

January 28, 2008

REQUEST FOR PROPOSALS

**EVALUATING ADDITIONAL OPPORTUNITIES
FOR ENERGY EFFICIENCY
IN NEW HAMPSHIRE**

To Prospective Bidder:

The New Hampshire Public Utilities Commission (Commission) is seeking proposals from qualified firms or individuals to provide consulting services for energy efficiency programs.

Pertinent dates and information:

1. Proposals must be received at the Commission prior to 4:30 p.m. on Tuesday, February 19, 2008.
2. A Bidders' Conference Call will be held at 12:00 noon. on Monday February 11, 2008. The Bidders' Conference Call will provide interested firms an opportunity to seek clarification of the requirements of this RFP, to the extent practicable. To participate in the Bidders' Conference Call, potential bidders must notify ChristiAne Mason of their intent to bid in writing (mail or email) at the address below no later than 4:30 p.m. on Friday, February 8, 2008. Call-in information will be provided to the designated contact specified in the notice of intent to bid.
3. Direct inquiries and submit proposals to:

ChristiAne Mason
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429
Tel: (603) 271-2431 Fax: (603) 271-3878
Christiane.mason@puc.nh.gov

Except as provided herein, bidders or prospective bidders are not permitted to communicate with the Commission or its staff, the OCA, or the staff of the 6 regulated electric and gas utilities with regard to this RFP until after the selection of the vendor is announced.

4. Follow-up conferences/interviews will be scheduled as needed.
5. An Evaluation Team consisting of Commission personnel will be established to evaluate bidder responses to this bid proposal in consultation with the OCA and the 4 electric and 2 natural gas utilities regulated by the Commission.

I. INTRODUCTION

In accord with its responsibility to monitor and evaluate the core electric energy efficiency programs funded by the System Benefits Charge and to oversee gas utility energy efficiency programs, and in order to help inform the prospective planning of energy efficiency programs in New Hampshire, the New Hampshire Public Utilities Commission is seeking expert consulting services to evaluate the potential for cost-effective energy efficiency investments in the residential, small commercial, medium/large commercial and industrial classes in New Hampshire. This will involve: researching applicable technologies; estimating energy savings for the relevant technologies; estimating the cost of installing relevant technologies; determining the eligible market; surveying customers to determine what factors affect the adoption of energy efficiency measures and/or act as significant barriers to the implementation of cost effective energy efficiency measures; calculating the overall technical, economic and achievable energy efficiency potential; and identifying the types of additional “market help” beyond the current programs needed to overcome barriers to adoption. Consideration must also be given to the level of efficiency that can reasonably be expected to be achieved in the absence of existing efficiency programs.

Energy efficiency measures should include all measures that reduce electrical and natural gas energy usage (expressed in kWh or therms) as well as those that reduce peak electric and natural gas demand. While the primary focus of this study is on electricity and natural gas, potential savings of propane and fuel oil are to be included to the extent that they are complementary to significant potential electrical efficiency savings or would qualify for CO₂ Emissions Offsets under the Regional Greenhouse Gas Initiative (RGGI) Model Rule. For example, evaluations of: building envelope improvements; measures that improve passive solar performance or utilize active solar heating; and HVAC appliance efficiencies that reduce electrical air conditioning loads and/or materially reduce electrical loads that vary with heating load; should be performed. This study should also estimate potential reductions or avoidance of carbon dioxide emissions from on-site combustion of natural gas, propane or fuel oil in a manner consistent with the RGGI Model Rule for CO₂ Emissions Offset Projects and characterize cost effective programs that would capture such savings that would not be expected to be realized in the absence of such programs. Consideration should also be given to energy efficient technologies and programs that may increase electric use but reduce overall energy consumption and CO₂ emissions such as geothermal heat pumps or solar hot water systems that displace gas, propane or fuel oil use.

This RFP will be granted to one firm, or a team of firms, with such expertise to provide assistance as needed, for the period commencing on or about March 3, 2008, with a draft report to be submitted by June 30, 2008, and a final report due no later than August 1, 2008. The firm(s) must show expertise in on-site and telephone data collection, technical understanding of both residential and commercial efficiency measures as well as strong data analysis and forecasting abilities.

II. SCOPE OF WORK

The purpose of this undertaking is to evaluate electric, natural gas, and related propane and fuel oil energy efficiency potential in New Hampshire. The selected vendor(s) is expected to execute the following major tasks.

