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

**REQUEST FOR PROPOSALS**

**RFP-2022-DLTSS-04-COMPR**

**FOR**

## Comprehensive Nutrition, Feeding and Swallowing Network for Children with Special Health Care Needs

February 1, 2021

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# 1. INTRODUCTION

## 1.1. Purpose and Overview

This Request for Proposals (RFP) is published to solicit proposals for the provision of community-based nutrition, feeding and swallowing services for children, birth to age twenty-one (21), with special health care needs, and their families.

The Department is seeking a Vendor with demonstrated experience in overseeing and participating in a Comprehensive Nutrition, and Feeding and Swallowing Network (NFSN). The selected Vendor will be responsible for providing program management and overseeing a network that includes, but is not limited to:

- The identification, training, and oversight of:
  - Regional Pediatric Dietitians and feeding and swallowing specialists.
  - Nutrition Network Coordinators.
  - Intake and Referral Coordinators.
  - Clinical Supervisor.
  - Program Manager.
- Program evaluation

The New Hampshire Department of Health and Human Services (Department) anticipates awarding one (1) for the services in this RFP.

## 1.2. Request for Proposal Terminology

**Children with special healthcare needs (CSHCN)** – is defined under RSA 132:13, II as "children who have or are at increased risk for chronic physical, developmental, behavioral, or emotional conditions and who also require health and related services of a type or amount beyond that required by children generally." This includes children ages birth to age twenty-one (21) with health conditions who:

- Have a biologic, psychological, and/or cognitive basis;
- Have lasted or are virtually certain to last for at least one year;
- Result in limited function, activities or social roles in comparison with healthy age peers in general areas of physical, cognitive, emotional and social growth and development; and
- Have a need for medical care and related services, physiological services, or educational services over and above the usual care for the child's age.

**Community-Based** – Being responsive to identified needs in the community and providing services as near to the child's or family's home as possible.

**Culturally-Competent** - The provision of services that are culturally and linguistically appropriate (this includes attending to racial, ethnic, religious and language domains).

**Family-Centered Care** – The underlying attitude and approach towards working with families that acknowledges the family as the decision-maker regarding the concerns, priorities, and resources needed for their child/children. Families choose the services they receive and choose the level of participation in managing their child's health care**.**

**Medical Home –** A physician, primary care provider, or clinic that is known to the eligible recipient and recipient's family as the source for the recipient's preventive and primary care services, continuity of care, access to acute health needs 24-hours a day, and appropriate treatment or referral for specialty care, other health and health-related services. Care is comprehensive, family-centered, coordinated, compassionate, and culturally aware.

### 1.3. Contract Period

The Contract resulting from this RFP is anticipated to be effective July 1, 2021 or upon Governor and Executive Council approval, whichever is later, through June 30, 2023.

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

## 2. BACKGROUND

### 2.1. New Hampshire Department of Health and Human Services, Division of Long Term Supports and Services, Bureau for Family-Centered Services (BFCS)

The Bureau for Family-Centered Services (BFCS) is guided by the federal Maternal and Child Health Bureau's (MCHB) goal to provide leadership in building and promoting community-based systems of services that are family-centered, comprehensive, coordinated, and culturally competent statewide. The mission of BFCS is to identify and integrate supports that assist families, providers, and communities to meet the unique challenges of Children with Special Health Care Needs (CSHCN). A comprehensive community-based Nutrition, Feeding and Swallowing (NFS) Consultation Network provides essential services to Children with Special Health Care (CSHCN) needs including, but not limited to the identification, training, and oversight of staff; intake, assessment, and eligibility determination; planning for safe feeding plans, management of feeding tubes, and aspiration management; and consultations.

The NFS program delivers family centered coordinated care with highly competent Nutrition Providers and Feeding and Swallowing Specialists. Home-based service delivery allows for observations in the child's environment providing a more complete picture of the child, family and their nutrition, feeding and swallowing concerns

The focus on systems development is to ensure CSHCN and their families have access to appropriate and adequate health related services. To achieve its mission, BFCS places the highest priority on integrating public and private health services with education, social services, mental health, and family support programs.

The selected Vendor will provide leadership for the statewide System of Care and

Care Development, including, but not limited to:

- Establishing recognition and visibility as a knowledgeable expert in the field.
- Collaborating with all parties and planning delivery of statewide services for CSHCN.
- Implementing quality improvement through innovative initiatives.
- Increasing the diversity and effectiveness of the workforce.

# 3. STATEMENT OF WORK

## 3.1. Covered Populations

Children and youth from birth to age twenty-one (21), with special health care needs (CSHCN) who have conditions requiring specialty Nutrition, Feeding and Swallowing consultation, and their families.

## 3.2. Scope of Services

3.2.1. The selected Vendor shall conduct statewide intake, eligibility determinations, and other services in accordance with New Hampshire Administrative Rule He-M 500 Developmental Services, Part 520, Children's Special Medical Services, which includes, but is not limited to, rules pertaining to:

3.2.1.1. Application procedures.

3.2.1.2. Program eligibility requirements.

3.2.1.3. Services provided.

3.2.1.4. Financial eligibility requirements.

3.2.1.5. Payment for health-related services.

3.2.1.6. Limitation of services.

3.2.1.7. Appeals.

3.2.1.8. Waivers.

3.2.2. The selected Vendor must ensure applications are completed in accordance with He-M 520.02 and eligibility determinations are completed prior to service provision.

3.2.3. The selected Vendor will provide home or community-based assessments, intervention recommendations, and ongoing monitoring of the growth and health status of children and youth accepted for services by the Comprehensive Nutrition, Feeding and Swallowing Network (NFSN) and the Bureau for Family Centered Services (BFCS).

***Q1*** *How will you provide statewide intake, eligibility determinations and services, in accordance with NH Administrative Rule He-M 520? Provide examples of your related experience overseeing a statewide Nutrition and/or Feeding and Swallowing Network.*

***Q2*** *What format will you use to develop intervention plans that are family-centered and reflect evidence based practices? How will you monitor progress?*

3.2.4. The selected Vendor must provide a Clinical Supervisor and Program Manager to oversee the reporting process and review notes from the Feeding and Swallowing Specialists for completeness and accuracy. The same individual may perform the roles of Clinical Supervisor and

Program Manager.

3.2.5. The select Vendor must ensure:

3.2.5.1. Pediatric Dietitians, and Feeding and Swallowing Specialists that comprise the NFSN are available for consultation and technical assistance to all Department and community-based coordinators and clinic coordinators.

