements as set forth in the Appendix B Sample Contract.

8.1.2. Liquidated Damages

The State intends to negotiate with the awarded vendor to include liquidated damages in the Contract in the event any deliverables are not met.

The Department and the Contractor agree that the actual damages that the Department will sustain in the event the Vendor fails to maintain the required performance standards throughout the life of the contract will be uncertain in amount and difficult and impracticable to determine. The Contractor acknowledges and agrees that any failure to achieve required performance levels by the Contractor will more than likely substantially delay and disrupt the Department's operations. Therefore the parties agree that liquidated damages shall be determined as part of the contract specifications.

Assessment of liquidated damages shall be in addition to, and not in lieu of, such other remedies as may be available to the Department. Except and to the extent expressly provided herein, the Department shall be entitled to recover liquidated damages applicable to any given incident.

The Department will determine compliance and assessment of liquidated damages as often as it deems reasonable necessary to ensure required performance standards are met. Amounts due the State as liquidated damages may be deducted by the State from any fees payable to the Contractor and any amount outstanding over and above the amounts deducted from the invoice will be promptly tendered by check from the Contractor to the State.

# 9. ADDITIONAL INFORMATION

## 9.1. Appendix A – Exceptions to Terms and Conditions

## 9.2. Appendix B – Contract Minimum Requirements

## 9.3. Appendix C – CLAS Requirements

## 9.4. Appendix D – Budget

## 9.5. Appendix E – Personnel Sheet

## 9.6. Appendix F – Contract Monitoring Provisions

## APPENDIX A

## EXCEPTIONS TO TERMS AND CONDITIONS

A Responder shall be presumed to be in agreement with the terms and conditions of the RFP unless the Responder takes specific exception to one or more of the conditions on this form.

**RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE RFP SPECIFICATIONS. IF A RESPONDER MATERIALLY DEVIATES FROM A RFP SPECIFICATION, ITS PROPOSAL MAY BE REJECTED.**

A material deviation is an exception to a specification which 1) affords the Responder taking the exception a competitive advantage over other Responders, or 2) gives the State something significantly different than the State requested.

**INSTRUCTIONS:** Responders must explicitly list all exceptions to State of NH minimum terms and conditions. Reference the actual number of the State's term and condition and Exhibit number for which an exception(s) is being taken. If no exceptions exist, state "NONE" specifically on the form below. Whether or not exceptions are taken, the Responder must sign and date this form and submit it as part of their Proposal. (*Add additional pages if necessary*.)

| **Responder Name:** | |
|---|---|
| **Term & Condition Number/Provision** | **Explanation of Exception** |

*By signing this form, I acknowledge that the above named Responder accepts, without qualification, all terms and conditions stated in this RFP Section 8- Mandatory Business Specifications, Contract Terms and Conditions except those clearly outlined as exceptions above.*

| _____ | _____ | _____ |
|---|---|---|
| Signature | Title | Date |

DO NOT RETURN

REFERENCE FOR APPENDIX A ONLY

SAMPLE CONTRACT

# APPENDIX B

**FORM NUMBER P-37 (version 5/8/15)**

Subject: _____

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<br><br>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<br><br>[Seal] | | | |
| 1.13.2 Name and Title of Notary or Justice of the Peace | | | |
| 1.14 State Agency Signature<br><br>Date: | | 1.15 Name and Title of State Agency Signatory | |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)*<br><br>By: Director, On: | | | |
| 1.17 Approval by the Attorney General (Form, Substance and Execution) *(if applicable)*<br><br>By: On: | | | |
| 1.18 Approval by the Governor and Executive Council *(if applicable)*<br><br>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



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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 $1,000,000per 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.



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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.



Contractor Initials _____
Date_____

## SPECIAL PROVISIONS

Contractors Obligations: The Contractor covenants and agrees that all funds received by the Contractor under the Contract shall be used only as payment to the Contractor for services provided to eligible individuals and, in the furtherance of the aforesaid covenants, the Contractor hereby covenants and agrees as follows:

1. **Compliance with Federal and State Laws:** If the Contractor is permitted to determine the eligibility of individuals such eligibility determination shall be made in accordance with applicable federal and state laws, regulations, orders, guidelines, policies and procedures.

2. **Time and Manner of Determination:** Eligibility determinations shall be made on forms provided by the Department for that purpose and shall be made and remade at such times as are prescribed by the Department.

3. **Documentation:** In addition to the determination forms required by the Department, the Contractor shall maintain a data file on each recipient of services hereunder, which file shall include all information necessary to support an eligibility determination and such other information as the Department requests. The Contractor shall furnish the Department with all forms and documentation regarding eligibility determinations that the Department may request or require.

4. **Fair Hearings:** The Contractor understands that all applicants for services hereunder, as well as individuals declared ineligible have a right to a fair hearing regarding that determination. The Contractor hereby covenants and agrees that all applicants for services shall be permitted to fill out an application form and that each applicant or re-applicant shall be informed of his/her right to a fair hearing in accordance with Department regulations.

5. **Gratuities or Kickbacks:** The Contractor agrees that it is a breach of this Contract to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the State in order to influence the performance of the Scope of Work detailed in Exhibit A of this Contract. The State may terminate this Contract and any sub-contract or sub-agreement if it is determined that payments, gratuities or offers of employment of any kind were offered or received by any officials, officers, employees or agents of the Contractor or Sub-Contractor.

6. **Retroactive Payments:** Notwithstanding anything to the contrary contained in the Contract or in any other document, contract or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for costs incurred for any purpose or for any services provided to any individual prior to the Effective Date of the Contract and no payments shall be made for expenses incurred by the Contractor for any services provided prior to the date on which the individual applies for services or (except as otherwise provided by the federal regulations) prior to a determination that the individual is eligible for such services.

7. **Conditions of Purchase:** Notwithstanding anything to the contrary contained in the Contract, nothing herein contained shall be deemed to obligate or require the Department to purchase services hereunder at a rate which reimburses the Contractor in excess of the Contractors costs, at a rate which exceeds the amounts reasonable and necessary to assure the quality of such service, or at a rate which exceeds the rate charged by the Contractor to ineligible individuals or other third party funders for such service. If at any time during the term of this Contract or after receipt of the Final Expenditure Report hereunder, the Department shall determine that the Contractor has used payments hereunder to reimburse items of expense other than such costs, or has received payment in excess of such costs or in excess of such rates charged by the Contractor to ineligible individuals or other third party funders, the Department may elect to:
   - 7.1. Renegotiate the rates for payment hereunder, in which event new rates shall be established;
   - 7.2. Deduct from any future payment to the Contractor the amount of any prior reimbursement in excess of costs;

7.3. Demand repayment of the excess payment by the Contractor in which event failure to make such repayment shall constitute an Event of Default hereunder. When the Contractor is permitted to determine the eligibility of individuals for services, the Contractor agrees to reimburse the Department for all funds paid by the Department to the Contractor for services provided to any individual who is found by the Department to be ineligible for such services at any time during the period of retention of records established herein.

RECORDS: MAINTENANCE, RETENTION, AUDIT, DISCLOSURE AND CONFIDENTIALITY:

8. **Maintenance of Records:** In addition to the eligibility records specified above, the Contractor covenants and agrees to maintain the following records during the Contract Period:
   8.1. Fiscal Records: books, records, documents and other data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor during the Contract Period, said records to be maintained in accordance with accounting procedures and practices which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.
   8.2. Statistical Records: Statistical, enrollment, attendance or visit records for each recipient of services during the Contract Period, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.
   8.3. Medical Records: Where appropriate and as prescribed by the Department regulations, the Contractor shall retain medical records on each patient/recipient of services.