- Analyze the current saturations and penetrations of energy efficiency equipment and practices in each end-use sector (residential, medium/large commercial, small commercial and industrial) for both the new construction/time dependent as well as retrofit markets;
- Produce an up-to-date list of currently available and soon to be commercially available technologies which may play a part in future efficiency programs;
- Based on survey results, review of past studies and program participation to date, estimate customer participation rates/levels by program based on different payback/incentive levels. Define and analyze significant barriers that customers face when investing in additional energy efficiency;
- Develop, by sector, a simplified end-use model of state electricity and natural gas consumption and peak demand. Each utility will provide necessary sector data, for example, sales by sector, peak load by sector, etc.;
- Estimate for each of the four retail electricity providers and two natural gas distribution companies, using the end-use model developed, the technical potential for electricity, natural gas and related propane and fuel oil savings over the following 10 years. Compare the estimates of technical potential to the forecast of overall state consumption as a reasonableness check;
- Estimate the economic potential for energy efficiency savings and the budget required to achieve that potential for each of the four retail electricity providers and two natural gas distribution companies. The economic potential is defined as the portion of the technical potential that is cost effective according to the economic criteria currently used to determine energy efficiency program cost-effectiveness (subject to update, clarification and refinement as part of Step 1 in the process outlined below). The current cost-effectiveness criteria derive from the “Report to the New Hampshire Public Utilities Commission On Ratepayer-Funded Energy Efficiency Issues in New Hampshire, Docket No. DR 96-150, From the New Hampshire Energy Efficiency Working Group, Submitted on July 6, 1999,”¹ pages 14-18 in particular, as amended by Attachment C of the 2008 Core Energy Efficiency filing approved by Order No. 24,815, 2008 Core Energy Efficiency, Docket DE 07-106.² See also, “Avoided Energy Supply Costs in New England: 2007 Final Report, August 10, 2007” by Synapse Energy Economics, Inc.³
- Estimate the achievable potential for energy efficiency savings and the budget required to achieve that potential for each of the four retail electricity providers and two natural gas distribution companies. The achievable potential is defined as that portion of the economic

¹ Available at [http://www.puc.nh.gov/Electric/96-150%20%20NH%20Energy%20Efficiency%20Working%20Group%20Final%20Report%20\(1999\).pdf](http://www.puc.nh.gov/Electric/96-150%20%20NH%20Energy%20Efficiency%20Working%20Group%20Final%20Report%20(1999).pdf).

² Attachment C states that “[t]he use of the 15% adder to represent environmental and other benefits as recommended by the [NHEEWG] ... was discontinued because the 2007 AESC avoided costs include market-based price proxies for power plant emission of NO_x, SO₂, Mercury and CO₂.”

³ Available at <http://www.synapse-energy.com/Downloads/SynapseReport.2007-08.AESC.Avoided-Energy-Supply-Costs-2007.07-019.pdf>.

potential that is likely to be attainable under alternative funding scenarios based on an estimate of market acceptance, backed-up by survey research and consideration of past participation levels;

- Evaluate the extent to which past and current energy efficiency programs have captured the achievable potential;
- Provide an analysis of the sensitivity of realized energy efficiency savings to differences in resource levels (i.e., staffing, incentives, marketing, etc.) of energy efficiency programs. This analysis also should estimate the likely level of energy efficiency investment, absent the current model which employs System Benefits Charge funding, and the associated achievable potential;
- Recommend modifications to program and measure offerings that would increase the likelihood of achieving the identified potential.

The selected vendor(s) will also be expected to perform the following subsidiary tasks.

