

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EMPLOYMENT SECURITY
BANKING SERVICES FOR PROCESSING STATE AND FEDERAL
UNEMPLOYMENT COMPENSATION FUNDS**

RFP NHES-2023-01

Section 1 – Overview and Schedule

A. Executive Summary

The New Hampshire Department of Employment Security, hereinafter referred to as “NHES” or “Agency”, is seeking proposals to obtain banking services for processing State and Federal unemployment compensation funds. Respondents may be a single banking institution or an association of more than one banking institution, but must be authorized to do business in New Hampshire with suitable in-network locations throughout the State of New Hampshire, as defined below. The intent of this RFP is to enable NHES to process State and Federal funds used in the operation of the Unemployment Compensation Program, and to provide for convenient service to the individuals served by the Agency. In furtherance of these objectives, the Respondent must provide in-network locations within reasonable proximity to NHES’ twelve (12) Local Offices located in the cities and towns of Berlin, Claremont, Concord, Conway, Keene, Laconia, Littleton, Manchester, Nashua, Portsmouth, Salem, and Somersworth. “In-network locations” is defined as a system of ATM and teller locations at which NHES customers may present NHES benefit checks for payment or electronic access cards for cash withdrawal without any charge, whether or not they are account holders. As referenced above, “reasonable proximity” is defined as no more than 50 miles from each NHES office location listed above and as further described in Appendix A.

B. Schedule

The following table provides a Schedule of Events for this RFP through contract finalization and Notice to Proceed. The Agency reserves the right to amend this Schedule at its sole discretion and at any time through a published Addendum.

EVENT	DATE	LOCAL TIME
RFP Released to Proposers	02/02/2023	
Proposer Inquiry Period Ends	02/07/2023	4:00 PM EST
Final Agency Responses to Proposer Inquiries	02/09/2023	4:00 PM EST
Proposers Submit Proposals	02/17/2023	4:00 PM EST
Estimate Timeframe for Proposer Oral Presentations and Interviews (if applicable)	TBD	TBD
Estimated Notification of Selection and Begin Contract Negotiations	TBD	TBD

Section 2 – Description of Agency and Programs Served

A. Introduction

NHES provides unemployment compensation and reemployment services to the public at twelve (12) offices located throughout New Hampshire. The Unemployment Compensation Program provides income replacement to workers who are temporarily unemployed through no fault of their own. State and/or Federal funds are used to support unemployment benefit payments. Pursuant to NH RSA 282-A, NHES is responsible for the collection of employer unemployment tax contributions and for the payment of unemployment benefits utilizing two separate accounts: a “Benefit Account” from which benefit payments are issued and a “Clearing Account” through which unemployment tax contribution collections and/or refunds are processed. In addition, NHES requires a third account to be known as a “Revolving Fund Account.”

B. Employer Contributions

The funds used to pay most unemployment benefits are provided by subject employers in the State of New Hampshire (approximately 52,226 employers). Employers pay unemployment tax contributions based on the first \$14,000 (current taxable wage base amount) paid to each individual employee annually, and those payments are deposited into the Clearing Account. Employer unemployment tax contributions are due four times each year, on or before the last day of the month following the close of the calendar quarter.

Since employers pay unemployment tax contributions only on the first \$14,000 of wages for each employee annually, the heaviest volume of funds is processed during the first and second quarters of each calendar year. During the twelve-month period ending on June 30, 2022, a total of 43,268 items representing checks totaling \$130,301,414 and a total of 24,166 items representing electronic fund transfers (EFT) totaling \$21,396,380 were processed and deposited into the Clearing Account, with an average daily balance in the amount of \$584,436. NHES currently receives unemployment tax contributions from employers by paper checks and EFT transactions via the NHES on-line WEBTAX application. NHES utilizes remote deposit scanners to scan and deposit checks. NHES also receives EFT payments to the Clearing Account from the US Treasury under the Treasury Offset Program.

One requirement of the Unemployment Compensation Program is to have funds wire transferred from the Clearing Account to the State’s Unemployment Trust Fund Account, maintained by the United States Treasury Department in Washington, DC, not later than two business days from the date of deposit. Daily wire transfers are performed by the State’s Unemployment Trust Fund Treasurer. In addition to the checks deposited, approximately 854 checks per year are written against the Clearing Account.

Through the normal process associated with the Clearing Account, the balance in the account will accumulate an earnings credit which shall be applied against the cost of maintaining the Clearing Account.

