



**State of New Hampshire
Office of Professional Licensure and Certification**

**REQUEST FOR APPLICATION
RFA-2023-BDMED-01-EXPER**

FOR

Expert Physician Consultants

December 23, 2022



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REQUEST FOR APPLICATIONS

1. Request for Services

1.1. Purpose and Overview

1.1.1. Purpose

This Request for Applications (RFA) is published to solicit applications for the provision of medical expertise to assist the Office of Professional Licensure and Certification (OPLC) staff with investigations in areas that include, but are not limited to:

- Malpractice.
- Incompetence.
- Unprofessional conduct.
- Consumer complaints.

The OPLC anticipates awarding one (1) or more contract(s) for the services in this RFA in order to develop a list of experts in specific specialties, with preference given to:

- Orthopedic Surgeons;
- Urologists; and
- Hospitalists.

1.1.2. Overview

The Board of Medicine (Board) was created by the State of New Hampshire Legislature in 1897 to ensure that all physicians had the training and skills necessary to practice safe and effective medicine for the people of the State of New Hampshire. The Board issues licenses to qualified applicants. The statutory responsibilities of the Board include, but are not limited to:

- The examination and licensing of practitioners;
- Developing ethical and other professional standards for licensees.
- Investigating allegations of misconduct.
- Developing continuing education and other requirements that demonstrate professional competence.

The mission of the New Hampshire Office of Professional Licensure and Certification is to create a regulatory environment favorable to workforce opportunities while protecting the public through efficient and economic support to New Hampshire's professional licensing boards.

When quality of care issues come to the attention of OPLC Investigators are engaged to investigate medical professionals who provided the care of the individual(s). At times, there is a need for experts in particular fields to review the cases to ensure the investigation is seen through the lens of the specialty that provided the service.



1.2. Scope of Services

- 1.2.1. The selected vendors must assist and work with the OPLC staff by providing expert consulting services in the specific area of medicine to ensure thorough investigations of quality of care issues including, but not limited to:
 - 1.2.1.1. Malpractice lawsuits.
 - 1.2.1.2. Matters of incompetence.
 - 1.2.1.3. Unprofessional conduct allegations.
 - 1.2.1.4. Consumer complaints.
 - 1.2.1.5. Other issues that may constitute violations of:
 - 1.2.1.5.1. New Hampshire Revised Statutes Annotated ([NH RSA 328-D: Physician Assistants](#);
 - 1.2.1.5.2. [NH RSA 329: Physicians and Surgeons](#); or
 - 1.2.1.5.3. The [Administrative Rules of the Board of Medicine, MED 100-600](#).
- 1.2.2. The selected vendor(s) must be available to receive electronic case files, as prepared and sent by OPLC.
- 1.2.3. The selected vendor(s) must sign an attestation that confirms no conflict of interest with the parties involved in the investigation, as assigned by OPLC.
- 1.2.4. The selected vendor(s) must review case file records which may include, but are not limited to:
 - 1.2.4.1. Office records.
 - 1.2.4.2. Responses to communications.
 - 1.2.4.3. Radiographic films.
 - 1.2.4.4. Reports from other agencies or states.
- 1.2.5. The selected vendor(s) must utilize report formats provided by the OPLC to complete investigations of providers, as appropriate. The selected vendor(s) shall:
 - 1.2.5.1. Utilize the appropriate current report format to complete investigations.
 - 1.2.5.2. Ensure reports are completed accurately and according to the requirements of the investigation being conducted.
 - 1.2.5.3. Ensure completed reports are legible and any comments are clear, concise, and objective.
 - 1.2.5.4. Provide completed reports and supporting documentation, as applicable, to the OPLC no later than forty-five (45) days after receiving case files, unless an extension of time is requested



and otherwise granted no later than thirty (30) days after receiving the case files.

- 1.2.6. The OPLC shall provide the final report to the Board for review. If the Board:
 - 1.2.6.1. Closes the case, the selected vendor(s) may submit an appropriate invoice, as specified in the payment terms.
 - 1.2.6.2. Determines the case must move forward to a hearing, the vendor(s) must be available to testify as an expert witness to the case and may submit an invoice upon the Board rendering a decision in the case, as specified in the payment terms.
- 1.2.7. Applicants must demonstrate the capacity and performance experience to meet the Scope of Services outlined in this RFA.

1.3. Compensation & Contract Value

- 1.3.1. The OPLC anticipates using Agency Funds for the resulting contract(s). The OPLC may choose to modify the source of funding contingent upon the availability of funds at the time of award.
- 1.3.2. Payment for services shall be reimbursed at a rate of \$550 per completed case.
- 1.3.3. The OPLC cannot determine how many cases or what type of Physician Expert Consultants will be requested through the term of the resulting contracts.

