



State of New Hampshire  
Department of Health and Human Services

**REQUEST FOR BID**

FOR

Building Automation System Maintenance and Repair Services  
RFB-2023-NHH-03-BUILD

RELEASE DATE: November 21, 2022

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## **1. PURPOSE AND OVERVIEW**

### **1.1. Introduction**

The New Hampshire Department of Health and Human Services, New Hampshire Hospital (“Department”) is seeking responses to this Request for Bid (“solicitation” or “RFB”) from qualified Bidders to provide preventive maintenance, repairs, and emergency services for the Building Automation Systems (BAS) at the New Hampshire Hospital (NHH) Acute Psychiatric Services (APS) facility and Transitional Housing Buildings overseen by NHH Facilities Dept. The selected Bidder must provide NHH with preventative maintenance and repairs as well as emergency repair services for the BAS equipment and associated devices, as listed in Appendix D, Equipment List. The Selected Bidder must ensure that emergency on-call service is available for the NHH BAS twenty-four (24) hours a day, seven (7) days per week.

The Department anticipates awarding one (1) contract for the services in this solicitation.

### **1.2. Key Information**

The information in the table below is as anticipated by the Department. All information is subject to change, the availability of funds, and/or approval by the Governor and Executive Council.

<b>Contract Effective Date</b>	<b>January 1, 2023</b>	
<b>Contract End Date</b>	<b>December 31, 2024</b>	
<b>Renewal Options</b>	The Department may extend contracted services for up to four (4) additional years.	
<b>Funding Source</b>	The Department anticipates using General and Other funds for resulting contract.	
	Assistance Listing #	N/A
	Award Name	N/A
<b>Point of Contact</b>	Dean B. Fancy, Contract Specialist Dean.B.Fancy@dhhs.nh.gov 603-271-9610	
From the date of release of this solicitation until an award is made and announced regarding the selection of a Bidder, all communication with personnel employed by or under contract with the Department regarding this solicitation is prohibited unless first approved by the Point of Contact listed above. Department employees have been directed not to hold conferences and/or discussions concerning this solicitation with any potential contractor during the selection process, unless otherwise authorized by the Point of Contact. Bidder may be disqualified for violating this restriction on communications.		

### 1.3. Procurement Timetable

All times are according to Eastern Time. The Department reserves the right to modify these dates and times at its sole discretion.		
Item	Action	Date
1.	RFB Released	11/21/2022
2.	Questions Submission Deadline	11/30/2022 <b>1:00PM</b>
3.	Department Response to Questions Published	12/14/2022
4.	Bid Submission Due Date	12/22/2022 <b>10:00AM</b>
5.	Public Bid Opening <i>(Bidders interested in attending the Public Bid Opening must register with the Sole Point of Contact in Subsection 1.2 by email no later than December 21, 2022 at 11:00 AM to obtain information on how to attend the opening.)</i>	12/22/2022 <b>1:00 PM</b>

### 1.4. Background

#### 1.4.1. New Hampshire Department of Health and Human Services, New Hampshire Hospital

1.4.1.1. The Department of Health and Human Services is the largest state government agency in New Hampshire and is responsible for the health, safety and well-being of the citizens of New Hampshire. The Department provides services for children, adults, and families, and administers various programs throughout New Hampshire. These services are provided via contracts or partnerships with families, community groups, private providers, other state and local government entities, and many citizens throughout the state. The Department also makes behavioral health services available through community mental health centers and institutions such as NHH and Glenclyff Home.

1.4.1.2. NHH is a tertiary psychiatric hospital with approximately 184 beds dedicated to providing acute psychiatric care for citizens of New Hampshire. NHH is the only Institute for Mental Disease (IMD) for adults in New Hampshire and offers forensic, geriatric, and general psychiatric care, along with medical management of chronic conditions.

The majority of individuals are admitted to NHH on an involuntary basis because they have been found to be dangerous to themselves or others as the result of a mental illness. A much smaller number are admitted voluntarily for the same reasons. NHH works closely with the community mental health center system, advocates for, and provides services that support an individual's recovery.

**1.4.2. Objective**

- 1.4.2.1. This Request for Bids (RFB) is published to solicit bids from Bidders for the provision of preventive maintenance, repairs, and emergency services to the Building Automation Systems (BAS) for the NHH Acute Psychiatric Services (APS) facility and Transitional Housing Buildings overseen by NHH Facilities Dept.
- 1.4.2.2. The selected Bidder must provide NHH with preventative maintenance and repairs as well as emergency repair services for the BAS equipment and associated devices, as listed in Appendix D, Equipment List.
- 1.4.2.3. The contract resulting from this Request for Bids must ensure that emergency on-call service is available for the NHH BAS twenty-four (24) hours a day, seven (7) days per week. The Department of Health and Human Services (Department) anticipates awarding one (1) contract for the services in this RFB.

**1.5. Terminology**

APS – Acute Psychiatric Services  
ATC - Automatic Temperature Control  
BAS - Building Automation Systems  
DDC - Direct Digital Control  
DHHS or Department – Department of Health and Human Services  
EMS - Energy Management System  
FEC - Field Equipment Controllers  
FX – Facility Explorer  
HVAC – Heating Ventilation Air Conditioning  
IPsec – Internet Protocol Security  
JCI – Johnson Controls, Incorporated  
NCE - Network Control Engines  
NHH – New Hampshire Hospital  
OEM - Original Equipment Manufacturer  
RFB – Request for Bids

**2. STATEMENT OF WORK**

**2.1. Semi-Annual Service Visits**

- 2.1.1. The selected Bidder must maintain all digital control systems and associated devices on a semi-annual basis (Spring and Fall), as required, to ensure proper operating condition.
- 2.1.2. The selected Bidder must conduct semi-annual service visits no sooner than five (5) months and 15 days from the date of the previous visit.
- 2.1.3. The selected Bidder must provide maintenance services that include, but are not limited to:
  - 2.1.3.1. Reviewing all digital control systems for proper operation and verifying that all associated devices start and stop properly.
  - 2.1.3.2. Checking the operational sequence of all Variable Air Volumes (VAVs), Variable Air Volume Modular Assemblies (VMAs) and related preheat, reheat and radiation valves and motors.