9. **Audit:** Contractor shall submit an annual audit to the Department within 60 days after the close of the agency fiscal year. It is recommended that the report be prepared in accordance with the provision of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" and the provisions of Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the US General Accounting Office (GAO standards) as they pertain to financial compliance audits.
   9.1. Audit and Review: During the term of this Contract and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives shall have access to all reports and records maintained pursuant to the Contract for purposes of audit, examination, excerpts and transcripts.
   9.2. Audit Liabilities: In addition to and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department, all payments made under the Contract to which exception has been taken or which have been disallowed because of such an exception.

10. **Confidentiality of Records:** All information, reports, and records maintained hereunder or collected in connection with the performance of the services and the Contract shall be confidential and shall not be disclosed by the Contractor, provided however, that pursuant to state laws and the regulations of the Department regarding the use and disclosure of such information, disclosure may be made to public officials requiring such information in connection with their official duties and for purposes directly connected to the administration of the services and the Contract; and provided further, that the use or disclosure by any party of any information concerning a recipient for any purpose not directly connected with the administration of the Department or the Contractor's responsibilities with respect to purchased services hereunder is prohibited except on written consent of the recipient, his attorney or guardian.

Notwithstanding anything to the contrary contained herein the covenants and conditions contained in the Paragraph shall survive the termination of the Contract for any reason whatsoever.

11. **Reports:** Fiscal and Statistical: The Contractor agrees to submit the following reports at the following times if requested by the Department.
    11.1. Interim Financial Reports: Written interim financial reports containing a detailed description of all costs and non-allowable expenses incurred by the Contractor to the date of the report and containing such other information as shall be deemed satisfactory by the Department to justify the rate of payment hereunder. Such Financial Reports shall be submitted on the form designated by the Department or deemed satisfactory by the Department.
    11.2. Final Report: A final report shall be submitted within thirty (30) days after the end of the term of this Contract. The Final Report shall be in a form satisfactory to the Department and shall contain a summary statement of progress toward goals and objectives stated in the Proposal and other information required by the Department.

12. **Completion of Services:** Disallowance of Costs: Upon the purchase by the Department of the maximum number of units provided for in the Contract and upon payment of the price limitation hereunder, the Contract and all the obligations of the parties hereunder (except such obligations as, by the terms of the Contract are to be performed after the end of the term of this Contract and/or survive the termination of the Contract) shall terminate, provided however, that if, upon review of the Final Expenditure Report the Department shall disallow any expenses claimed by the Contractor as costs hereunder the Department shall retain the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.

13. **Credits:** All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Contract shall include the following statement:
    13.1. The preparation of this (report, document etc.) was financed under a Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services.

14. **Prior Approval and Copyright Ownership:** All materials (written, video, audio) produced or purchased under the contract shall have prior approval from DHHS before printing, production, distribution or use. The DHHS will retain copyright ownership for any and all original materials produced, including, but not limited to, brochures, resource directories, protocols or guidelines, posters, or reports. Contractor shall not reproduce any materials produced under the contract without prior written approval from DHHS.

15. **Operation of Facilities: Compliance with Laws and Regulations:** In the operation of any facilities for providing services, the Contractor shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any direction of any Public Officer or officers pursuant to laws which shall impose an order or duty upon the contractor with respect to the operation of the facility or the provision of the services at such facility. If any governmental license or permit shall be required for the operation of the said facility or the performance of the said services, the Contractor will procure said license or permit, and will at all times comply with the terms and conditions of each such license or permit. In connection with the foregoing requirements, the Contractor hereby covenants and agrees that, during the term of this Contract the facilities shall comply with all rules, orders, regulations, and requirements of the State Office of the Fire Marshal and the local fire protection agency, and shall be in conformance with local building and zoning codes, by-laws and regulations.

16. **Equal Employment Opportunity Plan (EEOP):** The Contractor will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs (OCR), if it has received a single award of $500,000 or more. If the recipient receives $25,000 or more and has 50 or

more employees, it will maintain a current EEOP on file and submit an EEOP Certification Form to the OCR, certifying that its EEOP is on file. For recipients receiving less than $25,000, or public grantees with fewer than 50 employees, regardless of the amount of the award, the recipient will provide an EEOP Certification Form to the OCR certifying it is not required to submit or maintain an EEOP. Non-profit organizations, Indian Tribes, and medical and educational institutions are exempt from the EEOP requirement, but are required to submit a certification form to the OCR to claim the exemption. EEOP Certification Forms are available at: http://www.ojp.usdoj/about/ocr/pdfs/cert.pdf.

17. **Limited English Proficiency (LEP):** As clarified by Executive Order 13166, Improving Access to Services for persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, Contractors must take reasonable steps to ensure that LEP persons have meaningful access to its programs.

18. **Pilot Program for Enhancement of Contractor Employee Whistleblower Protections:** The following shall apply to all contracts that exceed the Simplified Acquisition Threshold as defined in 48 CFR 2.101 (currently, $150,000)

CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

19. **Subcontractors:** DHHS recognizes that the Contractor may choose to use subcontractors with greater expertise to perform certain health care services or functions for efficiency or convenience, but the Contractor shall retain the responsibility and accountability for the function(s). Prior to subcontracting, the Contractor shall evaluate the subcontractor's ability to perform the delegated function(s). This is accomplished through a written agreement that specifies activities and reporting responsibilities of the subcontractor and provides for revoking the delegation or imposing sanctions if the subcontractor's performance is not adequate. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions.
When the Contractor delegates a function to a subcontractor, the Contractor shall do the following:
    19.1. Evaluate the prospective subcontractor's ability to perform the activities, before delegating the function
    19.2. Have a written agreement with the subcontractor that specifies activities and reporting responsibilities and how sanctions/revocation will be managed if the subcontractor's performance is not adequate
    19.3. Monitor the subcontractor's performance on an ongoing basis

19.4. Provide to DHHS an annual schedule identifying all subcontractors, delegated functions and responsibilities, and when the subcontractor's performance will be reviewed
19.5. DHHS shall, at its discretion, review and approve all subcontracts.

If the Contractor identifies deficiencies or areas for improvement are identified, the Contractor shall take corrective action.

**DEFINITIONS**
As used in the Contract, the following terms shall have the following meanings:

COSTS: Shall mean those direct and indirect items of expense determined by the Department to be allowable and reimbursable in accordance with cost and accounting principles established in accordance with state and federal laws, regulations, rules and orders.

DEPARTMENT: NH Department of Health and Human Services.

FINANCIAL MANAGEMENT GUIDELINES: Shall mean that section of the Contractor Manual which is entitled "Financial Management Guidelines" and which contains the regulations governing the financial activities of contractor agencies which have contracted with the State of NH to receive funds.

PROPOSAL: If applicable, shall mean the document submitted by the Contractor on a form or forms required by the Department and containing a description of the Services to be provided to eligible individuals by the Contractor in accordance with the terms and conditions of the Contract and setting forth the total cost and sources of revenue for each service to be provided under the Contract.

