

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF NATURAL AND CULTURAL RECOURCES**

REQUEST FOR PROPOSALS

**HISTORIC STONE MASONRY REPAIR AT THE WEEKS STATE PARK FIRE
TOWER**

April 8, 2024
Project #ARP 2411

Section 1 – Overview and Schedule

A. Executive Summary

Contractors are invited to submit Proposals to provide historic stone masonry repair at the Weeks State Park Fire Tower. The project will involve an examination of the existing historic stone masonry fire tower, including material testing of existing mortars, and the removal and replacement of existing mortar. It will also include the removal and repair of sealant joints, repairs to cracked cast concrete sills and arches, and the replacement of missing stone masonry. The Weeks State Park Fire Tower is located in a National Historic District and the work shall be performed in accordance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties.

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.

EVENT	DATE	LOCAL TIME
RFP Released to Proposers (Advertisement)	4/8/2024	
Site Visit	4/23/2024	10:00 AM
Proposer Inquiry Period Ends	4/30/2024	4:00 PM
Final Agency Responses to Proposer Inquiries	5/3/2024	4:00 PM
Proposal Due Date	5/9/2024	2:00 PM
Final Selection	5/16/2024	
Governor and Executive Council Meeting for Approval	August 2024	TBD
Anticipated Project Start Date	8/19/2024	
Project Completion Date	11/1/2024	

Section 2 – Proposed Scope of Work

A. Requirements

Proposers must meet the following minimum qualifications in order to be considered for the project. A failure to meet these minimum qualifications will result in their proposal being precluded from further consideration.

1. Proposers must be a firm regularly engaged in historic treatments similar in nature, materials, design, and extent to that indicated for this Project and that have completed a minimum of five recent projects with a record of successful in-service performance that demonstrates the proposer's qualifications to perform this work.
2. Proposer must employ a qualified historic stone masonry repointing specialist. Experience in pointing and repointing only new or non-historic masonry is insufficient experience for masonry historic treatment work.
3. Proposer must utilize installers specializing in performing work indicated for this Project with a minimum of three years documented experience.

B. Scope of Work

Candidate firms will submit a Proposal in support of completing a project that would address the following scope of work:

1. Perform material testing of historic mortars to determine the material properties and compatibility with new mortars to be installed.
2. Remove all loose, cracked, or hard mortar to a minimum depth of two inches, but not less than a depth required to reach sound existing conditions. Mortar removal shall include both the exterior and interior walls of the structure.
3. Re-point the masonry with historically accurate mortar that matches the material properties and color of the original mortar.
4. Replace all loose or missing stones from the interior and exterior of the structure, and the stone arches under the wood framed fire tower cab. Stones shall be of a type and size that matches the existing tower stones.
5. Remove areas of existing sealant patches and replace with historically accurate mortar/grout.
6. Patch existing arches with concrete/mortar matching existing construction.
7. Treat the exterior of the structure with a water-resistant (not water-proof) sealant that is designed for stone masonry structures.
8. Prior to the start of construction provide submittals of all materials to be used on the project to the DNCR department Architect and the Bureau of Historic Sites for review and approval.
9. Provide construction management and oversight services, including biweekly project meetings with DNCR staff.
10. Provide a fee proposal with an itemized schedule of values for the Work.

Section 3 – Process for Submitting a Proposal

A. Submission, Deadline, and Location Instructions

Proposals submitted in response to this RFP must be received by the Department no later than the time and date specified in the Schedule section herein. Proposals may be submitted by U.S. Mail, Delivery Service, In Person, and Electronically, and must be addressed to:

State of New Hampshire
Department of Natural and Cultural Resources
Bureau of Historic Sites
172 Pembroke Road
Concord, NH 03301
c/o
Scott Coruth, Architect

Proposals must be clearly marked as follows:

Proposal for Historic Stone Masonry Repair at the Weeks State Park Fire Tower

All Proposals submitted in response to this RFP must consist of at least:

1. One (1) clearly identified electronic copy of the Proposal, including all required attachments contained on digital media such as PDF.

B. 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 Point of Contact:

To: Scott Coruth, Architect
Tel: 603-271-3676
E-mail: scott.d.coruth@dncr.nh.gov

Inquiries must be received by the Point 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 Department intends to issue official responses to properly submitted inquiries on or before the date specified in the Schedule section. The Department may consolidate and/or paraphrase questions for sufficiency and clarity. Vendors shall be responsible for reviewing the most updated information related to this RFP before submitting a proposal.

C. Validity of Proposal

Proposals must be valid for one hundred and twenty (120) days following the deadline for submission of Proposals in the Schedule of Events, or until the Effective Date of any resulting Contract, whichever is later.