- Collect all data on cumulative savings for the life of the past efficiency measures/programs for each company. Work with each of the six utilities to compile specific information on the efficiency opportunities that have been implemented, being careful to separate retrofits from new construction. Review relevant program evaluation studies that have been conducted in recent years;
- Review relevant energy codes and standards that are currently in place and those likely to be enacted. Note that, in New Hampshire, the 2006 IECC became effective on August 17, 2007. For simplicity, the consultant can assume that the local building code will not change beyond that level but other national standards will likely change. Assume new construction meets minimum code requirements, although that may not actually be the case. Increases in penetrations of new technologies such as plasma TVs and conventional air cooled air conditioning should be taken into account;
- Identify specific technologies and end-use reduction strategies which provide electricity, natural gas, and related propane and fuel oil savings, taking into account the latest technologies. Commercialized technologies and (emerging) technologies that are not yet available, but expected to be commercialized within a reasonable timeframe should be considered separately. Estimate the savings (for example, including, the energy and peak reduction savings as well as associated CO₂ reductions) for various technologies and strategies, including the potential for off-peak cooling with thermal energy storage and the paybacks for each of these technologies. For technologies and strategies that shift load from peak hours to off-peak hours estimate overall energy efficiency gains and CO₂ reductions by taking into account both changes in end-use energy consumption as well as efficiency gains (reduced fossil fuel use) from the shift of electric generation, transmission, and distribution on the margin during peak hours to off-peak hours;
- Conduct phone surveys and site visits to inform equipment penetrations (age and type of AC, penetration of plasma TVs, etc.) which are relevant to the technologies and end-uses identified above. For the purposes of the proposal, assume 400 completed phone surveys and 200 completed site visits. The site visits can be reserved for commercial and industrial sectors as it is thought that phone surveys are sufficient for collecting data for residential customers. The residential sector may need to be further broken down into low income and non-low income, single-family and multi-family and by age of housing stock. The

breakdown of the residential sector has not been determined and the Commission is looking for guidance from the respondents on that issue. Determination of the income status may not be available outside the surveys to be conducted as part of this project thus that type of breakdown may not be part of the sample design. Proposals may include sampling plans that employ different sample sizes than prescribed above; however, alternative sampling plans must be accompanied by an explanation of the statistical validity of the alternative plan together with separate cost estimates for both the prescribed and alternative sampling plans;

- Refine the list of technologies and end-use reduction strategies based upon the surveys and site visits;
- Develop end-use breakdowns of total electric, natural gas, and related propane and fuel oil consumption and electric and natural gas peak demand for each sector;

Bidders are encouraged to propose different, or additional, tasks if they would achieve the same result more efficiently or effectively.

In addition, the selected vendor(s) will take the following key process steps and produce the required deliverables.

Step 1: Conduct Project Initiation Meeting

The Consultant shall conduct a project initiation meeting with the Commission, the OCA and the electric and natural gas utilities. The Consultant shall prepare an agenda for the project initiation meeting which shall be submitted to the Commission for review and approval three (3) working days prior to this meeting.

The purpose of the meeting is to:

- Review and refine the Technical Requirements, research objectives and methods, discuss pros and cons of alternative evaluation methodologies, discuss data requirements, and clarify current data availability and quality;
- Review and reconfirm the schedule for the project, including key milestone dates;
- Review, clarify and refine cost effectiveness criteria;
- Review and adjust (as necessary) the project approach outlined in the proposal; and
- Develop project management and communication protocols to ensure that the information needs of the both the Commission and the Consultant are satisfied.

The Consultant shall prepare and submit to the Commission, the OCA and electric and natural gas utilities, a detailed memorandum documenting the results of the project initiation meeting. If modifications to the memorandum are needed, the Commission will submit the request for modifications to the Consultant within five (5) working days of receipt of the memorandum. The Consultant shall incorporate the comments and changes and shall re-submit the memorandum for review and approval.

Step 2: Develop Research and Sampling Plan

The Consultant shall prepare a draft of the final research plan for the Study. The Research Plan

shall provide a detailed description of all activities required to complete the project. At a minimum, the Consultant shall include in the Research Plan complete information regarding:

- Step-by-step plans to complete the project;
- Sources of data for efficiency measures and building code information as well as information about penetrations and end-use breakdowns;
- A detailed description of the model used to calculate savings potential including algorithms used to calculate savings based on the survey findings;
- A detailed listing of all measures included in existing efficiency programs offered in the state;

A sampling plan for the phone and site surveys. The Consultant will develop the sample design for the survey portions of the research plan. The proposal must demonstrate that the sampling plan will provide adequate representation of the population by utility service area, market segment and end-use while meeting a 10% precision at a 90% confidence level.

Step 3: Refine List of Eligible Technologies to Be Included in Estimate of Technical Potential

The Consultant shall prepare and submit to the Commission, the OCA and electric and natural gas utilities a draft list of all the efficiency technologies to be included in the evaluation of technical potential including, for each measure, estimates of typical savings and usage per customer, square foot, kW or kWh, therms, etc. The list will be approved by the Commission following consultation with the OCA and electric and natural gas utilities before advancing to the next stage of research.

