



STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
OFFICE OF THE COMMISSIONER

172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

65 [Signature]

July 29, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Executive Council
State House
Concord, NH 03301

sole source

REQUESTED ACTION

Authorize the Department of Resource and Economic Development, Office of Workforce Opportunity to enter into a **sole source** memorandum of understanding (MOU) with NH Department of Education (VC#177900), Concord, NH in the amount of **\$332,671.00**. NH DOE shall use funds allocated through this MOU to focus on: (1) accelerating the state's efforts to improve the transition of adults into postsecondary training and placement in high quality jobs and (2) increase the capacity of the adult education system to align instruction to the common core state standards, effective upon Governor and Council approval through May 31, 2015. 100% Federal Funds (CFDA # 17.267)

Funding is available in account titled, Workforce Opportunity as follows for FY 2014:

	<u>FY2014</u>
03-35-35-350510-53360000-102-500731 Contract for Program Services	\$332,671.00

EXPLANATION

This is a **sole source contract** based on the federal requirement for the use of WIA Incentive Funds by only those entities responsible for carrying out WIA, Adult Education and/or Perkins Act activities within the State of New Hampshire (i.e., DRED and NH DOE). Section 503 of the Workforce Investment Act (WIA) provides for incentive grants to **reward states for successful performance in workforce and education programs**. The provisions authorizing funding for incentive grant awards are found in WIA Section 174(b)(2)(D) for workforce investment services (29 U.S.C. 2919(b)(2)(D)) and the Adult Education and Family Literacy Act (AEFLA) Section 211(a)(3) for adult education activities. NH is one of fourteen states to receive a WIA Incentive Grant for exceeding performance goals in PY2011 in both the WIA and AEFLA programs. These funds are available to the State effective July 1, 2013. To receive funds, the state WIA entity must work with the state education entity to develop a plan, which must be for only those activities authorized under WIA Title IB and/or AEFLA.

As a condition of this agreement NH DOE assumes responsibility for the specific operational and fiscal responsibilities for the purpose of expending WIA Incentive Funds consistent with WIA Incentive Grant plan required by, submitted to and approved by the USDOL. NH DOE agrees to carry out these duties consistent with all the conditions and terms of this agreement, the WIA Incentive Grant Plan for Activities, and all applicable federal and state laws, regulations and requirements.

The Attorney General's Office has approved this MOU as to form, substance and execution.

Respectfully submitted,

Jeffrey J. Rose
Commissioner

Memorandum of Understanding

Between

NH Department of Resources & Economic Development
Office of Workforce Opportunity
172 Pembroke Road, Concord NH 03301

And

The New Hampshire Department of Education
21 Fruit Street, Walker Building
Concord, NH 03301

Section I. Parties and Purpose

Section 503 of WIA provides for incentive grants *to reward states for successful performance in workforce and education programs*. The provisions authorizing funding for incentive grant awards are found in WIA Section 174(b)(2)(D) for workforce investment services (29 U.S.C. 2919(b)(2)(D)) and AEFLA Section 211(a)(3) for adult education activities. The Department of Labor's (DOL) regulations on incentive awards may be found at 20 CFR 666.200 through 666.230. Funding made available through this MOU are from the Workforce Investment Act Incentive Grant (CDFA# 17.267) and shall be used consistent with the grant application submitted to and approved by USDOL effective July 1, 2013, and in accordance with all applicable US DOL Workforce Investment Act (WIA) rules and regulations.

The NH Department of Resources and Economic Development, Office of Workforce Opportunity (DRED/OWO) is the designated state entity for the recipient of all WIA funds for the State of New Hampshire, and as such serves as the fiscal agent for WIA Incentive Funds. DRED/OWO has contracted with the New Hampshire Department of Education (DOE) for the purpose of allocating a fair share of the WIA Incentive Funds to NHDOE based on successful Program Year (PY) 2011 Performance. DOE shall use funds allocated through this MOU to focus on: (1) accelerating the state's efforts to improve the transition of adults into postsecondary training and placement in high quality jobs and (2) increase the capacity of the adult education system to align instruction to the common core state standards.