3.2.5.2. Nutrition, Feeding and Swallowing Network Coordinators. Program Manager and Clinical Supervisor that comprise the NFSN develop and maintain educational material, policies and procedures, training material, and an evaluation plan, and collaborate with other agencies as needed.

***Q3*** *Provide your proposed plan to ensure a Program Coordinator will effectively create and maintain various forms of written communication, as well as collaborate with other agencies. How will your plan ensure consultation and technical assistance to other BFCS programs?*

3.2.5.3. Intake processes include:

3.2.5.3.1. Entering data;

3.2.5.3.2. Checking the health insurance status of applicants;

3.2.5.3.3. Guiding the intake process;

3.2.5.3.4. Assigning clinical caseloads;

3.2.5.3.5. Encouraging participation in the evaluation plan;

3.2.5.3.6. Supervising the activities of all professional and support personnel; and

3.2.5.3.7. Ensuring that Dieticians and Feeding and Swallowing Specialists associated with the NFSN attend NFSN Program and Training Meetings.

3.2.5.4. The Clinical Supervisor or Program Manager ensure that referrals are made to other BFCS and community services as appropriate including, but not limited to:

3.2.5.4.1. Health Care Coordination.

3.2.5.4.2. Partners in Health.

3.2.5.4.3. Child Development Clinic.

3.2.5.4.4. New Hampshire Family Voices.

3.2.5.4.5. Complex Care Clinic and Consultation.

3.2.5.4.6. Family Centered Early Supports and Services.

3.2.5.4.7. Area Agency for Developmental Services.

3.2.5.5. The Clinical Supervisor or Program Manger oversees the reporting process and reviews notes from the Dietitians for completeness and accuracy.

***Q4*** *Provide your proposed plan to ensure that the Clinical Supervisor and/or Program Manager monitor the intake/referral processes, and oversee(s) and review(s) the work of the Dietitians and Feeding and Swallowing Specialists.*

3.2.5.6. Collaborate with other Department and community-based agencies, in order to ensure coordination of care, interagency referrals, and joint training and planning for shared clients.

***Q5*** *Please identify your community partners and provide your proposed plan for collaborating with them. , including how you will engage with Medical Homes. Include letters of commitment from community partners.*

3.2.6. The Vendor shall provide competency training in pediatric feeding and swallowing disorders to families and community-based personnel serving children, including but not limited to Part C Early Intervention programs, childcare providers, and school based personnel.

3.2.7. The Vendor will review and propose alternative means of service provision should there be an unmet need identified for a specific population of CSHCN.

3.2.8. The Vendor will ensure attendance at meetings and activities as assigned by the BFCS Administrator or designee.

## 3.3. Staffing

3.3.1. The selected Vendor must adhere to the following staffing requirements:

3.3.1.1. The Department must be notified in writing within one (1) week of hire of when a new Pediatric Dietitian or Feeding and Swallowing Specialist is hired to work in the program. A resume of the employee must accompany this notification.

3.3.1.2. In the event of a vacancy in any of the staff positions, the Vendor will recruit for the position.

3.3.1.3. The Vendor must make a request in writing to the Department before hiring new program personnel that do not meet the required staff qualifications. A waiver may be granted based on the need of the program and/or the individual's experience and education.

3.3.1.4. All Dietitians must obtain, maintain, and provide documentation of a State of New Hampshire Dietetic license.

3.3.1.5. Feeding and Swallowing Specialists shall have the appropriate New Hampshire licensure consistent with their clinical preparation.

3.3.1.6. All health professionals must obtain and maintain a National Provider Identification (NPI) number and credentialing with the Council for Affordable Quality Healthcare (CAQH).

3.3.1.7. Dietitians must have a Bachelor's degree in nutrition science, foods and nutrition, or home economics, or a Master's degree in nutrition science, nutrition education or public health nutrition, and current Registered Dietitian status in accordance with the Commission on Dietetic Registration of the American Dietetic Association.

3.3.1.8. All Dietitian providers and Feeding and Swallowing Specialists must obtain, maintain, and provide documentation of professional liability insurance.

3.3.1.9. Feeding and Swallowing Specialists must have a Bachelor's degree in a health-related field, or a Master's degree in speech and language therapy or occupational therapy.

3.3.1.10. Feeding and Swallowing Specialists must have knowledge and understanding of anatomy and physiology of the normal swallowing reflex, and how this automatic activity may be impaired or diminished in children with disabilities, which includes:

3.3.1.10.1. Knowledge of normal growth and development;

3.3.1.10.2. Knowledge of federal/state legislation regarding service provision to children with disabilities;

3.3.1.10.3. Knowledge of the education and consultative processes;

3.3.1.10.4. Ability to organize work, analyze problems and recommend/implement solutions; and

3.3.1.10.5. Ability to establish and maintain cooperative working relationships with medical, educational and allied health service providers.

3.3.1.11. The Vendor will recruit for and maintain a workforce that is culturally, linguistically, racially, and ethnically diverse.

***Q6*** *Provide your staffing plan. Include your organizational chart with resumes for filled positions and job descriptions for vacant positions. Be sure to indicate any subcontracted staff and FTEs (full time equivalent) for staff paid under this agreement.*

***Q7*** *How will you ensure staff development includes up-to-date best practices for the services you are providing? Provide your proposed staff training plan.*

3.3.2. Prior to making an offer of employment or for volunteer work, the Contractor shall, after obtaining signed and notarized authorization from the person or persons for whom information is being sought:

3.3.2.1 Obtain at least two (2) references for the person;

3.3.2.2 Submit the person's name for review against the Bureau of Elderly and Adult Services (BEAS) state registry maintained pursuant to RSA 161-F:49;

3.3.2.3. Submit the person's name for review against the Division for Children, Youth and Families (DCYF) state registry maintained pursuant to RSA 170-G:8-c;

3.3.2.4. Complete a criminal records check to ensure that the person has no history of:

3.3.2.4.1. Felony conviction; or

3.3.2.4.2. Any misdemeanor conviction involving:

3.3.2.4.2.1. Physical or sexual assault;

3.3.2.4.2.2.. Violence;

3.3.2.4.2.3. Exploitation;

3.3.2.4.2.4. Child pornography;

3.3.2.4.2.5. Threatening or reckless conduct;

3.3.2.4.2.6. Theft;

3.3.2.4.2.7. Driving under the influence of drugs or alcohol; or

3.3.2.4.2.8. Any other conduct that represents evidence of behavior that could endanger the well-being of a consumer; and

3.3.2.5. Complete a motor vehicles record check to ensure that the person has a valid driver's license.

## 3.4. Reporting Requirements

3.4.1. The Vendor must provide an annual report using the Department's template, which includes, but is not limited to:

3.4.1.1. Quality assurance activities.

3.4.1.2. Progress made and efforts undertaken to meet goals and objectives for each activity or service funded in quantitative terms, including statistical measures for evaluating successful outcomes.

