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STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
OFFICE OF THE EXECUTIVE DIRECTOR

Deanna E. Jurius
Executive Director

Heather A. Kelley
Director

7 EAGLE SQUARE, CONCORD, NH 03301-4980
Telephone: 603-271-2152
TDD Access: Relay NH 1-800-735-2964
www.oplc.nh.gov

January 10, 2025

Her Excellency, Governor Kelly A. Ayotte
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Office of Professional Licensure and Certification (OPLC) to **Retroactively** exercise two contract renewal options, with the Contractors listed below for the provision of Dental Anesthesia Inspection Services, by extending the completion date from December 31, 2024, to December 31, 2025, with no change to the shared price limitation. The original contracts were approved by the Governor and Executive Council on May 1, 2024 (item# 53).

Contractor Name	Vendor Code
Mina D. Fahmy, DDS (Pembroke, NH)	488645
Peter P. Reich, DMD (North Hampton, NH)	488326

EXPLANATION

This request is **Retroactive** because the contractors did not return the completed amendment documents in time to allow for the item be presented to Governor and Executive Council prior to its effective date, although the contractors were provided with the amendment documents in mid-October. As previously stated, the original contracts were approved by the Governor and Executive Council on May 1, 2024 (item# 53).

OPLC requests approval of these contract extensions to provide continued support to the OPLC Licensing and Enforcement Division regarding facility inspections and comprehensive evaluations. The original request (May 1, 2024, item #53) encompassed three contracts with a shared price limitation of \$150,000.00, however Dr. Lily Hu has since been appointed to the Dental Sedation Committee by the Board of Dental Examiners, and subsequently has ended her contract as a Dental Anesthesia Inspector for the OPLC to avoid potential conflicts of interest.

The Board of Dental Examiners' Administrative Rules part DEN 304 requires a permit to administer anesthesia in the practice of dentistry, which in turn requires a facility inspection and comprehensive evaluation of the providers abilities and responses to Board approved emergency scenarios. The contractors shall conduct these inspections and evaluations to support the Board with the issuance of anesthesia permits of the appropriate level to dental facilities and dentists. The contractors shall also assist the Board in reviews of complaints, claims, suits, and facility inspections involving licensees where the safety of the public could be adversely affected.

In the event that Agency funds become no longer available, General Funds will not be requested to support this program.

Based on the foregoing, I am respectfully recommending approval of the contract amendments with the Contractors listed above.

Respectfully submitted,



Deanna E. Jurius
Executive Director

**State of New Hampshire
Office of Professional Licensure and Certification
Amendment #1**

This Amendment to the Dental Anesthesia Inspector Services contract is by and between the State of New Hampshire, Office of Professional Licensure and Certification ("State" or "OPLC") and Mina D. Fahmy, DDS ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on May 1, 2024, (Item #53), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 18, and Exhibit A, Paragraph 1.1, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

WHEREAS, the parties agree to extend the term of the agreement, increase the price limitation, or modify the scope of services to support continued delivery of these services; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties hereto agree to amend as follows:

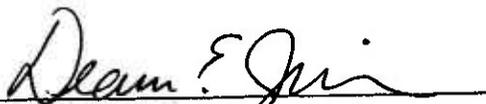
1. Form P-37 General Provisions, Block 1.7, Completion Date, to read:
December 31, 2025
2. Form P-37, General Provisions, Block 1.9, Contracting Officer for State Agency, to read:
Jesse G. Wilcox, Contracts Administrator.

All terms and conditions of the Contract and prior amendments not modified by this Amendment remain in full force and effect. This Amendment shall be effective upon Governor and Council approval.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

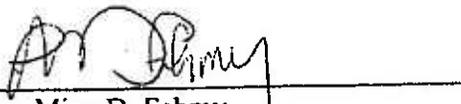
**State of New Hampshire
Office of Professional Licensure and Certification**

12/5/2024
Date


Name: Deanna E. Jurius
Title: Executive Director

Contractor

12/4/24
Date


Name: Mina D. Fahmy
Title: DDS

The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

12/27/24

Date

Jessica A King

Name: Jessica A. King

Title: Sr. Assistant Attorney General

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:

Title:

Jan



STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
OFFICE OF THE EXECUTIVE DIRECTOR

53

Lindsay B. Courtney, J.D.
Executive Director

Heather A. Kelley
Director

7 EAGLE SQUARE, CONCORD, NH 03301-4980
Telephone: 603-271-2152
TDD Access: Relay NH 1-800-735-2964
www.oplc.nh.gov

February 27, 2024

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

REQUESTED ACTION

Authorize the Office of Professional Licensure and Certification (OPLC), to enter into contracts with the Contractors listed below in an amount not to exceed \$150,000.00 for all vendors for the provision of Dental Anesthesia Inspector Services, statewide for the OPLC. These contracts are a result of a competitive RFA-2024-DENTA-01-ANEST. These contracts shall be effective upon Governor and Executive Council Approval through December 31, 2024, with the option to extend for four (4) years. No minimum or maximum individual contract amounts are guaranteed. 100% Agency Funds.