- 2.1.3.3. Testing and calibrating all devices, including but not limited to, thermostats, actuators, controls, dampers, valves and VAV devices.
- 2.1.3.4. Checking for, and recording of, system abnormalities and deficiencies.
- 2.1.3.5. Testing all safety devices including, but not limited to, fire eye controls; pressure relief valves; and low water cut offs.
- 2.1.3.6. Testing and ensuring that all operating controls for the heating systems are working properly.

## **2.2. Bi-Weekly Service Visits**

- 2.2.1. The selected Bidder must provide Automatic Temperature Control (ATC) system services, which include servicing all Direct Digital Control (DDC) systems, on a bi-weekly basis. The selected Bidder must ensure bi-weekly service visits include, but are not limited to:

- 2.2.1.1. Servicing and adjusting, as needed:

- 2.2.1.1.1. Three (3) Network Control Engines (NCE). One (1) NCE is located in each of the Brick, Gray, and Yellow Houses.
- 2.2.1.1.2. Four (4) Field Equipment Controllers (FEC), two (2) of which are located at Howard Recreational Building and two (2) of which are located at the Bayberry Building.
- 2.2.1.1.3. One (1) PCG Controller and one (1) PCX Controller located at Pond Place.
- 2.2.1.1.4. Three (3) Facility Explorer Controllers (FX). One (1) of which is located at the Howard Recreational Building, one (1) of which is located at the Bayberry Building, and one (1) of which is located at Pond Place.
- 2.2.1.1.5. Ten percent (10%), or 30, of the 298 VAV terminals units, all of which are located at the APS building.
- 2.2.1.1.6. Ten percent (10%), or eight (8) of the 84 VMA terminal units, all of which are located at the APS building.

- 2.2.1.2. Ensuring services to the NCE, FEC, FX, VAV and VMA equipment include, but are not limited to:

- 2.2.1.2.1. Confirming proper operation of compressors, fan motors, pumps, dampers, reheat valves, baseboard valves and all additional inputs and outputs that are wired to terminal unit.
- 2.2.1.2.2. Confirming points associated with the units are properly mapped to the Facility Explorer (FX80's) and Data Server.
- 2.2.1.2.3. Servicing and adjusting tuning parameters as well as analyzing trend data to ensure proper operation and optimum system performance of:
  - 2.2.1.2.3.1. All Air Handling Units (AHUs).
  - 2.2.1.2.3.2. All hot water systems.

2.2.1.2.3.3. Chilled water systems.

2.2.1.2.3.4. Hydronic Solar Panels.

2.2.1.3. Performing a complete system backup, upload and archive of NAEs as well as ADS and FX controllers.

2.2.1.4. Creating backup copies of software configurations of the operating systems and providing NHH staff with access to most recent back up copy.

### **2.3. Service Calls**

2.3.1. The selected Bidder must be available for regular and emergency service calls.

2.3.2. The selected Bidder must schedule regular service calls during normal hours of business operation, which are Monday through Friday, from 7:30 a.m. to 3:30 p.m. Regular service calls must be scheduled within 48 hours of need for service being identified.

2.3.3. The selected Bidder must be available twenty-four (24) hours per day, seven (7) days per week for emergency service calls occurring outside of the normal hours of business operation described in Section 2.3.2. The selected Bidder must arrive to the work site no later than two (2) hours from the time the Contractor is notified of the emergency.

### **2.4. Remote Monitoring Technology**

2.4.1. The selected Bidder must utilize their workstation on which HVAC systems may be remotely monitored. The selected Bidder must ensure the workstation meets the State's minimum standards, which include but are not limited to:

2.4.1.1. Ensuring the workstation is not connected to the State's internal network.

2.4.1.2. Ensuring the remote monitoring workstation uses an internet protocol security (IPsec) tunnel to the State's virtual private network (VPN) firewall as the transport.

2.4.1.3. Ensuring the VPN device is capable of routing multiple networks over an IPSEC tunnel.

2.4.1.4. Ensuring the remote monitoring workstation network uses Network Address Translation to avoid routing conflicts between the State network and the Contractor's network.

2.4.1.5. Providing the State with specific information regarding the ports needed for the HVAC monitoring application to work. Those ports will be allowed to traverse the IPSEC tunnel, all others will be blocked.

2.4.1.6. Ensuring troubleshooting procedures are provided to NHH and the State Department of Information Technology.

### **2.5. Staffing**

2.5.1. The selected Bidder must ensure:

2.5.1.1. Each employee safeguards the confidentiality of all records, and individuals at NHH, as required by state rule, state and federal law.

- 2.5.1.2. Each employee is available to complete a 30-minute NHH orientation regarding patient confidentiality and boundaries.
- 2.5.1.3. A sufficient number of staff are available so that calls of any emergency nature can be answered promptly, with the technician arriving at the job site no later than two (2) hours after the call is placed.
- 2.5.1.4. A sufficient number of qualified mechanics are available who:
  - 2.5.1.4.1. Are trained in JCI FX Facility Explorer procedures.
  - 2.5.1.4.2. Have a minimum of five (5) years of experience in Johnson Controls, Inc. (JCI) FX Facility Explorer equipment.
  - 2.5.1.4.3. Are fully skilled and competent to perform work identified in Section 2 and Section 3.

## **2.6. Warranty**

- 2.6.1. Except as otherwise specified, all new parts and labor must be guaranteed by the Bidder against defects resulting from the use of inferior materials, equipment or workmanship for one (1) year from the date of acceptance of work by the Department.
- 2.6.2. If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which in the opinion of the Contract Administrator is rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract the Contractor must, promptly upon receipt of notice from the Commissioner, and at the Contractor's own expense:
  - 2.6.2.1. Place in satisfactory condition, in every particular, all such guaranteed work and correct all defects therein.
  - 2.6.2.2. Make good all damage to the building or site, or equipment or contents thereof, which in the opinion of the Contract Administrator, is the result of the use of materials, equipment or workmanship that are inferior, defective, or not in accordance with the terms of the Contract.
  - 2.6.2.3. Make good any work or material, or the equipment and contents of said building or site disturbed in fulfilling any such guarantee.