UNIT: For each service that the Contractor is to provide to eligible individuals hereunder, shall mean that period of time or that specified activity determined by the Department and specified in Exhibit B of the Contract.

FEDERAL/STATE LAW: Wherever federal or state laws, regulations, rules, orders, and policies, etc. are referred to in the Contract, the said reference shall be deemed to mean all such laws, regulations, etc. as they may be amended or revised from the time to time.

CONTRACTOR MANUAL: Shall mean that document prepared by the NH Department of Administrative Services containing a compilation of all regulations promulgated pursuant to the New Hampshire Administrative Procedures Act. NH RSA Ch 541-A, for the purpose of implementing State of NH and federal regulations promulgated thereunder.

SUPPLANTING OTHER FEDERAL FUNDS: The Contractor guarantees that funds provided under this Contract will not supplant any existing federal funds available for these services.

## REVISIONS TO GENERAL PROVISIONS

1. Subparagraph 4 of the General Provisions of this contract, Conditional Nature of Agreement, is replaced as follows:

   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, in whole or in part, under this Agreement are contingent upon continued appropriation or availability of funds, including any subsequent changes to the appropriation or availability 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 of Services provided in Exhibit A, Scope of Services, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of appropriated or available funds. In the event of a reduction, termination or modification of appropriated or available funds, the State shall have the right to withhold payment until such funds become available, if ever. The State shall have the right to reduce, terminate or modify services under this Agreement immediately upon giving the Contractor notice of such reduction, termination or modification. The State shall not be required to transfer funds from any other source or account into the Account(s) identified in block 1.6 of the General Provisions, Account Number, or any other account, in the event funds are reduced or unavailable.

2. Subparagraph 10 of the General Provisions of this contract, Termination, is amended by adding the following language;

   10.1 The State may terminate the Agreement at any time for any reason, at the sole discretion of the State, 30 days after giving the Contractor written notice that the State is exercising its option to terminate the Agreement.

   10.2 In the event of early termination, 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, including but not limited to, identifying the present and future needs of clients receiving services under the Agreement and establishes a process to meet those needs.

   10.3 The Contractor shall fully cooperate with the State and shall promptly provide detailed information to support the Transition Plan including, but not limited to, any information or data requested by the State related to the termination of the Agreement and Transition Plan and shall provide ongoing communication and revisions of the Transition Plan to the State as requested.

   10.4 In the event that services under the Agreement, including but not limited to clients receiving services under the Agreement are transitioned to having services delivered by another entity including contracted providers or the State, the Contractor shall provide a process for uninterrupted delivery of services in the Transition Plan.

   10.5 The Contractor shall establish a method of notifying clients and other affected individuals about the transition. The Contractor shall include the proposed communications in its Transition Plan submitted to the State as described above.

## CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS**

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS**
**US DEPARTMENT OF EDUCATION - CONTRACTORS**
**US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner
NH Department of Health and Human Services
129 Pleasant Street,
Concord, NH 03301-6505

1. The grantee certifies that it will or will continue to provide a drug-free workplace by:
   - 1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
   - 1.2. Establishing an ongoing drug-free awareness program to inform employees about
     - 1.2.1. The dangers of drug abuse in the workplace;
     - 1.2.2. The grantee's policy of maintaining a drug-free workplace;
     - 1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
     - 1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
   - 1.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
   - 1.4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
     - 1.4.1. Abide by the terms of the statement; and
     - 1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
   - 1.5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency



Contractor Initials _____

Date _____

has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

1.6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 1.4.2, with respect to any employee who is so convicted

1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

1.7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6.

2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check ☐ if there are workplaces on file that are not identified here.

Contractor Name:

_____ _____

Date Name:
Title:

## CERTIFICATION REGARDING LOBBYING

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

Programs (indicate applicable program covered):
*Temporary Assistance to Needy Families under Title IV-A
*Child Support Enforcement Program under Title IV-D
*Social Services Block Grant Program under Title XX
*Medicaid Program under Title XIX
*Community Services Block Grant under Title VI
*Child Care Development Block Grant under Title IV

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-I.)

3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Contractor Name:

_____ _____
Date Name:
Title:

## CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.

6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and

information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

PRIMARY COVERED TRANSACTIONS

11. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
    - 11.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
    - 11.2. have not within a three-year period preceding this proposal (contract) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - 11.3. are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (I)(b) of this certification; and
    - 11.4. have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

12. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

LOWER TIER COVERED TRANSACTIONS

13. By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:
    - 13.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
    - 13.2. where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).

14. The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions,” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Contractor Name:

_____
Date

_____
Name:
Title:

## CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND WHISTLEBLOWER PROTECTIONS

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Contractor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;

- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;

- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);

- the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;

- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;

- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;

- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;

- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;

- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to comply with the provisions indicated above.

Contractor Name:

_____
Date

_____
Name:
Title:

## CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Contractor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this contract, the Contractor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

Contractor Name:

_____
Date

_____
Name:
Title:

# HEALTH INSURANCE PORTABLITY ACT
# BUSINESS ASSOCIATE AGREEMENT

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

**(1) Definitions.**

a. "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.

b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.

c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.

d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.

e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.

f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.

g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, TitleXIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.

h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.

i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).

j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

l. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.

m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.

o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH
Act.

(2) **Business Associate Use and Disclosure of Protected Health Information.**

a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, Business Associate, including but not limited to all its directors, officers, employees and agents, shall not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.

b. Business Associate may use or disclose PHI:
   I. For the proper management and administration of the Business Associate;
   II. As required by law, pursuant to the terms set forth in paragraph d. below; or
   III. For data aggregation purposes for the health care operations of Covered Entity.

c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

**d.** The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business

Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.

b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:

- The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
- The unauthorized person used the protected health information or to whom the disclosure was made;
- Whether the protected health information was actually acquired or viewed
- The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment within 48 hours of the breach and immediately report the findings of the risk assessment in writing to the Covered Entity.

c. The Business Associate shall comply with all sections of the Privacy, Security, and Breach Notification Rule.

d. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.

e. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section 3 (l). The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI

pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard Paragraph #13 of the standard contract provisions (P-37) of this Agreement for the purpose of use and disclosure of protected health information.

f. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.

g. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.

h. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

j. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.

k. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.

l. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business

Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.

b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.

**c.** Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**(5) Termination for Cause**

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

**(6) Miscellaneous**

a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.

b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.

c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.

d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule.

e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.

f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section (3) l, the defense and indemnification provisions of section (3) e and Paragraph 13 of the standard terms and conditions (P-37), shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

| | |
|---|---|
| The State | Name of the Contractor |
| Signature of Authorized Representative | Signature of Authorized Representative |
| Name of Authorized Representative | Name of Authorized Representative |
| Title of Authorized Representative | Title of Authorized Representative |
| Date | Date |

## CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) COMPLIANCE

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than $25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of $25,000 or more. If the initial award is below $25,000 but subsequent grant modifications result in a total award equal to or over $25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.
In accordance with 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), the Department of Health and Human Services (DHHS) must report the following information for any subaward or contract award subject to the FFATA reporting requirements:

1. Name of entity
2. Amount of award
3. Funding agency
4. NAICS code for contracts / CFDA program number for grants
5. Program source
6. Award title descriptive of the purpose of the funding action
7. Location of the entity
8. Principle place of performance
9. Unique identifier of the entity (DUNS #)
10. Total compensation and names of the top five executives if:
    - 10.1. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than $25M annually and
    - 10.2. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.
The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:
The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

Contractor Name:

_____ _____
Date Name:
Title:

## FORM A

As the Contractor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

1. The DUNS number for your entity is: _____

2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) $25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

   _____ NO _____ YES

   If the answer to #2 above is NO, stop here

   If the answer to #2 above is YES, please answer the following:

3. Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

   _____ NO _____ YES

   If the answer to #3 above is YES, stop here

   If the answer to #3 above is NO, please answer the following:

4. The names and compensation of the five most highly compensated officers in your business or organization are as follows:

   Name: _____ Amount: _____

   Name: _____ Amount: _____

   Name: _____ Amount: _____

   Name: _____ Amount: _____

   Name: _____ Amount: _____

**New Hampshire Department of Health and Human Services**

Exhibit K

**DHHS Information Security Requirements**

A. Definitions

The following terms may be reflected and have the described meaning in this document:

1. "Breach" means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. With regard to Protected Health Information, " Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.

