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DEPARTMENT OF ENERGY
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August 2, 2023

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

REQUESTED ACTION

Authorize the New Hampshire Department of Energy (NHDOE) to enter a Memorandum of Understanding (MOU) with the New Hampshire Department of Administrative Services (DAS), Vendor #177875, Concord, NH, in an amount not to exceed \$180,000 to support energy consumption reduction and costs in state buildings, effective upon approval by Governor & Executive Council, through June 30, 2024. 100% Federal Funds.

Funding for FY2024 is contingent upon continuing appropriation and availability of funds.

<u>Department of Energy, State Energy Programs</u>	<u>FY 2024</u>
02-52-52-520510-33520000	\$180,000
085-588514 Interagency Xfr Out of Federal Funds	
TOTAL	\$180,000

EXPLANATION

The intent of this MOU is to provide support for projects and initiatives to reduce energy consumption and costs in New Hampshire's State buildings by supporting the Department of Administrative Services' State Energy Manager's office.

NHDOE requests an MOU in an amount not to exceed \$180,000.00 to support: DAS's objective to promote the reduction of energy use, responsible energy behavior, and energy efficiency strategies in state facilities to state employees through education and outreach programs; making building improvements; energy efficiency projects; the Annual State Energy Conference; and other initiatives approved by NHDOE.

These projects will be administered by DAS. In the event Federal Funds are no longer available, General Funds will not be requested to support this program.

Respectfully submitted,

Jared Chicoine
Commissioner

State of New Hampshire
Interagency Memorandum of Understanding

(For use between an executive branch agency and another agency or branch of government of the State of New Hampshire)

Whereas, the New Hampshire Department of Energy is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, the New Hampshire Department of Administrative Services is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, the New Hampshire Department of Energy is responsible for managing and deploying the US Department of Energy's State Energy Program annual grant funding to advance energy initiatives that decrease energy waste and maximize efforts to promote energy efficiency;

Whereas, the New Hampshire Department of Energy desires to utilize State Energy Program funding to reduce energy consumption and costs in state buildings for the benefit of the State and its taxpayers;

Whereas, pursuant to Executive Order 2016-03, the New Hampshire Department of Administrative Services and its State Energy Manager are responsible for researching and entering the State into energy contracts, selecting and implementing energy efficiency projects in state buildings, and reporting on the state's quarterly and annual energy use;

Whereas, the New Hampshire Department of Administrative Services desires to use State Energy Program funding to reduce energy consumption and costs in state buildings for the benefit of the State, agency budgets, and state employees and staff;

NOW, THEREFORE, the parties enter into this Memorandum of Understanding to their mutual benefit, the benefit of the State and in furtherance of constitutional or statutory authority and objectives.

1. The New Hampshire Department of Energy agrees to:

A. Pay the New Hampshire Department of Administrative Services an amount not to exceed **\$180,000** for the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

Execute the following if Box 1., A is checked: Payment shall be provided from 02-52-52-520510-33520000-085-588514:

B. Perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

2. The Department of Administrative Services agrees to:

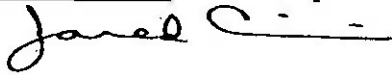
A. Pay *AGENCY 1* the amount of \$ _____ for the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

Execute the following if Box 2. A is checked: Payment shall be provided from [IDENTIFY FUND]:

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- B. Perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.
- C. Abide by the requirements described in the attached MOU Exhibit B, MOU Exhibit C, and MOU Exhibit D, which are hereby incorporated by reference.
3. The method of payment and payment amount for the above-referenced services, if any is required, is described in the attached MOU Exhibit B, such exhibit being hereby incorporated by reference.
 4. All obligations hereunder are contingent upon the availability and continued appropriation of funds. The agencies shall not be required to transfer funds from any other account in the event that funds are reduced or unavailable.
 5. The Memorandum of Understanding is effective until **June 30, 2024**.
 6. This Memorandum of Understanding may be amended by an instrument in writing signed by both parties. Either party may terminate this agreement by providing written notice to the other party at least **thirty (30)** days prior to termination. Upon termination, the Department of Administrative Services will be paid for all qualifying work completed prior to termination.
 7. The Parties agree that the obligations, agreements and promises made under this Memorandum of Understanding are not intended to be legally binding on the Parties and are not legally enforceable.
 8. Disputes arising under this Memorandum of Understanding which cannot be resolved between the agencies shall be referred to the New Hampshire Department of Justice for review and resolution.
 9. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
 10. The parties hereto do not intend to benefit any third parties and this Memorandum of Understanding shall not be construed to confer any such benefit.
 11. In the event any of the provisions of this Memorandum of Understanding are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Understanding will remain in full force and effect.
 12. This Memorandum of Understanding, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Understanding and understandings between the parties, and supersedes all prior Memoranda of Understanding and understandings relating hereto.

13. Nothing herein shall be construed as a waiver of sovereign immunity; such immunity being hereby specifically preserved.

14. **FOR AGENCY 1** New Hampshire Department of Energy



7/3/23

Signature

Date

Jared Chicoine, Commissioner

15. **FOR AGENCY 2** New Hampshire Department of Administrative Services



4/29/23

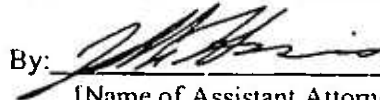
[Head or Commissioner signature]

Date

Charles Arlinghaus, Commissioner

[Head or Commissioner name in print]

Approved by the New Hampshire Department of Justice for form, substance, and execution:

By: 

7/11/2023

[Name of Assistant Attorney General]

On:

Date

Approved by the Governor and Executive Council

By: _____

On:

Date

MOU Exhibit A (MOU Terms)

This MOU describes activities that have been agreed to between the New Hampshire Department of Energy and Department of Administrative Services to utilize State Energy Program funding provided by the Department of Energy to reduce energy consumption and costs in state buildings. This agreement will become effective upon approval by Governor and Executive Council and will end on June 30, 2024.

For the purposes of this MOU, the New Hampshire Department of Energy and the New Hampshire Department of Administrative Services agree as follows:

1. Up to \$180,000.00 for FY24 of funds provided may be used to reduce energy consumption and costs in state buildings, as well as for energy education and outreach. Funding shall not exceed \$180,000.00 over the next fiscal year.
2. The agencies shall assign appropriate staff to oversee the implementation of this agreement.
3. The New Hampshire Department of Administrative Services and the New Hampshire Department of Energy shall agree to follow 2 CFR 200 as amended (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and 10 CFR 420 dated January 1, 2004 (State Energy Program).
4. Per 2 CFR 200.332, xiii, this money is not being used for research and development purposes.
5. Activities supporting this initiative may include:
 - a. Contracting with a firm that provides building automation services and support;
 - b. Purchasing of materials and/or equipment related to building automation;
 - c. Contracting with a firm that provides a building analytics software;
 - d. Contracting with a firm to perform a controls study for buildings;
 - e. Contracting with a firm that provides commissioning or technical assistance for energy savings performance contracts; (this should be on a one-time funding basis)
 - f. Sub-metering of energy or water consumption at the building level or within buildings to provide more detailed usage and cost data;
 - g. Conducting energy audits, retro-commissionings, or other similar studies of state facilities to identify areas of excess energy or water use and develop strategies for reduction;
 - h. Purchasing or installing materials or supplies that reduce energy usage in state buildings, such as, but not limited to, the installation of insulation, the installation of energy efficient lighting, HVAC upgrades to existing systems, weather sealing, purchase and installation of energy efficient or energy/water efficient appliances and equipment, retrofit of energy efficient pumps and motors, and the retrofit or replacement of windows and doors.
 - i. Purchasing products or services that aid in the fossil fuel reduction goals as part of Executive Order 2016-3 and RSA 21-I:14-c, provided the products or services meet a return on investment of 20 years or less;