Any cost in excess of balance earnings credit shall be invoiced to NHES – Fiscal Management Section on a monthly basis and will be paid from administrative funds outside of the Clearing Account.

NHES does not currently offer debit/credit card payment services but plans to offer the opportunity to employers and claimants to utilize these services at some future date. Pricing for such debit/credit card payment services should be provided in Appendix B – Cost Proposal, along with other cost related items.

C. Payment of Unemployment Benefits

Unemployment insurance claimants are paid benefits once per week for each week of eligibility. Unemployment benefit payments are currently provided by NHES in the form of paper check and EFT drawn against the Benefit Account. During the twelve-month period ending on June 30, 2022, a total of 17,457 checks were written to pay \$8,946,750 in unemployment benefits. Approximately 84,593 EFT transactions were processed to pay \$41,864,813 in unemployment benefits for the same period. The average daily balance of the Benefit Account for the same period was \$74,978. The current ratio of paper checks to EFTs is approximately 17/83. The overall volume of activity in the Benefit Account fluctuates depending on the unemployment rate in the State.

The largest source of deposits into the Benefit Account is wire and ACH transfers from the State's Unemployment Trust Fund Account maintained by the US Treasury Department in Washington, DC. The US Treasury wire transfers funds directly to the Benefit Account daily. Other sources of deposits include Federal program funds as well as benefit overpayment recoveries received from claimants. NHES also receives EFT payments to the Benefit Account from the US Treasury under the Treasury Offset Program.

A compensating balance is maintained in the Benefit Account, and the earnings credit on that balance shall be applied against the cost of maintaining the Benefit Account. Any cost in excess of compensating balance earnings credit shall be invoiced to NHES – Fiscal Management Section on a monthly basis and will be paid from administrative funds outside of the Benefit Account.

NHES does not currently offer but plans to implement electronic access cards (EAC) as a means of unemployment benefit payment at some future date. Pricing for such electronic access card services should be provided in Appendix B - Cost Proposal, along with all other cost related items.

D. General/Regulatory Banking Requirements

The Respondent must agree to enter into a separate collateralization agreement to cover all funds in excess of the FDIC insured limit. The collateralization agreement must include a provision to periodically adjust the collateralized amount to reflect changes in the amount of funds deposited in the Banking Institution.

Because of federal regulations found in the Cash Management Improvement Act (CMIA), NHES draws funds from the Unemployment Trust Fund Account in the US Treasury in accordance with a check

clearance pattern established in the Federal CMIA agreement. While this requirement is intended to be interest neutral, it creates the possibility, however slim, that there may not be sufficient funds in the Benefit Account to cover all checks presented for clearance. In such a case, NHES would be able to cover any shortfall once notified by the Respondent as part of the regular morning reporting on the account balances. The Respondent must agree to provide overdraft protection for the Benefit Account in the event there is a short-term overdraft and agree never to refuse to cash a valid NHES benefit check.

The Respondent must be willing to cover the overdraft without imposing the standard per check fee, by proposing a fee system based on the cost for covering the overdraft plus an agreed upon number of basis points over the average Federal Funds Rate for the previous seven days. Any overdraft costs incurred must be included on the monthly invoice to NHES for payment from administrative fund sources.

As stated previously, a compensating balance is maintained in the Benefit Account, and the earnings credit on that balance shall be applied against the cost of maintaining the Benefit Account. In the event that Benefit Account compensating balance earnings credit exceeds the costs in any given month, the excess earnings credit is to be carried forward as a credit against the future month's service charges. Any cost in excess of compensating balance earnings credit shall be invoiced to NHES – Fiscal Management Section on a monthly basis and will be paid from administrative funds outside of the Benefit Account. Additionally, costs in excess of Clearing Account balance earnings shall be invoiced to NHES – Fiscal Management Section on a monthly basis and will be paid from administrative funds outside of the Clearing Account. The selected Respondent will be compensated for the services provided to NHES for any costs in excess of compensating balance earnings credit for the Benefit Account and Clearing Account. The average balance of approximately \$10,000 maintained in the Revolving Fund Account should be sufficient to cover the service charges associated with that account.

Section 3 – Proposed Scope of Work

The Respondent must be able to provide the particular services requested within this RFP, as well as all usual and customary banking services for the Clearing Account, Benefit Account, Revolving Fund, and Non-UCTF accounts as well as any additional accounts to be added. In responding to the RFP, Respondents must be able to confirm their capacity to meet the following specifications for the performance of services:

- A. Respondent will provide NHES on-line access to information contained within its accounts. On-line banking system access shall enable NHES to view on-line balances and posted transactions, initiate stop payments/voids of checks, initiate wire transfers, initiate EFT/ACH batches, initiate transfers between NHES accounts, verify payment statuses, obtain check copies for up to 180 calendar days as well as other customary banking activities. Respondent will provide the necessary software and training for on-line banking system.