As a condition of this MOU, DOE assumes responsibility for the specific operational and fiscal responsibilities cited in this MOU, and agrees to carry out these duties consistent with all the conditions and terms of this MOU, and all applicable federal and state laws, regulations and requirements. Furthermore, DOE agrees to expend funds for only those activities authorized under the provisions of AEFLA and/or Perkins IV, and as specified in Section II (Scope of Function and Responsibilities) of this MOU. This MOU shall be

for a term beginning **upon Governor and Council approval through May 31, 2015**. It is understood that all WIA Incentive Funds will expire effective June 30, 2015, and that any funds unexpended as of this date will be recaptured by USDOL.

The purpose of this MOU is to establish the relationship between the OWO as the administrative agency of WIA funds and DOE as the sub-recipient and to identify specific operational, fiscal and monitoring responsibilities for each party to this MOU.

Nothing contained in this MOU shall be deemed to constitute a waiver of sovereign immunity of the State of New Hampshire, which immunity is hereby reserved to the State, its agencies and officials.

Both parties shall comply with the provisions of:

- 29 CFR Part 93 Restrictions on Lobbying
- 29 CFR Part 98 Government-wide Debarment and Suspension, Requirements for a Drug Free Workplace
- 29 CFR Part 37 Nondiscrimination and Equal Opportunity Requirements
- 29 CFR Part 97 Uniform Administrative Requirements for State, Local and Indian Tribal Governments (subject to the exceptions at 20 CFR Part 667-- Subpart B)
- OMB Circular A-87 Cost Principles for State, Local and Indian Tribal Governments
- 29 CFR Parts 96 and 99, Audit Requirements
- The Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611)
- Hatch Act (5 U.S.C. Subsection 1501-1508 and 7324-7328) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds
- Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 as amended (P.L. 91-616) relating to nondiscrimination on the basis of alcoholism

- Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. Section 794, 29 CFR Part 32) which prohibits discrimination on the basis of handicap
- Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. Subsection 1681-1683, and 1685 and 1686) which prohibits discrimination on the basis of sex
- The Age Discrimination Act of 1975 as amended (42 U.S.C. Section 6101-6107) which prohibits discrimination on the basis of age
- Title VI of the Civil Rights Act of 1964 (P.L. 88-352/29 CFR Part 31) which prohibits discrimination on the basis of race, color or national origin
- Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) as amended relating to nondiscrimination on the basis of drug abuse

In accordance with the Workforce Investment Act of 1998 (WIA), Federal Regulations and State Policy, both parties assure and certify that:

A. Civil Rights

- 1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 as amended, on the basis of a disability under the Rehabilitation Act of 1973 as amended and the Americans with Disabilities Act of 1990, on the basis of sex under the Title IX of the Education Amendments of 1972, or the basis of race, color, national origin or ethnicity under Titles VI of the Civil Rights Act of 1964, on the basis of alcohol abuse or alcoholism under the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 as amended, on the basis of drug abuse under the Drug Abuse Office and Treatment Act of 1972 as amended, programs and activities funded or otherwise financially assisted in whole or in part under this Act are considered to be programs and activities receiving Federal financial assistance.
- 2) No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any such program because of race, color, religion, sex, national origin, ethnicity, age, handicap, political affiliation or belief, citizenship status as a lawfully admitted immigrant authorized to work in the United States, drug or alcohol abuse, or alcoholism.

- 3) With respect to terms and conditions affecting, or the rights of individuals who are participants in activities supported by funds provided under WIA, such individuals shall not be discriminated against because of their participant status.
- 4) Participation in programs and activities financially assisted in whole or in part under WIA shall be open to citizens and nationals of the United States, lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, and other individuals authorized by the Attorney General to work in the United States.

B. Equal Employment Opportunity

As a condition to the award of financial assistance under WIA from the Office of Workforce Opportunity, both parties (Office of Workforce Opportunity and DOE) assure, with respect to operation of the WIA funded program or activity, that they will comply fully with the nondiscrimination and equal opportunity provisions of Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972 as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 37.

