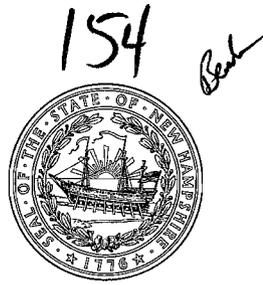




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

April 25, 2013

Her Excellency, Governor Margaret Wood Hassan
 and the Honorable Council
 State House
 Concord, New Hampshire 03301

Sole Source

REQUESTED ACTION

Authorize the Department of Environmental Services to enter into a **SOLE SOURCE** contract with the Northeast Waste Management Officials' Association (NEWMOA) (Vendor # 161803), Boston, Massachusetts, in the amount of \$114,885.00 to provide funding for the Northeast Regional Pollution Prevention (P2) Information Center, effective upon Governor and Council approval through June 30, 2014. 100% Federal funds.

Funding is available in the account as follows, with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified. Funding for FY 2014 is contingent upon continuing appropriation and availability of funds.

	<u>FY 2013</u>	<u>FY2014</u>
03-44-44-440010-5009-102-500731	\$20,115	\$94,770
Dept of Environmental Services, Northeast Regional P2 Center, Contracts for Program Services		

EXPLANATION

This is a **sole source** contract because US Environmental Protection Agency's (USEPA) Office of Chemical Safety & Pollution Prevention has authorized DES to receive grant funds on behalf of the Northeast Waste Management Official's Association (NEWMOA), with the requirement that the department enter into a contract with NEWMOA for \$114,885 to continue this regionally-based P2 project. NEWMOA is not eligible to directly receive USEPA funds for this project.

This project involves the continued administration, by NEWMOA, of a regional electronic data center designed to provide the assistance programs in the Northeast states (such as the DES Pollution Prevention Program and Small Business Technical Assistance Program) with information on the latest pollution prevention practices and technologies. This information is then used to help NH's small businesses run more efficiently, saving money and preventing pollution. This center also enables the states to share information, which promotes efficiency and enhances trouble-shooting capacity. Activities under this project will include: overall website management; supporting state efforts to measure environmental outcomes; fostering

collaboration among states on green hospitality, and sustainable lodging; establishing a green chemistry social network; and existing core functions such as providing a national P2 news service; developing metrics to assess program performance; promoting P2 internship programs, including the partnership between DES and UNH; and providing a P2 library for state assistance programs, businesses and others.

NEWMOA is a nonprofit, nonpartisan interstate association. The membership is composed of state environmental agency directors of the hazardous waste, solid waste, waste site cleanup, pollution prevention, and underground storage tank programs in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NEWMOA was established by the governors of the New England states as an official interstate regional organization in accordance with Section 1005 of the federal Resource Conservation and Recovery Act (RCRA).

In addition to being specifically selected by EPA to receive grant funds through a competitive grant process, NEWMOA is also well-suited to carry out the projects as described. As New England's only interstate agency focused on solid and hazardous waste issues, NEWMOA is uniquely qualified to enter into this contract with DES. With its on-going workgroups and roundtables, NEWMOA is already skilled at bringing together state representatives in the areas of pollution prevention and solid and hazardous waste issues. As the current administrator of the Northeast P2 Information Center, NEWMOA is the right organization to continue to provide comprehensive pollution prevention information in a centralized format, on behalf of its members, the Northeast States.

This contract has been approved by the Office of the Attorney General as to form, execution and content. In the event that federal funds become no longer available, general funds will not be requested to support this program.

We respectfully request your approval.