- j. Purchasing products, infrastructure or services that aid in the greenhouse gas emissions reduction goal for state passenger vehicle fleet as part of Executive Order 2016-3;
 - k. In-state travel for the purposes of educating state employees in the areas of responsible energy behavior and energy efficiency strategies; to monitor project progression; and to encourage participation in energy saving events and initiatives;
 - l. Conferences, memberships and educational software fees for the purposes of educating state employees in the areas of responsible energy behavior and energy efficiency strategies; and to encourage participation in energy saving events and initiatives;
 - m. Hosting energy-related training sessions for state employees or providing scholarships for state employees to attend energy training;
 - n. Materials necessary for conducting educational sessions or to support the administration of the Annual State Energy conference, including rental costs associated with a venue and refreshments for conference participants; and
 - o. Any other related expense approved by the Department of Energy.
6. The New Hampshire Department of Administrative Services shall administer the program(s).
 7. Prior to initiating every project and activity, the New Hampshire Department of Administrative Services shall consult with the New Hampshire Department of Energy regarding the requirements contained in Exhibits C and D.
 8. The New Hampshire Department of Administrative Services and the New Hampshire Department of Energy may meet regularly to review progression on funded activities.
 9. The New Hampshire Department of Administrative Services shall submit a quarterly report within 20 calendar days after the end of the calendar year quarter to the New Hampshire Department of Energy that includes the following:
 - a. The total amount of funding remaining and expended by the New Hampshire Department of Administrative Services;
 - b. A brief description of each funded activity, along with the location, the names of any firms working on the project, and the state agency or bureau that benefits from the project;
 - c. The total cost of each funded activity;
 - d. The estimated energy cost savings of each activity, if applicable;
 - e. The square footage of each location that is subject to any energy retrofits or upgrades, if applicable;
 - f. The estimated return on investment, measured in years, for each activity, if applicable.
 - g. The amount of funding expended on each activity to date;
 - h. Whether the project is completed or remains in progress;
 - i. A final agenda and any supporting documentation for the State Energy Conference;
 - j. Attendance list for the State Energy Conference with a number of attendees.
 - k. Reporting of program expenses.

10. The New Hampshire Department of Energy shall have the right to issue periodic notices, memos, and updated reporting forms and information under this Memorandum of Understanding.
11. The New Hampshire Department of Administrative Services shall grant the New Hampshire Department of Energy and the United States Department of Energy, or any person designated by them, the ability to inspect project and program sites, interview workers, and inspect and monitor financial payroll records and transactions.
12. The New Hampshire Department of Energy may, in consultation with the New Hampshire Department of Administrative Services, publicize progress of this program.

MOU Exhibit B (Payment Terms)

1. The New Hampshire Department of Energy agrees to reimburse the New Hampshire Department of Administrative Services an amount not to exceed \$180,000 for services described in Exhibit A for FY24.
2. Drawdowns from the amount not to exceed \$180,000 will be paid to the New Hampshire Department of Administrative Services only after written documentation of cash need is submitted to the New Hampshire Department of Energy. The New Hampshire Department of Administrative Services shall submit detailed invoices and related backup documentation within fifteen (15) days following the close of each fiscal quarter. Invoicing for the fourth quarter of any fiscal year will be done as soon as feasible to ensure compliance with year-end deadlines. Final invoicing is due to the New Hampshire Department of Energy by July 15, 2024.
3. Prior to invoicing for reimbursement, the New Hampshire Department of Administrative Services shall submit to the New Hampshire Department of Energy their Unique Entity Identifier (UEI) number and proof of active registration in the Federal System for Award Management (SAM).
4. Per 2 CFR 200.414, a standard indirect cost allowance equal to 10% of the direct salary and wage cost of providing the service may be used in lieu of determining the actual indirect costs of the service.