Section II. Scope of Function and Responsibilities

In order to ensure the proper execution of the responsibilities held at both the state and local level, the OWO and DOE will maintain systems to assure the appropriate use and integrity of WIA funds as administered by each party. Consistent with the intent of this MOU, DOE agrees to foster the ongoing development of a working partnership between OWO and DOE staff.

The Bureau of Adult Education, NH Department of Education will utilize the funds provided from this grant to focus on: (1) accelerating the state's efforts to improve the transition of adults into postsecondary training and placement in high quality jobs and (2) increase the capacity of the adult education system to align instruction to the common core state standards.

This funding will allow the state to substantially increase the number, scope and focus of existing transition programs and to provide a significant increase in the professional development activities accessed by local program teaching staff in Adult Basic Education, ESOL and Adult High School programs.

The funding in the transitions area will allow the state adult education system to rapidly expand their connections with the seven community colleges in the areas of curriculum

alignment for math and writing, the responsibility for remedial/development education courses and expansion of the number of adult education system graduates going into the community college system. Not only will the activities above provide greater access and success for students going into the community college system but they will enhance the potential for those adult education students to obtain future employment in high quality jobs.

The professional development activities will focus on upgrading the skills of local instructional staff in light of the movement to the common core state standards and the implementation of a new high school equivalency test in January, 2014. Initial efforts in this area will focus on the skills of math and writing teachers throughout the adult education system, followed by additional training in other academic areas.

The focus on the areas of college and workplace transitions and professional development around the common core state standards are relatively new to the adult education field. Success in both of these program activities will ultimately lead to improving the performance of the adult education system and more importantly the success of individual students and they move forward into both academic institutions and the world of work.

As a result of this grant it is expected that the Adult Education system will show significant improvement in the core performance indicators related to post-secondary enrollment, getting and keeping quality jobs and academic measures.

The Bureau of Adult Education, along with the NH Community College System has established a working group to address all of the transition issues mentioned above. This group was convened by the Governor in early spring, 2013 and continues with her mandate.

Section III. Pricing / Payments

This cost reimbursement MOU for services between NH Department of Education (DOE) and NH Department of Resources & Economic Development, Office of Workforce Opportunity (OWO) will be for a term beginning upon Governor and Council approval, and terminating on May 31, 2015.

Total payments under this MOU shall not exceed **\$332,671**. **This amount is further delineated as follows: \$26,614.00 in administration funds and \$296,057.00 in program funds.** These funds shall be used to support activities for the purpose of accelerating the state's efforts to improve the transition of adults into postsecondary training and placement in high quality jobs and, increase the capacity of the adult education system to align instruction to the common core state standards.

These funds are made available through Workforce Investment Act Incentive Grant (CDFA# 17.267) and shall be used in accordance with all applicable US DOL Workforce Investment Act (WIA) rules and regulations.

All funds must be fully expended by May 31, 2015.

Administration funds shall not exceed \$26,614.00, and should be expended proportionate to actual total expenditures.

Upon presentation of an invoice for services as outlined in Section II, the amount of the invoice shall be payable to DOE in accordance with the State 30 day minimum payment schedule.

Invoices shall be sent to: Office of Workforce Opportunity
Attn: Tammy Vaillancourt
172 Pembroke Road
PO Box 1856
Concord, NH 03302-1856

Payment shall be made to: NH DOE
Attn: Susan Folsom
21 Fruit St., Suite 20 Walker Building
Concord, NH 03301

Financial performance and reporting requirements:

1. Invoices are due monthly and by the 30th of the month following the month end date
2. All invoices must reference the MOU number, the name of the funding source (i.e., WIA Incentive Grant Funds) and the funding CFDA number (i.e., 17.267).
3. Itemized costs must be reported as administration or program costs.
4. DOE shall maintain sufficient documentation on file in their offices to support invoices, and make such documentation available for review by authorized OWO staff and/or its auditors.
5. DOE shall adhere to all cash management policies and procedures stipulated in the body of this MOU, and all other applicable WIA federal, State and OWO cash management regulations and policies.

6. DOE is solely responsible for paying to the OWO any and all disallowed costs associated with the misappropriation of federal funds. Disallowed costs may not be paid with federal funds, regardless of the funding source.