## **2.7. Reporting**

- 2.7.1. The selected Bidder must present a written estimate for any recommended repairs that are identified during any service call.
- 2.7.2. The selected Bidder must present a written summary of the work performed after each scheduled or emergency call and obtain the signature of a Department administrator before leaving the job site.

## **2.8. Deliverables**

- 2.8.1. The selected Bidder must complete four (4) semi-annual service visits as described in Section 2.1, by the contract completion date.
- 2.8.2. The selected Bidder must complete 24 bi-weekly service visits, as described in Section 2.2, by the contract completion date.



## **2.9. Bid Requirements**

- 2.9.1. The selected Bidder must maintain active licenses to perform this work as required by the State of New Hampshire.
- 2.9.2. The selected Bidder must ensure that no subcontractors are used to perform services under any Contract resulting from this RFB.
- 2.9.3. The selected Bidder must meet insurance requirements as indicated in Appendix A, Form P-37, General Provisions.
- 2.9.4. The selected Bidder must adhere to Department security requirements, at a minimum. See Appendix A, Exhibit I and Exhibit K. The selected Bidder may be required to sign system user agreements.
- 2.9.5. The selected Bidder must ensure all Contractor personnel performing services on-site provide verification of immunizations that adhere to recommendations from the Center for Disease Control, upon request by the Department.
- 2.9.6. The selected Bidder must ensure all Contractor personnel performing services onsite adhere to the Department's COVID-19 protocols, and requirements for ad-hoc Contractors at NHH. COVID-19 requirements for ad-hoc Contractor personnel include, but are not limited to:
  - 2.9.6.1. Wearing an N95 respirator mask that covers the mouth and nose at all times while onsite.
  - 2.9.6.2. Remaining outside of onsite common areas and shared facilities such as:
    - 2.9.6.2.1. Offices;
    - 2.9.6.2.2. Break rooms; and
    - 2.9.6.2.3. Lavatories.
  - 2.9.6.3. Implementing additional protective measures as directed by the Department, including, but not limited to:
    - 2.9.6.3.1. Leaving the premises upon request.
    - 2.9.6.3.2. Submitting to a test for COVID-19 infection.
    - 2.9.6.3.3. Providing proof of a COVID-19 vaccination.
- 2.9.7. The selected Bidder must provide two (2) references for whom the Bidder has provided similar services in the previous five (5) years.

## **3. BID EVALUATION**

### **3.1. Bid Scoring**

- 3.1.1. Bid scores will be calculated based on the Total Cost Bid as submitted on Appendix B, Transmittal Letter, Bidder Information and Bid Sheet, Table B-1, Cost Bid, Line 6.

### **3.2. Bidder Selection**

- 3.2.1. Bidders must complete Appendix B, Transmittal Cover Letter, Bidder Information and Bid Sheet, and submit the supporting documentation in accordance with

Section 6, Bid Response Requirements, Subsection 6.3, Bid Contents, by the Bid Submission Deadline in Subsection 1.3, Procurement Timetable.

- 3.2.2. Public Bids will be opened on the day and time specified in Subsection 1.3, Procurement Timetable.
- 3.2.3. One (1) Bidder with the lowest Annualized Cost Bid as submitted on Appendix B, Transmittal Letter, Bidder Information and Bid Sheet, Table B-1, Cost Bid, Line 6, will be selected.
- 3.2.4. Should the Department be unable to reach agreement with the selected Bidder during Contract discussions, the Department may then undertake Contract discussions with the second lowest Bidder and so forth. Such discussions may continue at the sole option of the Department, until an agreement is reached, or all Proposals are rejected.
- 3.2.5. Bids must conform to all instructions, requirements and contents indicated below and in Subsection 2.9.

#### **4. SOLICITATION RESPONSE PROCESS**

##### **4.1. Questions and Answers**

###### **4.1.1. Bidder's Questions**

- 4.1.1.1. All questions about this Solicitation including, but not limited to, requests for clarification, additional information or any changes to the Solicitation must be made in writing, by email only, citing the Solicitation page number and part or subpart, and submitted to the Contract Specialist identified in Subsection 1.2.
- 4.1.1.2. 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.
- 4.1.1.3. The questions must be submitted by email; however, the Department assumes no liability for ensuring accurate and complete email transmissions.
- 4.1.1.4. Questions must be received by the Department by the deadline given in Subsection 1.3, Procurement Timetable.

###### **4.1.2. Department Responses**

- 4.1.2.1. The Department intends to issue responses to properly submitted questions by the deadline specified in Subsection 1.3, Procurement Timetable. All oral answers given are non-binding. Written answers to questions received will be posted on the Department's website at (<https://www.dhhs.nh.gov/doing-business-dhhs/contracts-procurement-opportunities>). This date may be subject to change at the Department's discretion.

###### **4.1.3. Exceptions**

- 4.1.3.1. The Department will require the successful Bidder 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 Bidder believes that exceptions to Appendix A will be necessary for the Bidder to enter into a Contract, the

Bidder must note those issues during the Question Period in Subsection 1.3. Bidders may not request exceptions to the Scope of Services or any other sections of this Solicitation.

- 4.1.3.2. 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 in its response to Bidder questions.
- 4.1.3.3. Any exceptions to the standard form contract and exhibits that are not raised by a Bidder during the Question Period may not be considered. In no event is a Bidder to submit its own standard contract terms and conditions as a replacement for the Department's terms in response to this Solicitation.

#### **4.2. Solicitation Amendment**

- 4.2.1. The Department reserves the right to amend this Solicitation by publishing any addenda, as it deems appropriate, prior to the Submission Deadline on its own initiative or in response to issues raised through Bidder questions. In the event that an addendum is published, the Department, at its sole discretion, may extend the Submission Deadline.

### **5. SOLICITATION RESPONSE SUBMISSION INSTRUCTIONS**

- 5.1.** Responses to this Solicitation must be submitted electronically via email to [rfx@dhhs.nh.gov](mailto:rfx@dhhs.nh.gov) AND to the Contract Specialist at the email address specified in Subsection 1.2.

- 5.1.1. The subject line must include the following information:

RFB-2023-NHH-03-BUILD (email xx of xx).