1.4. Contract Period

- 1.4.1. The Contract(s) resulting from this RFA are anticipated to be effective March 1, 2023 or upon Governor and Executive Council approval, whichever is later, through December 31, 2024.
- 1.4.2. The OPLC may extend contracted services for up to four (4) additional years, contingent upon satisfactory Contractor performance, continued funding, and Governor and Executive Council approval.

1.5. Mandatory Responses to RFA Questions

Vendors must identify the specialty in which they are a topic area expert. If applying for more than one area of expertise, please submit an application for each area of expertise.

- 1.5.1. **Scoring Applicant Capability** – Maximum score of 40 points.

Question 1 of 3 – Describe, in narrative form, your capability to perform the entire scope of work in this RFA, including any specialized classes, trainings and/or seminars attended.

- 1.5.2. **Scoring Applicant Peer Review Experience** – Maximum score of 25 points.



Question 2 of 3 -- Describe, in narrative form, your experience in conducting peer reviews. Include a sample summary report with redactions of any personally identifiable information.

- 1.5.3. **Scoring Applicant Experience** – Maximum score of 35 points.

Question 3 of 3 –Describe, in narrative form*, your experience in the specialty for which you are applying. Include length of service in your profession and any achievements attained.

**Please note that providing a resume or CV in place of providing a narrative answer will not suffice.*

1.6. Application Evaluation

- 1.6.1. Capability Q1 – 40 Points
- 1.6.2. Peer Review Experience Q2 – 25 Points
- 1.6.3. General Experience Q3 – 35 Points

Total Possible Points – 100 Points

1.7. Applicant Selection

- 1.7.1. The OPLC shall select the highest scoring applicant from each identified specialty.
- 1.7.2. Should there be a tie in scoring, OPLC reserves the right to decide the winning vendor for each specific specialty.

2. Notices

2.1. Exceptions

- 2.1.1. The OPLC will require the successful Applicant to execute a contract using the Form P-37, General Provisions and Standard Exhibits, which are attached as Appendix A. To the extent that an Applicant believes that exceptions to Appendix A will be necessary for the Applicant to enter into an Agreement, the Applicant must note those issues during the RFA Question Period in Section 3. Applicants may not request exceptions to the Scope of Services or any other sections of this RFA.
- 2.1.2. The OPLC will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion.
- 2.1.3. If the OPLC accepts an Applicant's exception the OPLC will, at the conclusion of the RFA Question Period, provide notice to all potential Applicants of the exceptions that have been accepted and indicate that exception is available to all potential Applicants by publication of the OPLC's responses on or about the date indicated in Section 3.
- 2.1.4. Any exceptions to the standard form contract and exhibits that are not raised by an Applicant during the RFA Question Period will not be considered. In no event is an Applicant to submit its own standard



contract terms and conditions as a replacement for the OPLC's terms in response to this solicitation.

2.2. RFA Amendment

The OPLC reserves the right to amend this RFA, as it deems appropriate, prior to the Application submission deadline on its own initiative or in response to issues raised through Applicant questions. In the event of an amendment to the RFA, the OPLC, at its sole discretion, may extend the Application submission deadline. The amended language will be posted on the OPLC website.

2.3. Application Submission

- 2.3.1. Applications must be submitted electronically to OPLC.Contracts@oplc.nh.gov and the Contract Specialist at the email address specified in Subsection 3.3.2.
 - 2.3.1.1. The subject line must include the following information: **RFA-2023-BDMED-01-EXPER-01** (email xx of xx).
 - 2.3.1.2. The maximum size of file attachments per email is 10 MB. Applications with file attachments exceeding 10 MB must be submitted via multiple emails.

2.4. Compliance

- 2.4.1. Applicants must be in compliance with applicable federal and state laws, rules and regulations, and applicable policies and procedures adopted by the OPLC currently in effect, and as they may be adopted or amended during the contract period.
- 2.4.2. The selected Contractor must meet all information security and privacy requirements as set by the OPLC.
- 2.4.3. The selected Contractor must maintain the following records during the resulting contract term where appropriate and as prescribed by the OPLC:
 - 2.4.3.1. Books, records, documents and other electronic or physical data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor.
 - 2.4.3.2. All records must be maintained in accordance with accounting procedures and practices, which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the OPLC, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the OPLC.



- 2.4.3.3. Statistical, enrollment, attendance or visit records for each recipient of services, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the OPLC to obtain payment for such services.