3.4.1.3. Overall progress toward program goals and supporting

statistical information.

3.4.1.4. Program effectiveness.

3.4.1.5. Future plans or goals.

3.4.1.6. Third Party reimbursement funding and progress toward greater financial independence.

3.4.1.7. Emerging issues.

***Q8*** *Provide sample reports that provide the type of information requested in Section 3.4.1, above.*

3.4.2. The Vendor must ensure data is entered, documents uploaded, and case records are maintained in the Department Data System within five (5) business days of receiving the data which shall include, but not be limited to:

3.4.2.1. The demographic characteristics of each client receiving services, and insurance status.

3.4.2.2. Enrollment and discharge information.

3.4.2.3. Encounter and progress notes.

3.4.2.4. Any problems, obstacles, or hindrances with a plan to address them.

3.4.2.5. Screening efforts, results, and referrals for further assessment or services.

3.4.2.6. Documents for upload include, but are not limited to:

3.4.2.6.1. Applications.

3.4.2.6.2. Approval, denial and/or discharge letters (when applicable)

3.4.2.6.3. Medical documentation used for eligibility determination.

3.4.2.6.4. Referral forms.

3.4.2.6.5. Releases.

3.4.2.6.6. NFS Reports that include, but are not limited to treatment/care plans.

3.4.2.6.7. Waiver requests and approvals (if applicable).

3.4.3. The Department may request additional information at any time during the contract period.

***Q9*** *How will you ensure accurate and consistent data collection and reporting of statewide activities into the BFCS provided Database?*

### 3.5. Performance Measures

3.5.1. The Department will monitor performance of the selected Vendor by reviewing the following annually:

3.5.1.1. Ninety percent (90%) of CSHCN enrolled in NFSN have evidence of an individual treatment/care plan and/or progress made towards goals in their electronic case record upon annual review by the Department.

3.5.1.2. Eighty-five percent (85%) of CSHCN or their family or guardian, responding to a Department approved survey, will indicate satisfaction with services provided.

3.5.1.3. A minimum of seven hundred (700) nutrition visits by licensed dietician(s) provided per year.

3.5.1.4. A network of a minimum of six (6) feeding and swallowing specialists will visit clients in each of the ten (10) NH counties per year.

3.5.1.5. A minimum of one thousand one hundred (1,100) visits will be conducted by feeding and swallowing providers per year.

3.5.1.6. A minimum of one hundred (100) swallow studies that include analysis and relevant follow-up consultation to families of CSHCN will be provided annually.

3.5.1.7. One hundred percent (100%) of feeding and swallowing encounters by a feeding and swallowing professional will be billed to a private insurance company, a managed care organization (MCO), or to NH Medicaid, as is applicable.

3.5.2. The Department seeks to actively and regularly collaborate with providers to enhance contract management, improve results, and adjust program delivery and policy based on successful outcomes.

3.5.3. The Department may collect other key data and metrics from the selected Contractor, including client-level demographic, performance, and service data.

3.5.4. The Department may identify expectations for active and regular collaboration, including key performance measures, in the resulting contract. Where applicable, the selected Contractor must collect and share data with the Department in a format specified by the Department.

## 3.6. Compliance

3.6.1. The selected Contractor must be in compliance with applicable federal and state laws, rules and regulations, and applicable policies and procedures adopted by the Department currently in effect, and as they may be adopted or amended during the contract period.

3.6.2. The selected Contractor must meet all information security and privacy requirements as set by the Department.

3.6.3. The selected Contractor must maintain the following records during the resulting contract term where appropriate and as prescribed by the Department:

3.6.3.1. Books, records, documents and other electronic or physical 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.

3.6.3.2. All records must 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.

3.6.3.3. Statistical, enrollment, attendance or visit records for each recipient of services, 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.

3.6.3.4. Medical records on each patient/recipient of services.

3.6.3.5. 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. 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.

3.6.4. Credits and Copyright Ownership

3.6.4.1. 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, "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*."

3.6.4.2. All written, video and audio materials produced or purchased under the contract shall have prior approval from the Department before printing, production, distribution or use.

3.6.4.3. The Department will retain copyright ownership for any and all original materials produced, including, but not limited to:

3.6.4.3.1. Brochures.

3.6.4.3.2. Resource directories.

3.6.4.3.3. Protocols.

3.6.4.3.4. Guidelines.

3.6.4.3.5. Posters.

3.6.4.3.6. Reports.

3.6.4.4. The selected Contractor(s) shall not reproduce any materials produced under the contract without prior written approval from the Department.

3.6.5. Culturally and Linguistically Appropriate Services

3.6.5.1. The Department is committed to reducing health disparities in New Hampshire and 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, Department 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, Department continuously strives to improve existing programs and services, and to bring them in line with current best practices.

3.6.5.2. The Department 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.

3.6.5.3. 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 CLAS Section of the RFP, and, in the Vendor/RFP section of the Department's website.

3.6.5.4. 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.

3.6.5.5. Contractors 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.

3.6.5.6. Successful Contractors will be:

3.6.5.6.1. 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 ten (10) days of the date the contract is approved by Governor and Council; and

3.6.5.6.2. 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 Department's website.

3.6.5.7. 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:

3.6.5.7.1. 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);

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

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

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

3.6.5.8. **Contractors 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 Vendors' program design, which in turn, will allow Vendors to put forth the best possible Proposal.

3.6.5.9. For guidance on completing the two steps in Appendix C,

please refer to Proposer's Reference for Completing the CLAS Section of the RFP, which is posted on the Department's website. http://www.dhhs.nh.gov/business/forms.htm.

3.6.6. Audit Requirements

3.6.6.1. The Contractor is required to submit an annual audit to the Department if **any** of the following conditions exist:

3.6.6.1.1. Condition A - The Contractor expended $750,000 or more in federal funds received as a subrecipient pursuant to 2 CFR Part 200, during the most recently completed fiscal year.

3.6.6.1.2. Condition B - The Contractor is subject to audit pursuant to the requirements of NH RSA 7:28, III-b, pertaining to charitable organizations receiving support of $1,000,000 or more.