Thomas S. Burack
Commissioner

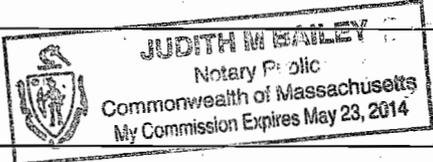
Subject: Northeast Regional Pollution Prevention Information Center (P2Rx) cont. **FORM NUMBER P-37 (version 1/09)**

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name <u>Department of Environmental Services</u>		1.2 State Agency Address <u>29 Hazen Drive Concord, New Hampshire</u>	
1.3 Contractor Name <u>Northeast Waste Management Official's Assn. (NEWMOA)</u>		1.4 Contractor Address <u>129 Portland Street, 6th Floor, Boston, MA 02114</u>	
1.5 Contractor Phone Number <u>617-367-8558</u>	1.6 Account Number <u>03-44-44-440010-5009-102</u>	1.7 Completion Date <u>June 30, 2014</u>	1.8 Price Limitation <u>\$114,885</u>
1.9 Contracting Officer for State Agency <u>Stephanie D'Agostino</u>		1.10 State Agency Telephone Number <u>603-271-6398</u>	
1.11 Contractor Signature <u>Terri Goldberg</u>		1.12 Name and Title of Contractor Signatory <u>Terri Goldberg, Executive Director</u>	
1.13 Acknowledgement: State of <u>MA</u> , County of <u>Suffolk</u> On <u>4/22/2013</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace <u>Judith Bailey</u> [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Judith Bailey, Notary Public</u>			
1.14 State Agency Signature <u>Thomas S. Burack</u>		1.15 Name and Title of State Agency Signatory <u>Thomas S. Burack, Commissioner</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: <u>[Signature]</u> On: <u>5-1-13</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/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 A 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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("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, and 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 terminate this Agreement immediately upon giving the Contractor notice of such termination. The State, shall not be required to transfer funds from any other account to the Account identified in block 1.6 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 B 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 statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, 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.

Contractor Initials NB
Date 4/24/13

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 remedied, 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 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 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall 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 A.

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

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

14. INSURANCE.

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

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

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 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 fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials TUB
Date 4/22/13

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

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. 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. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event 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.

17. 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.

18. 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.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be 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.

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 provisions set forth in the attached EXHIBIT C 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 relating hereto.

Contractor Initials TLB
Date 9/22/13

EXHIBIT A

SCOPE OF SERVICES

Northeast Regional Pollution Prevention Information Center

1. Fostering Collaboration in Green Hospitality by Convening Programs Nationally:

Under this Scope of Services, NEWMOA will manage the National Sustainable Lodging Network. National Sustainable Lodging Network, www.sustainablelodging.org, is an online social network and information clearinghouse for sustainable hospitality practitioners.

NEWMOA will perform the following activities to support the Network:

- Support the implementation and marketing of the National Sustainable Lodging Network
- Maintain the features of the site, provide content, and foster networking and communication among members
- Explore options to expand the scope of the network to other areas of sustainable hospitality, such as restaurants, casinos, eco-tourism, golf courses, and green meetings

2. Establishing a Green Chemistry Social Network: Under this Scope of Service NEWMOA will develop a Green Chemistry Social Networking site. The purpose of the social networking site will be to advance green chemistry in the Northeast through networking and information sharing among interested practitioners. NEWMOA will form a subcommittee within the EPA Region 1 Green Chemistry Challenge to guide the development of the site and help to define the functions. NEWMOA will gather initial content for the site and create a beta version for review by the group. In collaboration with the group, NEWMOA will generate a list of potential members to invite to join the site. After launch, NEWMOA will continue to maintain the site, provide content, and foster communication through it.

3. Establishing a Social Network for Programs Interested in Addressing Climate Mitigation and Materials Management: Under this Scope of Service NEWMOA will develop a fully functioning social networking site that supports the efforts of those working on climate and materials management initiatives, particularly those from the Northeast states and the West Coast Climate and Materials Forum participants. The site will serve two main functions: 1) create a national community of those working on climate-materials work to connect with each other and share information, ideas, and resources; and 2) create a clearinghouse to support the efforts of this community. The social networking site will combine a number of different Web 2.0 technologies including blogs, discussion forums, news, as well as traditional content such as research and policy papers and case studies.

4. P2Rx Center Core Functions: NEWMOA will continue to maintain the core functions of the Northeast Regional Pollution Prevention Information Center including: maintaining a functioning website, updating database resources, participating in the National Network through conference calls and meetings, marketing P2Rx resources, and responding to information requests as they are received.