- 5.2.** The maximum size of file attachments per email is 10 MB. Submissions with file attachments exceeding 10 MB must be sent via multiple emails.
- 5.3.** The Department must receive submissions by the time and date specified in the Procurement Timetable in Section 1.3 and in the manner specified or it may be rejected as non-compliant, unless waived by the Department as a non-material deviation.
- 5.4.** The Department will conduct an initial screening step to verify Bidder compliance with the requirements of this Solicitation. The Department may waive or offer a limited opportunity for a Bidder to cure immaterial deviations from the Solicitation requirements if it is deemed to be in the best interest of the Department.
- 5.5.** Late submissions that are not accepted will remain unopened. Disqualified submissions will be discarded. Submission of solicitation responses shall be at the Bidder's expense.

### **6. BID RESPONSE REQUIREMENTS**

- 6.1.** Acceptable solicitation responses must offer all services identified in Section 2 - Statement of Work, unless an allowance for partial scope is specifically described in Section 2.

#### **6.2. Bid Contents**

- 6.2.1. Each Response must contain the following, in the order described in this section:

- 6.2.1.1.1. **Audited Financial Statements** (four (4) most recently completed fiscal years or other acceptable financial documentation).

6.2.1.2. Appendix B – Transmittal Letter, Bidder Information and Bid Sheet, including:

6.2.1.2.1. **Vendor Code Number** - Prior to executing any resulting contract(s), the selected Bidder(s) will be required to provide a vendor code number issued by the State of New Hampshire Department of Administrative Services upon registering as an authorized vendor with the State. Bidders are strongly encourage to provide a vendor code number in the Appendix B if available. More information can be found at: <https://das.nh.gov/purchasing/vendorresources.aspx>

## **7. ADDITIONAL TERMS AND REQUIREMENTS**

### **7.1. Non-Collusion**

The Bidder's required signature on the Appendix B – Transmittal Letter, Bidder Information, and Bid Sheet submitted in response to this Solicitation guarantees that the prices, terms and conditions, and services quoted have been established without collusion with other Bidders and without effort to preclude the Department from obtaining the best possible competitive bid.

### **7.2. Collaborative Solicitation Responses**

Solicitation responses 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.

### **7.3. Validity of Solicitation Responses**

Solicitation responses must be valid for one hundred and eighty (180) days following the deadline for submission in the Procurement Timetable above in Subsection 1.3, or until the Effective Date of any resulting contract, whichever is later.

### **7.4. Debarment**

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

### **7.5. Property of Department**

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

### **7.6. Bid Withdrawal**

Prior to the Bid Submission Deadline specified in Subsection 1.3, Procurement Timetable, bids may be withdrawn by submitting a written request for its withdrawal to the Contract Specialist specified in Subsection 1.2.

### **7.7. Confidentiality**

7.7.1. Pursuant to RSA 21-G:37, the content of responses to this solicitation must remain confidential until the Governor and Executive Council have awarded a contract. The Bidder's disclosure or distribution of the contents of its solicitation response,

other than to the Department, will be grounds for disqualification at the Department's sole discretion.

## **7.8. Public Disclosure**

- 7.8.1. The information submitted in response to this solicitation (including all materials submitted in connection with it, such as attachments, exhibits, addenda, and presentations), any resulting contract, and information provided during the contractual relationship may be subject to public disclosure under Right-to-Know laws, including RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this solicitation will be made accessible to the public online via the New Hampshire Secretary of State website (<https://sos.nh.gov/>).
- 7.8.2. Confidential, commercial or financial information may be exempt from public disclosure under RSA 91-A:5, IV. If a Bidder believes any information submitted in response to this solicitation should be kept confidential, the Bidder must specifically identify that information where it appears in the submission in a manner that draws attention to the designation and must mark/stamp each page of the materials that the Bidder claims must be exempt from disclosure as "CONFIDENTIAL." Bidders must also provide a letter to the person listed as the point of contact for this solicitation, identifying the specific page number and section of the information considered to be confidential, commercial or financial and providing the rationale for each designation. Marking or designating an entire submission, attachment or section as confidential shall neither be accepted nor honored by the Department. Bidders must also provide a separate copy of the full and complete document, fully redacting those portions and shall note on the applicable page or pages that the redacted portion or portions are "confidential."
- 7.8.3. Submissions which do not conform to these instructions by failing to include a redacted copy (if necessary), by failing to include a letter specifying the rationale for each redaction, by failing to designate the redactions in the manner required by these instructions, or by including redactions which are contrary to these instructions or operative law may be rejected by the Department as not conforming to the requirements of the solicitation.
- 7.8.4. Pricing, which includes but is not limited to, the administrative costs and other performance guarantees in responses or any subsequently awarded contract shall be subject to public disclosure regardless of whether it is marked as confidential.
- 7.8.5. Notwithstanding a Bidder's designations, the Department is obligated under the Right-to-Know law to conduct an independent analysis of the confidentiality of the information submitted in response to the solicitation. If a request is made to the Department to view or receive copies of any portion of the response that is marked confidential, the Department shall first assess what information it is obligated to release. The Department will then notify the Bidder that a request has been made, indicate what, if any, information the Department has assessed is confidential and will not be released, and specify the planned release date of the remaining portions of the response. To halt the release of information by the Department, a Bidder must initiate and provide to the Department, prior to the date specified in the notice, a court action in the Superior Court of the State of New Hampshire, at its sole expense, seeking to enjoin the release of the requested information.
- 7.8.6. By submitting a response to this solicitation, Bidders acknowledge and agree that:

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

#### **7.9. Electronic Posting of RFB Results and Resulting Contract**

- 7.9.1. At the time of receipt of responses, 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 solicitation, the Department will post the name, rank or score of each responding Bidder. In the event that the resulting contract does not require Governor & Executive Council approval, the Agency will disclose the rank or score at least five (5) business days before final approval of the contract.
- 7.9.2. Pursuant to RSA 91-A and RSA 9-F:1, the Secretary of State will post to the public any document submitted to G&C for approval, including contracts resulting from this solicitation, and posts those documents on its website (<https://sos.nh.gov/administration/miscellaneous/governor-executive-council/>). By submitting a response to this solicitation, bidders acknowledge and agree that, in accordance with the above mentioned statutes and policies, (and regardless of whether any specific request is made to view any document relating to this solicitation), any contract resulting from this solicitation that is submitted to G&C for approval will be made accessible to the public online.