3.6.6.1.3. Condition C - The Contractor is a public company and required by Security and Exchange Commission (SEC) regulations to submit an annual financial audit.

3.6.6.2. If Condition A exists, the Contractor shall submit an annual **single audit** performed by an independent Certified Public Accountant (CPA) to the Department within 120 days after the close of the Contractor's fiscal year, conducted in accordance with the requirements of 2 CFR Part 200, Subpart F of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.

3.6.6.3. If Condition B or Condition C exists, the Contractor shall submit an annual **financial audit** performed by an independent CPA within 120 days after the close of the Contractor's fiscal year.

3.6.6.4. Any Contractor that receives an amount equal to or greater than $250,000 from the Department during a single fiscal year, regardless of the funding source, may be required, at a minimum, to submit annual financial audits performed by an independent CPA if the Department's risk assessment determination indicates the Contractor is high-risk.

3.6.6.5. 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.

### 3.7. Contract Monitoring Provisions

3.7.1. All Contractors must complete Appendix B, Contract Monitoring Provisions.

3.7.2. The Department will use Vendor responses to conduct a risk assessment to determine if enhanced contract monitoring is necessary if the Vendor is awarded a contract. The risk assessment will not be used to disqualify or score Proposals.

## 4. FINANCE

### 4.1. Financial Standards

4.1.1. The Department anticipates using Federal and General funds for the resulting contract. The Department may choose to modify the source of funding contingent upon the availability of funds at the time of award. Any selected vendor will be subject to the requirements in the Catalog of Federal Domestic Assistance (CFDA) # 93.994, U.S. Department of Health and Human Services, Maternal and Child Health Services Block Grant to the States.

4.1.2. Funding for the resulting contract is anticipated to be available in the amount of $535,000 for SFY 2022 and $535,000 for SFY 2023; however, this amount is approximate and may be increased or decreased to meet the needs of the Department.

### 4.2. Billing and Sustainability

4.2.1. The selected Vendor will coordinate a system integrating public and private funding to sustain the availability of specialized feeding and swallowing services to children and youth with special healthcare needs throughout the State, which includes but is not limited to:

4.2.1.1. Developing and maintaining relationships with third-party insurance payers and public health funders.

4.2.1.2. Developing a system to negotiate and secure reimbursements for Feeding and Swallowing services, and serve as the paymaster for the established network of community-based providers' fee-for-service and training activities.

***Q10*** *What is your experience with creating and maintaining a system of payment and reimbursement for services? Describe your credentialing status, including expected wait times with New Hampshire Medicaid, Managed Care Organizations and private insurance agencies.*

### 4.3. Budget, Staff List and Budget Narrative

4.3.1. Proposers must complete Appendix D, Budget Sheet and Appendix E, Program Staff List for each State Fiscal Year (July 1 through June 30). This is not a low cost award.

4.3.2. Proposers must provide a Budget Narrative that explains the specific line item costs included in the Appendix D, Budget Sheet and their direct relationship to meeting the objectives of this RFP. The Budget Narrative must explain how each positon included in Appendix E, Program Staff List pertains to the proposal and what activities they will perform.

4.3.3. The Budget Sheet will be scored based on the following criteria:

| Budget Sheet | |
|---|---|
| **Score** | **Criteria** |
| 0-20 | Costs are not allowable. |
| | Reader cannot understand the relationship of cost relative to the proposed services. |
| | Cost items do not directly align with objectives of the RFP. |
| | Costs are not reasonable. |
| | The costs do not represent significant value relative to anticipated outcomes. |
| 21-48 | Reader can generally understand the relationship of cost relative to the proposed services. |
| | Cost items are mostly aligned with the objectives of the RFP. |
| | Costs are predominantly reasonable. |
| | Costs relative to outcomes are adequate and meet the objectives of RFP |
| 49-70 | Reader has a thorough understanding of the relationship of cost relative to the proposed services. |
| | Cost items directly align with objectives of the RFP. |
| | Costs are reasonable. |
| | The costs represent significant value relative to anticipated outcomes. |

4.3.4. Funds may be used to pay salaries and benefits of program staff, meeting expenses, travel for program and training purposes, technical assistance, and other training, educational materials, postage, supplies, rent, laboratory services, subcontracts, consultants,

equipment, software and telephone.

4.3.5. The selected Vendor will be expected to keep records of their activities related to Department funded programs and services. Payment for contracted services will be made on monthly invoices for expenditures incurred and upon compliance with reporting requirements.

4.3.6. Funding may not be used to replace funding for a program already funded from another source.

4.3.7. The Program Staff List will be scored based on the following criteria:

| Program Staff List | |
|---|---|
| **Score** | **Criteria** |
| 0-9 | Staffing costs are not reasonable. |
| | Reader cannot understand the relationship of staffing costs relative to the proposed services. |
| | Staffing cost items do not directly align with objectives of the RFP. |
| | The staffing costs do not represent significant value relative to anticipated outcomes. |
| | |
| 10-21 | Reader can generally understand the relationship of staffing costs relative to the proposed services. |
| | Staffing cost items are mostly aligned with the objectives of the RFP. |
| | Staffing costs are predominantly reasonable. |
| | Staffing costs relative to outcomes are adequate and meet the objectives of RFP |
| 22-30 | Reader has a thorough understanding of the relationship of staffing costs relative to the proposed services. |
| | Staffing cost items directly align with objectives of the RFP. |
| | Staffing costs are reasonable. |
| | Staffing costs represent significant value relative to anticipated outcomes. |

# 5. PROPOSAL EVALUATION

## 5.1. Selection

5.1.1. The Department will use a scoring scale of 350 points, with a maximum of 100 points awarded based on the Cost Proposal. The Department will select a Vendor based upon the criteria and standards contained in this RFP and applying the points set forth below.