SECTION 4 - Content and Requirements for a Proposal

Proposals shall follow the below format and provide the required information set forth below:

1. **DESCRIPTION OF SERVICES TO BE PROVIDED:** Include a formal letter describing how the firm would carry out and manage the project, the anticipated project timeline, and the invoicing system and payment schedule you would propose to cover your fee. The letter should provide a written commitment to participate in the project as described in your letter if selected. The letter must be signed by the firm principal who will manage the project.
2. **LIST OF PROJECTS:** Provide a list of projects completed by the firm within the last 10 years which are similar or relevant to this project.
3. **EXPERIENCE:** Provide a description of the firms, contractors, and sub-contractors experience with similar types of projects which would provide insight valuable in carrying out this project. Provide resumes indicating the qualifications of the firm members who would work on this project.
4. **REFERENCES:** Provide a list of at least 3 clients for projects of similar character or scope who will provide a reference for your firm. Include the name, telephone number and e-mail address of the contact person.
5. **PRICE PROPOSAL:** Provide a Firm Fixed Fee/Not to Exceed price proposal along with an itemized schedule of values for the work. The schedule of values shall include itemized line items for the following: General Conditions, Bond Costs, Insurance Costs, Demolition, and Historic Stone Masonry Repair.

SECTION 5 – Evaluation of Submissions

A. Criteria for Evaluation and Scoring

The Agency will establish an evaluation team to score the Proposals. This evaluation team will review the Proposals and give a score based on the following evaluation criteria.

EVALUATION CRITERIA	POINTS
<u>Contractors Historic Project Completion Background</u>	<u>Maximum 30 Points</u>
• Completion of 10 or more previous, similar type projects within proposed time frame & budget	30 Points
• Completion of 7-9 projects	25 Points
• Completion of 4-6 projects	15 Points
• Completion of 1-3 projects	5 Points
<u>Contractors Experience with Historic Masonry Repair</u>	<u>Maximum 25 Points</u>
• 5 or more years' experience	25 Points
• 3-4 years' experience	15 Points
• 1-2 years' experience	5 Points
<u>References from Similar Projects</u>	<u>Maximum 20 Points</u>

<u>Price Proposal</u>	<u>Maximum 25 Points</u>
MAXIMUM TOTAL POINTS	100 POINTS

B. Planned Evaluations

The Agency plans to use the following evaluation process:

- Proposals will be scored based upon the criteria and standards contained in this RFP and from applying the weighting in this section;
- Initial screening to ensure that the Proposals are in compliance with submission requirements;
- Evaluation and scoring;
- Review of Price Proposals and final scoring;
- Final selection of the highest scoring candidate and begin contract negotiations.

C. Price Proposal Review

The Proposer’s price proposal will be allocated a maximum potential score of 25 points. Proposers are advised that this **is not a low bid award** and that scoring of the price proposal will be combined with the scoring of the other criteria to determine the overall highest scoring Proposer.

The following formula will be used to assign points for the price proposal:

$$\text{Proposer's Price Score} = (\text{Lowest Proposed Price} / \text{Proposer's Proposed Price}) \times \text{Number of Points for Score}$$

For the purpose of use of this formula, the lowest proposed price is defined as the lowest price proposed by a Proposer who has met the minimum qualifications requirements.

D. No Best and Final Offer

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

E. Rights of the Agency in Accepting and Evaluating Proposals

The Agency reserves the right to:

- Make independent investigations in evaluating Proposals;
- Request additional information to clarify elements of a Proposal;
- Waive minor or immaterial deviations from the RFP requirements, if determined to be in the best 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 candidate and so on if the Agency is unable to reach an agreement on Contract terms with the higher scoring Proposer(s).

Section 6 – Contract Terms and Award

A. Award

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

B. Standard Contract Terms

The successful candidate(s) will be expected to enter into a Firm Fixed Price/Not to Exceed Contract with the State of New Hampshire. The terms and conditions set forth in Form P-37 General Provisions are mandatory and will apply to any contract awarded to the candidate. In addition, engagement specific terms and conditions will be negotiated with the candidate and included in the final contract. For the convenience of the candidates, and reference only, Form P-37 has been included in Appendix A. Candidates shall not be required to fill in the P-37 Form until after final selection and contract negotiations are complete.

C. Federal Requirements

This Project is funded under a grant to the State of New Hampshire and subsequently through the Governor’s Office for Emergency Relief and Recovery (GOFERR) and the Department of Natural and Cultural Resources (DNCR) from the federal government through the Department of the Treasury (Treasury) through the American Rescue Plan Act of 2021 (ARPA), with the source of funds being the State and Local Fiscal Recovery Funds (SLFRF). The successful candidate(s) shall be responsible for any and all compliance requirements, as updated by Treasury, for use of SLFRF funds as applicable to the Contractor.