- B. Respondent will provide on-line access to daily summary activity reports, daily detail activity reports, and daily check return files of the Benefit Account, Clearing Account, Revolving Fund Account, and Non-UCTF accounts as well as any additional accounts to be added as noted below:
- i. Daily Summary Report: Daily reports to include the following summarized information for each NHES account: date of report, opening ledger amount, closing ledger amount, opening available amount, closing available amount, sweep closing balance, total float amount, 1 day float amount, 2 or more days float amount, number of credits, total credit amount, number of debits, total debit amount, grand total credit less grant total debit amount, total debit less wire transfer and charge-backs; total debit (without return items) amount, and total checks paid amount.
 - ii. Daily Detail Reports: Daily reports to include details of all transactions. Details separated by NHES account shall include but are not limited to those found under Daily Check Return file below plus dishonored checks and failed EFTs. EFT (ACH/FedWire) details such as originator, amount, effective date, sender, sender's banking institution, sender's address, reference number, recipient name, etc. shall also be included.
 - iii. Daily Check Return File: Data for each check includes the bank account number, check number, check amount and clear date. Data containing check information must be provided in a machine readable format that is suitable for import into third-party database systems (e.g. Oracle).
- C. Respondent will enable NHES to transfer check and EFT data files daily to the Respondent (both electronically via secure means (SFTP) and via on-line banking software) and also provide the ability to securely retrieve data electronically: a daily checks paid file, a daily void check file and a daily rejected check/EFT file for the purpose of uploading data to our UI benefit and tax systems. Data containing this information must be provided in a machine readable format that is suitable for import into third-party database systems (e.g. Oracle).
- D. Respondent will not charge any fees to non-account holders presenting NHES checks for payment or EACs for cash withdrawal at any in-network location.
- E. Respondent will wire transfer funds from the Clearing Account to the US Treasury Department as instructed by NHES. Respondent will take all reasonable steps to assure that checks deposited into the Clearing Account are available for transfer within one deposit day.
- F. Respondent will post funds transferred from the US Treasury Department to the Benefit Account on the same day they are transferred.
- G. Respondent will process Wires to the Internal Revenue Service and EFT debit/credit batches as needed. Respondent will process EFT batches to / from employers and claimants. Respondent will post EFTs on effective date provided in the transmitted file.

- H. Respondent will prepare the ETA-8413, Income-Expense Analysis, UC Fund, Benefit Account (see Appendix C for sample form), and the ETA-8414, Income-Expense Analysis, UC Fund, Clearing Account (see Appendix D for sample form) and similar detailed banking transactions reports for the non-UCTF accounts according to instructions provided by NHES, and forward both reports to NHES not later than 10 calendar days after the close of each month.
- I. Respondent will provide a semi-monthly reconciliation of the Clearing Account, Benefit Account, Revolving Fund Account, and Non-UCTF accounts as well as any additional accounts to be added within 10 calendar days after the end of the reconciliation period. Images of cashed checks (front and back) must be provided semi-monthly for all accounts. Data containing check information must be provided in a machine readable format that is suitable for import into third-party database systems (e.g. Oracle). Software and necessary training must also be provided for independent query, review and printing of single or multiple check images. Data may be provided either through secure electronic data transfer (e.g. SFTP, HTTPS) or physical media (e.g. CD/DVD).
- J. Respondent will provide Full (a/k/a Payee) Positive Pay services on the Benefit, Clearing and non-UCTF Accounts including same-day Positive Pay and teller-line Positive Pay with the ability to set a default decision.
- K. Respondent will notify NHES immediately if it finds an error in the daily deposit to NHES accounts. Respondent will research discrepancies and provide timely documentation if changes are made to any account.
- L. Respondent must debit the correct checking account when a check and/or EFT is returned for insufficient funds. If the wrong account is debited, the Respondent will be responsible for making the necessary corrections to the account upon discovering or when notified by NHES.
- M. Following receipt of signed forgery affidavits from NHES, the Respondent will credit the appropriate NHES account for the amount of the forged check. It will be the Respondent's responsibility to investigate and obtain restitution in the amount of the forged check.
- N. Respondent will credit the appropriate account for the amount of any check cashed for which a Stop Payment/Void Order had been previously issued. It will be the Respondent's responsibility to obtain restitution of these funds.
- O. Respondent will accept on-line cancellations of stop payments and lift the stop payment from the check number the same day the cancellation is received. Respondent will resolve any issues if the cancellation is not lifted.
- P. Respondent will not honor NHES checks that are older than 6 months (stale-dated). If a stale-dated check is cashed, the Respondent will credit the appropriate account. It will be the Respondent's responsibility to obtain restitution of these funds.