5. Support of the National P2 Results Data System: The National P2 Results Data System is an online database designed to regionally aggregate P2 results data from public agencies and to

make this information easily accessible. Under this Scope of Service NEWMOA, in coordination with the other P2Rx Centers, will continue to support the National P2 Results Data System by:

- continuing to host the regional module,
- answering questions from state and local programs as they enter their data,
- managing login credentials for participating programs,
- using the System to track the activities and outcomes associated with the Center's activities.

Deliverables

There are a number of deliverables that will be fulfilled under this Scope of Services in support of the P2Rx National Network, the Northeast Regional Pollution Prevention Information Center, and their information products. The following is a list of these deliverables:

- Managing the National Sustainable Lodging Networking
- Establishing a Green Chemistry Social Network
- Establishing a social network on Climate Mitigation and Materials Management
- Performing core functions of the Northeast Regional Pollution Prevention Information Center, including maintaining and updating a number of online resources
- Hosting and supporting the use of the northeast regional module of the National P2 Results Data System
- Participating in P2Rx Administration calls
- Marketing P2Rx resources
- Participating in annual meetings

EXHIBIT B

PAYMENT SCHEDULE

Northeast Regional Pollution Prevention Information Center

NH shall reimburse NEWMOA for its expenses based upon receipt and approval of monthly invoices for actual expenses in accordance with the following budget:

NEWMOA Personnel	57,442
Executive Director (0.04 FTE/year)	3,929
Project Manager (0.33 FTE/year)	22,533
Programmer (0.20 FTE/year)	9,824
Environmental Specialist (0.40 FTE/year)	19,157
Administrative Assistant (0.04 FTE/year)	1,999
Fringe (30% of salaries)	17,233
Travel¹	4,000
Supplies	0
Other	1,745
Total Direct Charges	80,420
Indirect Charges²	34,465
Total Sub-Award Budget	\$114,885

¹ This includes funding for travel for two NEWMOA staff to attend one national P2Rx meeting as well as travel to states and other regional meetings.

² NEWMOA has a Nonprofit Organization Indirect Cost Negotiation Agreement in place with the U.S. Department of Interior, National Business Center, Report Nos. 09-A-073 (07F) and 09-A-074 (09P).

EXHIBIT C

SPECIAL CONDITIONS

Northeast Regional Pollution Prevention Information Center

Paragraph 14 of the General Provisions is hereby modified to require \$1,000,000 in general liability insurance due to NEWMOA's non-profit status.

CERTIFICATE

I, Ronald Gagnon, Chair of the Board of Directors of the Northeast Waste Management Officials' Association (NEWMOA), do hereby certify that: Terri Goldberg is the duly appointed Executive Director of NEWMOA, an official interstate organization created by the Governors of the New England States under the provisions of the Federal Resource Conservation and Recovery Act, and approved by the Regional Administrator of the U.S. Environmental Protection Agency; she is duly authorized under the by-laws of NEWMOA, as amended on April 29, 2011, to sign checks and enter into contracts and grant agreements as necessary to conduct NEWMOA business; and, this authorization has not been revoked, annulled or amended in any manner whatsoever and remains in full force and effect as of the date hereof.

Ronald Gagnon
(Printed name of officer authorized to sign)

IN WITNESS WHEREOF, I have hereunto set my hand as Chairman of the Board of Directors of the Association, this 5th day of March, 2013.

Ronald Gagnon
Chair, Board of Directors

State of Rhode Island, County of Providence

On this the 5th day of March, 2013, before me Alan T. Gates, Alan T. Gates
Notary Public

the undersigned officer, personally appeared Ronald Gagnon who acknowledged himself to be the Chairman of the Board of Directors of the Association, being authorized to do so, executed the foregoing instrument for the purpose therein contained.

In witness whereof, I have set my hand and official seal.

Alan T. Gates
Notary Public

Commission Expiration Date: June 9, 2013
(Seal)