#### **7.10. Non-Commitment**

Notwithstanding any other provision of this solicitation, this solicitation does not commit the Department to award a contract. The Department reserves the right to reject any and all responses to this solicitation or any portions thereof, at any time and to cancel this solicitation and to solicit new solicitation responses under a new procurement process.

#### **7.11. Liability**

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

#### **7.12. Request for Additional Information or Materials**

The Department may request any Bidder to provide additional information or materials needed to clarify information presented in the solicitation response. Such a request will be issued in writing and will not provide a Bidder with an opportunity to change, extend, or otherwise amend its solicitation response in intent or substance.

#### **7.13. Oral Presentations and Discussions**



The Department reserves the right to require some or all Bidders to make oral presentations of their solicitation response. The purpose of the oral presentation is to clarify and expound upon information provided in the written solicitation response. Bidders are prohibited from altering the original substance of their solicitation response 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 Bidder.

#### **7.14. Successful Bidder Notice and Contract Negotiations**

If a Bidder 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 Bidder(s), all submitted solicitation responses remain eligible for selection by the Department. In the event contract negotiations are unsuccessful with the selected Bidder(s), the evaluation team may recommend another Bidder. The Department will not contact Bidder(s) that are not initially selected to enter into contract negotiations.

#### **7.15. Scope of Award and Contract Award Notice**

7.15.1. The Department reserves the right to award a service, part of a service, group of services, or total solicitation response and to reject any and all solicitation responses in whole or in part. A contract award is contingent on approval by the Governor and Executive Council.

7.15.2. If a contract is awarded, the selected Bidder(s) must obtain written consent from the Department before any public announcement or news release is issued pertaining to any contract award.

#### **7.16. Site Visits**

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

#### **7.17. Protest of Intended Award**

Any challenge of an award made or otherwise related to this solicitation shall be governed by RSA 21-G:37, and the procedures and terms of this solicitation. The procedure set forth in RSA 21-G:37, IV, shall be the sole remedy available to challenge any award resulting from this solicitation. In the event that any legal action is brought challenging this solicitation 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.

#### **7.18. Contingency**

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

#### **7.19. Ethical Requirements**

From the time this solicitation is published until a contract is awarded, no Bidder 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 a solicitation, or similar submission. Any Bidder that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any Bidder 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 a response to this solicitation, or similar request for submission and every such Bidder shall be disqualified from submitting any solicitation response or similar request for submission issued by any state agency. A Bidder 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.

#### **7.20. Liquidated Damages**

The selected Bidder agrees that liquidated damages may be determined by the Department as part of the contract specifications, as failure to achieve required performance levels will more than likely substantially delay and disrupt the Department's operations.

#### **8. COMPLIANCE**

**8.1.** The selected Bidder(s) 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.

**8.2.** The selected Bidder(s) may be required to participate in monitoring activities for the resulting contract(s), at the sole discretion of the Department, including, but not limited to:

- 8.2.1. Site visits.
- 8.2.2. File reviews.
- 8.2.3. Staff training.

#### **8.3. Records**

**8.3.1.** The selected Bidder(s) must maintain the following records during the resulting contract term where appropriate and as prescribed by the Department:

- 8.3.1.1. Books, records, documents and other electronic or physical data evidencing and reflecting all costs and other expenses incurred by the selected Bidder(s) in the performance of the resulting contract(s), and all income received or collected by the selected Bidder(s).
- 8.3.1.2. 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.



- 8.3.2. During the term of the resulting contract(s) 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 resulting contract(s) for purposes of audit, examination, excerpts and transcripts. Upon the purchase by the Department of the maximum number of units provided for in the resulting contract(s) and upon payment of the price limitation hereunder, the selected Bidder(s) and all the obligations of the parties hereunder (except such obligations as, by the terms of the resulting Contract(s) are to be performed after the end of the term of the contract(s) and/or survive the termination of the Contract(s)) shall terminate, provided however, that if, upon review of the Final Expenditure Report the Department shall disallow any expenses claimed by the selected Bidder(s) 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 selected Bidder(s).

#### **8.4. Credits and Copyright Ownership**

- 8.4.1. All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the resulting Contract(s) must 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."
- 8.4.2. All written, video and audio materials produced or purchased under the contract must have prior approval from the Department before printing, production, distribution or use.
- 8.4.3. The Department will retain copyright ownership for any and all original materials produced, including, but not limited to:
- 8.4.3.1. Brochures.
  - 8.4.3.2. Resource directories.
  - 8.4.3.3. Protocols.
  - 8.4.3.4. Guidelines.
  - 8.4.3.5. Posters.
  - 8.4.3.6. Reports.
- 8.4.4. The selected Bidder(s) must not reproduce any materials produced under the contract without prior written approval from the Department.

#### **8.5. Background Checks**

- 8.5.1. Prior to making an offer of employment or for volunteer work, the selected Bidder will, after obtaining signed and notarized authorization from the person or persons for whom information is being sought:
- 8.5.1.1. Obtain and verify at least two (2) references for the person;
  - 8.5.1.2. 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;

- 8.5.1.3. Submit the person's name for review against the Division for Children, Youth and Families (DCYF) central registry pursuant to RSA 169-C:35;
- 8.5.1.4. Complete a criminal records check to ensure that the person has no history of:
  - 8.5.1.4.1. Felony conviction; or
  - 8.5.1.4.2. Any misdemeanor conviction involving:
    - 8.5.1.4.2.1. Physical or sexual assault;
    - 8.5.1.4.2.2. Violence;
    - 8.5.1.4.2.3. Exploitation;
    - 8.5.1.4.2.4. Child pornography;
    - 8.5.1.4.2.5. Threatening or reckless conduct;
    - 8.5.1.4.2.6. Theft;
    - 8.5.1.4.2.7. Driving under the influence of drugs or alcohol; or
  - 8.5.1.4.3. Any other conduct that represents evidence of behavior that could endanger the well-being of any individual served under the resulting contract(s); and
- 8.5.2. Unless the selected Bidder requests and obtains a waiver from the Department, it will not hire any individual or approve any individual to act as a volunteer if:
  - 8.5.2.1. The individual's name is on the BEAS state registry;
  - 8.5.2.2. The individual's name is on the DCYF central registry;
  - 8.5.2.3. The individual has a record of a felony conviction; or
  - 8.5.2.4. The individual has a record of any misdemeanors as specified above.

