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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

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William Cass, P.E.
Commissioner

David Rodrigue, P.E.
Assistant Commissioner
Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

Bureau of Materials & Research
November 28, 2023

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

REQUESTED ACTION

Authorize the Department of Transportation to enter into a 5-year **Sole Source** agreement with the Northern New England Concrete Association (NNECA), South Portland, ME (Vendor 153200) for a fee not to exceed $65,000 to participate in NNECA's training and certification program from January 1, 2024 through December 31, 2028. 100% Federal Funds.

Funding is available as follows for FY 2024 and FY 2025, and is contingent upon the availability and continued appropriation of funds for FY 2026 through FY 2029, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office if needed and justified:

	FY 2024	FY 2025	FY 2026	FY 2027
04-96-96-962015-3036 SPR Research Funds 066-500543 Continuing Professional Training	$6,500	$13,000	$13,000	$13,000

FY 2028	FY 2029
$13,000	$6,500

EXPLANATION

This agreement is requested as a **Sole Source** with NNECA. American Concrete Institute (ACI) lists NNECA as a Sponsoring Group for ACI Certification in New Hampshire. This is a non-profit organization, which promotes the use of Portland cement concrete in the Tri-State area. They have agreed to provide these services at a very reasonable price, acknowledging the benefit to their members when the Department has properly trained technicians. ACI lists one other Sponsoring Group for ACI Certification in New Hampshire, Maine Concrete Technician Certification Board (MCTCB). This organization's president has explained that they are a volunteer organization, which provides the ACI examination as a service to Maine. They are not interested in providing ACI review training and

examination for New Hampshire. Any other option would require out-of-state travel, which would prove to be more costly. Based on cost and services provided, New Hampshire is receiving the best overall ACI training and examination package available in our region through NNECA. In consideration of this, it is recommended that the New Hampshire Department of Transportation continue to receive ACI training through NNECA.

The contract will provide a review course and examination for Department employees for ACI, Grade 1, Field Testing Technician Certification and Concrete Laboratory Testing Technician. These certifications provide assurance that Department employees providing concrete field and lab testing in support of the Department construction program are properly trained. These certifications are a requirement of our specification for concrete QC/QA projects. Certification of all technicians performing materials tests on Federally Funded Projects has been required since June of 2000.

This project funding is 80% Federal Funds with 20% State match. Turnpike Toll Credit is being utilized for match requirements, effectively using 100% Federal Funds.

This Agreement has been approved by the Attorney General as to form and execution, and the Department has verified that the necessary funds are available. Copies of the fully executed Agreement are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

Sincerely,

William J. Cass, PE
Commissioner

WC/dmb
Attachments

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 NH Department of Transportation		1.2 State Agency Address P.O. Box 483, 5 Hazen Drive Concord, NH 03302-0483	
1.3 Contractor Name Northern New England Concrete Promotion Association		1.4 Contractor Address 50 Market Street, Suite 1-A #221, So. Portland, ME 04106	
1.5 Contractor Phone Number (888) 875-3232	1.6 Account Number 04-96-96-962015-3036	1.7 Completion Date December 31, 2027	1.8 Price Limitation $65,000.00
1.9 Contracting Officer for State Agency Peter Stamnas		1.10 State Agency Telephone Number (603) 271-1486	
1.11 Contractor Signature Jonathan Kuell Date: 5/30/2023		1.12 Name and Title of Contractor Signatory Jonathan Kuell, Executive Director	
1.13 State Agency Signature Date: 11/17/23		1.14 Name and Title of State Agency Signatory Michael J Servetas, Director of Operations	
1.15 Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)* By: Director, On:			
1.16 Approval by the Attorney General (Form, Substance and Execution) *(if applicable)* By: On: 11/30/2023			
1.17 Approval by the Governor and Executive Council *(if applicable)* G&C Item number: G&C Meeting Date:			

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Date 5-30-2023

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

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8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.

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

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

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

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

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Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.
14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:
14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than $1,000,000 per occurrence and $2,000,000 aggregate or excess; and
14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.
14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.
14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.
15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A *("Workers' Compensation")*.
15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. AMENDMENT: This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

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

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

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Date 5·30·2023

ACI Review and Examination Contract
Northern New England Concrete Promotion Association

Exhibit A: Additional Provisions

1) Insurance requirements of Section 14 Insurance are waived.

2) NNECPA trainers are Subcontractors, and have no employees as defined in N.H. RSA chapter 281-A:2 Definitions VI.(a). They are therefore exempt from the requirement to provide Workers' Compensation insurance.

3) The NHDOT will provide facility for review and written exam.

Exhibit B: Service

1) Provide certification review of ACI (American Concrete Institute) certification training for New Hampshire Department of Transportation employees as listed below.

2) Provide ACI Technician Workbooks CP-1, CP-19 and CP-44 for Department of Transportation employees.

3) Administer ACI Certified written and physical testing examination for Concrete Field Testing Technician, Grade 1, and Concrete Laboratory Testing Technician in accordance with ACI certification requirements. Oversight of this exam, including necessary proctors will be included, as well as grading of exams and the issuing of certifications.

Exhibit C: Compensation

1) Payments will be processed by the New Hampshire Department of Transportation to Northern New England Concrete Promotion Association (a non-profit organization) within 30 days of receipt of invoices, with a total not exceeding the contract amount of Thirty Thousand Dollars ($65,000.00), for the five-year time period beginning at Governor & Council approval and ending on December 31, 2028.

2) Training and certification examinations will be provided on a per-person, per-course request basis at the member cost listed below for each type of certification. NNECPA shall monitor total contract billings and not provide training and/or certification services to Department applicants if the cost of such services would cause the total billed amount for this agreement to exceed the contract amount of $65,000.00. The Department will not pay for any services, whether authorized or not, which exceed the total contract amount of $65,000.00.

3) The NNECPA 2023 fee schedule will be effective for this agreement through the second year of the agreement, ending December 31, 2024. Thereafter, the current NNECPA fee schedule shall apply.

NHDOT Fee Schedule for ACI Certifications 2023

ACI Concrete Field Testing Technician – Grade 1	$525.00/applicant
ACI Concrete Strength Testing Technician	$525.00/applicant
ACI Aggregate Testing Technician Level 1	$525.00/applicant
Performance Retesting of any ACI certification exam	$275.00/applicant
Written Retesting of any ACI certification exam	$250.00/applicant

(written or performance, if both are needed, full exam price is required)
Above fees include the corresponding ACI workbook.

State of New Hampshire

Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that NORTHERN NEW ENGLAND CONCRETE PROMOTION ASSOCIATION is a Maine Nonprofit Corporation registered to transact business in New Hampshire on June 02, 2016. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **745560**

Certificate Number: **0006343994**

IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 9th day of November A.D. 2023.

David M. Scanlan
Secretary of State

Certificate of Vote

I, Tim Latham, hereby certify that I am the duly elected President of the Northern New England Concrete Promotion Association.

I hereby certify the following a true copy of a vote taken at a meeting of the Northern New England Concrete Promotion Association Board of Directors, duly called and held on May 30, 2023 at which at quorum of the Board of Directors was present and voting.

VOTED:

That Northern New England Concrete Promotion Association authorizes Jonathan Kuell on behalf of Northern New England Concrete Association, to enter into a contract, lease, or other agreement with the State of New Hampshire and further authorizing Jonathan Kuell to execute any documents which in his judgment, be desirable or necessary to affect the purpose of the vote.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of May 30, 2023 and that Jonathan Kuell is the duly elected Executive Director of this corporation.

Notary:

Signature

11/14/2023

Date

Attest:

Signature

11/14/2023

Date