MOU Exhibit C (Federal Buy America Provisions)**BUILD AMERICA, BUY AMERICA (Buy America) COMPLIANCE**

The New Hampshire Department of Administrative Services agrees to comply with the provisions of the Build America, Buy America Act (Buy America) Pub. L. No. 117-58, §§ 70901-52 under the Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, as well as the *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure* memorandum from the Office of Management and Budget (OMB) dated April 18, 2022, and further OMB or the United States Department of Energy guidance once issued.

Buy America requires that the New Hampshire Department of Energy and all awardees of federal funding like the New Hampshire Department of Administrative Services, its subcontractor, its subgrantee, or other person, firm, or corporation employed by or contracted with the New Hampshire Department of Administrative Services shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Definitions:

Infrastructure includes, at a minimum, the structures, facilities, and equipment for, in the United States:

- Roads, highways, and bridges;
- Public transportation;
- Dams, ports, harbors, and other maritime facilities;
- Intercity passenger and freight railroads;
- Freight and intermodal facilities;
- Airports;
- Water systems, including drinking water and wastewater systems;
- Electrical transmission facilities and systems;
- Utilities;
- Broadband infrastructure;
- Buildings and real property; and
- Facilities that generate, transport, and distribute energy.

Further, the “infrastructure” in question must either be publicly owned or serve a public function; privately owned infrastructure that is not open to the public, such as a personal residence, is not considered “infrastructure” for purposes of this requirement. In cases where the “public” nature of the infrastructure is unclear, the New Hampshire Department of Administrative Services should contact the New Hampshire Department of Energy. The New Hampshire Department of Energy will consult with the United States Department of Energy which will render a determination.

Project means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Construction Materials includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is, or consists primarily of:

- Non-ferrous metals;

- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

Domestic content procurement preference means and refers to the same thing as “Buy America Preference.” These terms mean all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

Buy America Preference:

None of the funds provided under this Memorandum of Understanding between the New Hampshire Department of Administrative Services and the New Hampshire Department of Energy may be used for a project for infrastructure unless:

1. All iron and steel used in the project are produced in the United States - this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States - this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States - this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Before undertaking any project, the New Hampshire Department of Administrative Services shall contact the New Hampshire Department of Energy and review whether any proposed project is subject to the provisions of this exhibit.

The New Hampshire Department of Administrative Services and its subcontractor, subgrantee, or other person, firm, or corporation shall provide the best available documentation illustrating compliance with the Buy America Preference. The New Hampshire Department of Energy reserves the right to request additional information from the New Hampshire Department of Administrative Services to further demonstrate compliance with the Buy America preference. Compliance may be met by providing the following:

1. A written statement from the manufacturer demonstrating that the iron, steel, manufactured products, or construction materials purchased from that manufacturer were produced in the United States.

2. Photographic evidence that the iron, steel, manufactured products, or construction materials were produced in the United States.
3. Other documentation pre-approved by the New Hampshire Department of Energy.

Waivers:

When necessary, the New Hampshire Department of Administrative Services may apply for, and the United States Department of Energy may grant, a waiver from the Buy America Preference. Requests to waive the application of the Buy America Preference must be made in writing to the New Hampshire Department of Energy. The New Hampshire Department of Administrative Services, in consultation with the New Hampshire Department of Energy, shall be responsible for writing the waiver request. The New Hampshire Department of Energy will submit waiver requests on behalf of the New Hampshire Department of Administrative Services to the United States Department of Energy. Waiver requests are subject to review by the United States Department of Energy and the OMB, as well as a public comment period of no less than 15 calendar days. Waiver requests may take up to 90-120 calendar days to process.

Waivers must be based on one of the following justifications:

1. Applying the Buy America Preference would be inconsistent with the public interest (Public Interest);
2. The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (Nonavailability); or
3. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (Unreasonable Cost).

Requests to waive the Buy America Preference must include the following:

- Waiver type (Public Interest, Nonavailability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- A detailed justification as to how the non-domestic item(s) is/are essential to the project;
- A certification that the Department of Administrative Services made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- Total estimated project cost, with estimated Federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated Federal share and recipient cost share breakdowns;
- A brief description of the project, its location, and the specific infrastructure involved;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, country(ies) of origin, and relevant PSC and NAICS codes for each;
- A justification statement—based on one of the applicable justifications outlined above - as to why the items in question cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and

- Anticipated impact to the project if no waiver is issued.