- Q. Respondent will provide all carbonless deposit slips and check stock at no charge (approximately 100 checks per year for Benefit Account, 100 checks per year for Clearing Account and 50 checks per year for Revolving Account).
- R. Respondent will enter into a separate collateralization agreement to cover all funds in excess of the Federal Deposit Insurance Corporation (FDIC) insured limit.
- S. Respondent will provide two (2) check scanners for electronic check processing/deposits.
- T. Respondent will provide NHES the ability to block unauthorized debit/credit transactions on its accounts.
- U. Respondent will notify NHES immediately of any known or suspected security breach pursuant to applicable State and Federal laws.
- V. Respondent will propose a solution for NHES to consider and implement should it choose to make debit/credit card payment services available.
- W. Respondent will propose a solution for NHES to consider and implement should it choose to utilize electronic access cards (EAC) as a means to make unemployment insurance benefit payments.
- X. Respondent will provide overdraft protection for NHES accounts.

The proposal must include a detailed listing of each cost or costs to be charged for services delineated in this RFP, as well as the current earnings rate, what that rate is based on, and the frequency with which the rate is customarily changed. Banking costs to be charged that are not listed Appendix B must be detailed in the “Additional Costs to be Charged” section of Appendix B.

Section 4 – Process for Submitting a Proposal

A. Proposal Submission, Deadline, and Location Instructions

Proposals submitted in response to this RFP must be received by NHES, no later than the time and date specified in the Schedule of Events section, herein. Proposals may be delivered by U.S. Mail, Delivery Service, or In Person. Proposals may not be submitted via email. Proposals must be addressed to:

**State of New Hampshire
Department of Employment Security
Erik Bal, Counsel
Legal Section
45 South Fruit Street
Concord, NH 03301-4857**

Proposals must be clearly marked as follows:

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EMPLOYMENT SECURITY
RESPONSE TO RFP NHES-2023-01**

Unless waived as a non-material deviation in accordance with Section 6B, late submissions will not be accepted and will be returned to the proposers unopened. Delivery of the Proposals shall be at the Proposer's expense. The time of receipt shall be considered to be when a Proposal has been officially documented by the Agency, in accordance with its established policies, as having been received at the location designated above. The Agency accepts no responsibility for mislabeled mail or mail that is not delivered or undeliverable for whatever reason. Any damage that may occur due to shipping shall be the Proposer's responsibility.

All Proposals submitted in response to this RFP must include of at least one (1) original and five (5) clearly identified copies of the Proposal, including all required attachments.

B. Proposal Inquiries

All inquiries concerning this RFP, including but not limited to, requests for clarifications, questions, and any changes to the RFP, shall be submitted via email to the following RFP designated Points of Contact:

TO: Erik.P.Bal@nhes.nh.gov
CC: Denise.I.Hopkins@nhes.nh.gov

Inquiries must be received by the Agency's RFP Points of Contact no later than the conclusion of the Proposer Inquiry Period (see Schedule of Events section, herein). Inquiries received later than the conclusion of the Proposer Inquiry Period shall not be considered properly submitted and may not be considered.

The Agency intends to issue official responses to properly submitted inquiries on or before the date specified in the Schedule of Events section, herein; however, this date is subject to change at the Agency's discretion. The Agency may consolidate and/or paraphrase questions for sufficiency and clarity. The Agency may, at its discretion, amend this RFP on its own initiative or in response to issues raised by inquiries, as it deems appropriate. Oral statements, representations, clarifications, or modifications concerning the RFP shall not be binding upon the Agency. Official responses by the Agency will be made only in writing by the process described above.

C. Restriction of Contact with Agency Employees

From the date of release of this RFP until an award is made and announced regarding the selection of a Proposer, all communication with personnel employed by or under contract with the Agency regarding this

RFP is forbidden unless first approved by the RFP Points of Contact listed in the Proposal Inquiries section, herein. Agency employees have been directed not to hold conferences and/or discussions concerning this RFP with any potential contractor during the selection process, unless otherwise authorized by the RFP Points of Contact. Proposers may be disqualified for violating this restriction on communications. This restriction shall not serve to limit communications with the current NHES banking vendor that are unrelated to this RFP or RFP process.