D. Special Terms To Be Included In A Contract Resulting From this RFP

The following Terms and Conditions shall be included as Exhibit A – Special Provisions of Form P-37:

ARTICLE 1 – CONTRACTOR’S RESPONSIBILITIES

General Responsibilities

- A. The Contractor shall use its diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. Such Work includes furnishing construction administration and management services.

- B. The Contractor shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the RFP.
- C. The Contractor shall solely be responsible for and have control over the construction means, methods, techniques, sequences, procedures, site security, and safety precautions, and for coordinating all portions of the Work under the Agreement.

Construction Personnel and Supervision

- A. The Contractor shall provide competent supervision for the performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.
- B. The Contractor shall be responsible to the Owner for acts or omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors and Suppliers.
- C. The Contractor shall permit only qualified persons to perform the Work. The Contractor shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If the Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned Work, the Contractor shall immediately reassign the person upon receipt of the Owner's written notice to do so.
- D. The Contractor's representative shall possess full authority to receive instructions from the Owner and to act on those instructions.

Workmanship

- A. The Work shall be executed in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except as otherwise permitted by the Owner.
- B. Work shall be of best quality for the intended use and consistent with the quality of surrounding work and of the construction of the Project generally.
- C. Where the Work is to fit with existing conditions, the Contractor shall join the Work fully and completely with such conditions or work, unless otherwise specified.

Tests and Inspections

- A. The Contractor shall schedule all tests, inspections, and approvals of the Work required by the RFP, Law, or orders of authorities having jurisdiction at an appropriate time so as to not delay the progress of the Work. The Contractor shall give proper notice to all required parties of such tests, inspections, and approvals. The Contractor shall bear all expenses

associated with tests, inspections, and approvals required by the RFP, which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Contractor, and approved by the Owner.

Warranty

- A. The Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, and free from defective workmanship and materials. At the Owner's request, the Contractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Contractor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required. The Contractor's warranty shall commence on the Date of Substantial Completion of the Work. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.
- B. With respect to any portion of the Work performed after Substantial Completion, the Contractor's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

Correction of Work Within One Year

- A. If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work, any Defective Work is found, the Owner shall promptly notify the Contractor in writing. Unless the Owner provides written acceptance of the condition, the Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.
- B. With respect to any portion of Work performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Contractor.
- C. If the Contractor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, the Contractor shall be responsible for the cost of correcting the destroyed or damaged property.
- D. The one-year period for correction of Defective Work does not constitute a limitation period with respect to enforcement of the Contractor's other obligations under the Contract Documents.

Safety

- A. Safety Programs: The Contractor holds overall responsibility for safety programs. However, such obligation does not relieve the Subcontractors of their safety

responsibilities or requirements to comply with the Law. The Contractor shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

1. Its employees and other persons at the Site;
 2. Materials and equipment stored at onsite or offsite locations for use in the Work; and
 3. Property located at the Site and adjacent to work areas, whether or not the property is part of the Site.
- B. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of authorities having jurisdiction bearing on safety of persons or property or their protection from damage, injury, or loss.
- C. The Contractor shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

Submittals

- A. The Contractor shall submit to the Owner shop drawings, samples, product data, and similar submittals for all materials used on the project for review and approval. The Contractor shall prepare and deliver its submittals in a manner consistent with the Construction Schedule and in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others.

Site Conditions

- A. Site Visit: The Contractor acknowledges that it has visited, or has had the opportunity to visit, the Site to visually inspect the general and local conditions which could affect the Work.
- B. The Owner maintains possession of the premises and any improvements made by the Contractor. Under the Contract Documents, the Owner grants the Contractor the right to enter and use the premises. The Contractor shall confine its apparatus, the storage of materials, and the operations of the Contractor's workers to limits indicated by Law, ordinance, permits, and/or directions of the Owner and shall not unreasonably encumber the premises with the Contractor's materials or equipment.
- C. The Contractor shall remove snow or ice within the limits of the Site indicated in the Contract Documents that might result in damage or delay.

Permits, Fees, Notices and Compliance with Laws

- A. The Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by authorities having jurisdiction necessary for proper

execution and completion of the Work that are customarily secured after execution of the Agreement and legally required at the time bids are received or negotiations concluded.

