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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES

BUSINESS ADMINISTRATION  
STATE MILITARY RESERVATION  
4 PEMBROKE ROAD  
CONCORD, NEW HAMPSHIRE 03301-5652

David J. Mikolaities, Major General  
*The Adjutant General*

Warren M. Perry  
*Deputy Adjutant General*

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June 25, 2020

His Excellency Governor Christopher T. Sununu  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

The Department of Military Affairs and Veterans Services respectfully requests approval to enter into a contract agreement with Absolute Resource Associates, LLC (vendor code #159136), 124 Heritage Avenue #16, Portsmouth, New Hampshire, 03801, in the amount of \$37,530.00, to provide Hazardous Waste and Environmental Sample Analysis services from the date of Governor and Executive Council approval through June 30, 2023. **100% Federal Funds.**

Funds are available in the SFY 2021 operating budget and contingent upon availability and continued appropriations in SFY 2022 and SFY 2023 with the authority to adjust between fiscal years through the Budget Office if needed and justified.

**02-12-12-120010-2262000 - Military Affairs and Veterans Services – ARNG Environmental Resources**  
**102-500731- Contracts for Program Services**

	<u>FY '21</u>	<u>FY '22</u>	<u>FY '23</u>	<u>Total</u>
ARNG Environmental Resources	\$12,510.00	\$12,510.00	\$12,510.00	\$37,530.00

**EXPLANATION**

This contract is to provide for hazardous waste evaluation and other environmental testing, such as wastewater discharges at various state-owned facilities of the Department of Military Affairs and Veterans Services. The New Hampshire Code of Administrative Rules, Env-HW 502.01 requires generators of waste to determine if their waste is hazardous.

Analytical testing is one of the two specified methods allowed to evaluate waste streams and is required for mixed and process wastes. Wastewater discharge permits with various municipalities, including the City of Concord, require testing of discharges to ensure compliance with permit requirements.

The federal funds to pay for this Agreement are provided to the Department of Military Affairs and Veterans Services by the National Guard Bureau pursuant to a Federal-State Master Cooperative Agreement for the mutual support of the New Hampshire Army National Guard. The cost of this contract shall be reimbursed to the State by the Federal government at a rate of 100%. In the event that federal funds are not available, general funds will not be requested to support this program.

The contract has been approved for form, substance and execution by the Attorney General's Office.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David J. Mikolaities", is written over the printed name.

David J. Mikolaities  
Major General, NH National Guard  
The Adjutant General

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES  
HAZARDOUS WASTE AND ENVIRONMENTAL SAMPLE ANALYSIS 2020-2023  
STATE MILITARY RESERVATION**

**BID/MANAGEMENT SUMMARY**

The Department of Military Affairs and Veterans Services solicited for these hazardous Waste and Environmental Sample Analysis 2020-2023 for State Military Reservation by posting a Request for Proposal (RFP) on the State of New Hampshire Bureau of Purchase and Property website on April 20, 2020.

The agency's Procurement Technician contacted nine vendors via email with information on how to locate the RFP on the state's Purchase and Property website. On May 7, 2020, the agency received one response to the RFP from Absolute Resource Associates. The proposal was considered qualified and a panel of three raters from the agency moved forward with a comprehensive and impartial evaluation of the submission.

The Absolute Resource Associates proposal for Hazardous Waste and Environmental Sample Analysis 2020-2023 was evaluated by "Best Value for the State". The Best Value determination included a composite of performance factors and cost using the criteria of the following items: accreditation, subcontracting, Reporting, Delivery and Pick-up Method/Time and Cost. A composite of the individual criteria score was developed. Absolute Resource Associates cost were considered reasonable and had 80.5% compliance with all evaluation criteria.

Absolute Resource Associates, LLC. (ARA), provides New Hampshire and Department of Defense Environmental Laboratory Accreditation Program laboratory services to the New England region. Located in Portsmouth, New Hampshire, ARA provides timely pick-up and delivery of samples and sample containers facilitating meeting regulatory requirements for hazardous waste determinations and Defense Logistics Agency disposal contract time lines. ARA experienced staff and customer service orient business will be instrumental in meeting current and future regulatory testing requirements of the Department.

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES  
HAZARDOUS WASTE AND ENVIROMENTAL SAMPLE ANALYSIS 2020-2023  
STATE MILITARY RESERVATION**

**RATING SUMMARY OF QUALIFIED BID**

The panel scored the qualified bid:

	Evaluator Scores			Composite	Cost
	ZLB	KLW	KO	Score	
Absolute Resource Associates	58	57	59	174	\$12,510.00

Following results from scoring:

1. ARA achieved a score of 174 out of 216 for an 80.5% compliance with all evaluation criteria.
2. ARA Cost of \$12,510 is considered reasonable. Cost for individual analysis are also considered reasonable.
3. The only analysis that increased significantly was total halogens which is being subcontracted and was expected.

Pricing

The base year bid price provided by Absolute Resource Associates:

\$12,510 per year for each year of the contract.

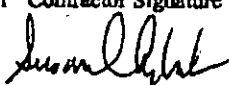
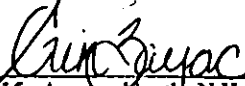
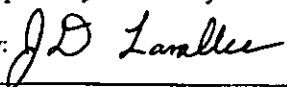
\*\*\*Agency is moving forward with vendor because vendor is well qualified for service contract and lapse of service coverage would occur if agency didn't move forward\*\*\*

**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 DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES		1.2 State Agency Address 4 PEMBROKE ROAD CONCORD, NH 03301	
1.3 Contractor Name Absolute Resource Associates, LLC. (V#159136)		1.4 Contractor Address 124 Heritage Avenue, Unit 16 Portsmouth, NH 03801	
1.5 Contractor Phone Number (603)436-2001	1.6 Account Number 010-012-22620000-500731	1.7 Completion Date 6/30/2023	1.8 Price Limitation \$37,530.00
1.9 Contracting Officer for State Agency Erin M. Zayac, Administrator of Business Operations		1.10 State Agency Telephone Number (603)225-1361	
1.11 Contractor Signature  Date: 5/10/20		1.12 Name and Title of Contractor Signatory Susan Sylvester President	
1.13 State Agency Signature  Date: 6/2/20		1.14 Name and Title of State Agency Signatory Erin M. Zayac, Administrator of Business Operations	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 6/25/20			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

**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 not 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.



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES  
HAZARDOUS WASTE AND ENVIRONMENTAL SAMPLE ANALYSIS 2020-2023  
STATE MILITARY RESERVATION**

**EXHIBIT A, SPECIAL PROVISIONS**

**SUBJECT: Hazardous Waste and Environmental Sample Analysis 2020-2023**

The following special provisions modify, change, delete or add to the General Provisions of the agreement. Where any part of the General Provisions is modified or voided by these Special Provisions, the unaltered provisions for that part shall remain in effect.

1. This agreement is funded, wholly or in part, by monies of the Federal Government of the United States; therefore, all parts and provisions of this agreement that refer to contract which are funded in any part by the federal government are applicable to this agreement.

2. The term "Contracting Officer" as used in this agreement shall mean the State's Contracting Officer as is specified at item #1.9 of the General Provisions of this agreement or his/her authorized representative. No individual shall be an authorized representative of the Contracting Officer unless he or she is so appointed in writing by the Contracting Officer, in which case such written appointment shall be provided to the Contractor.