Section IV. Other Provisions

1. This MOU may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
2. The parties hereto do not intend to benefit any third parties and this MOU shall not be construed to confer any such benefit.
3. In the event of an early termination of this MOU for any reason other than the completion of the Services, DOE shall deliver to the Office of Workforce Opportunity, not later than forty-five (45) days after the date of termination, an invoice for services rendered which shall be paid by the Office of Workforce Opportunity within ten (10) business days.
4. In connection with the performance of the services, the Office of Workforce Opportunity shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Office of Workforce Opportunity, including, but not limited to civil rights and equal opportunity laws.
5. Both Agencies, through their Commissioners, will attempt to resolve any disputes, and if they can't the dispute shall be submitted to the Attorney General and the Attorney General's decision shall be final.
6. Any one or more of the following acts or omissions of the Office of Workforce Opportunity or DOE shall constitute an event of default hereunder ("Events of Default"):
 - o failure to pay timely; or
 - o failure to submit any report required hereunder; or
 - o failure to perform any other covenant or condition of this MOU.
7. Upon the occurrence of any Event of Default, the non-defaulting party may take any one, or more, or all, of the following actions:
 - o give the defaulting party written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the

Event of Default is not timely remedied, terminate this MOU, effective two (2) days after giving notice of termination; and

- give the defaulting party written notice specifying the Event of Default and suspend all services under this MOU until such time as the Event of Default has been cured; and
 - treat the MOU as breached and pursue any of its remedies at law or in equity, or both.
8. This MOU may be amended, waived or discharged only by an instrument in writing signed by the parties hereto.
9. To facilitate the performance of this MOU, the following positions are designated as liaisons between DOE and OWO:

For DOE:

Art Ellison
NH DOE
21 Fruit Street, Suite 20, Walker Building
Concord, NH 03301

For OWO:

Jackie Heuser, Director (603) 271-7275
Office of Workforce Opportunity
172 Pembroke Road
Concord, NH 03302

10. Neither party shall be liable for delays caused by fire, accident, labor dispute, war, insurrection, riot, act of government, act of God, or any other cause reasonably beyond its control; but each party shall use all reasonable efforts to minimize the extent of any such delay.
11. Neither party may assign its rights or delegate its obligations hereunder without the prior written consent of the other party, which consent will not be unreasonably withheld, provided that DOE may assign its rights to receive monies due and becoming due.
12. Neither party shall be deemed to have waived any right hereunder unless such waiver is in writing and executed by a duly authorized officer of the waiving party. No waiver by either party of any right hereunder shall constitute a waiver of any right on any other occasion.

13. The invalidity or unenforceability, in whole or in part, of any provision, term or condition hereof shall not affect the validity or enforceability of the remainder of such provision, term or condition or of any other provision, term or condition.
14. This MOU shall be construed in accordance with the laws of the State of New Hampshire and is binding upon and inures to the benefits of the parties and their respective successors and assigns.
15. Captions of the sections of this MOU are for reference purposes only and do not constitute terms or conditions hereof. The parties acknowledge that they have thoroughly reviewed this MOU and bargained over its terms. Accordingly, neither party shall be considered responsible for the preparation of this MOU, which shall be deemed to have been prepared jointly by both parties. The provisions of the MOU allocate the risks between the parties. The terms and conditions included herein reflect this allocation of risk, and each provision herein is part of the bargained for consideration of this MOU.
16. The General Provisions of this MOU as written constitute the entire MOU between the Office of Workforce Opportunity and DOE, and supersedes all prior MOUs and understandings.

**New Hampshire
Department of Education**

**NH Department of Resources &
Economic Development** *DM*

Virginia M. Barry 7/15/13
Virginia M. Barry, Ph.D. Date
NHDOE Commissioner

Jeffrey J. Rose 8/1/13
Jeffrey J. Rose, Date
DRED Commissioner

Patricia Beethu 7/15/13
Witness

Leah M. Lavin 7/29/13
Witness

Approved by the Attorney General (Form, Substance and Execution)

Date: 8/7/13

By: 

Approved by the Governor and Council

Date: _____

Item # _____