2. "Computer Security Incident" shall have the same meaning "Computer Security Incident" in section two (2) of NIST Publication 800-61, Computer Security Incident Handling Guide, National Institute of Standards and Technology, U.S. Department of Commerce.

3. "Confidential Information" or "Confidential Data" means all confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, Substance Abuse Treatment Records, Case Records, Protected Health Information and Personally Identifiable Information.

   Confidential Information also includes any and all information owned or managed by the State of NH - created, received from or on behalf of the Department of Health and Human Services (DHHS) or accessed in the course of performing contracted services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Protected Health Information (PHI), Personal Information (PI), Personal Financial Information (PFI), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.

4. "End User" means any person or entity (e.g., contractor, contractor's employee, business associate, subcontractor, other downstream user, etc.) that receives DHHS data or derivative data in accordance with the terms of this Contract.

5. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.

6. "Incident" means an act that potentially violates an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of physical or electronic

mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification or destruction.

7. "Open Wireless Network" means any network or segment of a network that is not designated by the State of New Hampshire's Department of Information Technology or delegate as a protected network (designed, tested, and approved, by means of the State, to transmit) will be considered an open network and not adequately secure for the transmission of unencrypted PI, PFI, PHI or confidential DHHS data.

8. "Personal Information" (or "PI") means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, personal information as defined in New Hampshire RSA 359-C:19, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

9. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

10. "Protected Health Information" (or "PHI") has the same meaning as provided in the definition of "Protected Health Information" in the HIPAA Privacy Rule at 45 C.F.R. § 160.103.

11. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subpart C, and amendments thereto.

12. "Unsecured Protected Health Information" means Protected Health Information that is not secured by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

## I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR

A. Business Use and Disclosure of Confidential Information.

1. The Contractor must not use, disclose, maintain or transmit Confidential Information except as reasonably necessary as outlined under this Contract. Further, Contractor, including but not limited to all its directors, officers, employees and agents, must not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
2. The Contractor must not disclose any Confidential Information in response to a

request for disclosure on the basis that it is required by law, in response to a subpoena, etc., without first notifying DHHS so that DHHS has an opportunity to consent or object to the disclosure.

3. If DHHS notifies the Contractor that DHHS has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Contractor must be bound by such additional restrictions and must not disclose PHI in violation of such additional restrictions and must abide by any additional security safeguards.
4. The Contractor agrees that DHHS Data or derivative there from disclosed to an End User must only be used pursuant to the terms of this Contract.
5. The Contractor agrees DHHS Data obtained under this Contract may not be used for any other purposes that are not indicated in this Contract.
6. The Contractor agrees to grant access to the data to the authorized representatives of DHHS for the purpose of inspecting to confirm compliance with the terms of this Contract.

## II. METHODS OF SECURE TRANSMISSION OF DATA

1. Application Encryption. If End User is transmitting DHHS data containing Confidential Data between applications, the Contractor attests the applications have been evaluated by an expert knowledgeable in cyber security and that said application's encryption capabilities ensure secure transmission via the internet.
2. Computer Disks and Portable Storage Devices. End User may not use computer disks or portable storage devices, such as a thumb drive, as a method of transmitting DHHS data.
3. Encrypted Email. End User may only employ email to transmit Confidential Data if email is encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
4. Encrypted Web Site. If End User is employing the Web to transmit Confidential Data, the secure socket layers (SSL) must be used and the web site must be secure. SSL encrypts data transmitted via a Web site.
5. File Hosting Services, also known as File Sharing Sites. End User may not use file hosting services, such as Dropbox or Google Cloud Storage, to transmit Confidential Data.
6. Ground Mail Service. End User may only transmit Confidential Data via *certified* ground mail within the continental U.S. and when sent to a named individual.
7. Laptops and PDA. If End User is employing portable devices to transmit Confidential Data said devices must be encrypted and password-protected.
8. Open Wireless Networks. End User may not transmit Confidential Data via an open

wireless network. End User must employ a virtual private network (VPN) when remotely transmitting via an open wireless network.

9. Remote User Communication. If End User is employing remote communication to access or transmit Confidential Data, a virtual private network (VPN) must be installed on the End User's mobile device(s) or laptop from which information will be transmitted or accessed.

10. SSH File Transfer Protocol (SFTP), also known as Secure File Transfer Protocol. If End User is employing an SFTP to transmit Confidential Data, End User will structure the Folder and access privileges to prevent inappropriate disclosure of information. SFTP folders and sub-folders used for transmitting Confidential Data will be coded for 24-hour auto-deletion cycle (i.e. Confidential Data will be deleted every 24 hours).

11. Wireless Devices. If End User is transmitting Confidential Data via wireless devices, all data must be encrypted to prevent inappropriate disclosure of information.

## III. RETENTION AND DISPOSITION OF IDENTIFIABLE RECORDS

The Contractor will only retain the data and any derivative of the data for the duration of this Contract. After such time, the Contractor will have 30 days to destroy the data and any derivative in whatever form it may exist, unless, otherwise required by law or permitted under this Contract. To this end, the parties must:

A. Retention

1. The Contractor agrees it will not store, transfer or process data collected in connection with the services rendered under this Contract outside of the United States. This physical location requirement shall also apply in the implementation of cloud computing, cloud service or cloud storage capabilities, and includes backup data and Disaster Recovery locations.

2. The Contractor agrees to ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.

3. The Contractor agrees to provide security awareness and education for its End Users in support of protecting Department confidential information.

4. The Contractor agrees to retain all electronic and hard copies of Confidential Data in a secure location and identified in section IV. A.2

5. The Contractor agrees Confidential Data stored in a Cloud must be in a FedRAMP/HITECH compliant solution and comply with all applicable statutes and regulations regarding the privacy and security. All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, anti-hacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a

whole, must have aggressive intrusion-detection and firewall protection.

6. The Contractor agrees to and ensures its complete cooperation with the State's Chief Information Officer in the detection of any security vulnerability of the hosting infrastructure.