3. The Contractor acknowledges and agrees that this Agreement was entered into following the coronavirus disease 2019 (COVID-19) outbreak. The Contractor agrees that to the extent the COVID-19 outbreak, or any federal, state or local orders, regulations, rules, restrictions, or emergency declarations relating to COVID-19, disrupt, delay, or otherwise impact the Scope of Services to be performed by the Contractor as set forth in EXHIBIT B of this Agreement, any such disruption, delay, or other impact was foreseeable at the time this Agreement was entered into by the Parties and does not excuse the Contractor's performance under this Agreement. The Contractor agrees that any such impact, including any disruption to supply chains, workforce reductions, delays or interruptions in performance, or other effects on businesses, are not the fault of the State and the Contractor may not seek damages against the State for any such impacts.

If the Contractor experiences or anticipates any such COVID-19-related impacts to this Agreement, the Contractor shall immediately notify the Contracting Officer. In the event of any COVID-19-related impact or anticipated impact to this Agreement, the Contracting Officer shall have the right to temporarily modify, substitute, or decrease the Services, without the approval of the Governor and Executive Council, upon giving written notice to the Contractor. The State's right to modify includes, but is not limited to the right to modify service priorities, including how and when Services are delivered, and expenditure requirements under this Agreement so as to achieve compliance therewith, provided such modifications are within the Scope of Services and cost limitations of this Agreement. By exercising any of the rights described within this subsection, the State does not waive any of its right under this Agreement.

In the event that a modification by the State under this subsection would result in a reduction of Services that cannot be supplemented during the remaining term of this Agreement with either replacement or substituted services of substantially similar value, the Parties shall submit an amendment to this Agreement with a commensurate reduction in the price. In order to facilitate reconciliation of services performed under this Agreement, the Contractor shall submit weekly reports detailing the following for any service not fully performed pursuant to the terms of the Agreement:

- 1) The services required to be performed under the terms of this Agreement as written;
- 2) The services actually performed;
- 3) Any replacement or substituted services performed with reference to the associated unperformed contracted services.

4. The Contractor shall be responsible to correct, at his own cost and expense, defective work, or damaged property when defects and damage are caused by the Contractor's employees, equipment or supplies. The Contracting Officer may withhold all, or part of, payments due to the Contractor until defective work or damaged property caused by the Contractor, his employees, equipment or materials, is placed in satisfactory condition

5. **General Provisions** are amended as follows:

a. **Provision 7. PERSONNEL sub-part 7.2:** after "who is a State employee or official," add the following:

"or who is a National Guardsperson or who is a federal employee of the National Guard,"

b. **Provision 10. DATA: ACCESS; CONFIDENTIALITY; PRESERVATION:** Add the following sub-part:

10.4 Between the Effective Date and three (3) years after the Completion Date, as often as the State or Federal Government shall demand, the Contractor shall make available for audit purposes, all records that pertain to this Agreement. Upon demand the contractor shall provide copies of such documents which may include invoices, payrolls, records of personnel, and other information relating to all matters covered in this agreement.

c. **Provision 14. INSURANCE AND BOND:** Add the following sub-sub-part:

14.1.3 Insurance against all claims arising from the Contractor's use of automobiles in the conduct of this agreement, in amounts of not less than \$250,000.00 per person bodily injury liability, \$500,000.00 per occurrence bodily injury liability and \$50,000.00 property damage liability.

6. ADD the following as Special Provisions to the extent not inconsistent with the express terms of this Agreement, the provisions of 32 CFR Part 33, Uniform Administrative Requirements for Grants and Cooperative Agreements, DoD Grant and Agreement Regulations (DoDGARS) (DoD 3210.6-R) as amended, Title 2 Code of Federal Regulations (CFR) Part 225, and NGR 5-1, are hereby incorporated into this MCA by reference as if fully set forth herein, shall govern this Agreement:

**Nondiscrimination.**

The Grantee covenants and agrees that no person shall be subject to discrimination or denied benefits in connection with the State's performance under the MCA. Accordingly, and to the extent applicable, the Grantee covenants and agrees to comply with the following national policies prohibiting discrimination:

- a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as implemented by DoD regulations at 32 CFR part 195.
- b. On the basis of race, color or national origin, in Executive Order 11246 as implemented by Department of Labor regulations at 41 CFR part 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.
- d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.
- e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

**Lobbying.**

- a. The state covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions. The awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any CA; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Cooperative Agreement.
- b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the state agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

### **Drug-Free work Place.**

The Grantee covenants and agrees to comply with the requirements regarding drug-free workplace requirements in of 32 CFR Part 26, which implements section 5151-5160 of the Drug-Free Workplace act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

### **Environmental Protection.**

a. The Grantee covenants and agrees that its performance under this Agreement shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued there under;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32;
- (8) To identify any impact this award may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.
- (9) The applicable provision of the Clean Air Act (42 U.S.C. § 7401, et seq.) and Clean Water Act (33 USC 1251, et seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 comp., p.799].

b. In accordance with the EPA rules, the parties further agree that the Grantee shall also identify to the awarding agency (NGB) any impact this award may have on:

(1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300H-3).

#### **Use of United States Flag Carriers.**

a. The state covenants and agrees that travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The state agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

#### **Debarment and Suspension.**

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12698, 2 CFR part 180. These regulations restrict awards, sub awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded for or ineligible for participation in Federal assistance programs or activities. The State complies with the DOD implementation of 2 CFR part 180 (at 2 CFR Part 1125) by checking the Excluded Parties List System (EPLS) at [www.sam.gov](http://www.sam.gov) to verify contractor eligibility to receive contracts and subcontracts resulting from the Federal Agreement which funds this contract. The state shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the State and subrecipient contract files, and shall be subject to audit by the grantor and Federal/State audit agencies.

#### **Buy American Act.**

The state covenants and agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

**Uniform Relocation Assistance and real Property Acquisition Policies.**

The state covenants and agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

**Copeland "Anti-Kickback" Act.**

The state covenants and agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. Section 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this agreement, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

**Contract Work Hours and Safety Standards Act.**

The state covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES**

**EXHIBIT B, P37 AGREEMENT  
THE SERVICES**

**SUBJECT: Hazardous Waste and Environmental Sample Analysis 2020-2023.**

**1. GENERAL**

The Contractor will, at the request of the NH Department of Military Affairs and Veterans Services (DMAVS), provide all labor, materials, equipment and transportation as necessary to perform hazardous waste and environmental sample analysis as specified in the DMAVS Exhibit B-1 and incorporated herein by reference as Exhibit B-1.

**2. CONTRACTOR PROVIDED MATERIALS, EQUIPMENT AND TRANSPORTATION**

The Contractor will provide collection containers (i.e. sample containers, bottles and vials). The collection containers shall be clean and conform to the US Environmental Protection Agency (EPA) quality control requirements and procedures.

The Contractor will provide chain of custody documentation for the samples from the DMAVS facility to the appropriate laboratory.

The Contractor will provide proper preservation of samples during transportation and storage.

The Contractor will provide appropriate packing and shipping materials, labels.

The Contractor will provide a courier service or other means of transporting materials and equipment and samples to and from the laboratory and the State Military Reservation, located at 1 Minuteman Way, Concord, NH.