Step 4: Design Survey Instruments and Execute Surveys

The Consultant should design the phone and on-site surveys to collect data on measure, technology and end-use penetrations to support estimates of savings potential. Questions should be linked to the technologies and measures identified in Task 3. In addition, surveys should also assess:

- the likelihood of participating in future programs at different incentive levels;
- past participation history;
- reasons for not participating in programs in the past;
- past program satisfaction;
- program or incentive changes necessary to enhance future participation.

Surveys should be executed over a period of 4-8 weeks. Results should be kept in an electronic format that the Commission, OCA and electric and natural gas utilities can use for future analyses.

Step 5: Develop Estimates of Savings Potential

Using the information collected, the Consultant should use its model to estimate the total available technical savings potential over the next 10 years and the cost to achieve that level of savings. The Consultant should then determine economic potential savings using payback

criteria. Finally, the Consultant should determine achievable potential at varying levels of incentives and utility marketing efforts using the survey results and other research combined with the economic potential estimates. These results should be checked or trued up against historical and forecasted consumption to make sure the savings potential comports with the level of total sales.

Step 6: Recommend Appropriate Program Changes

The Consultant will make recommendations based on the information collected for this project and its knowledge of program implementation to identify steps necessary to attain the levels of market penetration that the estimates above predict are achievable.

Step 7: Produce Draft Report, Presentation of Findings and Final Report

The Consultant will produce a draft report of all findings. The report will be read by the Commission, the OCA and a representative of each of the electric and natural gas utilities for initial feedback. Comments will be provided within two weeks of receiving the report. After receiving those initial comments, the Consultant will then make a formal presentation to the Commission, the OCA and a representative of each of the electric and natural gas utilities in person. After the presentation, the Commission, based on consultations with the OCA and representatives of each of the electric and natural gas utilities will provide comments to the Consultants. A final report will then be produced and both paper and PDF electronic format copies will be submitted to the Commission, the OCA and the electric and natural gas utilities.

III. PROPOSAL ORGANIZATION

All proposals submitted for consideration must contain the following sections:

Transmittal Letter. Bidders are required to submit a Transmittal Letter signed by an individual authorized to bind the Bidder contractually. The letter must include all of the following:

- A summary, or executive overview, of the Bidder's qualifications;
- The name, title, address and telephone number of one or more individuals who can respond to requests for additional information;
- The name, title, address and telephone number of one or more individuals who are authorized to negotiate and sign a contract for the Bidder;
- A statement describing the degree of availability to do work on short notice and the procedures for assuring such availability.

Section 1: Introduction. In this section, Bidder shall summarize its understanding of the project requirements, its approach to fulfilling them, and why it believes the Commission should select the Bidder's firm.

Section 2: Technical Discussion and Proposed Approach. Bidders are required to submit a proposed scope of services and work plan, including a description of the techniques and

procedures to be utilized to address the questions posed in the Scope of Work, including the timeframe in which they will deliver key products. Respondents are encouraged to propose a scope of services that uses New Hampshire specific data and does not rely exclusively on data from other states. The scope of service should also include a detailed description of the proposed methodology to conduct the analyses and the results that will be delivered, including, but not limited to:

- what information and type of data will be collected;
- what type of results will be produced;
- how that information will be used to produce the results;
- to what extent results will be in quantitative versus qualitative in form;
- how quantitative estimates will be made;

At a minimum, Bidder shall propose a methodology for addressing the major tasks listed in the Scope of Work. In addition to responding to the RFP as written, Bidder, if it wishes, may propose alternatives to the tasks listed in this RFP.

Section 3: Project Management Structure and Qualifications of Key Personnel. The Bidder shall provide in this section a clear description of the responsibilities each of the key personnel shall have in executing the proposed Work plan. In addition, Bidder shall include a brief description of the experience and qualification of each of the key personnel to be assigned to the Study (full resumes must be included as an appendix). Bidder shall incorporate brief bulleted descriptions of up to three relevant previous engagements for each of the key personnel. Qualifications and experience of key personnel shall rate more highly than qualifications and experience of the firm as a whole.

Section 4: Timeline, Staffing Plan, and Cost Summary. Bids are to be provided on a fixed cost price basis, including the estimated costs for each task described below. The Bidder shall provide:

- A cost summary sheet showing the total cost of the Study and Work.
- A timeline for completing the major tasks and their deliverables.
- Respondents must include a statement about the degree of their availability to do work over the period March, 2008 through July, 2008.
- The number of hours budgeted by task for each of the key personnel. Also, hourly rates for each of the contributing key personnel or employee category (analyst, engineer, etc.)
- Bidders are required to identify the specific Bidder personnel or subcontractor personnel to be assigned to each task, including the name of a Project Manager.
- Cost summaries for the proposed Work plan showing cost by task in the format shown in Attachment A.