#### **8.6. Confidential Data**

- 8.6.1. The selected Bidder(s) must meet all information security and privacy requirements as set by the Department and in accordance with the Department's Exhibit K, DHHS Information Security Requirements.
- 8.6.2. The selected Bidder(s) must ensure any staff and/or volunteers involved in delivering services through the resulting contract(s) sign an attestation agreeing to access, view, store, and discuss Confidential Data in accordance with federal and state laws and regulations and the Department's Exhibit K. The selected Bidder(s) must ensure said individuals have a justifiable business need to access confidential data. The selected Bidder(s) must provide attestations upon Department request.
- 8.6.3. Upon request, the selected Bidder(s) must allow the Department to conduct a Privacy Impact Assessment (PIA) of its system if Personally Identifiable Information (PII) is collected, used, accessed, shared, or stored. To conduct the PIA the selected Bidder must provide the Department access to applicable systems and documentation sufficient to allow the Department to assess, at minimum, the following:

- 8.6.3.1. How PII is gathered and stored;
- 8.6.3.2. Who will have access to PII;
- 8.6.3.3. How PII will be used in the system;
- 8.6.3.4. How individual consent will be achieved and revoked; and
- 8.6.3.5. Privacy practices.
- 8.6.4. The Department may conduct follow-up PIAs in the event there are either significant process changes or new technologies affecting the collection, processing or storage of PII.
- 8.6.5. The selected Bidder must ensure each employee performing work under any contract resulting from this RFB on the premises at NHH has completed Appendix C, Confidentiality Statement.

#### **8.7. State Owned Devices, Systems and Network Usage**

- 8.7.1. If the selected Bidder workforce or its subcontractor's workforce is authorized by the Department's Information Security Office to use a Department issued device (e.g. computer, tablet, mobile telephone) or access the State network in the fulfillment of this Agreement, the selected Bidder must:
  - 8.7.1.1. Sign and abide by applicable Department and NH Department of Information Technology (DOIT) use agreements, policies, standards, procedures and/or guidelines;
  - 8.7.1.2. Use the information solely for conducting official Department business;
  - 8.7.1.3. Not access or attempt to access information in a manner inconsistent with the approved policies, procedures, and/or agreement relating to system entry/access;
  - 8.7.1.4. Not copy, share, distribute, sub-license, modify, reverse engineer, rent, or sell software licensed, developed, or being evaluated by the state. At all times the selected Bidder(s) must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other agreement executed by the State. Only equipment or software owned, licensed, or being evaluated by the State can be used by the selected Bidder. Non-standard software must not be installed on any equipment unless authorized by the Department's Information Security Office;
  - 8.7.1.5. Agree that email and other electronic communication messages created, sent, and received on a state-issued email system are the property of the State of New Hampshire and to be used for business purposes only. Email is defined as "internal email systems" or "state-funded email systems." The selected Bidder(s) must understand and agree that use of email must follow Department and DOIT standard policies. When utilizing the Department's email system, the selected Bidder(s) must:
    - 8.7.1.5.1. Include in the signature lines information identifying the contractor as a non-state employee; and
    - 8.7.1.5.2. Contain the following embedded confidentiality notice:

CONFIDENTIALITY NOTICE: "This message may contain information that is privileged and confidential and is intended only for the use of the individual(s) to whom it is addressed. If you receive this message in error, please notify the sender immediately and delete this electronic message and any attachments from your system. Thank you for your cooperation."

- 8.7.2. The State internet/Intranet is to be used for access to and distribution of information in direct support of the business of the State of New Hampshire according to policy. At no time should the State's internet be used for personal use or used by the selected Bidder(s) without written approval by the Department's Information Security Office.
- 8.7.3. All workforce members of the selected Bidder(s) or its subcontractors with a workspace in a Department building and/or facility must sign the Department's Business Use and Confidentiality Agreement upon execution of the agreement and annually until contract end.

#### **8.8. Contract End-of-Life Transition Services**

- 8.8.1. The selected Bidder(s) must use reasonable efforts to assist the Recipient, in connection with the transition from the performance of Services by the selected Bidder(s) and their Affiliates to the performance of such Services. This may include assistance with the secure transfer of records (electronic and hard copy), transition of historical data (electronic and hard copy), the transition of any such Service from the hardware, software, network and telecommunications equipment and internet-related information technology infrastructure ("Internal IT Systems") of selected Bidder(s) to the Internal IT Systems of the Recipient and cooperation with and assistance to any third-party consultants engaged by Recipient in connection with the Transition Services.
- 8.8.2. If a system, database, hardware, software, and/or software licenses (Tools) was purchased or created to manage, track, and/or store State Data in relationship to this contract said Tools will be inventoried and returned to the Department, along with the inventory document, once transition of State Data is complete.
- 8.8.3. The internal planning of the Transition Services by the selected Bidder(s) and its Affiliates shall be provided to the Department and if applicable the Recipient on a timely manner. Any such Transition Services shall be deemed to be Services for purposes of this Contract.
- 8.8.4. Should the data Transition extend beyond the end of the resulting Contract(s), the selected Bidder(s) and its affiliates agree Contract Information Security Requirements, and if applicable, the Department's Business Associates Agreement terms and conditions remain in effect until the Data Transition is accepted as complete by the Department.
- 8.8.5. In the event where the selected Bidder(s) has comingled Department Data and the destruction or Transition of said data is not feasible, the Department and selected Bidder(s) will jointly evaluate regulatory and professional standards for retention requirements prior to destruction.

#### **8.9. Audit Requirements**

- 8.9.1. The selected Bidder(s) must email an annual audit to [dhhs.act@dhhs.nh.gov](mailto:dhhs.act@dhhs.nh.gov) if any of the following conditions exist:
  - 8.9.1.1. Condition A - The selected Bidder 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.
  - 8.9.1.2. Condition B - The selected Bidder 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.
  - 8.9.1.3. Condition C - The selected Bidder is a public company and required by Security and Exchange Commission (SEC) regulations to submit an annual financial audit.
- 8.9.2. If Condition A exists, the selected Bidder(s) 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 Bidder'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.
- 8.9.3. If Condition B or Condition C exists, the selected Bidder(s) shall submit an annual financial audit performed by an independent CPA within 120 days after the close of the selected Bidder's fiscal year.
- 8.9.4. Any selected Bidder 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 Bidder is high-risk.
- 8.9.5. In addition to, and not in any way in limitation of obligations of the resulting Contract(s), it is understood and agreed by the selected Bidder(s) that the selected Bidder(s) shall be held liable for any state or federal audit exceptions and shall return to the Department all payments made under the resulting Contract(s) to which exception has been taken, or which have been disallowed because of such an exception.