## 5.2. Technical Proposal

| | | |
|---|---|---|
| 5.2.1. | Intake, eligibility determination (Q1) | 25 Points |
| 5.2.2. | Intervention Plan (Q2) | 25 Points |
| 5.2.3. | Consultation and Technical Assistance (Q3) | 30 Points |
| 5.2.4. | Supervision Plan (Q4) | 25 Points |
| 5.2.5. | Collaboration and Letters of Commitment (Q5) | 25 Points |
| 5.2.6. | Staffing Plan (Q6) | 25 Points |
| 5.2.7. | Staff Development and Training Plan (Q7) | 25 Points |
| 5.2.8. | Sample Reports (Q8) | 20 Points |
| 5.2.9. | Data Collection and Reporting (Q9) | 20 Points |
| 5.2.10. | Payment and Reimbursement Experience (Q 10) | 30 Points |

Total Technical Proposal Points Available 250 Points

## 5.3. Cost Proposal

| | | |
|---|---|---|
| 5.3.1. | Budget (Appendix D) | 70 Points |
| 5.3.2. | Program Staff List (Appendix E) | 30 Points |

Total Cost Proposal Points Available 100 Points

Maximum Possible Score **350 Points**

# 6. PROPOSAL PROCESS

## 6.1. Contact Information – Sole Point of Contact

6.1.1. The sole point of contact, the Contract Specialist, relative to the proposal process for this RFP, from the RFP issue date until the selection of a Proposer, and approval of the resulting contract by the Governor and Executive Council is:

State of New Hampshire
Department of Health and Human Services
Dean B. Fancy, Senior Contract Specialist
Bureau of Contracts & Procurements
129 Pleasant Street
Concord, New Hampshire 03301
Email: Dean.B.Fancy@dhhs.nh.gov
Phone: 603-271-9610

6.1.2. From the date of release of this RFP until an award is made and announced regarding the selection of a Proposer, all communication with personnel employed by or under contract with the Department regarding this RFP is prohibited unless first approved by the RFP Sole Point of Contact listed in Section 6.1.1, herein. Department employees have been directed not to hold conferences and/or discussions concerning this RFP with any potential Contractor during the selection process, unless otherwise authorized by the RFP Sole Point of Contact. Proposers may be disqualified for violating this restriction on communications.

## 6.2. Procurement Timetable

**Procurement Timetable**

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

| Item | Action | Date |
|---|---|---|
| 1. | Release RFP | February 1, 2021 |
| 2. | Optional Letter of Intent Submission Deadline | February 8, 2021 |
| 3. | RFP Questions Submission Deadline | February 12, 2021<br>**2:00 PM** |
| 4. | Department Response to Questions Published | February 18, 2021 |
| 5. | Proposal Submission Deadline | March 1, 2021<br>**11:59 PM** |

## 6.3. Letter of Intent

6.3.1. A Letter of Intent to submit a Proposal in response to this RFP is optional.

6.3.2. Receipt of the Letter of Intent by Department will be required 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 Vendors; or responses to comments; or questions.

6.3.3. The Letter of Intent must be transmitted by email to the Contract Specialist identified in Subsection 6.1.

6.3.4. The Proposer is responsible for successful email transmission. The Letter of Intent must include the name, telephone number, mailing address and email address of the Vendor's designated contact. The Department will provide confirmation of receipt of the Letter of Intent if the name and email address of the person to receive such confirmation is provided by the Vendor.

6.3.5. Notwithstanding the Letter of Intent, Vendors remain responsible for reviewing the most updated information related to this RFP before submitting a proposal.

## 6.4. Questions and Answers

6.4.1. Proposers' Questions

6.4.1.1. 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, by email only, citing the RFP page number and part or subpart, and submitted to the Contract Specialist identified in Subsection 6.1.

6.4.1.2. The Department 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.

6.4.1.3. The questions must be submitted by email; however, the Department assumes no liability for ensuring accurate and complete email transmissions.

6.4.1.4. Questions must be received by the Department by the

deadline given in Subsection 6.2, Procurement Timetable.

## 6.5. Exceptions

6.5.1. The Department will require the successful Proposer to execute a contract using the Form P-37, General Provisions and Standard Exhibits, which are attached as Appendix A. To the extent that a Vendor believes that exceptions to Appendix A will be necessary for the Vendor to enter into a Contract, the Vendor must note those issues during the RFP Question Period in Subsection 6.2. Proposers may not request exceptions to the Scope of Services or any other sections of this RFP.

6.5.2. The Department will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion.

6.5.3. If the Department accepts a Proposer's exception, the Department will, at the conclusion of the RFP Question Period, provide notice to all potential Contractors of the exceptions that have been accepted and indicate that exception is available to all potential Contractors by publication of the Department's answers on or about the date indicated in Subsection 6.2.

6.5.4. Any exceptions to the standard form contract and exhibits that are not raised by a Proposer during the RFP Question Period will not be considered. In no event is a Vendor to submit its own standard contract terms and conditions as a replacement for the Department's terms in response to this solicitation.

## 6.6. RFP Amendment

The Department 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 Proposer questions. In the event of an amendment to the RFP, the Department, at its sole discretion, may extend the Proposal Submission Deadline. Proposers who submitted a Letter of Intent will receive notification of the amendment, and the amended language will be posted on the Department's website.

## 6.7. Proposal Submission

6.7.1. Proposals must be submitted electronically to contracts@dhhs.nh.gov and the Contract Specialist at the email address specified in Subsection 6.1.

6.7.1.1. The subject line must include the following information: RFP-2022-DLTSS-04-COMPR (email xx of xx).

6.7.1.2. The maximum size of file attachments per email is 10 MB.

Proposals with file attachments exceeding 10 MB must be submitted via multiple emails.

6.7.2. The Department must receive the Proposal by the time and date specified in the Procurement Timetable in Section 6 and in the manner specified or it may be rejected as non-compliant, unless waived by the Department as a non-material deviation.

6.7.3. The Department will conduct an initial screening step to verify Proposer compliance with the submissions requirements of this RFP. The Department may waive or offer a limited opportunity for a Proposer to cure immaterial deviations from the RFP requirements if it is deemed to be in the best interest of the Department.

6.7.4. Late submissions that are not accepted will remain unopened. Disqualified submissions will be discarded. Submission of the Proposals shall be at the Proposer's expense.

### 6.8. Non-Collusion

The Proposer'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 vendors and without effort to preclude the Department 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 a subcontractor subject to the terms of Appendix A, P-37 General Provisions and Standard Exhibits.

### 6.10. Validity of Proposals

Proposals must be valid for one hundred and eighty (180) days following the deadline for submission in the Procurement Timetable above in Subsection 6.2, or until the Effective Date of any resulting Contract, whichever is later.

### 6.11. Property of Department

All material property submitted and received in response to this RFP will become the property of the Department and will not be returned to the Proposer. The Department 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 Proposal Submission Deadline specified in Subsection 6.2, Procurement Timetable, a submitted Letter of Intent or Proposal may be withdrawn by submitting a written request for its withdrawal to the Contract Specialist specified in Subsection 6.1.