- B. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of authorities having jurisdiction applicable to performance of the Work.
- C. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules, and regulations, or lawful orders of authorities having jurisdiction, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

Cutting, Fitting, and Patching

- A. The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

Cleaning Up

- A. The Contractor shall regularly remove debris and waste materials at the Site resulting from the Work. The Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Contractor shall remove from the Site all construction equipment, tools, surplus materials, waste materials, and debris. All debris from the Project shall be cleaned up daily and removed from the Site at least on a weekly basis.

Compliance with Laws

- A. The Contractor shall comply with the Law at its own costs. The Contractor shall be liable to the Owner for all loss, cost, or expense attributable to any acts or omissions by the Contractor, its employees, subcontractors, and agents for failure to comply with the Law, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and the Owner is received.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

Information and Services

- A. The Owner shall furnish information or services required of the Owner by the RFP with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services.

Owner's Representative

- A. The Owner's Representative shall be fully acquainted with the Project and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its Representative or its Representative's authority, the Owner shall immediately notify the Contractor in writing.

Owner's Right to Stop the Work

- A. If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract or repeatedly fails to carry out the Work in accordance with the Contract, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

Submittals

- A. The Owner or its Design Professional will review and approve, or take other appropriate action upon, the Contractor's submittals such as shop drawings, product data, and samples, but only for the limited purpose of checking for conformance with information given and the requirements of the Contract.

ARTICLE 3 –INSURANCE AND BONDS

Insurance

- A. In addition to the Insurance provisions indicated in Articles 14 and 15 of the Agreement, the Consultant shall maintain the following insurance for the duration of the Agreement.
 - 1. Owners Protective Liability:
Limits of Liability:
 - a) \$2,000,000 Each Occurrence
 - b) \$3,000,000 Aggregate
 - 2. Commercial Automobile Liability: Covering all motor vehicles including owned, hired, borrowed, and non-owned vehicles.
Limits of Liability:
 - a) \$1,000,000 Combined Single Limit for Bodily Injury & Property Damage
 - 3. Commercial Umbrella Liability:
Limits of Liability:
 - a) \$1,000,000 Each Occurrence
 - b) \$1,000,000 Aggregate

- B. The Department shall be an additional insured on the Contractor's primary and excess insurance policies for Commercial General Liability and Automobile Liability.

Bonds

- A. Performance and Payment Bond: In the event a bid is \$75,000 or more, the Contractor shall furnish security by bond or otherwise in an amount equal to 100% of the Contract Price guaranteeing performance and payment. The payment security shall meet the requirements of New Hampshire RSA 447:16.
- B. The fully executed performance and payment bond must be returned to the Owner a minimum of fifteen (15) Days prior to the Date of Commencement for the Work.

ARTICLE 4 – FEDERAL REQUIREMENTS

General

- A. The Contractor and subcontractors shall comply with all requirements applicable to contracts under the federal grant award as set forth by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200, other than such provisions as the federal administrative authority (Treasury) may determine are inapplicable to this award or the extent to which the award may be subject to such exceptions.
- B. Universal Identifier and System for Award Management (SAM): The Contractor shall maintain active registration in the System for Award Management (SAM) throughout the term of this contract, and to provide evidence of active registration and assignment of a Universal Entity Identified (UEI) to the State as requested.
- C. Work Hours: The Contractor shall comply with all applicable provisions of 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Debarment and Suspension

- A. By signing the Agreement the Contractor attests that in accordance with 2 CFR 180.220, to the best of the Contractors knowledge, the Contractor is not debarred, suspended,

excluded, disqualified, or otherwise ineligible from participation in covered transactions as defined in 2 CFR 180. Should the Contractor become debarred, suspended, excluded, disqualified, or otherwise ineligible at any point during the contract term, the Contractor shall immediately notify the State.

Nondiscrimination

- A. Per Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.), Contractors are prohibited from discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
- B. Contractors shall not discriminate against individuals with disabilities and shall provide goods and services in a manner that is accessible to and usable by individuals with disabilities, in compliance with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and its implementing regulations, and Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.)
- C. Equal Opportunity in Construction Projects: Pursuant to 41 CFR Part 60, during the performance of this contract, the Contractor agrees as follows:
 - 1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - 2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - 3. The Contractor will not discharge or in any other manner discriminate against an employee or applicant for employment because such employee or applicant has inquired about, or discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted

by the employer, or is consistent with the Contractor's legal duty to furnish information.

4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract of understanding, a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
 - a. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Minority Businesses

- A. The Contractor must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- B. Affirmative steps must include:
 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

2. Ensuring that small and minority businesses and women’s business enterprises are solicited whenever there are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business and women’s business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring subcontractors to take the affirmative steps listed above.