## **9. APPENDICES TO THIS SOLICITATION**

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

### **9.2. Appendix B – Transmittal Letter, Bidder Information, and Bid Sheet**

### **9.3. Appendix C – Confidentiality Statement**

### **9.4. Appendix D – Equipment List**

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.**

<b>1.1 State Agency Name</b>  New Hampshire Department of Health and Human Services		<b>1.2 State Agency Address</b>  129 Pleasant Street Concord, NH 03301-3857	
<b>1.3 Contractor Name</b>  		<b>1.4 Contractor Address</b>  	
<b>1.5 Contractor Phone Number</b>  (   )   -	<b>1.6 Account Number</b>  	<b>1.7 Completion Date</b>  Select a Date	<b>1.8 Price Limitation</b>  
<b>1.9 Contracting Officer for State Agency</b>  Nathan D. White, Director		<b>1.10 State Agency Telephone Number</b>  (603) 271-9631	
<b>1.11 Contractor Signature</b>  <div style="text-align: right;">Date:</div>		<b>1.12 Name and Title of Contractor Signatory</b>  	
<b>1.13 State Agency Signature</b>  <div style="text-align: right;">Date:</div>		<b>1.14 Name and Title of State Agency Signatory</b>  	
<b>1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)</b>  <div style="display: flex; justify-content: space-between;"> <span>By:</span> <span>Director, On:</span> </div>			
<b>1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable)</b>  <div style="display: flex; justify-content: space-between;"> <span>By:</span> <span>On:</span> </div>			
<b>1.17 Approval by the Governor and Executive Council (if applicable)</b>  <div style="display: flex; justify-content: space-between;"> <span>G&amp;C Item number:</span> <span>G&amp;C Meeting Date:</span> </div>			

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 Contractor Initials \_\_\_\_\_  
 Date \_\_\_\_\_

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**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.

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Contractor Initials \_\_\_\_\_

Date \_\_\_\_\_

**Do Not Return****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

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Contractor Initials \_\_\_\_\_

Date \_\_\_\_\_



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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.

**Do Not Return**

Contractor Initials \_\_\_\_\_

Date \_\_\_\_\_

Do Not Return

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

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**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.

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Exhibit A - Revisions to Standard Contract Provisions

Contractor Initials \_\_\_\_\_

Date \_\_\_\_\_

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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.*

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Contractor Initials \_\_\_\_\_

Vendor Name

Page 1 of 1

Date \_\_\_\_\_

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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.*

VENDOR NAME

Exhibit C

Contractor Initials \_\_\_\_\_

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Page 1 of 1

Date \_\_\_\_\_

Rev. 01/08/19

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**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

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Exhibit D**

- 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**

Vendor Initials \_\_\_\_\_

Date \_\_\_\_\_

**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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Exhibit E – Certification Regarding Lobbying

Vendor Initials \_\_\_\_\_

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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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Exhibit F**

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:**Do Not Return**

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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.

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Exhibit G

Vendor Initials \_\_\_\_\_

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations  
and Whistleblower protections

6/27/14  
Rev. 10/21/14

Page 1 of 2

Date \_\_\_\_\_

**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**

Exhibit G

Vendor Initials \_\_\_\_\_

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations  
and Whistleblower protections

6/27/14  
Rev. 10/21/14

Page 2 of 2

Date \_\_\_\_\_

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**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:

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Vendor Initials \_\_\_\_\_

Date \_\_\_\_\_

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New Hampshire Department of Health and Human Services



## Exhibit I

## **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, Title XIII, 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.

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3/2014

Exhibit I  
Health Insurance Portability Act  
Business Associate Agreement  
Page 1 of 6

Contractor Initials \_\_\_\_\_

Date \_\_\_\_\_

Do Not Return

## New Hampshire Department of Health and Human Services



## Exhibit I

- 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

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3/2014

Contractor Initials \_\_\_\_\_

Date \_\_\_\_\_

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New Hampshire Department of Health and Human Services



## Exhibit I

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:
- o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - o The unauthorized person used the protected health information or to whom the disclosure was made;
  - o Whether the protected health information was actually acquired or viewed
  - o 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 (I). 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

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## Exhibit I

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

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## Exhibit I

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.

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- 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) I, 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

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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:

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**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: _____

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## 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

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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

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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

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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

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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.).

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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

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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.

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## DHHS Information Security Requirements



- 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

Do Not Return

V5. Last update 10/09/18

Exhibit K  
DHHS Information  
Security Requirements  
Page 8 of 9

Contractor Initials \_\_\_\_\_

Date \_\_\_\_\_

Do Not Return

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

**Exhibit K**

**DHHS Information Security Requirements**

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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

Do Not Return

V5. Last update 10/09/18

Contractor Initials \_\_\_\_\_

Date \_\_\_\_\_



## APPENDIX B

### Transmittal Letter, Vendor Information, and Bid Sheet

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

Address: \_\_\_\_\_

To Dean B. Fancy:

Telephone: 603-271-9610

Email: Dean.B.Fancy@dhhs.nh.gov

To Whom It May Concern:

[Insert name of signor: \_\_\_\_\_], on behalf of [insert name of business submitting the Bid \_\_\_\_\_] (collectively referred to as "Bidder") hereby submits an offer as contained in the written Bid submitted herewith ("Bid") to the State of New Hampshire in response to RFB-2023-NHH-03-BUILD Building Automation Systems Maintenance and Repair Services, in complete accordance with RFB-2023-NHH-03-BUILD Building Automation Systems Maintenance and Repair Services.