## 6.13. Public Disclosure

6.13.1. Pursuant to RSA 21-G:37, the content of responses to this RFP must remain confidential until the Governor and Executive Council have awarded a contract. At the time of receipt of Proposals, the Department will post the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the Department of Administrative Services pursuant to this RFP, the Department will post the name, rank or score of each Proposer. The Proposer's disclosure or distribution of the contents of its Proposal, other than to the Department, will be grounds for disqualification at the Department's sole discretion.

6.13.2. The content of each 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 Proposal 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.

6.13.3. Insofar as a Proposer seeks to maintain the confidentiality of its confidential commercial, financial or personnel information, the Proposer must clearly identify in writing the information it claims to be confidential and explain the reasons such information should be considered confidential. This must be done by separate letter identifying by page number and Proposal section the specific information the Vendor claims to be exempt from public disclosure pursuant to RSA 91-A:5. **The Proposer is strongly encouraged to provide a redacted copy of their Proposal.**

6.13.4. Each Proposer acknowledges that the Department is subject to the Right-to-Know Law New Hampshire RSA Chapter 91-A. The Department shall maintain the confidentiality of the identified confidential information insofar as it is consistent with applicable laws or regulations, including but not limited to New Hampshire RSA Chapter 91-A. In the event the Department receives a request for the information identified by a Proposer as confidential, the Department shall notify the Proposer and specify the date the Department intends to release the

requested information. Any effort to prohibit or enjoin the release of the information shall be the Proposer's responsibility and at the Proposer's sole expense. If the Proposer's fails to obtain a court order enjoining the disclosure, the Department may release the information on the date the Department specified in its notice to the Proposer without incurring any liability to the Proposer.

### 6.14. Non-Commitment

Notwithstanding any other provision of this RFP, this RFP does not commit the Department to award a contract. The Department 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 procurement process.

### 6.15. Liability

By submitting a Proposal in response to this RFP, a Proposer agrees that in no event shall the Department be either responsible for or held liable for any costs incurred by a Proposer 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

The Department may request any Proposer to provide 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 Proposer with an opportunity to change, extend, or otherwise amend its Proposal in intent or substance.

### 6.17. Oral Presentations and Discussions

The Department reserves the right to require some or all Proposers to make oral presentations of their Proposal. The purpose of the oral presentation is to clarify and expound upon information provided in the written Proposal. Proposers are prohibited from altering the original substance of their Proposals during the oral presentations. The Department will use the information gained from oral presentations to refine the technical review scores. Any and all costs associated with an oral presentation shall be borne entirely by the Proposer.

### 6.18. Successful Proposer Notice and Contract Negotiations

6.18.1. If a Proposer is selected, the Department will send written notification of their selection and the Department's desire to enter into contract negotiations. Until the Department successfully completes negotiations with the selected Proposer(s), all submitted Proposals remain eligible for selection by the Department. In the event contract negotiations are unsuccessful with the selected Proposer(s), the evaluation team may recommend another Proposer(s). The Department will not contact Proposer(s) that are not initially selected to enter into contract negotiations.

### 6.19. Scope of Award and Contract Award Notice

6.19.1. The Department 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. A contract award is contingent on approval by the Governor and Executive Council.

6.19.2. If a contract is awarded, the Contractor 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 Proposer's location or at any other location deemed appropriate by the Department, to determine the Proposer's capacity to satisfy the terms of this RFP. The Department may also require the Proposer to produce additional documents, records, or materials relevant to determining the Proposer's capacity to satisfy the terms of this RFP. Any and all costs associated with any site visit or requests for documents shall be borne entirely by the Proposer.

### 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.

### 6.23. Ethical Requirements

From the time this RFP is published until a contract is awarded, no Proposer shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any Proposer that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any Proposer who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from submitting an Proposal to this RFP, or similar request for submission and every such Proposer shall be disqualified from submitting any Proposal or similar request for submission issued by any state

agency. A Proposer that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the Department of Administrative Services, which shall note that information on the list maintained on the state's internal intranet system, except in the case of annulment, the information, shall be deleted from the list.

# 7. PROPOSAL OUTLINE AND REQUIREMENTS

## 7.1. Presentation and Identification

7.1.1. Overview

7.1.1.1. 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.

7.1.1.2. Proposals must be submitted electronically as specified in Subsection 6.7.

7.1.1.3. Proposers must submit a separate electronic document for the Technical Proposal and a separate electronic document for the Cost Proposal.

7.1.1.4. Fax or hard copies will not be accepted.

## 7.2. Outline and Detail

7.2.1. Proposal Contents – Outline

Each Proposal shall contain the following, in the order described in this section.

7.2.2. **Technical Proposal Contents –** The Transmittal Cover Letter must:

7.2.2.1. Be on the Proposer's company letterhead.

7.2.2.2. Be signed by an individual who is authorized to bind the company to all statements, including services and prices contained in the Proposal.

7.2.2.3. Contain the following:

7.2.2.3.1. Identify the submitting organization;

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

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

7.2.2.3.4. Identify the name, title, telephone number, and email address of the person who will serve as the Vendor's representative for all matters relating to

the RFP;

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

7.2.2.3.6. Explicitly state acceptance of terms, conditions, and general instructions stated in Section 8 Mandatory Business Specifications;

7.2.2.3.7. Confirm that Appendix A P-37 General Provisions and Standard Exhibits has been read and is understood;

7.2.2.3.8. Explicitly state that the Proposal is valid for one hundred and eighty (180) days following the deadline for submission in the Procurement Timetable above in Subsection 6.2, or until the Effective Date of any resulting Contract, whichever is later; and

7.2.2.3.9. Include the date that the Proposal was submitted.

7.2.3. Table of Contents

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

7.2.4. **Executive Summary**. A Proposer must submit an executive summary to:

7.2.4.1. Provide the Department with an overview of the organization and what the Vendor intends to provide;

7.2.4.2. Demonstrate an understanding of the services requested in this RFP and any problems anticipated in accomplishing the work;

7.2.4.3. Demonstrate the overall design of the project in response to achieving the deliverables as defined in this RFP; and

7.2.4.4. Demonstrate familiarity with the project elements, its solutions to the problems presented and knowledge of the requested services.

7.2.5. Proposal Narrative, Project Approach, and Technical Response

7.2.5.1. The Proposer must address every section of Section 3 Statement of Work.

7.2.5.2. 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, paragraph

and subparagraph number, as appropriate.

7.2.5.3. Proposers are encouraged, but not required to include a Word version of the proposal narrative in the electronic copy.