**3. ANALYTICAL SERVICES**

The Contractor will, upon request, perform the analytical methods identified in EXHIBIT B-1, using the method identified in EXHIBIT B-1 or other methods that conform to the paragraph 4 Regulatory Requirements and Citations.

The contractor will occasionally reanalyze samples at no additional cost, in the event that the DMAVS questions the accuracy of the results.

Initials: SS  
Date: 5/20/26

The Contractor may also be asked to provide analyses that are not specified in the Exhibit B-1, the cost of which shall be determined by DMAVS and the Contractor on a case-by-case basis.

#### 4. REGULATORY REQUIREMENTS AND CITATIONS

The Contractor will upon request, perform testing in accordance with methods set forth in the New Hampshire Code of Administrative Rules (NHCAR) and the United States Code of Federal Regulations (CFR), pursuant to the wastes/media being tested.

The Contractor will, upon request, perform other environmental testing as necessary, in accordance with the State and Federal regulations.

#### 5. SERVICES PERFORMANCE TIME FRAME

**Normal performance:** The Contractor will provide all materials and equipment to the DMAVS as specified in the Contractors Proposal following a request for analysis. The Contractor will perform the analytical services requested within 10 business days of the receipt of the samples and provide a full set of test results and chain of custody documentation to the DMAVS.

**Expedited Performance:** The Contractor will provide all materials and equipment to the DMAVS as specified in the Contractors proposal following a request for analysis. The Contractor will perform the analytical services requested within 2 business days (except when circumstances of the test require analysis over time, i.e. BOD) of the receipt of the samples and provide a full set of test results and chain of custody documentation to the DMAVS.

#### 6. RESULTS REPORT

The test result report will include at a minimum the following items:

- Generator name,
- Name and address of the facility,
- Sample number,
- Name of the waste/media being tested,
- Date of the sampling and testing,
- Characteristic or name of constituents being tested for,
- The Chemical Abstracts Service (CAS) number of the constituent(s) being tested for
- Analysis method number used,

Initials: SS  
Date: 5/22/00



- Minimum detection level for toxic constituents in parts per million (ppm)
- Reference to wet or dry weight,
- Results (results for toxic constituents will be reported in ppm, results for characteristic of ignitability will be reported in degrees Fahrenheit, results for characteristic of corrosivity will be reported in pH, results for characteristic of reactivity will be reported in parts per million),
- Regulatory Level/Maximum contaminate level.
- Subcontractor name (if applicable).

Individual test reports shall be provided for each sample number or name. The Contractor shall provide occasional consultation on interpretation of reports at no additional cost to the DMAVS.

## 6. MINIMUM DETECTION LEVELS

The Contractor will report the characteristic of ignitability (Flash point) up to 200 degrees Fahrenheit.

Toxic characteristic waste constituents will be reported to a detection level equal to the regulatory limit established in NHCAR Wm-Env 403.06 (d) or as practical as possible based on the sample type.

Total Halogens will be analyzed to the nearest 100 ppm, with a detection level less than 1000 ppm.

All other samples will be reported to a detection level equal to the order of magnitude of the regulatory limit as established by the appropriate analysis method.

## 7. SAMPLE RETENTION AND DISPOSAL

The Contractor shall retain samples until such time as the DMAVS has accepted the results and notified the contractor that the samples are no longer needed. The Contractor shall be responsible for disposal of samples at no additional cost to the DMAVS. Such disposal shall be conducted in accordance with all applicable federal and state regulations adopted pursuant to the federal Resource Conservation and Recovery Act and NH RSA 147-A.

## 8. DMAVS POINTS OF CONTACT

Zachary Boyajian, State Environmental Supervisor (Primary)  
 NGNH-FMO-ENV  
 1 Minuteman Way

Initials: SS  
 Date: 5/20/22

Concord, NH 03301-5607  
603-227-1439  
zachary.l.boyajian.nfg@mail.mil

Kevin Womack, Water Resource Manager (Alternate)  
NGNH-FMO-ENV  
1 Minuteman Way  
Concord, NH 03301-5607  
603-227-1439  
kevin.l.womack10.nfg@mail.mil

Other alternate points of contact may be identified during the course of the contract period.

#### 9. PERIOD OF PERFORMANCE

This Contractor will provide analytical services as outlined for a period from contract approval (expected July 2020) to June 30, 2023.

The Agreement is subject to 1 one year extension at the discretion of the DMAVS determination of satisfactory performance and subsequent rate approval not to exceed the consumer price index.

Initials: ES  
Date: 5/20/20

**STATE OF NEW HAMPSHIRE  
THE DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES  
AGREEMENT**

**EXHIBIT C  
THE CONTRACT PRICE, METHOD OF PAYMENT AND TERMS OF PAYMENT**

**SUBJECT: Hazardous Waste and Environmental Sample Analysis 2020-2023.**

**The Contract Price:**

The Department of Military Affairs and Veterans Services (DMAVS) will pay the contractor a maximum total of \$37,530.00. This amount shall not be exceeded without issuance of an amendment to this agreement and approval by the Governor and Executive Council of the State of New Hampshire.

**Method of Payment:**

Payment will be made within 30 days after receipt of a proper invoice. Payment shall be made by mailing a bank draft to the address specified in the General Provisions 1.4 of this agreement. Invoices will be submitted by the Contractor to:

Department of Military Affairs and Veterans Services  
Business Office (Attn: Accounting)  
4 Pembroke Road, Building C.  
Concord, NH 03301-5607

**Terms of Payment:**

The DMAVS will pay the contractor based on invoiced services performed and after approved tests results and chain of custody documentation have been provided. Invoiced prices shall be based on price per sample for the Contract line Item Number specified in attachment 1 of Exhibit C. Prices for any unspecified analytical services will be mutually agreed upon by the contractor and the DMAVS prior to the Contractor performing the service.

Initials: JS  
Date: 5/20/20

NH Department of Military Affairs and Veterans Services  
Hazardous Waste and Environmental Sample Analysis

Exhibit C  
ATTACHMENT 1  
Contract Line Items and Pricing

Contract Line Item #	Characteristic/Compound(s)	Chemical Abstract #	Regulatory Level mg/L	Potential Methods EPA	Estimated # of Analysis Per Year	Price Per Sample	Total Price For Estimated #/year
EPA/State Hazardous Waste #							
Contract Line Item # 1					12	40	480
D001	Ignitability (Flash Point)		<141 Deg. F	1010A/1020A			
Contract Line Item # 2					4	20	80
D002	Corrosivity (pH)			90408/9045C			
Contract Line Item # 3					1	20	20
NH02	NH Corrosive Solid Env-Wm 403.04 (b) (3)			SW-846			
Contract Line Item # 4					1	80	80
D003	Reactivity Releasable Cyanide Releasable Sulfide			SW846 7.3.3.2 SW846 7.3.4.2			
Contract Line Item # 5					12	150	1800
	TCLP Characteristic Metal Wastes			1311			
D004	Arsenic	7440-38-2		5 6020A			
D005	Barium	7440-39-3		100 6020A			
D006	Cadmium	7440-43-9		1 6020A			
D007	Chromium	7440-47-3		5 6020A			
D008	Lead	7439-92-1		5 6020A			
D009	Mercury	7439-97-6		0.2 7470A/7471B			
D010	Selenium	7782-49-2		1 6020A			
D011	Silver	7440-22-4		5 6020A			
Contract Line Item # 6					6	92	552
	Individual TCLP Characteristic Metal			See Above			
Contract Line Item # 7					10	185	1850
	TCLP VOCs Characteristic Wastes			1311/8260B			
D018	Benzene	71-43-2		0.5 8260B			
D019	Carbon Tetrachloride	56-23-5		0.5 8260B			