D. Validity of Proposal

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

Section 5 - Content and Requirements for a Proposal

Proposals submitted by the Respondent should be concise. Respondents are requested to address required RFP items in no more than 15 pages. Please be sure to follow this format when developing a proposal. A transmittal letter signed by the Banking Institution President or other authorized official must accompany the proposal. Proposals shall follow the following format and provide the required information set forth below:

1. Company Background/Qualifications – Provide a brief description of the Respondent’s organization, including size, asset base, and the location of the main branch or branches which will service the accounts, as well as any additional proposed in-network locations throughout the State. Please include a list of Banking Institution personnel who will be assigned to the accounts and the specific areas for which they will be responsible. Include management, technical support and fraud investigation staff. Respondent shall also:
 - a. Provide written assurance that the Respondent will comply with the requirements found in Section 3 – Proposed Scope of Work, and all other requirements outlined in this RFP.
 - b. Respond to each requirement in the RFP, in the order listed in the RFP and explain how it intends to meet each requirement. It will not be sufficient to simply indicate that the Respondent will comply. Proposals that do not adequately address the items listed in Section 3 – Proposed Scope of Work, may be rejected.
 - c. Follow the format found in Appendix B – Cost Proposal, being sure to include any detail and other necessary service costs not already listed.
 - d. Outline how the Respondent would provide electronic access card and debit/credit card processing services to NHES. Indicate whether the services are performed by the Respondent itself or by a third-party administrator.
 - e. Describe how NHES will earn credits on funds deposited in the Benefit, Clearing and Revolving Fund accounts, including what the credits are based on and how they are calculated. Please provide a prior 12-month history of the earnings credit rate. What is the Respondent’s expectation for the rate in the next 24 months? What are the payment terms if the costs exceed the earnings credit? Understanding any costs which exceed earnings credit cannot be paid from the Benefit and/or Clearing Accounts, how does the Respondent propose to charge NHES for the costs, if any?

- f. Outline how the Respondent will collateralize the Department’s deposits in excess of the FDIC insured amount.
 - g. Outline how the Respondent will provide overdraft protection for NHES accounts.
 - h. Explain Respondent policies and procedures regarding wire transfers, posting of deposits, float, overnight deposit of funds, hours of operation, account reconciliation, dishonored checks, check clearance, stop payment orders and forged checks, positive pay, and all deadlines which will impact the delivery of services, such as deposit deadlines and ACH/wire transfer deadlines.
 - i. Provide an overview of information security policies and procedures. Describe how the Respondent will ensure compliance with all applicable State and Federal requirements for information security.
 - j. Provide a Disaster Recovery Plan to ensure a sufficient level of fail-safe and disaster recovery operations so that disruptions to services are transparent to claimants and employers. Respondent must ensure uninterrupted banking services for all electronic services.
2. References – Provide three references who can speak to the Respondent’s performance of services similar or identical to those requested in this RFP. Extra points are available for public sector references. See Section 6.
3. Cost Proposal – Appendix B must contain all of the necessary cost proposal elements required under this RFP.

Section 6 – Evaluation of Proposals

A. Criteria for Evaluation and Scoring

Each responsive Proposal will be evaluated and considered with regard to the following criteria:

The Agency will use a scoring scale of 100 points, a maximum of 45 points awarded based on the Price Proposal, a maximum of 55 points awarded for the Technical Proposal, which will be distributed as set forth in the table below.

CATEGORIES	POINTS
TECHNICAL PROPOSAL with the following potential maximum scores for each Technical Proposal category;	55
1. Adequate staff resources, experience, qualifications, knowledge and competence to provide requested level of services	10
2. Demonstrates capacity to perform all services required by the RFP	10
3. Best meets NHES and our customers' needs (including suitable statewide branch locations and no fee charged to non-account holder to cash NHES checks)	20
4. References from clients for whom services have been performed, with 5 points reserved for public sector client references	10 Plus 5
PRICE PROPOSAL POTENTIAL MAXIMUM POINTS	45

The Agency will select a Proposer based upon the criteria and standards contained in this RFP and from applying the weighting in this section as described in more detail below.

Should the Agency be unable to reach agreement with the selected Proposer during Contract discussions, the Agency may then undertake Contract discussions with the second preferred Proposer and so on, or the Agency may reject all proposals, cancel this RFP, or solicit new Proposals under a new acquisition process.