7.2.6. Description of Organization

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

7.2.6.1.1. General company overview;

7.2.6.1.2. Ownership and subsidiaries;

7.2.6.1.3. Company background and primary lines of business;

7.2.6.1.4. Number of employees;

7.2.6.1.5. Headquarters and satellite locations;

7.2.6.1.6. Current project commitments;

7.2.6.1.7. Major government and private sector clients;

7.2.6.1.8. Mission Statement;

7.2.6.1.9. The programs and activities of the company;

7.2.6.1.10. The number of people served;

7.2.6.1.11. Company accomplishments;

7.2.6.1.12. Reasons the company is capable of effectively completing the services outlined in the RFP; and

7.2.6.1.13. All strengths considered to be assets to the company.

7.2.6.2. The Proposer should demonstrate the length, depth, and applicability of all prior experience in providing the requested services as well as the skill and experience of staff.

7.2.7. **Resume** of those key personnel who would be primarily responsible for meeting the terms and conditions of any agreement resulting from this RFP.

7.2.8. Proposer's References

7.2.8.1. The Proposer must submit three (3) written references from individuals or organizations who have knowledge of the Proposer's capability to deliver services applicable to this

solicitation. A current Department employee will not be considered a valid reference.

7.2.8.2. Each written reference must include current contact information, a description of work performed, quality of work, and dates of performance.

7.2.8.3. The Department may contact a reference to clarify any information.

7.2.9. Subcontractor Letters of Commitment (if applicable)

The Proposer 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 Proposer 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 Department. All selected Contractor(s) that indicate an intention to subcontract must submit a subcontractor's letter of commitment to the Department no later than thirty (30) days from the contract effective date. The Department will approve or reject subcontractors for this project and require the Contractor to replace subcontractors found to be unacceptable.

7.2.10. New Hampshire Certificate of Good Standing

The Department requires, as applicable, every Contractor to acquire a Certificate of Good Standing or assurance of obtaining registration with the New Hampshire Office of the Secretary of State in accordance with RSA 5:18-a.

7.2.11. Affiliations – Conflict of Interest

The Proposer 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.

7.2.12. Required Attachments

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

7.2.12.1.1. Answers to questions in Section 3.

7.2.12.1.2. Appendix C, CLAS Requirements.

7.2.12.2. The following are required statements that must be included with the Cost Proposal. The Proposer must complete the correlating forms found in the RFP Appendices and submit

them as the "Required Attachments" section of the Cost Proposal.

7.2.12.2.1. Appendix B, Contract Monitoring Provisions.

7.2.12.2.2. Appendix D, Budget.

7.2.12.2.3. Appendix E, Program Staff List.

7.2.12.2.4. Budget Narrative.

## 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. The Proposer must agree to contractual requirements as set forth in the Appendix A, P-37 General Provisions and Standard Exhibits.

8.1.2. Liquidated Damages

8.1.2.1. The Department may negotiate with the awarded vendor to include liquidated damages in the Contract in the event any deliverables are not met.

8.1.2.2. The Department and the Vendor 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 Vendor 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 may be determined as part of the contract specifications.

8.1.2.3. Assessment of liquidated damages may 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.

8.1.2.4. The Department may determine compliance and assessment of liquidated damages as often as it deems reasonable necessary to ensure required performance standards are met. Amounts due the Department as liquidated damages may be deducted by the Department 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 Department.

# 9. ADDITIONAL INFORMATION

## 9.1. Appendix A – Form P-37 General Provisions and Standard Exhibits

## 9.2. Appendix B – Contract Monitoring Provisions

## 9.3. Appendix C – CLAS Requirements

## 9.4. Appendix D – Budget Sheet

## 9.5. Appendix E – Program Staff List

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

**Do Not Return**

**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<br><br>New Hampshire Department of Health and Human Services | | 1.2 State Agency Address<br><br>129 Pleasant Street<br>Concord, NH 03301-3857 | |
| 1.3 Contractor Name | | 1.4 Contractor Address | |
| 1.5 Contractor Phone Number<br><br>( ) - | 1.6 Account Number | 1.7 Completion Date<br><br>Select a Date | 1.8 Price Limitation |
| 1.9 Contracting Officer for State Agency<br><br>Nathan D. White, Director | | 1.10 State Agency Telephone Number<br><br>(603) 271-9631 | |
| 1.11 Contractor Signature<br><br>Date: | | 1.12 Name and Title of Contractor Signatory | |
| 1.13 State Agency Signature<br><br>Date: | | 1.14 Name and Title of State Agency Signatory | |
| 1.15 Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)*<br><br>By: Director, On: | | | |
| 1.16 Approval by the Attorney General (Form, Substance and Execution) *(if applicable)*<br><br>By: On: | | | |
| 1.17 Approval by the Governor and Executive Council *(if applicable)*<br><br>G&C Item number: G&C Meeting Date: | | | |

**Do Not Return**



Contractor Initials _____
Date _____

**Do Not Return**

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

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

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

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

**4. CONDITIONAL NATURE OF AGREEMENT.**

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

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

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

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

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

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

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

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

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

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

**7. PERSONNEL.**

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

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

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

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

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

**9. TERMINATION.**

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

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

**10. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.**

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

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

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

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

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

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

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

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

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

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

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

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

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

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

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

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

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



Contractor Initials _____
Date _____

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

**Exhibit A**

## REVISIONS TO STANDARD CONTRACT PROVISIONS

### 1 – Revisions to Form P-37, General Provisions

1.1 Paragraph 12, Assignment/Delegation/Subcontracts, is amended by adding subparagraph 12.3 as follows:

12.3 Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions. The Contractor shall have written agreements with all subcontractors, specifying the work to be performed and how corrective action shall be managed if the subcontractor's performance is inadequate. The Contractor shall manage the subcontractor's performance on an ongoing basis and take corrective action as necessary. The Contractor shall annually provide the State with a list of all subcontractors provided for under this Agreement and notify the State of any inadequate subcontractor performance.

**Do Not Return**

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

# EXHIBIT B

## Scope of Services

*To be drafted in accordance with the selected Vendor's proposal, as negotiated with the Department through the procurement process.*

**Do Not Return**

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

# EXHIBIT C

## Payment Terms

*To be drafted in accordance with the selected Vendor's proposal, as negotiated with the Department through the procurement process.*

**Do Not Return**

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

## CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Vendor 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

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.

Vendor Name:

_____ _____

Date Name:
Title:

**Do Not Return**

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

## CERTIFICATION REGARDING LOBBYING

The Vendor 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.