## Exhibit C

## ATTACHMENT 1

NH Department of Military Affairs and Veterans Services  
Hazardous Waste and Environmental Sample Analysis

## Contract Line Items and Pricing

Contract Line Item #	Characteristic/Compound(s)	Chemical Abstract #	Regulatory Level mg/L	Potential Methods EPA	Estimated # of Analysis Per Year	Price Per Sample	Total Price For Estimated #/year
EPA/State Hazardous Waste #							
D021	Chlorobenzene	108-90-7		100 82608			
D022	Chloroform	67-66-3		6 82608			
D027	1,4 Dichlorobenzene	106-46-7		7.5 82608			
D028	1,2 Dichloroethane	107-06-2		0.5 82608			
D029	1,1 Dichloroethylene	75-35-4		0.7 82608			
D035	Methyl Ethyl Ketone	78-93-3		200 82608			
D039	Tetrachloroethylene	127-18-4		0.7 82608			
D040	Trichloroethylene	79-01-6		0.5 82608			
D043	Vinyl Chloride	75-01-4		0.2 82608			
Contract Line Item # 8	TCLP semi VOC's Characteristic Waste				2	232	464
D023	o-Cresol	95-48-7		200 8270D			
D024	m-cresol	108-39-4		200 8270D			
D025	p-cresol	106-44-5		200 8270D			
D026	Cresol	1319-77-3		200 8270D			
D030	2,4 Dinitrotoluene	121-14-2		0.13 8270D			
D032	Hexachlorobenzene	118-74-1		0.13 8270D			
D033	Hexachlorobutadiene	87-68-3		0.5 8270D			
D034	Hexachloroethane	67-72-1		3 8270D			
D036	Nitrobenzene	98-95-3		2 8270D			
D037	Pentachlorophenol	87-86-5		100 8270D			
D038	Pyridine	110-86-1		5 8270D			
D041	2,4,5-Trichlorophenol	95-95-4		400 8270D			
D042	2,4,6-Trichlorophenol	88-06-2		2 8270D			
Contract Line Item # 9	Total Halogens SUBCONTRACTED				10	194	1940
				9023 or 9020			

Date: 8/20/12  
Initials: SPB/120

# State of New Hampshire

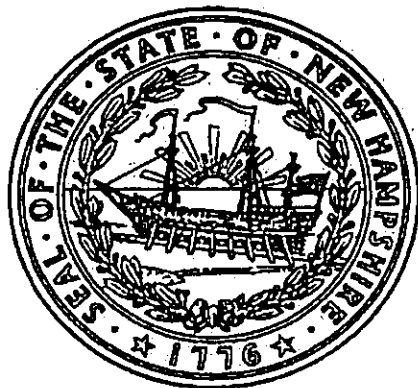
## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that ABSOLUTE RESOURCE ASSOCIATES LLC is a New Hampshire Limited Liability Company registered to transact business in New Hampshire on November 15, 2000. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 363755

Certificate Number: 0004902266



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 28th day of April A.D. 2020.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State

I, Susan C. Sylvester, hereby certify that I am a Partner, Member or Manager  
(Susan C. Sylvester, President)  
of Absolute Resource Associates a limited liability partnership under RSA 304-B,  
(Name of Partnership or LLC)

a limited liability professional partnership under RSA 304-D, or a limited liability company  
under RSA 304-C.

I certify that I am authorized to bind the partnership or LLC. I further certify that it is  
understood that the State of New Hampshire will rely on this certificate as evidence that the  
person listed above currently occupies the position indicated and that they have full authority to  
bind the partnership or LLC and that this authorization **shall remain valid for thirty (30) days**  
from the date of this Corporate Resolution

DATED: 5/20/20  
ATTEST: Guy Sylvester CEO  
(Guy Sylvester, CEO)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Lisa Lermond
Braley & Wellington Insurance Agency	PHONE (A/C No, Ext): (508) 754-7255
P.O. Box 15127	FAX (A/C, No): (508) 797-3507
	E-MAIL: llermond@braleywellingtongroup.com
	ADDRESS:
Worcester MA 01615	INSURER(S) AFFORDING COVERAGE
	INSURER A: Westchester Surplus Lines Ins Co
INSURED	INSURER B: Merchants Mutual ins Co
Absolute Resource Associates, LLC	INSURER C: Travelers P & C Co of America
124 Heritage Ave Suite 16	INSURER D:
	INSURER E:
Portsmouth NH 03801	INSURER F:

## COVERAGES

CERTIFICATE NUMBER: 20-21 Updated WC

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			G27952896004	02/01/2020	02/01/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			CAP1075052	02/01/2020	02/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			G27952902004	02/01/2020	02/01/2021	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	6JUB2E81891-9-20	05/02/2020	05/02/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Contractors Pollution/Mold and Professional Liability			G27952896004	02/01/2020	02/01/2021	\$2,000,000 Per Claim \$2,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Guy &amp; Susan Sylvester are not covered by the workers' compensation policy.

## CERTIFICATE HOLDER

## CANCELLATION

Department of Military Affairs and Veterans Service 4 Pembroke Road, Bldg C  Concord NH 03301	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
--	---



Hazardous Waste Environmental Sample Analysis 2020-2023  
Rating Panel Background Information

Z.L.B –Bachelor Degree in Natural Resource Studies and Master Degree in Resource Management and Administration. He has worked for the New Hampshire Department of Military Affairs and Veterans Services (DMAVS) for 25 years and has over 30 years of experience. He is currently the State Environmental Supervisor and has been supervising the DMAVS environmental program since 2001 including developing and implementing DMAVS contracts. He is the acting hazardous waste manager for the DMAVS and a primary user of the contract services.

K.L.W. – Bachelor of Science in Chemical Engineering. He has 8+ years' experience working as a staff engineer for private engineering consulting firm, primarily in compliance audits, Phase I and II Site Assessments, hydrogeological site investigations, RI/FS Site investigations and Remedial Action. He has 11 + years working for the DMAVS as a Water Resource Manager including managing underground and aboveground storage tanks, spill prevention control and countermeasure plans, Stormwater, wastewater and drinking water compliance. Prior to this position Mr. Womack worked for the DMAVS Veterans Cemetery as an office support staff. He is a primary user of the contract services.

K.O. – Bachelor degree in Environmental Science. She has been an Environmental Compliance Specialist with DMAVS for 4.5 years. She has 12 years of previous experience with environmental restoration, contracting, grant review and implementation for a county agency in Florida. She has experience conducting compliance inspections, air quality permitting and contract bid submissions and will function as an alternate user of the contract services.



A NEW WAY TO SIGN IN - If you already have a SAM account, use your SAM email for login.gov.