B. Planned Evaluations

The Agency plans to use the following process:

- Initial screening to ensure that the Proposals are in compliance with submission requirements;
- Preliminary evaluation of the Proposals;
- Oral interviews and Product Demonstrations (if necessary);
- Final Evaluation of Technical Proposals and scoring;
- Review of Price Proposals and final scoring; and
- Select the highest scoring Proposer and begin contract negotiation.

C. Initial Screening

The Agency will conduct an initial screening step to verify Proposer compliance with the technical submission requirements set forth in the RFP and the minimum content set forth in Section 5 of this RFP. The Agency may waive or offer a limited opportunity to cure immaterial deviations from the RFP requirements if it is determined to be in the best interest of NHES and the State.

D. Preliminary Technical Scoring of Proposals

The Agency will establish an evaluation team to initially score the Technical Proposals. This evaluation team will be comprised of the Deputy Commissioner, Director of the Unemployment Compensation Bureau, Fiscal Business Administrator, Trust Fund Treasurer, Legal Counsel and other appropriate technical and/or legal staff. The Department reserves the right to call on other technical and/or legal staff as may be required for this review. The evaluation team will review the technical proposals and give a preliminary score to the technical proposals under the guidelines set forth in Section 6.

E. Oral Interviews and Product Demonstrations

If the Agency determines that it is appropriate, proposers may be invited to oral interviews and/or product demonstrations including demonstrations of any proposed automated systems or technology components. The Agency retains the sole discretion to determine whether to conduct oral interviews, with which proposers; and the number of interviews. Proposers are advised that the Agency may decide to conduct interviews with less than all responsive proposers.

The purpose of oral interviews and product demonstrations is to clarify and expound upon information provided in the written Proposals. Proposers are prohibited from altering the basic substance of their Proposals during the oral interviews and product demonstrations. The Agency may ask the Proposer to provide written clarifications of elements in their Technical Proposal regardless of whether it intends to conduct Oral Interviews.

Information gained from oral interviews and product demonstrations will be used to refine technical review scores assigned from the initial review of the Proposals.

F. Final Technical Scoring of Proposals

Following Oral Interviews, Product Demonstrations, Reference Checks and/or review of written clarifications of proposals requested by the Agency, the evaluation team will determine a final score for each Technical Proposal.

G. Price Proposal Review

The Proposer's Price Proposal will be allocated a maximum potential score of 45 points. Proposers are advised that this **is not a low bid award** and that the scoring of the price proposal will be combined with the scoring of the technical proposal to determine the overall highest scoring Proposer.

The following formula will be used to assign points for costs:

Proposer's Price Score = (Lowest Proposed Price / Proposer's Proposed Price) x Number of Points for Score

H. No Best and Final Offer

The Proposal should be submitted initially on the most favorable terms which the proposer can offer. There will be no best and final offer procedure. The Proposer should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Proposal.

I. Final Selection

The Agency will conduct a final selection based on the final evaluation of the initial proposals and begin contract negotiations with the selected Proposer.

J. Rights of the Agency in Accepting and Evaluating Proposals

The Agency reserves the right to:

- Make independent investigations in evaluating Proposals;
- Request additional information to clarify elements of a Proposal;
- Waive minor or immaterial deviations from the RFP requirements if determined to be in the best interests of the Agency and the State of New Hampshire;
- Omit any planned evaluation step if, in the Agency's sole discretion, the step is not needed;

- At its sole discretion, reject any and all Proposals at any time; and
- Open contract discussions with the second highest scoring Proposer and so on, if the Agency is unable to reach an agreement on Contract terms with the higher scoring Proposer(s).

Section 7 – Terms and Conditions Related To The RFP Process

A. RFP Addendum

The Agency reserves the right to amend this RFP at its discretion, prior to the Proposal submission deadline. In the event of an addendum to this RFP, the Agency, at its sole discretion, may extend the Proposal submission deadline, as it deems appropriate.

B. Non-Collusion

The Proposer's signature on a Proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and Work quoted have been established without collusion with other Proposers and without effort to preclude the Agency from obtaining the best possible competitive Proposal.

C. Property of the Agency

All material received in response to this RFP shall become the property of the State and will not be returned to the proposer. Upon Contract award, the State reserves the right to use any information presented in any Proposal.

D. Confidentiality of a Proposal

Unless necessary for the approval of a contract, the substance of a proposal must remain confidential until the Effective Date of any Contract resulting from this RFP. A Proposer's disclosure or distribution of Proposals other than to the Agency will be grounds for disqualification.