The United States Department of Energy and the New Hampshire Department of Energy may request the New Hampshire Department of Administrative Services provide additional information for consideration of this waiver. The United States Department of Energy's final determination regarding approval or rejection of the waiver request may not be appealed.

More information on Build America, Buy America can be found here:

<https://www.energy.gov/management/build-america-buy-america>

MOU Exhibit D (NEPA Requirements)**CERTIFICATION REGARDING NHPA AND NEPA COMPLIANCE**

The New Hampshire Department of Administrative Services agrees to comply with the provisions of the National Environmental Policy Act (NEPA) 42 U.S.C. §4321 et seq., rules promulgated thereunder (40 CFR Parts 1500-1508), guidance documents issued by the Office of Management and Budget or the United States Department of Energy, the New Hampshire's Department of Energy's executed Historic Preservation Programmatic Agreement, and the United States Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE) NEPA Determinations (NEPA Determinations) under SEP-ALRD-2022 and SEP-ALRD-2023. The NEPA Determinations apply to activities funded by SEP-ALRD-2022 and SEP-ALRD-2023. The New Hampshire Department of Administrative Services also agrees to follow any additional guidance issued by the United States Department of Energy.

The New Hampshire Department of Administrative Services agrees to assure compliance with Section 106 of the National Historic Preservation Act (NHPA) and the New Hampshire Department of Energy's executed Historic Preservation Programmatic Agreement prior to authorizing the use of funds.

The New Hampshire Department of Administrative Services agrees that it will only fund activities that are listed within the "Bounded Categories" pursuant to the NEPA Determinations.

Before undertaking any activity, the New Hampshire Department of Administrative Services shall contact the New Hampshire Department of Energy to ensure the activities are in accordance with the NEPA Determinations.

- a. The New Hampshire Department of Energy shall be responsible for creating a NEPA Questionnaire for the New Hampshire Department of Administrative Services to complete prior to the start of any activity.
- b. The New Hampshire Department of Administrative Services shall complete the NEPA Questionnaire and return it to the New Hampshire Department of Energy.
- c. The New Hampshire Department of Energy shall review the completed NEPA Questionnaire and conduct an internal NEPA review of the proposed activity. The New Hampshire Department of Energy shall respond to each NEPA Questionnaire submission within 15 days of receipt. The New Hampshire Department of Energy shall either indicate the project satisfies NEPA provisions so the activity can begin or seek clarification to ensure a satisfactory NEPA review.
- d. The New Hampshire Department of Energy shall document the activity's conformance with the Bounded Categories on a NEPA log and retain the completed NEPA Questionnaire with any other relevant activity materials for record retention.

Activities not listed under "Bounded Categories" including ground disturbing activities outside the boundaries of a facility (defined as an already disturbed area due to regular ground maintenance), structural improvements to facilities, and tree removal, are subject to additional NEPA review and approval by the United States Department of Energy. If the New Hampshire Department of Administrative Services wants to fund activities that are not listed under "Bounded Categories," then the New Hampshire Department of Administrative Services agrees to notify the New Hampshire Department of Energy and seek NEPA review with the United States Department of Energy. Activities requiring NEPA review are not authorized for Federal funding unless and until the United

States Department of Energy, through the New Hampshire Department of Energy, provides written authorization for those activities.

The New Hampshire Department of Administrative Services is responsible for identifying and promptly notifying the New Hampshire Department of Energy of any extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with the “integral elements” (as contained in 10 CFR Part 1021, Appendix B) as they relate to a particular project; and activities restricted elsewhere in Award No. DE-EE0010041.

The New Hampshire Department of Administrative Services agrees to complete the online United States Department of Energy training on NEPA and Historic Preservation at www.energy.gov/node/4816816.