Log In

Login.gov FAQs

ALERT: SAM.gov will be down for scheduled maintenance Saturday, 06/13/2020 from 8:00 AM to 1:00 PM

## Entity Dashboard

- Entity Overview
- Entity Registration
  - Core Data
  - Assertions
  - Reps & Certs
  - POCs
- Exclusions
  - Active Exclusions
  - Inactive Exclusions
  - Excluded Family Members

RETURN TO SEARCH

ABSOLUTE RESOURCE ASSOCIATES, LLC  
DUNS: 868348293 CAGE Code: 3VNB6  
Status: Active  
Expiration Date: 08/08/2020  
Purpose of Registration: All Awards

124 HERITAGE AVE UNIT 16  
PORTSMOUTH, NH, 03801-5645  
UNITED STATES

### Entity Overview

#### Entity Registration Summary

Name: ABSOLUTE RESOURCE ASSOCIATES, LLC  
Doing Business As: ABSOLUTE AIR QUALITY  
Business Type: Business or Organization  
Last Updated By: Susan Sylvester  
Registration Status: Active  
Activation Date: 08/09/2019  
Expiration Date: 08/08/2020

Debarment  
Correct

#### Exclusion Summary

Active Exclusion Records? No



HBM-P-20200424-1037  
WWW5

Search Records Disclaimers FAPHS.gov  
Data Access Accessibility GSA.gov/IAE  
Check Status Privacy Policy GSA.gov  
About USA.gov  
Help

This is a U.S. General Services Administration Federal Government computer system that is "FOR OFFICIAL USE ONLY." This system is subject to monitoring. Individuals found performing unauthorized activities are subject to disciplinary action including criminal prosecution.

**From:** DAS: NH Purchasing  
**To:** Godin, Ryan  
**Subject:** RE: RFP DMAVS 03-2020 Hazardous Waste Testing  
**Date:** Monday, April 20, 2020 9:09:14 AM  
**Attachments:** [image002.png](#)  
[image001.png](#)

Thanks Ryan!

I've posted your RFP to the website as such. RFP DMAVS 2020-03

	RFP Description	Title	Attachments	Addenda	Closing Date	Closing Time	Status/ RFP Results/ Respondents/ Scoring	Contact	Agency	Commodity Category
0	Hazardous Waste and Environmental Sample Analysis 2020-2023	RFP DMAVS 2020-03	<a href="#">attachment_1_RFP DMAVS 2020-03.docx</a> <a href="#">attachment_2_RFP DMAVS 2020-03.docx</a> <a href="#">attachment_3_RFP DMAVS 2020-03.pdf</a>		3/7/2020	1:30PM	Open	Bozelle, Zachary	MULTIPLE	MISCELLANEOUS SERVICES, No 1 (NOT OTHERWISE CLASSIFIED)

Chris Lewis  
 Purchasing Assistant  
 603-271-2201

**From:** Godin, Ryan <Ryan.Godin@nh.gov>  
**Sent:** Monday, April 20, 2020 8:43 AM  
**To:** DAS: NH Purchasing <NH.Purchasing@das.nh.gov>  
**Subject:** RE: RFP DMAVS 03-2020 Hazardous Waste Testing

Good morning again Purchasing!

Sorry about that and having a software issue. I have attached the RFP docs.

Thanks for your help!  
 Ryan

**From:** DAS: NH Purchasing <NH.Purchasing@das.nh.gov>  
**Sent:** Monday, April 20, 2020 8:40 AM  
**To:** Godin, Ryan <Ryan.Godin@nh.gov>  
**Subject:** RE: RFP DMAVS 03-2020 Hazardous Waste Testing

Good morning, Ryan

I am not able to view this RFP again. I provided a screenshot of what I see on my end.



*State of New Hampshire*  
*Environmental Laboratory Accreditation Program*  
*Awards*  
**PRIMARY NH ELAP ACCREDITATION**  
*to*  
**ABSOLUTE RESOURCE ASSOCIATES LLC**  
*of*  
**PORTSMOUTH, NH**

For the matrix, method and analytes listed on the latest Analyte List in accordance  
with the provisions on the 2009 TNI Standards and Env-C 300.

**Certificate Number:** 173220

**Effective Date:** 1/26/2020

**Expiration Date:** 1/25/2021

**Laboratory ID:** 1732



*Bill Hall*  
ABSOLUTE RESOURCE ASSOCIATES LLC

Bill Hall  
NH ELAP Program Manager

Method accreditation does not imply acceptance for NHDES compliance testing. Laboratory is required to use EPA-approved methods required by regulation. Continuing accreditation status is dependent on successful ongoing participation in the program. Customers may verify the laboratory's current accreditation status by calling (603) 271-2998 or by visiting the NH ELAP website (<http://www.des.nh.gov/transportation/divisions/health/safety/ehs/index.html>).

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES  
HAZARDOUS WASTE AND ENVIRONMENTAL  
SAMPLE ANALYSIS 2020-2023**

**RFP DMAVS 03-2020**

**Section 1 – Overview and Schedule**

**A. Executive Summary**

This is a Request for Proposals (RFP) issued by The Department of Military Affairs and Veterans Services (DMAVS) for Hazardous Waste and Environmental Sample Analysis 2020-2023. The Contractor will, at the request of the NH Department of Military Affairs and Veterans Services, provide all labor, materials, equipment and transportation as necessary to perform hazardous waste and environmental sample analysis as specified in the outlined Scope of Services and Attachment 1 to this RFP.

The Hazardous Waste and Environmental Sample Analysis contract shall be for three (3) years.

**B. Schedule**

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

<b>EVENT</b>	<b>DATE</b>	<b>LOCAL TIME</b>
RFP Released to Proposers (Advertisement)	04/20/2020	1:00 PM
Proposer Inquiry Period Ends	04/27/2020	1:00 PM
Final Agency Responses to Proposer Inquiries	04/30/2020	4:00 PM
Proposers Submit Proposals	05/07/2020	1:30 PM
Estimated Notification of Selection and Begin Contract Negotiations	05/14/2020	TBD

## **Section 2 - Description of Agency/Program Issuing the Request for Proposals**

The Department of Military Affairs and Veterans Services (DMAVS) is accepting written Proposals for Hazardous Waste and Environmental Sample Analysis 2020-2023.

## **Section 3 – Proposed Scope of Work**

The Contractor shall be able to provide all services as outlined within this scope of work.

### **1. GENERAL**

The Contractor will, at the request of the NH Department of Military Affairs and Veterans Services (DMAVS), provide all labor, materials, equipment and transportation as necessary to perform hazardous waste and environmental sample analysis as specified in Attachment 1 to this RFP and incorporated herein by reference as Attachment 1.

### **2. CONTRACTOR PROVIDED MATERIALS, EQUIPMENT AND TRANSPORTATION**

The Contractor will provide collection containers (i.e. sample containers, bottles and vials). The collection containers shall be clean and conform to the US Environmental Protection Agency (EPA) quality control requirements and procedures.

The Contractor will provide chain of custody documentation for the samples from the DMAVS facility to the appropriate laboratory.

The Contractor will provide proper preservation of samples during transportation and storage.

The Contractor will provide appropriate packing and shipping materials, labels.

The Contractor will provide a courier service or other means of transporting materials and equipment and samples to and from the laboratory and the State Military Reservation, located at 1 Minuteman Way, Concord, NH.

### **3. ANALYTICAL SERVICES**

The Contractor will, upon request, perform the analytical methods identified in Attachment 1, using the method identified in Attachment 1 or other methods that conform to the paragraph 4 Regulatory Requirements and Citations.

The Contractor will occasionally reanalyze samples at no additional cost, in the event that the DMAVS questions the accuracy of the results.