E. Public Disclosure

Pursuant to RSA 21-G:37, all responses to this RFP shall be considered confidential until the award of a contract. At the time of receipt of proposals, the Agency 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 for inclusion on Governor & Executive Council agenda, the Agency will post the name, rank or score of each proposer. In the event that the contract does not require Governor & Executive Council approval, the Agency shall disclose the rank or score of the Proposals at least 5 business days before final approval of the contract.

The content of each Proposer's Proposal shall become public information upon the award of any resulting Contract. Any information submitted as part of a response to this request for proposal (RFP) may be subject to public disclosure under RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP will be made accessible to the public online via the website Transparent NH (<http://www.nh.gov/transparentnh/>). Accordingly, business financial information and

proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV. **If you believe any information being submitted in response to this request for proposal, bid or information should be kept confidential as financial or proprietary information; you must specifically identify that information in a letter to the agency, and must mark/stamp each page of the materials that you claim must be exempt from disclosure as “CONFIDENTIAL”.** A designation by the Proposer of information it believes exempt does not have the effect of making such information exempt. The Agency will determine the information it believes is properly exempted from disclosure. Marking of the entire Proposal or entire sections of the Proposal (e.g. pricing) as confidential will neither be accepted nor honored. Notwithstanding any provision of this RFP to the contrary, Proposer pricing will be subject to disclosure upon approval of the contract. The Agency will endeavor to maintain the confidentiality of portions of the Proposal that are clearly and properly marked confidential. If a request is made to the Agency to view portions of a Proposal that the Proposer has properly and clearly marked confidential, the Agency will notify the Proposer of the request and of the date the Agency plans to release the records. Proposers agree that unless a Proposer obtains a court order, at its sole expense, enjoining the release of the requested information, the Agency may release the requested information on the date specified in the Agency’s notice without any further obligation to the Proposer and may not be held liable for any consequence of the release.

F. Non-Commitment

Notwithstanding any other provision of this RFP, this RFP does not commit the Agency to award a Contract. The Agency reserves the right, at its sole discretion, to reject any and all Proposals, or any portions thereof, at any time; to cancel this RFP; and to solicit new Proposals under a new acquisition process.

G. Proposal Preparation Cost

By submitting a Proposal, a Proposer agrees that in no event shall the Agency be either responsible for or held liable for any costs incurred by a Proposer in the preparation of or in connection with the Proposal, or for Work performed prior to the Effective Date of a resulting Contract.

H. Ethical Requirements

From the time this RFP 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 an RFP, 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 bidding on the RFP, or similar request for submission and every such bidder shall be disqualified from bidding on any RFP 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.

I. Challenges on Form or Process of the RFP

Any challenges regarding the validity or legality of the form and procedures of this RFP, including but not limited to the evaluation and scoring of Proposals, shall be brought to the attention of the Agency at least ten (10) business days prior to the Proposal Submission Deadline. By submitting a proposal, the Proposer is deemed to have waived any challenges to the form or procedures set forth in this RFP.

Section 8 – Contract Terms and Award

A. Award

If the State decides to award a contract as a result of this RFP process, any award is contingent upon approval of the Contract by Governor and Executive Council of the State of New Hampshire.

B. Standard Contract Terms

The Agency will require the successful bidder to execute a Not to Exceed Contract using the Standard Terms and Conditions of the State of New Hampshire which is attached as Appendix E (P-37). Any contract entered into as a result of this RFP is subject to approval by Governor & Executive Council and contingent upon continued appropriation of funding for the contract.

The successful Proposer must be prepared at the time of contract execution to provide a Certificate of Good Standing (if applicable) from the NH Secretary of State; a Certificate of Vote or notarized statement authorizing the person signing the contract to bind the company to its terms; and an insurance certificate consistent with the insurance requirements of the P-37 contract form. See Appendix E.

The Term of the Contract will be for three (3) years from the date of approval. The contract term may be extended by up to two (2) additional one (1) year terms at the sole option of the State, subject to the parties' prior written agreement on terms and applicable fees for each extended term, contingent upon satisfactory vendor performance, continued funding and Governor & Executive Council approval.

The Agency may consider modifications of this form during negotiations. To the extent that a Proposer believes that exceptions to the standard form contract will be necessary for the proposer to enter into the Agreement, the Proposer must note those issues during the Proposer Inquiry Period. The Agency will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion. If the Agency accepts a Proposer's exception the Agency will, at the conclusion of the inquiry period, provide notice to all potential proposers of the exceptions which have been accepted and indicate that exception is available to all potential proposers. Any exceptions to the standard form contract that are not raised during the proposer inquiry period are waived. In no event is

a Proposer to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this solicitation.