\_\_\_\_\_ Is authorized to legally obligate \_\_\_\_\_  
Print Signor Name Complete Name of Entity  
Submitting Bid

Bidder attests to the fact that:

1. The Bidder has reviewed and agreed to be bound by RFB-2023-NHH-03-BUILD Building Automation Systems Maintenance and Repair Services.
2. The Bidder has not altered any of the language or other provisions contained in the RFB document.
3. The Bidder accepts terms, conditions, and general instructions stated in Mandatory Business Specifications, Contract Terms, Conditions and Penalties.
4. The Bid is effective for a period of one hundred eighty (180) days from the Bid submission deadline of December 22, 2022.
5. The prices the Bidder has quoted in the Bid were established without collusion with other vendors.
6. The Bidder has read and fully understands this RFB.

\_\_\_\_\_ (Bidder Signature)





**QUALIFICATION OF BIDDER (OPTIONAL)**

The Bidder must be able to demonstrate that they can provide the services listed within the Request for Bids. The Bidder shall provide as references at least two (2) clients for which they have provided similar services over the period of the last five (5) years.

Name of Client: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Name of Client: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Name of Client: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**BIDDER'S NAME AND ADDRESS**

Complete Name of Entity Submitting Bid:

Complete Address:

Telephone Number:

\_\_\_\_\_

**BIDDER'S CONTACT PERSON**

Name: Title

TEL. # \_\_\_\_\_ FAX # \_\_\_\_\_ EMAIL: \_\_\_\_\_

**BIDDER'S REMITTANCE ADDRESS**

\_\_\_\_\_

\_\_\_\_\_

TEL. # \_\_\_\_\_ FAX # \_\_\_\_\_ EMAIL: \_\_\_\_\_



New Hampshire Department of Health and Human Services  
Building Automation Systems Maintenance and Repair Services

Table B-1		
Line	Cost Bid	
	Description of Service	Line Cost
1	Bi-Weekly Service Cost: \$_____per visit	Bi-Weekly Service Cost X 25 \$_____
2	Semi Annual Service Cost: \$_____per visit	Semi Annual Service Cost X 2 \$_____
3	Emergency Service Calls (during normal business hours*): Labor Cost: \$_____per hour with a _____hour minimum	Emergency Service Calls (during normal business hours*) X Minimum hours X 10 \$_____
4	Emergency Service Calls (outside of normal business hours*): Labor Cost: \$_____per hour with a _____hour minimum.	Emergency Services Calls (outside of normal business hours*) X Minimum hours X 10 \$_____
5	Other Costs (Attach separate page with description and explanation for Other Costs, if any.) Total Other Costs \$_____	Other Costs per Year** \$_____
6	Annualized Cost Bid (Total of Line Cost Column for Lines 1-5): \$_____	

\*Normal business hours are from 7:00 AM to 3:30 PM, Monday through Friday, excluding holidays for State Employees.

\*\* Divide Total Other Costs from Line 5, Description of Service, by 4 to equal Other Costs per Year.

Authorized Signor's Name Printed: \_\_\_\_\_

Authorized Signor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

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



## Appendix C

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# *NEW HAMPSHIRE HOSPITAL* *STATEMENT OF CONFIDENTIALITY*

The logo for New Hampshire Hospital, featuring a stylized blue figure with arms raised, next to the text "NEW HAMPSHIRE HOSPITAL" in blue and green.

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Your work at New Hampshire Hospital may cause you to unintentionally see or overhear confidential health information about a patient. Each patient at New Hampshire Hospital has a right to confidentiality, and to the privacy of their clinical information. That right extends to the fact of their hospitalization. Any information (spoken or in writing) that identifies, potentially identifies, or is about a specific patient may be shared among individuals that have a need to know and only insofar as it is necessary for the patient's treatment or in the course of professional education. In addition, this information must be kept secure at all times, may not be placed in or recorded by personal electronic hardware or software, and shall be protected from any potential breach. Under no other circumstances may information be shared unless an authorization is given by law, by the patient/legal representative, or when a clear medical emergency exists.

All those having a relationship with New Hampshire Hospital (students, consultants, contractors and volunteers) are under equal obligation to treat as confidential and to use safeguards to keep secure, any information they may have access to or acquire, by any means, about a patient or former patient. Any breach of confidentiality is a serious offense, violates the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and may be grounds for legal action or termination of a business relationship.

I, \_\_\_\_\_, have read, understand and  
(Print name)  
agree to abide by the provisions of this statement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed



**New Hampshire Department of Health and Human Services  
Building Automation Systems (BAS) Maintenance  
and Repair Services**

**Appendix D**

**EQUIPMENT LIST**

Digital controls which are monitored in the Acute Psychiatric Services (APS) building are known variously in the industry as Direct Digital Controls (DDC), Building Automation System (BAS) or Energy Management System (EMS).

This is a Johnson Controls Facility Explorer Building Automation System (BAS). Equipment includes the following, not intended as an exact count, but an approximation of the magnitude of the system:

1. Four (4) Facility Explorer (FX80) Controllers.
2. Three (3) Network Control Engines (NCE).
3. Two (2) FX20 (Facility Explorer) controllers.
4. Seven (7) Extended Digital Controllers (DX 9100).
5. Four (4) Field Equipment Controllers (FEC).
6. One (1) AS-UNT111-1 field controller.
7. Five (5) PCG Controllers.
8. One (1) PCX Controller 9.
9. Two hundred ninety-four (294) VAV (variable air volume) boxes and eighty four (84) VAV Modular Assembly (VMA) boxes (most with reheat and those on the perimeter zones also having associated perimeter heat zones; some having occupant-set thermostats and some having remote set transmitters).
10. Five (5) air handling units with preheat and final chilled water coils, supply and return fans, variable drives, mixed air controls and economizers.
11. Five (5) boilers, two steam and three heating hot water.
12. One (1) makeup air unit with heating and mixed air controls.
13. One (1) two-cell cooling tower with bypass control valves and variable speed motors.
14. Hydronic Solar Panels and Domestic Hot Water System.
15. Bypass control on chilled water.
16. Static pressure control on air handling units.
17. High and low temperature alarm points on equipment and buildings.
18. Six (6) remote transitional housing buildings on campus with heating, ventilation and air-conditioning (HVAC) systems which are network-connected to APS, having boilers, furnaces, and direct expansion cooling systems.