Section 5: Corporate Qualifications and References. In this section, Bidder shall include the name and telephone number of at least three recent references for whom the Bidder's firm has completed similar studies using key personnel listed in the proposal. Please note which personnel are associated with each reference.

Section 6: Potential Conflict of Interest. Respondents must identify any potential conflict(s) of interest that may arise if such contractor were to provide consulting services under this RFP. Such information must include a brief description of the nature of the potential conflict. Conflicts include the lead consultant on the team providing direct installation services in New Hampshire.

IV. CRITERIA FOR SELECTION

Cost is a consideration but may not be the determining factor in the Commission's decision. In addition to cost, the Commission will consider the following criteria:

- 1. Quality** of the proposal in terms of organization, quality of the presentation as well as thoroughness and practicality of the proposed approach in meeting the objectives described in this RFP.
- 2. Experience** of key personnel who have successfully completed similar studies. Key areas of experience include technical experience and clear understanding of forecasting of energy efficiency potential, program delivery mechanisms and energy efficient technologies including calculation of savings.
- 3. Proposed Staffing Plan** of Bidder, including the number and type of person-hours allocated to each Task, shall be judged in terms of its appropriateness for the proposed Work plan.
- 4. Bid Amount.** The bid amount should be appropriate to the level of effort required to complete this Study and break out the bid by the main tasks identified above. Bidders should be very specific about the level of detail they plan to go into for their surveys and site visits as this will be a large part of the costs.

V. GENERAL BID CONDITIONS

1. Bids must be typed. An original and 3 copies of the bid must be submitted along with an electronic copy in PDF format. Bids that are incomplete or unsigned will not be considered.
2. The deadline for submitting bids is 4:30 p.m. on February 19, 2008. Bids must be addressed to ChristiAne Mason, New Hampshire Public Utilities Commission, 21 S. Fruit Street, Suite 10, Concord, NH 03301-2429, ChristiAne.Mason@puc.nh.gov.
3. The Commission reserves the right to reject or accept any or all bids, to reject or accept all or any part of any bid, to determine what constitutes a conforming bid, to waive irregularities that it considers not material to the bid, to award the bid solely as it deems to be in the best interest of the State, to contract for any portion of the bids submitted and to contract with more than one bidder if necessary.
4. Because bidders will propose varied approaches to address the requirements of this RFP, it is envisioned that developing a final scope of services and detailed work plan will require intensive engagement with the selected Bidder(s).

5. Bidders may submit written technical and contractual questions raised by this RFP to the contact named above no later than two (2) business days prior to the due date for Responses to this RFP. The inquiries must be in writing and delivered by e-mail. The reviewers will discuss the inquiries and if appropriate and necessary, prepare written answers and e-mail them to all Respondents registered for this RFP.
6. If the reviewers determine it is necessary to revise any part of this RFP, or to provide additional data to clarify any of its provisions, an addendum will be mailed to all Respondents who have been sent a copy of the RFP and others who have requested to be placed on the bidders list.
7. All information relating to this bid (including but not limited to fees, contracts, agreements and prices) are subject to the laws of the State of New Hampshire regarding public information.
8. Selection of the successful consultant(s) will be announced on or about March 3, 2008.
9. Any contract awarded from this Request for Proposals will expire on December 31, 2008.

VI. FORM OF CONTRACT

The terms and conditions set forth in Attachment 1 (General Provisions Agreement) are part of the proposal and will apply to any contract awarded the bidder.

Any contract resulting from this bid proposal shall not be deemed effective until it is signed by the Commission.

When responding to this Request for Proposals, please include your ability to comply with Paragraph 14, Insurance and Bond, of the General Provisions Agreement. Please note that the Commission will allow substitution of professional liability insurance for part or all of the per incident comprehensive general liability insurance coverage. In addition, excess liability insurance in an equal amount may be substituted for up to \$1,000,000 of the per incident comprehensive general liability or professional liability insurance coverage. The State reserves the right to further waive or modify the insurance requirement in Paragraph 14 based on bids presented.