2.4.4. Audit Requirements

- 2.4.4.1. The Contractor is required to submit an annual audit to the OPLC if **any** of the following conditions exist:
 - 2.4.4.1.1. Condition A - The Contractor expended \$750,000 or more in federal funds received as a subrecipient pursuant to 2 CFR Part 200, during the most recently completed fiscal year.
 - 2.4.4.1.2. Condition B - The Contractor is subject to audit pursuant to the requirements of NH RSA 7:28, III-b, pertaining to charitable organizations receiving support of \$1,000,000 or more.
 - 2.4.4.1.3. Condition C - The Contractor is a public company and required by Security and Exchange Commission (SEC) regulations to submit an annual financial audit.
- 2.4.4.2. If Condition A exists, the Contractor shall submit an annual **single audit** performed by an independent Certified Public Accountant (CPA) to the OPLC within 120 days after the close of the Contractor's fiscal year, conducted in accordance with the requirements of 2 CFR Part 200, Subpart F of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.
- 2.4.4.3. If Condition B or Condition C exists, the Contractor shall submit an annual **financial audit** performed by an independent CPA within 120 days after the close of the Contractor's fiscal year.
- 2.4.4.4. Any Contractor that receives an amount equal to or greater than \$250,000 from the OPLC during a single fiscal year, regardless of the funding source, may be required, at a minimum, to submit annual financial audits performed by an independent CPA if the OPLC's risk assessment determination indicates the Contractor is high-risk.
- 2.4.4.5. In addition to, and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the OPLC all payments made under the Contract to which exception has been taken, or which have been disallowed because of such an exception.



2.5. Non-Collusion

The Applicant's required signature on the Transmittal Cover Letter for an Application submitted in response to this RFA guarantees that the prices, terms and conditions, and services have been established without collusion with other Applicants and without effort to preclude OPLC from obtaining the best possible Application.

2.6. Applicant Withdrawal

Prior to the Closing Date for receipt of Applications, an Application may be withdrawn by submitting a written request for its withdrawal to Contract Specialist identified in Paragraph 3.3.2.

2.7. Public Disclosure

- 2.7.1. Pursuant to RSA 21-G:37, the content of responses to this RFA must remain confidential until the Governor and Executive Council have awarded a contract. At the time of receipt of Applications, the OPLC will publish the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the OPLC of Administrative Services pursuant to this RFA, the OPLC will post the name, rank or score of each Applicant. Applicant's disclosure or distribution of the contents of its Application, other than to the State, will be grounds for disqualification at the State's sole discretion.
- 2.7.2. The content of each Application and addenda thereto will become public information once the Governor and Executive Council have approved a contract. Any information submitted as part of an Application in response to this RFA 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 RFA will be made accessible to the public online via the website Transparent NH (www.nh.gov/transparentnh/). Accordingly, business financial information and proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV.
- 2.7.3. Insofar as an Applicant seeks to maintain the confidentiality of its confidential commercial, financial or personnel information, the Applicant must clearly identify in writing the information it claims to be confidential and explain the reasons such information should be considered confidential. This must be done by separate letter identifying by page number and Application section the specific information the Applicant claims to be exempt from public disclosure pursuant to RSA 91-A:5. **The Applicant is strongly encouraged to provide a redacted copy of their application.**
- 2.7.4. Each Applicant acknowledges that the OPLC is subject to the Right-to-Know Law New Hampshire RSA Chapter 91-A. The OPLC shall maintain the confidentiality of the identified confidential information insofar as it is consistent with applicable laws or regulations, including



but not limited to New Hampshire RSA Chapter 91-A. In the event the OPLC receives a request for the information identified by an Applicant as confidential, the OPLC shall notify the Applicant and specify the date the OPLC intends to release the requested information. Any effort to prohibit or enjoin the release of the information shall be the Applicant's responsibility and at the Applicant's sole expense. If the Applicant fails to obtain a court order enjoining the disclosure, the OPLC may release the information on the date the OPLC specified in its notice to the Applicant without incurring any liability to the Applicant.

2.8. Non-Commitment

Notwithstanding any other provision of this RFA, this RFA does not commit the OPLC to award a Contract. The OPLC reserves the right to reject any and all Applications or any portions thereof, at any time and to cancel this RFA and to solicit new Applications under a new Application process.

2.9. Request for Additional Information or Materials

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

2.10. Liability

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

2.11. Oral Presentations and Discussions

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

2.12. Successful Applicant Notice and Contract Negotiations

If an Applicant(s) is selected, the OPLC will notify the successful Applicant(s) in writing of their selection and the State's desire to enter into contract negotiations. Until the OPLC successfully completes negotiations with the selected Applicant(s), all submitted Applications remain eligible for selection by the OPLC. In the event contract negotiations are unsuccessful with the selected Applicant(s), the evaluation team may recommend another Applicant(s). The OPLC will not contact Applicant(s) that are not initially selected to enter into contract negotiations.