B. Disposition

1. If the Contractor will maintain any Confidential Information on its systems (or its sub-contractor systems), the Contractor will maintain a documented process for securely disposing of such data upon request or contract termination; and will obtain written certification for any State of New Hampshire data destroyed by the Contractor or any subcontractors as a part of ongoing, emergency, and or disaster recovery operations. When no longer in use, electronic media containing State of New Hampshire data shall be rendered unrecoverable via a secure wipe program in accordance with industry-accepted standards for secure deletion and media sanitization, or otherwise physically destroying the media (for example, degaussing) as described in NIST Special Publication 800-88, Rev 1, Guidelines for Media Sanitization, National Institute of Standards and Technology, U. S. Department of Commerce. The Contractor will document and certify in writing at time of the data destruction, and will provide written certification to the Department upon request. The written certification will include all details necessary to demonstrate data has been properly destroyed and validated. Where applicable, regulatory and professional standards for retention requirements will be jointly evaluated by the State and Contractor prior to destruction.

2. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to destroy all hard copies of Confidential Data using a secure method such as shredding.

3. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to completely destroy all electronic Confidential Data by means of data erasure, also known as secure data wiping.

## IV. PROCEDURES FOR SECURITY

A. Contractor agrees to safeguard the DHHS Data received under this Contract, and any derivative data or files, as follows:

1. The Contractor will maintain proper security controls to protect Department confidential information collected, processed, managed, and/or stored in the delivery of contracted services.

2. The Contractor will maintain policies and procedures to protect Department confidential information throughout the information lifecycle, where applicable, (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).

3. The Contractor will maintain appropriate authentication and access controls to contractor systems that collect, transmit, or store Department confidential information where applicable.

4. The Contractor will ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.

5. The Contractor will provide regular security awareness and education for its End Users in support of protecting Department confidential information.

6. If the Contractor will be sub-contracting any core functions of the engagement supporting the services for State of New Hampshire, the Contractor will maintain a program of an internal process or processes that defines specific security expectations, and monitoring compliance to security requirements that at a minimum match those for the Contractor, including breach notification requirements.

7. The Contractor will work with the Department to sign and comply with all applicable State of New Hampshire and Department system access and authorization policies and procedures, systems access forms, and computer use agreements as part of obtaining and maintaining access to any Department system(s). Agreements will be completed and signed by the Contractor and any applicable sub-contractors prior to system access being authorized.

8. If the Department determines the Contractor is a Business Associate pursuant to 45 CFR 160.103, the Contractor will execute a HIPAA Business Associate Agreement (BAA) with the Department and is responsible for maintaining compliance with the agreement.

9. The Contractor will work with the Department at its request to complete a System Management Survey. The purpose of the survey is to enable the Department and Contractor to monitor for any changes in risks, threats, and vulnerabilities that may occur over the life of the Contractor engagement. The survey will be completed annually, or an alternate time frame at the Departments discretion with agreement by the Contractor, or the Department may request the survey be completed when the scope of the engagement between the Department and the Contractor changes.

10. The Contractor will not store, knowingly or unknowingly, any State of New Hampshire or Department data offshore or outside the boundaries of the United States unless prior express written consent is obtained from the Information Security Office leadership member within the Department.

11. Data Security Breach Liability. In the event of any security breach Contractor shall make efforts to investigate the causes of the breach, promptly take measures to prevent future breach and minimize any damage or loss resulting from the breach. The State shall recover from the Contractor all costs of response and recovery from

the breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services necessary due to the breach.

12. Contractor must, comply with all applicable statutes and regulations regarding the privacy and security of Confidential Information, and must in all other respects maintain the privacy and security of PI and PHI at a level and scope that is not less than the level and scope of requirements applicable to federal agencies, including, but not limited to, provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), DHHS Privacy Act Regulations (45 C.F.R. §5b), HIPAA Privacy and Security Rules (45 C.F.R. Parts 160 and 164) that govern protections for individually identifiable health information and as applicable under State law.

13. Contractor agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements established by the State of New Hampshire, Department of Information Technology. Refer to Vendor Resources/Procurement at https://www.nh.gov/doit/vendor/index.htm for the Department of Information Technology policies, guidelines, standards, and procurement information relating to vendors.

14. Contractor agrees to maintain a documented breach notification and incident response process. The Contractor will notify the State's Privacy Officer, and additional email addresses provided in this section, of any security breach within two (2) hours of the time that the Contractor learns of its occurrence. This includes a confidential information breach, computer security incident, or suspected breach which affects or includes any State of New Hampshire systems that connect to the State of New Hampshire network.

15. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such DHHS Data to perform their official duties in connection with purposes identified in this Contract.

16. The Contractor must ensure that all End Users:

    a. comply with such safeguards as referenced in Section IV A. above, implemented to protect Confidential Information that is furnished by DHHS under this Contract from loss, theft or inadvertent disclosure.

    b. safeguard this information at all times.

    c. ensure that laptops and other electronic devices/media containing PHI, PI, or PFI are encrypted and password-protected.

    d. send emails containing Confidential Information only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.

e. limit disclosure of the Confidential Information to the extent permitted by law.

f. Confidential Information received under this Contract and individually identifiable data derived from DHHS Data, must be stored in an area that is physically and technologically secure from access by unauthorized persons during duty hours as well as non-duty hours (e.g., door locks, card keys, biometric identifiers, etc.).

g. only authorized End Users may transmit the Confidential Data, including any derivative files containing personally identifiable information, and in all cases, such data must be encrypted at all times when in transit, at rest, or when stored on portable media as required in section IV above.

h. in all other instances Confidential Data must be maintained, used and disclosed using appropriate safeguards, as determined by a risk-based assessment of the circumstances involved.

i. understand that their user credentials (user name and password) must not be shared with anyone. End Users will keep their credential information secure. This applies to credentials used to access the site directly or indirectly through a third party application.

Contractor is responsible for oversight and compliance of their End Users. DHHS reserves the right to conduct onsite inspections to monitor compliance with this Contract, including the privacy and security requirements provided in herein, HIPAA, and other applicable laws and Federal regulations until such time the Confidential Data is disposed of in accordance with this Contract.

## V. LOSS REPORTING

The Contractor must notify the State's Privacy Officer, Information Security Office and Program Manager of any Security Incidents and Breaches within two (2) hours of the time that the Contractor learns of their occurrence.

The Contractor must further handle and report Incidents and Breaches involving PHI in accordance with the agency's documented Incident Handling and Breach Notification procedures and in accordance with 42 C.F.R. §§ 431.300 - 306. In addition to, and notwithstanding, Contractor's compliance with all applicable obligations and procedures, Contractor's procedures must also address how the Contractor will:

1. Identify Incidents;
2. Determine if personally identifiable information is involved in Incidents;
3. Report suspected or confirmed Incidents as required in this Exhibit or P-37;
4. Identify and convene a core response group to determine the risk level of Incidents and determine risk-based responses to Incidents; and

5. Determine whether Breach notification is required, and, if so, identify appropriate Breach notification methods, timing, source, and contents from among different options, and bear costs associated with the Breach notice as well as any mitigation measures.

Incidents and/or Breaches that implicate PI must be addressed and reported, as applicable, in accordance with NH RSA 359-C:20.