The Contractor may also be asked to provide analyses that are not specified in Attachment 1, the cost of which shall be determined by DMAVS and the Contractor on a case-by-case basis.

#### **4. REGULATORY REQUIREMENTS AND CITATIONS**

The Contractor will, upon request, perform testing in accordance with methods set forth in the New Hampshire Code of Administrative Rules (NHCAR) and the United States Code of Federal Regulations (CFR), pursuant to the wastes/media being tested.

The Contractor will, upon request, perform other environmental testing as necessary, in accordance with the State and Federal regulations.

#### **5. SERVICES PERFORMANCE TIME FRAME**

**Normal performance:** The Contractor will provide all materials and equipment to the DMAVS as specified in the Contractors Proposal following a request for analysis. The Contractor will perform the analytical services requested within **ten (10) business days** of the receipt of the samples and provide a full set of test results and chain of custody documentation to the DMAVS.

**Expedited Performance:** The Contractor will provide all materials and equipment to the DMAVS as specified in the Contractors proposal following a request for analysis. The Contractor will perform the analytical services requested within **two (2) business days** (except when circumstances of the test require analysis over time, i.e. BOD) of the receipt of the samples and provide a full set of test results and chain of custody documentation to the DMAVS.

#### **6. RESULTS REPORT**

The test result report will include at a minimum the following items:

- Generator name;
- Name and address of the facility;
- Sample number;
- Name of the waste/media being tested;
- Date of the sampling and testing;
- Characteristic or name of constituents being tested for;
- The Chemical Abstracts Service (CAS) number of the constituent(s) being tested for;
- Analysis method number used;
- Minimum detection level for toxic constituents in parts per million (ppm);
- Reference to wet or dry weight;
- Results (results for toxic constituents will be reported in ppm, results for characteristic of ignitability will be reported in degrees Fahrenheit, results for characteristic of corrosivity will be reported in pH, results for characteristic of reactivity will be reported in parts per million);
- Regulatory Level/Maximum contaminate level;
- Subcontractor name (if applicable).

Individual test reports shall be provided for each sample number or name. The Contractor shall provide occasional consultation on interpretation of reports at no additional cost to the DMAVS.

## **7. MINIMUM DETECTION LEVELS**

The Contractor will report the characteristic of ignitability (Flash point) up to 200 degrees Fahrenheit.

Toxic characteristic waste constituents will be reported to a detection level equal to the regulatory limit established in NHCAR Wm-Env 403.06 (d) or as practical as possible based on the sample type.

Total Halogens will be analyzed to the nearest 100 ppm, with a detection level less than 1000 ppm.

All other samples will be reported to a detection level equal to the order of magnitude of the regulatory limit as established by the appropriate analysis method.

## **8. SAMPLE RETENTION AND DISPOSAL**

The Contractor shall retain samples until such time as the DMAVS has accepted the results and notified the Contractor that the samples are no longer needed. The Contractor shall be responsible for disposal of samples at no additional cost to the DMAVS. Such disposal shall be conducted in accordance with all applicable federal and state regulations adopted pursuant to the federal Resource Conservation and Recovery Act and NH RSA 147-A.

## **9. DMAVS POINTS OF CONTACT**

Zachary Boyajian, State Environmental Supervisor (Primary)  
NGNH-FMO-ENV  
1 Minuteman Way  
Concord, NH 03301-5607  
603-227-1439  
[zachary.l.boyajian.nfg@mail.mil](mailto:zachary.l.boyajian.nfg@mail.mil)

Kevin Womack, Water Resource Manager (Alternate)  
NGNH-FMO-ENV  
1 Minuteman Way  
Concord, NH 03301-5607  
603-227-1439  
[kevin.l.womack10.nfg@mail.mil](mailto:kevin.l.womack10.nfg@mail.mil)

Other alternate points of contact may be identified during the course of the contract period.



## **10. PERIOD OF PERFORMANCE**

This Contractor will provide analytical services as outlined for a period from contract approval (expected June or July 2020) to June 30, 2023.

The Agreement is subject to one (1) year extension at the discretion of the DMAVS determination of satisfactory performance and subsequent rate approval not to exceed the consumer price index.

## **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 the Department of Military Affairs and Veterans Services no later than the time and date specified in the Schedule section, herein. Proposals may be submitted by U.S. Mail, Delivery Service or In Person. Proposals must be addressed to:

**State of New Hampshire  
Department of Military Affairs and Veterans Services  
NGNH-FMO-ENV  
ATTN: Zachary Boyajian  
1 Minuteman Way  
Concord, NH 03301**

Proposals may be hand delivered to Building F, State Military Reservation, 4 Pembroke Road, Concord, NH 03301

Proposals must be clearly marked as follows:

**STATE OF NEW HAMPSHIRE  
RESPONSE TO RFP DMAVS 03-2020  
HAZARDOUS WASTE & ENVIRONMENTAL SAMPLE ANALAYSIS**

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 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.

The DMAVS State of New Hampshire reserves the rights to accept any or all proposals, or reject any or all proposals, that may be in the best interest of the state. It is also understood that the DMAVS, State of New Hampshire reserves the right to award all or a portion of the proposals. Companies, corporation or trade names, except sole proprietorships must be registered with the State of New Hampshire, Corporate Division, Secretary of State's Offices Concord, NH 03301, phone (603) 271-3244/3246.

The Service provider will be chosen based on the rating described in the Best Value For the State Evaluation Procedure including number accredited analysis requested, use of subcontracting, completeness of example analysis reporting show the requirements identified in Exhibit A, paragraph 6, Pick-up and delivery method/response time to requests for containers and analysis and cost.

Details on proposal package requirements may be obtained from DMAVS, 4 Pembroke Road Concord, NH 03301, Zachary Boyajian at 603-227-1439, [zachary.l.boyajian.nfg@mail.mil](mailto:zachary.l.boyajian.nfg@mail.mil).

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

## **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: Zachary Boyajian [zachary.l.boyajian.nfg@mail.mil](mailto:zachary.l.boyajian.nfg@mail.mil)

CC: Kevin Womack [kevin.l.womack10.nfg@mail.mil](mailto:kevin.l.womack10.nfg@mail.mil)

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 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. Vendors shall be responsible for reviewing the most updated information related to this RFP before submitting a proposal.

### **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 and Federal personnel working with the Agency regarding this RFP is forbidden unless first approved by the RFP Points of Contact listed in the Proposal Inquiries section, herein.

### **D. Validity of Proposal**

Proposals must be valid for one hundred 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**

Complete proposals will include:

1. Cover letter which includes:
  - a. Company contact information to include name, address, telephone/fax number, web page address and valid email address.
  - b. Date of Proposal
  - c. Statement that the company/proposer has the ability to provide the services that are requested and will comply with the sample agreement terms and conditions set forth in this request.
2. Proposal Form
3. Certificate of Authority
4. Certificate of Good Standing from the NH Secretary of State's Office
5. Certificate of insurance showing coverage in the amounts identified on the P-37 standard Agreement, Section 14 and the herein outlined Section D, #4 C. Provision 14 Insurance and Bond
6. Documentation of Accreditation
7. Example set of test results
8. A list of analysis to be subcontracted
9. A description of the method of transport of containers and samples between New Hampshire Department of Military Affairs and Veterans Services in Concord, NH and the laboratory and contractor response time to requests.