2.13. Scope of Award and Contract Award Notice



- 2.13.1. The OPLC reserves the right to award a service, part of a service, group of services, or total services and to reject any and all Applications in whole or in part. A contract award is contingent on approval by the Governor and Executive Council.
- 2.13.2. If a contract is awarded, the Applicant must obtain written consent from the OPLC before any public announcement or news release is issued pertaining to any contract award.

2.14. Site Visits

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

2.15. Protest of Intended Award

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

2.16. Contingency

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

2.17. Ethical Requirements

From the time this RFA is published until a contract is awarded, no Applicant 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 Applicant that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any Applicant who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from submitting an Application to this RFA, or similar request for submission and every such Applicant shall be disqualified from submitting any Applicant or similar request for submission issued by any state agency. An Applicant 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.

3. Application Process

3.1. Overview

- 3.1.1. Application documents must be presented in the order indicated below.
- 3.1.2. Applications must conform to all instructions, requirements and contents indicated below.
- 3.1.3. The OPLC must receive the Application by the time and date specified in the Procurement Timetable in Section 3 and in the manner specified or it will be rejected as non-compliant, unless waived by the OPLC as a non-material deviation.
- 3.1.4. The OPLC will conduct an initial screening step to verify Applicant compliance with the submission requirements of this RFA. The OPLC may waive or offer a limited opportunity for an Applicant to cure immaterial deviations from the RFA requirements if it is determined to be in the best interest of the OPLC.
- 3.1.5. Late submissions that are not accepted will remain unopened and will be discarded. Submission of the Application shall be at the Applicant's expense.

3.2. Application Content

- 3.2.1. A **Transmittal Cover Letter** on the Applicant's letterhead that must:
 - 3.2.1.1. Reference, "**RFA-2023-BMED-01-EXPER-01**;"
 - 3.2.1.2. Identify the name, title, mailing address, telephone number and email address of the person authorized by the Applicant to contractually obligate the agency or individual;
 - 3.2.1.3. Acknowledge that the Applicant has read this Request for Application, understands it, and agrees to be bound by its requirements;
 - 3.2.1.4. Contain the date that the Application was submitted; and
 - 3.2.1.5. Be signed by an individual who is authorized to bind the Applicant to all statements, including services and prices contained in this Request for Application.
- 3.2.2. **Mandatory Responses** to RFA Questions in Subsection 1.5.
- 3.2.3. **Resume** of key personnel who would be primarily responsible for meeting the terms and conditions of any agreement resulting from this RFA.
- 3.2.4. **Licenses, Certificates and Permits** as required by this Request for Application.
- 3.2.5. **Current Certificate of Insurance**



3.2.6. **Three (3) references for the Applicant.** The Applicant must submit three (3) written references from individuals or organizations who have knowledge of the Applicant's capability to deliver services applicable to this solicitation. A current OPLC employee will not be considered a valid reference:

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

3.2.6.2. The OPLC may contact a reference to clarify any information.

3.2.7. **Affiliations – Conflict of Interest Statement** regarding any and all affiliations that might result in a conflict of interest. Explain the relationship and how the affiliation would not represent a conflict of interest.

3.3. Procurement Timetable and Contact Information

3.3.1. Schedule of Events

Item	Action (All times are according to Eastern Standard Time. The OPLC reserves the right to modify these dates at its sole discretion.)	Date
1.	RFA Release Date	December 23, 2022
2.	RFA Applicant Questions Submission Deadline	January 6, 2023 11:59 PM
3.	OPLC Responses to Questions Published	January 11, 2023
4.	Application Submission Deadline	January 20, 2023 11:59 PM

3.3.2. All questions and applications must be submitted electronically to:

State of New Hampshire
Office of Professional Licensure and Certification
Denise Sherburne, Contract Specialist
7 Eagle Square
Concord NH 03301
Email: Denise.M.Sherburne@oplcnh.gov
Phone: (603) 271-3052

3.3.3. From the date of release of this RFA until an award is made and announced regarding the selection of an Applicant, all communication with personnel employed by or under contract with the OPLC regarding this RFA is prohibited unless first approved by the RFA Point of Contact listed in Paragraph 3.3.2, herein. OPLC employees have been directed not to hold conferences and/or discussions concerning this RFA with



any potential contractor during the selection process, unless otherwise authorized by the RFA Point of Contact. Applicants may be disqualified for violating this restriction on communications.