## VI. PERSONS TO CONTACT

A. DHHS contact for Data Management or Data Exchange issues:

DHHSInformationSecurityOffice@dhhs.nh.gov

B. DHHS contacts for Privacy issues:

DHHSPrivacyOfficer@dhhs.nh.gov

C. DHHS contact for Information Security issues:

DHHSInformationSecurityOffice@dhhs.nh.gov

D. DHHS contact for Breach notifications:

DHHSInformationSecurityOffice@dhhs.nh.gov

DHHSPrivacy.Officer@dhhs.nh.gov

**APPENDIX C**

# Addendum to Culturally and Linguistically Appropriate Services (CLAS) Section of RFP for Purpose of Documenting Title VI Compliance

**All DHHS bidders are required to complete the following two (2) steps as part of their proposal:**

(1) Perform an individualized organizational assessment, using the four-factor analysis, to determine the extent of language assistance to provide for programs, services and/or activities; and;

(2) Taking into account the outcome of the four-factor analysis, respond to the questions below.

**Background**:

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program that receives Federal financial assistance. The courts have held that national origin discrimination includes discrimination on the basis of limited English proficiency. Any organization or individual that receives Federal financial assistance, through either a grant, contract, or subcontract is a covered entity under Title VI. Examples of covered entities include the NH Department of Health and Human Services and its contractors.

Covered entities are required to take reasonable steps to ensure ***meaningful access*** by persons with limited English proficiency (LEP) to their programs and activities. LEP persons are those with a limited ability to speak, read, write or understand English.

The **key** to ensuring meaningful access by LEP persons is effective communication. An agency or provider can ensure effective communication by developing and implementing a language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP clients/applicants, and that provides for an array of language assistance options, notice to LEP persons of the right to receive language assistance free of charge, training of staff, periodic monitoring of the program, and translation of certain written materials.

The Office for Civil Rights (OCR) is the federal agency responsible for enforcing Title VI. OCR recognizes that covered entities vary in size, the number of LEP clients needing assistance, and the nature of the services provided. Accordingly, covered entities have some flexibility in how they address the needs of their LEP clients. (In other words, it is understood that one size language assistance program does not fit all covered entities.)

The **starting point** for covered entities to determine the extent of their obligation to provide LEP services is to apply a four-factor analysis to their organization. It is important to understand that the flexibility afforded in addressing the needs of LEP clients ***does not diminish*** the obligation covered entities have to address those needs.

## APPENDIX C

Examples of practices that may violate Title VI include:

- Limiting participation in a program or activity due to a person's limited English proficiency;
- Providing services to LEP persons that are more limited in scope or are lower in quality than those provided to other persons (such as then there is no qualified interpretation provided);
- Failing to inform LEP persons of the right to receive free interpreter services and/or requiring LEP persons to provide their own interpreter;
- Subjecting LEP persons to unreasonable delays in the delivery of services.

**BIDDER STEP #1 – Individualized Assessment Using Four-Factor Analysis**

The four-factor analysis helps an organization determine the right mix of services to provide to their LEP clients. The right mix of services is based upon an individualized assessment, involving the balancing of the following four factors.

(1) The **number** or proportion of LEP persons served or likely to be encountered in the population that is eligible for the program;
(2) The **frequency** with which LEP individuals come in contact with the program, activity or service;
(3) The **importance** or impact of the contact upon the lives of the person(s) served by the program, activity or service;
(4) The **resources** available to the organization to provide effective language assistance.

This addendum was created to facilitate bidders' application of the four-factor analysis to the services they provide. At this stage, bidders are not required to submit their four-factor analysis as part of their proposal. **However, successful bidders will be required to submit a detailed description of the language assistance services they will provide to LEP persons to ensure meaningful access to their programs and/or services, within 10 days of the date the contract is approved by Governor and Council.** For further guidance, please see the Bidder's Reference for Completing the Culturally and Linguistically Appropriate Services (CLAS) Section of the RFP, which is available in the Vendor/RFP Section of the DHHS website.

## APPENDIX C

**Important Items to Consider When Evaluating the Four Factors.**

| **Factor #1 The number or proportion of LEP persons served or encountered in the population that is eligible for the program.** |
|---|
| Considerations:<br>• The eligible population is specific to the program, activity or service. It includes LEP persons serviced by the program, as well as those directly affected by the program, activity or service.<br>• Organizations are required not only to examine data on LEP persons served by their program, but also those in the community who are ***eligible*** for the program (but who are not currently served or participating in the program due to existing language barriers).<br>• Relevant data sources may include information collected by program staff, as well as external data, such as the latest Census Reports.<br>• Recipients are required to apply this analysis to each language in the service area. When considering the number or proportion of LEP individuals in a service area, recipients should consider whether the minor children their programs serve have LEP parent(s) or guardian(s) with whom the recipient may need to interact. It is also important to consider language minority populations that are eligible for the programs or services, but are not currently served or participating in the program, due to existing language barriers.<br>• An effective means of determining the number of LEP persons served is to record the preferred languages of people who have day-to-day contact with the program.<br>• It is important to remember that the ***focus*** of the analysis is on the lack of English proficiency, not the ability to speak more than one language. |
| **Factor #2: The frequency with which LEP individuals come in contact with the program, activity or service.** |
| • The more frequently a recipient entity has contact with individuals in a particular language group, the more likely that language assistance in that language is needed. For example, the steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different from those that are expected from a recipient that serves LEP persons daily.<br>• Even recipients that serve people from a particular language group infrequently or on an unpredictable basis should use this four-factor analysis to determine what to do if an LEP person seeks services from their program.<br>• The resulting plan may be as simple as being prepared to use a telephone interpreter service.<br>• The key is to have a plan in place. |

| **Factor #3 The importance or impact of the contact upon the lives of the person(s) served by the program, activity or service.** |
|---|
| • The more important a recipient's activity, program or service, or the greater the possible consequence of the contact to the LEP persons, the more likely language services are needed.<br>• When considering this factor, the recipient should determine both the importance, as well as the urgency of the service. For example, if the communication is both important and urgent (such as the need to communicate information about an emergency medical procedure), it is more likely that immediate language services are required. If the information to be communicated is important but not urgent (such as the need to communicate information about elective surgery, where delay will not have any adverse impact on the patient's health), it is likely that language services are required, but that such services can be delayed for a reasonable length of time. |
| **Factor #4 The resources available to the organization to provide effective language assistance**. |
| • A recipient's level of resources and the costs of providing language assistance services is another factor to consider in the analysis.<br>• Remember, however, that cost is merely one factor in the analysis. Level of resources and costs do not diminish the requirement to address the need, however they may be considered in determining how the need is addressed;<br>• Resources and cost issues can often be reduced, for example, by sharing language assistance materials and services among recipients. Therefore, recipients should carefully explore the most cost-effective means of delivering quality language services prior to limiting services due to resource limitations. |

## APPENDIX C

**BIDDER STEP #2 - Required Questions Relating to Language Assistance Measures**

Taking into account the four-factor analysis, please answer the following questions in the six areas of the table below. (**Do not** attempt to answer the questions until you have completed the four-factor analysis.) The Department understands that your responses will depend on the outcome of the four-factor analysis. The requirement to provide language assistance does not vary, but the measures taken to provide the assistance will necessarily differ from organization to organization.