Vendor Name:

_____ _____
Date Name:
Title:

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

## CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Vendor 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

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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.

Vendor Name:

_____
Date

_____
Name:
Title:

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

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

The Vendor 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:

Vendor 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.

**Do Not Return**

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

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 Vendor 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 Vendor agrees to comply with the provisions indicated above.

Vendor Name:

_____ _____

Date

Name:
Title:

**Do Not Return**

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

## 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 Vendor 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 Vendor 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.

Vendor Name:

_____ _____

Date

Name:
Title:

**Do Not Return**

## HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY 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.

| | |
|---|---|
| Department of Health and Human Services | |
| 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 |

**Do Not Return**

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

## 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:

**Do Not Return**

**Do Not Return**

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

## 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: _____

**Do Not Return**

## 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 the State's Security Officer of any security breach immediately, at the email addresses provided in Section VI. 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 and Security Officer of any Security Incidents and Breaches immediately, at the email addresses provided in Section VI.

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 Privacy Officer:

DHHSPrivacyOfficer@dhhs.nh.gov

B. DHHS Security Officer:

DHHSInformationSecurityOffice@dhhs.nh.gov

# Appendix B Contract Monitoring Provisions

***All vendors must complete and return pages 4 & 5, Management Questionnaire, and the required financial information as specified in Section 2.4, unless exempt.***

## 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 200.331, 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 200.331, 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 and 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 200.331.

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 programmatic risk utilizing the Management Questionnaire which addresses 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. Adequacy of internal controls.

2.4. The Department shall also assess vendor risk of financial solvency using the following Statement of Vendor's Financial Condition:

2.4.1. The vendor'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 by the Department as part of the risk assessment to determine if enhanced contract monitoring is required if a contract is awarded.

2.4.2. Each vendor must submit audited financial statements for the four (4) most recently completed fiscal years. If your organization has not been established long enough to have four (4) audited financial statements, please send the total number of statements generated since the inception of your organization. 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.

2.4.3. Complete financial statements must include the following:

2.4.3.1. Opinion of Certified Public Accountant;

2.4.3.2. Balance Sheet;

2.4.3.3. Income Statement;

2.4.3.4. Statement of Cash Flow;

2.4.3.5. Statement of Stockholder's Equity of Fund Balance;

2.4.3.6. Complete Financial Notes; and

2.4.3.7. Consolidating and Supplemental Financial Schedules.

2.4.4. A vendor, 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 vendor, 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 vendor 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.

2.4.5. If a vendor 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 vendor shall submit the following as part of its proposal:

2.4.5.1. Uncertified financial statements; and

2.4.5.2. 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.

2.4.6. Exemptions: The Department will not request audited financial statements from or perform Financial Risk Analyses for the following organizations:

2.4.6.1. The University and Community College Systems of NH. These organizations are component units of the State which is ultimately financially liable for them.

2.4.6.2. Political Subdivisions, which includes counties and municipalities.

**3. Contract Monitoring**

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. Vendor Disqualification**

4.1. The Department reserves the right to disqualify vendors who refuse to complete and return the Management Questionnaire on Page 4 and 5 of Appendix B, Contract Monitoring or the financial information as specified in Section 2.4.

4.2. 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.

# Appendix B Contract Monitoring Provisions

**Management Questionnaire for _____ *(Vendor Name)***

***All vendors must complete and return this Management Questionnaire along with the required financial information in Section 2.4, unless exempt.***

| | Question | YES | NO | N/A |
|---|---|---|---|---|
| **1.** | Was your organization established more than two years ago? | ☐Yes | ☐No | ☐N/A |
| **2.** | During the past 18 months, have you experienced staff turnover in positions that will be involved in the administration of the contract? | ☐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 the Department through a contract 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.** | If you had a Single Audit performed in accordance with the Federal Uniform Guidance (2 CFR 200 subpart F (200.500)) 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 |
| **7.** | Have you ever been required to return payments to the Department as a result of an audit, unallowable expenditure or any other reason? | ☐Yes | ☐No | ☐N/A |
| **8.** | Has your organization implemented a new accounting, financial, or programmatic IT system within the last two years? | ☐Yes | ☐No | ☐N/A |
| **9.** | Are you aware of any ongoing or pending lawsuits filed against your organization or any investigations or inspections of your organization by any state or federal regulatory agency within the last two years? | ☐Yes | ☐No | ☐N/A |
| **10.** | With Department approval, 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 |
| **11.** | With Department approval, 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 subpart D (200.300)? | ☐Yes | ☐No | ☐N/A |

# Appendix B Contract Monitoring Provisions

| | Question | YES | NO | N/A |
|---|---|---|---|---|
| **12.** | Does your accounting system identify the receipt and expenditure of program funds separately by each contract or grant, and by line item categories? | ☐Yes | ☐No | ☐N/A |
| **13.** | Does your organization maintain a formal system of segregation of duties for procurement, time keeping, and bank statement reconciliation activities? | ☐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 financial system compare amounts spent to date with budgeted amounts for each award? | ☐Yes | ☐No | ☐N/A |
| **17.** | Does your accounting or financial system include budgetary controls to prevent incurring obligations in excess of total funds available for a grant or a cost category (e.g., personnel costs, equipment, travel)? | ☐Yes | ☐No | ☐N/A |
| **18.** | 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 subpart D (200.300)? | ☐Yes | ☐No | ☐N/A |

*An independent person can be any individual within an organization or an outside third party, who verifies that an expenditure made by another person, is appropriate and in accordance with the terms of the contract. For example, one person would be responsible for making a purchase or authorizing payment and a second independent person verifies that funds were spent appropriately. If you do not have an independent person, please mark “No” for Question 14.

Marking No or N/A for any question on the Management Questionnaire does not preclude a Vendor from being selected.

**I hereby declare that the answers provided in this Management Questionnaire are accurate and true to the best of my knowledge.**

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

**APPENDIX C**

# Addendum to CLAS Section of RFP for Purpose of Documenting Title VI Compliance

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

(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.

## Applicant 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 an applicant's application of the four-factor analysis to the services they provide. At this stage, applicants are not required to submit their four-factor analysis as part of their application. **However, successful applicants 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

**Applicant 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** | Yes | No |

| | | | |
|---|---|---|---|
| **assistance to LEP persons, if needed)**<br>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?**<br>(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)?**<br>(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 RFA#_____, 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 RFA.

**APPENDIX C**

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.