**Evaluation** – The proposals shall be evaluated on the basis of demonstrated competence and qualifications for the type of services required and shall be based upon the evaluation criteria set forth in this request.

Failure to adequately address and meet the above requirements may be cause for the proposal to be deemed unresponsive by the Purchasing Officer.

## **SECTION 6 – Evaluation of Proposals**

### **A. Criteria for Evaluation and Scoring**

New Hampshire Department of Military Affairs and Veterans Services (DMAVS) will evaluate proposals of potential service providers for Hazardous Waste and Environmental Sample Analysis 2020-2023 to determine the “Best Value for the State”. The Best Value determination will include a composite of performance factors and cost using the criteria out line below. Each company will be provided a score for each criterion by three personnel at the DMAVS. A composite of the individual criteria score will be developed for each company. The company with the highest composite score will be determined to provide the best value for the government.

#### **SCORING CRITERIA**

- 1) **Accreditation:** Companies must provide documentation of accreditation such as National Environmental Laboratory Accreditation Program (NELAC) for the analysis requested in their proposals. Companies will be scored based on the number of analysis in Attachment 1 with documentation of accreditation provided. Companies will be provided one point for each contract line item that the company has at least one accreditation to perform.
- 2) **Subcontracting:** Companies must provide a list of subcontracted analysis from Attachment 1. Companies will be scored based on the number analysis NOT subcontracted. Companies will be provided one point for each contract line item in Attachment 1 that is NOT Subcontracted.
- 3) **Reporting:** Companies will be scored by demonstrating the ability to provide the analysis reporting requirements identified in Section 6 Results Report of the Scope of Services. Companies must provide an example analysis report. Companies will be provided one point for each of the reporting requirements that are exhibited on the example report.
- 4) **Delivery and Pick-up Method/Time:** Delivery and pick of sampling container response time. Companies will be scored based on the expected response time to provide sample containers for analysis and pick up of sample containers for analysis. Companies may be awarded up to ten (10) points from their description of the pick-up and delivery method and response time. DMAVS will provide more points for short response time, convenience of the services and flexibility.
- 5) **Cost:** Attachment 1 will be used to determine the total cost, which should be the sum of the total price for the estimated number of each contract line item. Companies will be scored based on low cost. Ten (10) points will be awarded for the least cost proposal, zero points for the most expensive proposal and proportional scores will be provided for costs between the highest and lowest cost proposal.

## TOTAL SCORING

Attachment A includes a copy of the evaluation matrix that will be used to record criteria scores and total score for each company. Please note the example in Attachment A includes example information. The total composite score will be established by calculating the sums of the individual criteria scores. DMAVS will make a final determination based on the highest composite score and cost.

## SCORING TABLE EXAMPLE

Company	NELAP Accreditation	Points
	Maximum Points	21
	Analysis not Subcontracted	Points
	Maximum Points	20
	Reporting details	Points
	Maximum Points	12
	Delivery-pick up performance	Points
	Maximum Points	10
	Price	Points
	Maximum Points	10
		Total Points
		73

## B. Final Selection

The Agency will conduct a final selection based on the final evaluation of the initial proposals or, if requested, as a result of the Best and Final Offer and begin contract negotiations with the selected Proposer(s).

## C. Rights of the Agency in Accepting and Evaluating Proposals

The Agency reserves the right to perform the following:

- 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 interest of the State;
- Omit any planned evaluation step if, in the Agency's view, 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 pursuant to this RFP, 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 five (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/>). However, 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. By submitting a Proposal, Proposers agree that unless the 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 liability to the Proposers.

#### **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 agency's authority to conduct this procurement and the form and procedures of this RFP.

## **Section 8 – Contract Terms and Award**

### **A. Non-Exclusive Contract**

Any resulting Contract from this RFP will be a non-exclusive Contract. The State reserves the right, at its discretion, to retain other Contractors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal.

### **B. 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 and upon continued appropriation of funding for the contract.

### **C. 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 Attachment 2.

The Term of the Contract will be for three (3) years from the date of approval. The contract term may be extended by an additional term of one (1) year 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 and Executive Council approval.

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 should 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, at the conclusion of the inquiry period the Agency will provide notice to all potential Proposers of the exceptions that have been accepted and indicate those exceptions are 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.

### **D. Special Terms To Be Included In A Contract Resulting From This RFP**

1. This agreement is funded, wholly or in part, by monies of the Federal Government of the United States; therefore, all parts and provisions of this agreement that refer to contract which are funded in any part by the federal government are applicable to this agreement.
2. The term "Contracting Officer" as used in this agreement shall mean the State's Contracting Officer as is specified at item #1.9 of the General Provisions of this agreement or his authorized representative. No individual shall be an authorized representative of the Contracting Officer unless he or she is so appointed in writing by the Contracting Officer, in which case such written appointment shall be provided to the Contractor.



3. The Contractor shall be responsible to correct, at his own cost and expense, defective work, or damaged property when defects and damage are caused by the Contractor's employees, equipment or supplies. The Contracting Officer may withhold all, or part of, payments due to the Contractor until defective work or damaged property caused by the Contractor, his employees, equipment or materials, is placed in satisfactory condition

4. General Provisions are amended as follows:

a. Provision 7. PERSONNEL sub-part 7.2: Delete the period at the end of the provision, and add the following:

“or who is a National Guardsperson or who is a federal employee of the National Guard.”

b. Provision 9. DATA: ACCESS; CONFIDENTIALITY; PRESERVATION: Add the following sub-part:

9.4 Between the Effective Date and three (3) years after the Completion Date, as often as the State or Federal Government shall demand, the Contractor shall make available for audit purposes, all records that pertain to this Agreement. Upon demand the contractor shall provide copies of such documents which may include invoices, payrolls, records of personnel, and other information relating to all matters covered in this agreement.

c. Provision 14. INSURANCE AND BOND: Add the following sub-sub-part:

14.1.3 Insurance against all claims arising from the Contractor's use of automobiles in the conduct of this agreement, in amounts of not less than \$250,000.00 per person bodily injury liability, \$500,000.00 per occurrence bodily injury liability and \$50,000.00 property damage liability.

5. GOVERNING REGULATIONS:

Title 2 Code of Federal Regulations (CFR) Part 200, and NGR 5-1, shall govern this Agreement and include the following terms and conditions:

Nondiscrimination.

The Grantee covenants and agrees that no person shall be subject to discrimination or denied benefits in connection with the State's performance under the MCA. Accordingly, and to the extent applicable, the Grantee covenants and agrees to comply with the following national policies prohibiting discrimination:

a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195.

b. On the basis of race, color or national origin, in Executive Order 11246 as implemented by Department of Labor regulations at 41 CFR Chapter 60.

c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681, et seq.), as implemented by DoD regulations at 32 CFR Part 196.

d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.

e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR Part 56.

#### Lobbying.

a. The state covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions. The awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any CA; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Cooperative Agreement.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the state agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

#### Drug-Free work Place.

The Grantee covenants and agrees to comply with the requirements regarding drug-free workplace requirements in of 32 CFR Part 26, which implements Section 5151-5160 of the Drug-Free Workplace act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

#### Environmental Protection.

a. The Grantee covenants and agrees that its performance under this Agreement shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA));

(7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;

(8) To identify any impact this award may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Grantee shall also identify to the awarding agency (NGB) any impact this award may have on:

(1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300H-3).