| **1. IDENTIFICATION OF LEP PERSONS SERVED OR LIKELY TO BE ENCOUNTERED IN YOUR PROGRAM** | | |
|---|---|---|
| **a. Do you make an effort to identify LEP persons served in your program?**<br>(One way to identify LEP persons served in your program is to collect data on ethnicity, race, and/or preferred language.) | Yes | No |
| **b. Do you make an effort to identify LEP persons likely to be encountered in the population eligible for your program or service?**<br>(One way to identify LEP persons likely to be encountered is by examining external data sources, such as Cenus data) | Yes | No |
| **c. Does you make an effort to use data to identify new and emerging population or community needs?** | Yes | No |
| **2. NOTICE OF AVAILABILITY OF LANGUAGE ASSISTANCE** | | |
| **Do you inform all applicants / clients of their right to receive language / communication assistance services at no cost?**<br>**(Or, do you have procedures in place to notify LEP applicants / clients of their right to receive assistance, if needed?)**<br>Example: One way to notify clients about the availability of language assistance is through the use of an "I Speak" card. | Yes | No |
| **3. STAFF TRAINING** | | |
| **Do you provide training to personnel at all levels of your organization on federal civil rights laws compliance and the procedures for providing language assistance to LEP persons, if needed?** | Yes | No |

| **4. PROVISION OF LANGUAGE ASSISTANCE** | | |
|---|---|---|
| **Do you provide language assistance to LEP persons, free of charge, in a timely manner?**<br>**(Or, do you have procedures in place to provide language assistance to LEP persons, if needed)** | Yes | No |

| | | | |
|---|---|---|---|
| In general, covered entities are required to provide two types of language assistance: (1) oral interpretation and (2) translation of written materials. Oral interpretation may be carried out by contracted in-person or remote interpreters, and/or bi-lingual staff. (Examples of written materials you may need to translate include vital documents such as consent forms and statements of rights.) | | | |
| **5. ENSURING COMPETENCY OF INTERPRETERS USED IN PROGRAM AND THE ACCURACY OF TRANSLATED MATERIALS** | | | |
| **a. Do you make effort to assess the language fluency of all interpreters used in your program to determine their level of competence in their specific field of service?** (Note: A way to fulfill this requirement is to use certified interpreters only.) | Yes | No | |
| **b. As a general rule, does your organization avoid the use of family members, friends, and other untested individual to provide interpretation services?** | Yes | No | |
| **c. Does your organization have a policy and procedure in place to handle client requests to use a family member, friend, or other untested individual to provide interpretation services?** | Yes | No | |
| **d. Do you make an effort to verify the accuracy of any translated materials used in your program (or use only professionally certified translators)?** (Note: Depending on the outcome of the four-factor analysis, N/A (Not applicable) may be an acceptable response to this question. | Yes | No | N/A |
| **6. MONITORING OF SERVICES PROVIDED** | | | |
| Does you make an effort to periodically evaluate the effectiveness of any language assistance services provided, and make modifications, as needed? | Yes | | No |
| If there is a designated staff member who carries out the evaluation function?<br>If so, please provide the person's title:<br>_____ | Yes | | No |

By signing and submitting this attachment to RFP#_____, the Contractor affirms that it:

1.) Has completed the four-factor analysis as part of the process for creating its proposal, in response to the above referenced RFP.
2.) Understands that Title VI of the Civil Rights Act of 1964 requires the Contractor to take reasonable steps to ensure meaningful access to ***all*** LEP persons to all programs, services, and/or activities offered by my organization.

3.) Understands that, if selected, the Contractor will be required to submit a detailed description of the language assistance services it will provide to LEP persons to ensure meaningful access to programs and/or services, within 10 days of the date the contract is approved by Governor and Council.

Contractor/Vendor Signature | Contractor's Representative Name/Title

Contractor Name | Date

**New Hampshire Department of Health and Human Services**

**COMPLETE ONE BUDGET FORM FOR EACH BUDGET PERIOD**

**Bidder/Program Name:**

**Budget Request for:**

*(Name of RFP)*

**Budget Period:**

| | Total Program Cost | | | Contractor Share / Match | | | Funded by DHHS contract share | | |
|---|---|---|---|---|---|---|---|---|---|
| **Line Item** | **Direct Incremental** | **Indirect Fixed** | **Total** | **Direct Incremental** | **Indirect Fixed** | **Total** | **Direct Incremental** | **Indirect Fixed** | **Total** |
| 1. Total Salary/Wages | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 2. Employee Benefits | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 3. Consultants | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 4. Equipment: | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Rental | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Repair and Maintenance | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Purchase/Depreciation | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 5. Supplies: | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Educational | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Lab | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Pharmacy | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Medical | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Office | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 6. Travel | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 7. Occupancy | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 8. Current Expenses | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Telephone | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Postage | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Subscriptions | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Audit and Legal | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Insurance | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Board Expenses | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 9. Software | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 10. Marketing/Communications | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 11. Staff Education and Training | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 12. Subcontracts/Agreements | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 13. Other (specific details mandatory): | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| **TOTAL** | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** |

**Indirect As A Percent of Direct** #DIV/0!

# Program Staff List

## New Hampshire Department of Health and Human Services

**COMPLETE ONE PROGRAM STAFF LIST FOR EACH STATE FISCAL YEAR**

**Proposal Agency Name:** _____

**Program:** _____

**Budget Period:** _____

| A | B | C | D | E | E | F |
|---|---|---|---|---|---|---|
| **Position Title** | **Current Individual in Position** | **Projected Hrly Rate as of 1st Day of Budget Period** | **Hours per Week** | **Amnt Funded by this program for Budget Period** | **Amnt Funded by other sources for Budget Period** | **Site*** |
| Example: | | | | | | |
| Program Coordinator | Sandra Smith | $21.00 | 40 | $43,680 | $43,680 | |
| | | | | | | |
| Administrative Salaries | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total Admin. Salaries | | | | $0 | $0 | |
| Direct Service Salaries | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total Direct Salaries | | | | $0 | $0 | |
| Total Salaries by Program | | | | $0.00 | $0.00 | |

**Please note, any forms downloaded from the DHHS website will NOT calculate. Forms will be sent electronically via e-mail to all programs submitting a Letter of Intent by the due date.**

*Please list which site(s) each staff member works at, if your agency has multiple sites.

# Appendix F Contract Monitoring Provisions

***All vendors responding to Department-issued Requests for Proposals (RFPs), Requests for Bids (RFBs), or Requests for Applications (RFAs) must complete and return pages 3 & 4 of Appendix F, as a required attachment.***

## 1. Definitions

1.1. Department – NH Department of Health and Human Services (DHHS).

1.2. Vendors – non-state agency external entities with which the Department intends to enter into a legal agreement. Component units of the State shall be considered vendors (e.g., University of New Hampshire, Community College System of New Hampshire.

1.3. Subrecipients – *vendors issued funds to provide goods or services on behalf of the Department to the public.* In accordance with 2 CFR 200.330, characteristics which support the classification of a subrecipient include when the non-Federal entity:

1.3.1. Determines who is eligible to receive what Federal assistance;

1.3.2. Has its performance measured in relation to whether objectives of a Federal program were met;

1.3.3. Has responsibility for programmatic decision making;

1.3.4. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

1.3.5. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the Department.

1.4. Contractors – *vendors issued funds to provide goods or services to the Department.* In accordance with 2 CFR 200.330, characteristics indicative of a contractor are when the vendor:

1.4.1. Provides the goods and services within normal business operations;

1.4.2. Provides similar goods or services to many different purchasers;

1.4.3. Normally operates in a competitive environment;

1.4.4. Provides goods or services that are ancillary to the operation of the Federal program; and

1.4.5. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

## 2. Vendor Identification & Risk Assessment

2.1. The Department shall identify ***ALL*** vendors receiving federal, general, or other funds as either a Subrecipient or a Contractor, as defined in Section 1, above and in 2 CFR 200.330.