AGREEMENT

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

GENERAL PROVISIONS

1. Identification and Definitions.

1.1 State Agency Name Public Utilities Commission		1.2 State Agency Address 21 S. Fruit St. Suite 10 Concord, NH 03301-2429	
1.3 Contractor Name		1.4 Contractor Address 7	
1.5 Account No.	1.6 Completion Date	1.7 Audit Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency Thomas B. Getz, Chairman		1.10 State Agency Telephone Number 271-2431	
1.11 Contractor Signature		1.12 Name & Title Of Contractor Signature	
1.13 Acknowledgment: State of _____, County of _____ On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal]			
1.13.2 Name & Title of Notary Public or Justice of the Peace			
1.14 State Agency Signature(s)		1.15 Name/Title of State Agency Signor (s) Thomas B. Getz, Chairman	
1.16 Approval by Department of Personnel (Rate of Compensation for Individual Consultants) By: _____ Director, On: _____			
1.17 Approval by Attorney General (Form, Substance and Execution) By: _____ Assistant Attorney General, On: _____			
2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED: The State of New Hampshire, acting through the agency identified in block 1.1 (the "State"), engages contractor identified in block 1.3 ("the Contractor") to perform, and the Contractor shall perform, that work or sale of goods, or both, identified and more particularly described in EXHIBIT A incorporated herein (the "Services").			
3. EFFECTIVE DATE: COMPLETION OF SERVICES. 3.1 This agreement, and all obligations of the parties hereunder, shall become effective on the date it is signed by the contracting officer of the Public Utilities Commission (the "Effective Date"). 3.2 If the date for the commencement in Exhibit A precedes the Effective Date all services performed by Contractor between the commencement date and 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 be under no obligation to pay the contractor for any costs incurred or services performed; however that if this Agreement becomes effective all costs incurred prior to the effective date shall be paid under the terms of this Agreement. All services must be completed by the date specified in block 1.6.			

4. **CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding anything in this agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability of funds, and in no event shall the State be liable for any payments hereunder in excess of such available funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the account identified in block 1.5 in the event funds in that account are reduced or unavailable.

5. CONTRACT PRICE: LIMITATION ON PRICE: PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in Exhibit B, incorporated herein.

5.2 The payment 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 RSA 80:7 through 7-C or any other provision of law.

5.4 Notwithstanding anything 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 to block 1.8 of these general provisions.

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to civil rights and equal opportunity laws. In addition, the vendor shall comply with all applicable copyright laws.

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

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

7. PERSONNEL

7.1 The performance of the Services shall be carried out by employees of the Contractor. 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 The Contractor shall not hire, and shall permit no 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 has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

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.

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 ("Events of Default")

8.1.1 failure to perform the Services satisfactorily or on schedule; or

8.1.2 failure to submit any report required hereunder; or

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

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

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

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; and

8.2.3 set off against any other obligations that may be owed to the Contractor any damages the State suffers by reason of any Event of Default; and

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

8.2.5 Information Technology Contracts. The Contractor's and the States monetary liability to one another shall not exceed two times the total contract price, and shall not include consequential damages. This limitation shall not apply to Contractor's indemnification obligations under Paragraph 13 of the General Provisions (Form P-37) or the following:

(a) death or bodily injury and physical damage to real or intangible personal property;

(b) misappropriation or infringement of any intellectual property including but not limited to any patent or copyright or any unauthorized use of any trade secret;

(c) losses accruing to any and all contractors, subcontractors, materials, men, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies to Contractor in connection with the performance of this Agreement;

(d) personal injury;

(e) disclosure of confidential information; or

(f) failure to meet applicable statutes, regulations, codes or guidelines.

This provision shall not be subject to any modification; however, the State may modify the cap on liability, presently set at two times the contract price for a particular project and any such modification shall appear in the Request for Proposal.

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

9. DATA: ACCESS; CONFIDENTIALITY; PRESERVATION.

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

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

9.3 Confidentiality of data shall be governed by RSA 91-A or other existing law. Disclosure pursuant to a right to know request shall require prior written approval of the State.

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

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

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

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

14. INSURANCE AND BOND.

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

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per incident; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 of these general provisions, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than 10 days after written notice thereof has been received by the State.

15. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that event, or any subsequent Event. No express failure of 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 default on the part of the Contractor.

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, above

17. **AMENDMENT.** This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto.

18. **CONSTRUCTION OR AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire Successors and assigns.

19. **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.

20. **SPECIAL PROVISIONS.** The additional provisions set forth in EXHIBIT C hereto are incorporated as part of this Agreement.

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