#### Use of United States Flag Carriers.

a. The state covenants and agrees that travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The state agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

#### Debarment and Suspension.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, sub awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. The grantee agrees to comply with the DOD implementation of 2 CFR Part 180 (at 2 CFR Part 1125) by checking the Excluded Parties List System (EPLS) at [www.sam.gov](http://www.sam.gov) to verify contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The grantee and sub recipients shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the grantee and sub recipient contract files, and shall be subject to audit by the grantor and Federal/State audit agencies.

#### Buy American Act.

The state covenants and agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C.10a et seq.). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

#### Uniform Relocation Assistance and real Property Acquisition Policies.

The state covenants and agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

#### Copeland "Anti-Kickback" Act.

The state covenants and agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. Section 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this agreement, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

#### Contract Work Hours and Safety Standards Act.

The state covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708) as

supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

Contract Line Item #	Characteristic/Compound(s)	Chemical Abstract #	Regulatory Level mg/L	Potential Methods EPA	Estimated # of Analysis Per Year	Price Per Sample	Total Price For Estimated #/year
EPA/State Hazardous Waste #							
Contract Line Item # 1					12		0
D001	Ignitability (Flash Point)		<141 Deg. F	1010A/1020A			
Contract Line Item # 2					4		0
D002	Corrosivity (pH)			90408/9045C			
Contract Line Item # 3					1		0
NH02	NH Corrosive Solid Env-Wm 403.04 (b) (3)			SW-846			
Contract Line Item # 4					1		0
D003	Reactivity Releasable Cyanide Releasable Sulfide			SW846 7.3.3.2 SW846 7.3.4.2			
Contract Line Item # 5					12		0
	TCLP Characteristic Metal Wastes			1311			
D004	Arsenic	7440-38-2		5 6020A			
D005	Barium	7440-39-3		100 6020A			
D006	Cadmium	7440-43-9		1 6020A			
D007	Chromium	7440-47-3		5 6020A			
D008	Lead	7439-92-1		5 6020A			
D009	Mercury	7439-97-6		0.2 7470A/7471B			
D010	Selenium	7782-49-2		1 6020A			
D011	Silver	7440-22-4		5 6020A			
Contract Line Item # 6					1311	6	0
	Individual TCLP Characteristic Metal			See Above			
Contract Line Item # 7					10		0
	TCLP VOCs Characteristic Wastes			1311/8260B			
D018	Benzene	71-43-2		0.5 8260B			
D019	Carbon Tetrachloride	56-23-5		0.5 8260B			

Contract Line Item #	Characteristic/Compound(s)	Chemical Abstract #	Regulatory Level mg/L	Potential Methods EPA	Estimated # of Analysis Per Year	Price Per Sample	Total Price For Estimated #/year
EPA/State Hazardous Waste #							
D021	Chlorobenzene	108-90-7		100 8260B			
D022	Chloroform	67-66-3		6 8260B			
D027	1,4 Dichlorobenzene	106-46-7		7.5 8260B			
D028	1,2 Dichloroethane	107-06-2		0.5 8260B			
D029	1,1 Dichloroethylene	75-35-4		0.7 8260B			
D035	Methyl Ethyl Ketone	78-93-3		200 8260B			
D039	Tetrachloroethylene	127-18-4		0.7 8260B			
D040	Trichloroethylene	79-01-6		0.5 8260B			
D043	Vinyl Chloride	75-01-4		0.2 8260B			
Contract Line Item # 8					2		0
	TCLP semi VOC's Characteristic Waste						
D023	o-Cresol	95-48-7		200 8270D			
D024	m-cresol	108-39-4		200 8270D			
D025	p-cresol	106-44-5		200 8270D			
D026	Cresol	1319-77-3		200 8270D			
D030	2,4 Dinitrotoluene	121-14-2		0.13 8270D			
D032	Hexachlorobenzene	118-74-1		0.13 8270D			
D033	Hexachlorobutadiene	87-68-3		0.5 8270D			
D034	Hexachloroethane	67-72-1		3 8270D			
D036	Nitrobenzene	98-95-3		2 8270D			
D037	Pentachlorophenol	87-86-5		100 8270D			
D038	Pyridine	110-86-1		5 8270D			
D041	2,4,5-Trichlorophenol	95-95-4		400 8270D			
D042	2,4,6-Trichlorophenol	88-06-2		2 8270D			
Contract Line Item # 9					10		0
	Total Halogens			9023 or 9020			

NH Department of Military Affairs and Veterans Services  
Hazardous Waste and Environmental Sample Analysis

**ATTACHMENT 1**  
Contract Line Items and Pricing

Contract Line Item #	Characteristic/Compound(s)	Chemical Abstract #	Regulatory Level mg/L	Potential Methods EPA	Estimated # of Analysis Per Year	Price Per Sample	Total Price For Estimated #/year
EPA/State Hazardous Waste #							
Contract Line Item # 10	PCB			3540C/8082A	12	_____	0
Contract Line Item # 11	Oil and Grease			1664 HEM	10	_____	0
Contract Line Item # 12	Non-polar Material (TPH)			1664 SGT-HEM	6	_____	0
Contract Line Item # 13	Diesel or Gasoline Range Organics (DRO/GRO)			8015B	2	_____	0
Contract Line Item # 14	Volatile Organic Compounds in soil			8260B	2	_____	0
Contract Line Item # 15	Polynuclear Aromatic Hydrocarbons in Soil			8270D	2	_____	0
Contract Line Item # 16	TOTAL RCRA Metals (See Item 5)			7470A/7471B	10	_____	0
Contract Line Item # 17	TOTAL Individual RCRA Metal (See Item 5)			7470A/7471B	4	_____	0
Contract Line Item # 18	TOTAL RCRA VOCs (See Item 7)			8260B	6	_____	0
Contract Line Item # 19	TOTAL RCRA Semi-VOCs (See Item 8)			8270D	2	_____	0
Contract Line Item # 20	PFOS Compounds (21)			EPA 537 Modified	6	_____	0
Contract Line Item #21	Surcharge For Expedited Service				2	_____	0
Total Contract Amount							0



Location  
Primary Locations

ATTACHMENT 2  
Sample Scoring Matrix

	Evaluator Scores			Composite Score	Cost
	EVAL 1	EVAL 2	EVAL 3		
Company 1	57	56	57	170	\$ 11,000.00
Company 2	48	48	48	144	\$ 15,000.00
Company 3	44	42	42	128	\$ 13,000.00

\*note in Best Value Evaluation Procedure (BVEP) under TOTAL SCORING the statement is made that "DMAVS will make a final determination based on highest Composite Score and cost.", which allows for considering cost a second time in comparison to the composite score.

[illegible]

[illegible]

[illegible]

## ATTACHMENT 3

## FORM NUMBER P-37 (version 12/11/2019)

**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 DEPT. OF MILITARY AFFAIRS AND VETERAN SERVICES		1.2 State Agency Address 4 PEMBROKE ROAD CONCORD, NH 03301	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX		1.10 State Agency Telephone Number XXXXXXXXXXXXXXXXXXXX	
1.11 Contractor Signature  Date:		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  Date:		1.14 Name and Title of State Agency Signatory Erin M. Zayac, Administrator of Business Operations	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable)  By: _____ On: _____			
1.17 Approval by the Governor and Executive Council (if applicable)  G&C Item number: _____ G&C Meeting Date: _____			

**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.