Procurement

- A. Domestic Preference: The Contractor shall, to the greatest extent practicable and as applicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) as prescribed by 2 CFR 200.322. For the purposes of this requirement, “produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and “manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
1. For the purposes of this Project the requirements of 2 CFR 200.322 (c) Buy America preferences for infrastructure projects, set forth in 2 CFR 184, do not apply.
- B. Recovered Materials: The Contractor shall comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as prescribed in 2 CFR 200.323, including procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeds \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- C. Prohibition of Certain Telecommunications and Video Surveillance Equipment: The Contractor shall adhere to the requirements of 2 CFR 200.216 regarding certain telecommunications and video surveillance equipment. The Contractor is prohibited from procuring, obtaining, or extending, renewing, or entering into a contract that involves equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered

telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Other Laws and Regulations

- A. Environmental Laws and Regulations: The Contractor must comply with all generally applicable environmental laws and regulations unless explicitly exempted under the U.S. Department of Treasury’s SLFRF Final Rule, supplemental guidance, or the terms and conditions of the Agreement or the prime agreement between Treasury and the State.
 - 1. The Contractor will include this clause in all subcontracts and will ensure subcontractor compliance with these terms.

- B. Clean Air Act and Federal Water Pollution Control Act: The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and to take any necessary actions to ensure compliance. The Contractor shall promptly notify the State and Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA) of any violations of these standards, orders, or regulations.

- C. Copeland Anti-Kickback: The Contractor shall comply with all applicable provisions of the Copeland Anti-Kickback Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), which are incorporated into this Agreement by reference. This act provides that each contractor or subcontractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The Contractor shall report all suspected or reported violations to the State and the U.S. Department of Treasury.

Lobbying Restrictions

- A. The Contractor certifies by signing the Agreement, to the best of his or her knowledge and belief, that:
 - 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1253.
 - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard

Form-LLL, "Disclosure Form to Report Lobbying," OMB Number 4040-0013, in accordance with its instructions.

3. The Contractor shall require that the language of this certification is included in all subcontracts, sub-subcontracts, and material supply agreements, at all tiers, and that all such sub agreements shall certify and disclose accordingly.

Protections for Whistleblowers

- A. In accordance with 41 USC 4712, an employee of a contractor, subcontractor, grantee, or subgrantee, or personal services contractor may not be discharged, demoted, or otherwise discriminated against as reprisal for disclosing to a person or entity listed below information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial or specific danger to public health or safety, or a violation of law, rule, or other regulation related to a federal contract (including the competition or negotiation of a contract) or grant.
- B. The list of persons and entities referenced in the paragraph above includes the following:
 1. A member of Congress or a representative of a committee of Congress;
 2. An Inspector General;
 3. The Government Accountability Office;
 4. A Treasury employee responsible for contract or grant oversight or management;
 5. An authorized official of the US Department of Justice or other law enforcement agency;
 6. A court or grand jury; or
 7. A management official or employee of the State, subrecipient, contractor, or subcontractor, who has the responsibility to investigate, discover, or address misconduct.
- C. The Contractor and all subcontractors shall inform their employees in writing of the rights and remedies provided in 41 USC 4712 in the predominant language of the workforce.

Safety

- A. Seat Belt Use: The Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.
- B. Text Messaging: The Contractor is encouraged to adopt and enforce policies that ban text messaging while driving and to establish workplace policies to decrease accidents caused by distracted drivers.

Appendix A

Sample Form P-37 Agreement

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 - DNCR Forests and Lands		1.2 State Agency Address- 172 Pembroke Road, Concord NH 03301	
1.3 Contractor Name- Cloutier Sand and Gravel		1.4 Contractor Address- 516 US RTE. 3, North Stratford, NH 03590	
1.5 Contractor Phone Number- 603-922-5527	1.6 Account Unit and Class	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
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	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i> By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i> By: _____ On: _____			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i> 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, 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.

3.3 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. 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 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, 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 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. 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.

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 The State’s liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

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 and the Governor’s order on Respect and Civility in the Workplace, Executive order 2020-01. 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 age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. 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 this Agreement and all rules, regulations and orders pertaining to 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 The Contracting Officer specified in block 1.9, or any successor, shall be the State’s point of contact pertaining to this Agreement.

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) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar 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.

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) calendar 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) calendar 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. In addition, at the State’s discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word “Property” shall mean all data, 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 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure 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 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, 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.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 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. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys’ fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. 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 State’s sovereign immunity, 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 any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. 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 any 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. A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

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 unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

20. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. THIRD PARTIES. This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. 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.

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

24. FURTHER ASSURANCES. The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

25. 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.

26. 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.