2.2. The Department shall complete a risk assessment of Subrecipients to evaluate their risk of non-compliance with Federal and State statutes and regulations, as well as the terms and conditions of the contract.

2.3. The Department shall assess vendor risk utilizing multiple factors that include, but are not limited to:

2.3.1. Grant management experience.

2.3.2. Documented history of non-performance or non-compliance.

2.3.3. Audit findings.

2.3.4. Recent personnel or system changes.

2.3.5. Financial solvency.

2.3.6. Adequacy of internal controls.

**3. <u>Contract Monitoring</u>**

3.1. The Department shall determine if enhanced monitoring is necessary to address any risks identified through the risk assessment referenced in Section 2, above.

3.2. The Department shall incorporate contract monitoring procedures and activities into final contracts to address identified risks, which may include but are not limited to:

3.2.1. Requesting vendors to provide fiscal reports and documentation behind reports to the Department for review.

3.2.2. Reviewing vendor reporting processes and systems for data integrity.

3.2.3. Performing file reviews to ensure vendor compliance with state and federal laws and rules in the administration of the contract.

3.2.4. Conducting site visits to assess vendor compliance with applicable contract objectives and requirements.

3.2.5. Reviewing vendor expenditure details to ensure all expenditures are allowable and in compliance with Federal and State laws and other applicable policies or rules.

3.2.6. Providing targeted training or technical assistance to vendors.

3.2.7. Reviewing monthly financial data to assess vendor financial solvency.

3.3. The Department shall conduct contract monitoring activities as specified in resulting contracts.

**4. <u>Vendor Disqualification</u>**

4.1. The Department reserves the right to disqualify vendors from selection based on the results of the risk assessment described in Section 2 above.

4.2. The Department reserves the right to disqualify vendors who refuse to complete and return the Management Questionnaire on Page 3 and 4 of Appendix F, Contract Monitoring.

4.3. The Department intends to only disqualify a vendor that, based on the results of the risk assessment described in Section 2 above, poses an unmanageable degree of programmatic and/or financial risk that may greatly inhibit the vendor's ability to execute the provisions of the contract.

4.4. The Department considers an unmanageable degree of risk to be present when:

4.4.1. The vendor appears to be financially unstable based on the Department's analysis of the vendor's audited financial statements; and/or

4.4.2. The identified programmatic risks may severely inhibit the vendor's ability to execute the contract in accordance with the requirements therein.

4.5. In the event that the Department disqualifies a vendor from selection, the vendor shall have no right to appeal the Department's decision. Any review shall be in accordance with NH. RSA 21-G:37, IV.

## Management Questionnaire

***All vendors responding to Department-issued Requests for Proposals (RFPs), Requests for Bids (RFBs), or Requests for Applications (RFAs) must complete and return this Management Questionnaire.***

| | Question | YES | NO | N/A |
|---|---|---|---|---|
| **1.** | During the past 18 months, have you experienced staff turnover in positions that will be involved in the administration of the contract or MOU? | ☐Yes | ☐No | ☐N/A |
| **2.** | Will you subcontract any part of the work that will be required under the final contract or MOU to other entities? | ☐Yes | ☐No | ☐N/A |
| **3.** | Have you managed the same or a similar contract or program during one of the last five (5) calendar years? | ☐Yes | ☐No | ☐N/A |
| **4.** | Have you received federal funds from DHHS through a contract, MOU, or other legal agreement during one of the last five (5) calendar years? | ☐Yes | ☐No | ☐N/A |
| **5.** | Were you ever provided formal written notification from the Department that you were in non-compliance or failed to perform in accordance with contract provisions or requirements? | ☐Yes | ☐No | ☐N/A |
| **6.** | Based on your understanding of the future requirements of the contract or MOU, will your organization determine whether individuals, institutions, or businesses will be eligible to receive services or financial assistance? | ☐Yes | ☐No | ☐N/A |
| **7.** | Is your organization a for-profit organization, foreign entity, or foundation? | ☐Yes | ☐No | ☐N/A |
| **8.** | Was your organization incorporated more than two years ago? | ☐Yes | ☐No | ☐N/A |
| **9.** | Did you have an audit performed in accordance with A-133 (Single Audit) standards for your most recently completed fiscal year? | ☐Yes | ☐No | ☐N/A |
| **10.** | If you had an audit performed in accordance with A-133 (Single Audit) standards by an external entity or an audit performed by a state or federal agency during the most recently completed fiscal year, did the audit include any findings? | ☐Yes | ☐No | ☐N/A |
| **11.** | Has your organization implemented a new accounting, financial, or programmatic IT system within the last two years? | ☐Yes | ☐No | ☐N/A |
| **12.** | Are you aware of any ongoing or pending lawsuits filed against your organization? | ☐Yes | ☐No | ☐N/A |
| **13.** | Does your accounting system identify the receipt and expenditure of program funds separately by each contract/grant, and by line item categories? | ☐Yes | ☐No | ☐N/A |

# Appendix F Contract Monitoring Provisions

| | Question | YES | NO | N/A |
|---|---|---|---|---|
| **14.** | Do you have procedures to ensure expenditures are reviewed by an independent person to determine that all expenditures are allowable under the terms of the contract as well as federal and state regulations, laws and rules? | ☐Yes | ☐No | ☐N/A |
| **15.** | Are time distribution records maintained for each employee performing contracted services that account for time spent working on the contract versus time spent on all other activities? | ☐Yes | ☐No | ☐N/A |
| **16.** | Does your property management system maintain a description of equipment, acquisition date, funding source, location and condition? | ☐Yes | ☐No | ☐N/A |
| **17.** | Does your financial system compare amounts spent to date with budgeted amounts for each award? | ☐Yes | ☐No | ☐N/A |
| **18.** | Does your accounting/financial system include budgetary controls to prevent incurring obligations in excess of total funds available for a grant or a cost category (i.e., personnel costs, equipment, travel)? | ☐Yes | ☐No | ☐N/A |
| **19.** | If you intend to subcontract a portion of the work under the resulting contract to another entity, do you have competitive bid procedures for purchases and personal services contracts compliant with state and federal regulations, laws, and rules? | ☐Yes | ☐No | ☐N/A |
| **20.** | If you intend to subcontract a portion of the work under the resulting contract to another entity, do you have written policies and procedures for subrecipient/contractor determinations, risk assessments, and subrecipient monitoring as required under Federal Uniform Guidance (2 CFR 200.330 & 331 et. seq.)? | ☐Yes | ☐No | ☐N/A |
| **21.** | Does your organization maintain a formal system of segregation of duties for procurement, time keeping, and bank statement reconciliation activities? | ☐Yes | ☐No | ☐N/A |
| **22.** | Do you maintain written policy and procedures for all aspects of financial transactions and accounting related to time keeping, a record retention, procurement, and asset management that are compliant with Federal Uniform Guidance requirements (2 CFR 200.300 et seq.)? | ☐Yes | ☐No | ☐N/A |

**I hereby declare that the answers provided in the Management Questionnaire of Appendix F, Contract Monitoring Provisions, are accurate and true to the best of my knowledge.**

| Signature | Printed Name & Job Title | Date |
|---|---|---|