3.4. Applicant's Questions and Answers

- 3.4.1. All questions about this RFA, including but not limited to requests for clarification, additional information or any changes to the RFA must be made in writing, citing the RFA page number and part or subpart, and submitted by email to the Contract Specialist identified in Paragraph 3.3.2.
- 3.4.2. The OPLC may consolidate or paraphrase questions for efficiency and clarity. Questions that are not understood will not be answered. Statements that are not questions will not receive a response.
- 3.4.3. Questions must be submitted by email; however, the OPLC assumes no liability for ensuring accurate and complete email transmissions.
- 3.4.4. Questions must be received by the deadline provided in Paragraph 3.3.1, Procurement Timetable.
- 3.4.5. Written answers to questions received will be published on the OPLC's website on or about the date indicated in Paragraph 3.3.1, Procurement Timetable.

3.5. Validity of Application

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

4. Appendices

- 4.1. Appendix A – P-37 General Provisions and Standard Exhibits (*for reference only-do not return*)**

Subject:

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS**1. IDENTIFICATION.**

1.1 State Agency Name Office of Professional Licensure and Certification		1.2 State Agency Address 7 Eagle Square Concord, NH 03301	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Telephone Number	1.6 Account Number [Type here]	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency Heather A. Kelley, Finance Director		1.10 State Agency Telephone Number (603) 271-0142	
1.11 Contractor Signature <div style="text-align: right;">Date:</div>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature <div style="text-align: right;">Date:</div>		1.14 Name and Title of State Agency Signatory Lindsey B. Courtney, Executive Director	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (<i>if applicable</i>) <div style="display: flex; justify-content: space-between;"> By: Director, On: </div>			
1.16 Approval by the Attorney General (Form, Substance and Execution) (<i>if applicable</i>) <div style="display: flex; justify-content: space-between;"> By: On: </div>			
1.17 Approval by the Governor and Executive Council (<i>if applicable</i>) <div style="display: flex; justify-content: space-between;"> G&C Item number: G&C Meeting Date: </div>			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

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

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

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

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

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

7. PERSONNEL.

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

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

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

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

9. TERMINATION.

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

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

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

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

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

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

14. INSURANCE.

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

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

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

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

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

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

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

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

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

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

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

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

EXHIBIT A

Revisions to General Provisions

1. Revisions to Form P-37, General Provisions

1.1. Paragraph 3, Effective Date: Completion of Project, is amended by adding Subparagraph 3.3 as follows:

3.3. The parties may extend the Agreement for up to four (4) additional years from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.

1.2. Paragraph 8, Event of Default: Remedies, subparagraph 8.2.3, is amended as follows:

8.2.3 Give the Contractor a written notice specifying the Event of Default and suspending payments, in whole or in part, to be made under this Agreement, until the Event of Default is cured.

Scope of Services

*Drafted as Specified in RFA-2023-FDEMB-01-FUNER,
Subsection 1.2., Scope of Services*

Payment Terms

1. This Agreement is one of multiple agreements for services described in Exhibit B, Scope of Services. ***No minimum client and service volume is guaranteed.*** The price limitation shall not exceed the amount identified in Form P-37, Block 1.8, Price Limitation for the duration of the agreement.
2. This Agreement is funded with Agency Funds.
3. The Contractor agrees to provide the services in Exhibit B, Scope of Service in compliance with funding requirements. Failure to meet the scope of services may jeopardize the Contractor's current and/or future funding.
4. Payment for services shall be made as follows:
 - 4.1. Payment shall be on an all-inclusive per case at the rate \$XXX.XX per case.
 - 4.2. The Contractor shall submit an invoice in a form satisfactory to the State by the twentieth (20th) working day of each month, which identifies and requests reimbursement for evaluations completed in the prior month.
 - 4.3. The State shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available.
 - 4.4. The final invoice shall be due to the State no later than forty (40) days after the contract Form P-37, Block 1.7 Completion Date.
5. In lieu of hard copies, all invoices may be e-mailed to oplc.accountspayable@oplc.nh.gov. Hard copy invoices may be mailed to:

Financial Director
Office of Professional Licensure and Certification
7 Eagle Square
Concord, NH 03301
6. Payments may be withheld pending receipt of required reports and/or documentation as identified in Exhibit B, Scope of Services and in this Exhibit C.
7. Notwithstanding paragraph 18 of the General Provisions P-37, changes limited to adjusting encumbrances between State Fiscal Years, may be made by written agreement of both parties and may be made without obtaining approval of the Governor and Executive Council.