C. Special Terms To Be Included In A Contract Resulting From This RFP

- a. **CONFIDENTIALITY AND CRIMINAL RECORD.** Contractor and each of its employees working on NHES property will be required to sign and submit **STATEMENT OF CONFIDENTIALITY OF RECORDS FORM** and a **CRIMINAL RECORD AUTHORIZATION FORM** prior to the start of any work. There is a fee for each background check required, which must be paid by the Contractor.
- b. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS IN PRIMARY COVERED TRANSACTIONS.** Contractor certifies that the primary participant, and its principals, to the best of its knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or State agency. Contractor will inform NH Employment Security of any changes in the status regarding this statement.
- c. **AMERICANS WITH DISABILITIES ACT.** The undersigned Contractor agrees to comply with all Federal, State and Local ADA rules and regulations.
- d. **NON-DISCRIMINATION.** In connection with the furnishing of services under the Contract, the Contractor agrees to comply with all laws, regulations, and orders of federal, state, county or municipal authority which impose any obligations or duties upon the Contractor, including but not limited to civil rights laws, non-discrimination laws and equal opportunity laws. During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, disability, national origin, marital status or veteran status, and will take appropriate steps to prevent such discrimination.
- e. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT** (if applicable). For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide

that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

- f. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT** (if applicable). Contractor agrees to comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- g. **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT** (if applicable). For contracts in excess of \$150,000, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. **BYRD ANTI-LOBBYING AMENDMENT** (if applicable). For contracts in excess of \$100,000, the Contractor certifies it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award/contract.
- i. **NEVER CONTRACT WITH THE ENEMY**. Pursuant to 2 CFR 183.300, none of the funds received under contract with NHES shall be provided directly or indirectly to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- j. **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT**. Pursuant to 2 CFR 200.216, none of the funds received under contract with NHES shall be used to procure or obtain equipment, services, or systems that use(s) covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunication equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- k. **STEVENS AMENDMENT**. This contract with NHES may be supported in part or in whole by the Employment and Training Administration (ETA) of the United States Department of Labor (USDOL) as part of awards received.
- l. **TERMINATION**. Either party may terminate this agreement at any time. The party requesting termination must give the other party written notice, by certified mail, to so terminate at least sixty (60) days prior to effective date of termination.
- m. **NH CERTIFICATE OF GOOD STANDING**. Contractor must provide a **CERTIFICATE OF GOOD STANDING** from the NH Secretary of State.
- n. **VENDOR APPLICATION/ALTERNATE W-9**. In connection with this Contract, the Contractor shall have completed and filed a Vendor Application and Alternate W-9 Form with the New Hampshire Bureau of Purchase and Property.
- o. **DAVIS-BACON ACT** (if applicable). Davis-Bacon Act and Related Acts, apply to contractors and subcontractors performing on federally funded/assisted contracts in excess of \$2,000 for

construction, alteration, or repair (including painting and decorating) of public buildings or public works. Under these Acts, contractors and sub-contractors must pay laborers and mechanics prevailing wages and fringe benefits for corresponding work on similar projects in the area as determined by the Department of Labor. When there is no Davis-Bacon assignment, applicable Wage Determination is realized by using the lowest skilled craft above laborer, excluding power equipment rate.

- p.** DAMAGE (if applicable). Contractor will agree that any damage to building(s), materials, equipment and/or other property during the performance of service will be repaired at Contractor's expense. Contractor agrees to return all building(s), materials, equipment and/or property to its original or better condition and with acceptance by a representative of NHES. Contractor agrees to obtain approval of NHES representative assigned to project for any sub-contractor performing such repair work.
- q.** PAYMENT BOND/MILLER ACT (if applicable). Contractor agrees to comply with The Miller Act bond requirement and NH RSA 447:16. A payment bond, with surety satisfactory for protection of all persons supplying labor and materials in carrying out construction, alteration, or repair work provided for in the contract may be required. Amount of payment bond will equal total amount payable by terms of contract unless officer awarding contract determines, in writing, that a payment bond in that amount is impractical, in which case contracting officer will set amount of payment bond. Amount of bond will not be less than total amount of contract. A Payment Bond is required for contracts \$30,000 or greater. A Performance Bond is required for contracts totaling \$100,000 or greater.