Contractor Name	Vendor Code	Shared Price Limitation
Mina D. Fahmy, DDS (Pembroke, NH)	488645	\$150,000
Lily Hu, DMD (Kittery, ME)	396946	
Peter P. Reich, DMD (North Hampton, NH)	488326	

Funds to support this request are available in the following account:

01-21-2100-24040000 Division of Administration	<u>FY 2024</u>	<u>FY 2025</u>
046-500462 - Consultants	\$75,000	\$75,000

EXPLANATION

The purpose of this request is to ensure licensed dental examiners, anesthesiologists, and/or nurse anesthetists are available to inspect dental facilities for the use of anesthesia on behalf of the OPLC.

This request represents three (3) of three (3) contracts that will be presented to the Governor and Executive Council for consideration and approval. There are no minimum or maximum number of inspections guaranteed to any one contractor. Contractors will be added to a list of contracts approved by the agency to conduct inspections on behalf of the OPLC.

Contractors must conduct initial inspections and subsequent evaluations of dental facilities and/or dental offices to ensure compliance with statutory and regulatory provisions, including but not limited to, New Hampshire Revised Statutes Annotated (RSA) 317-A and NH Administrative Rules, DEN 300, Licensing Requirements, Part DEN 304, Use of General Anesthesia and Sedation by Dentists, to assist the OPLC and Board of Dental Examiners with the issuance of appropriate licensure, certification, and/or permit.

Inspector services include the review of information received to ensure that all materials are in order and ready for Board Review. Information reviewed could include, but is not limited to, office records, responses, radiographic films, reports from other agencies and reports from other states.

The OPLC selected the Contractors through a competitive bid process using a Request for Application (RFA) that was posted on the OPLC's website from December 11, 2023 through January 12, 2024. The OPLC received seven (7) responses that were reviewed and scored by a team of qualified individuals. The Scoring Sheet is attached.

In the event that Agency Funds become no longer available, General Funds will not be requested to support this program.

Based on the foregoing, I am respectfully recommending approval of the contractors in the table above.

Respectfully submitted,



Lindsey B. Courtney
Executive Director

Dental Anesthesia Inspector (RFA-2024-DENTA-01-ANEST) Final Score Sheet

Maximum Points Available	Benjamin Farr, DDS, MD	Daniel DeTolla, DDS, MD	Jonathan Bean, DDS	LBy Hu, OMD	Mina Fahmy, DDS	Peter Reich, OMD	Thomas Burk, OMD, MD
	Non-Compliant	Non-Compliant	Non-Compliant				Non-Compliant
(Q1) Describe, in narrative form*, your capability to perform the entire scope of work in this RFA, including any specialized classes, trainings and/or seminars attended.	40			35	25	40	
(Q2) Describe, in narrative form*, your experience in conducting peer reviews. Include a sample summary report with redactions of any personally identifiable information.	25			25	10	25	
(Q3) Describe, in narrative form*, your experience in the specialty for which you are applying. Include length of service in your profession and any achievements attained.	35			35	32	30	
Totals:	100			95	67	95	

Reviewer Name	Reviewer Title
Jessica F. Kallipolites	Director, Division of Enforcement
John Garrigan	Chief Administrative Prosecutor
Puneet Kochar, OMD	Dentist, President, Board of Dental Examiners
Howard J. Ludington, DDS	Dentist, Board of Dental Examiners

FORM NUMBER P-37 (version 2/23/2023)

Subject: Dental Anesthesia Inspector (RFA-2024-DENTA-01-ANEST)

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 Office of Professional Licensure and Certification		1.2 State Agency Address 7 Eagle Square Concord, NH 03301	
1.3 Contractor Name Mina D. Fahmy, DDS		1.4 Contractor Address [REDACTED] Pembroke, NH 03275	
1.5 Contractor Phone Number [REDACTED]	1.6 Account Unit and Class 010-021-2100-24040000-46-500462	1.7 Completion Date December 31, 2024	1.8 Price Limitation Shared Price Limitation \$150,000
1.9 Contracting Officer for State Agency Heather A. Kelley, Director of Operations		1.10 State Agency Telephone Number (603) 271-0142	
1.11 Contractor Signature  Date: 1/9/24		1.12 Name and Title of Contractor Signatory Mina Fahmy, DDS	
1.13 State Agency Signature  Date: 1/16/24		1.14 Name and Title of State Agency Signatory Lindsey B. Courtney, Executive Director	
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: 4/16/2024			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, 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.

Contractor Initials: MD

Date: 1/9/24

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.

Contractor Initials: AW
Date: 1/9/24

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.

Contractor Initials: RO

Date: 1/9/24

EXHIBIT A

Revisions to General Provisions

1. Revisions to Form P-37, General Provisions

1.1. Paragraph 3, Effective Date: Completion of Project, is amended by adding subparagraph 3.4 as follows:

3.4. The parties may extend the Agreement for up to four (4) additional years from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.

1.2. Paragraph 8, Event of Default: Remedies, subparagraph 8.2.3, is amended as follows:

8.2.3 Give the Contractor a written notice specifying the Event of Default and suspending payments, in whole or in part, to be made under this Agreement, until the Event of Default is cured.

1.3. Revisions to Form P-37, General Provisions, Paragraph 14, Insurance is deleted.



Scope of Services

1. Provisions Applicable to All Services

- 1.1. The Contractor shall provide dental anesthesia inspector services to assist the Office of Professional Licensure and Certification (OPLC) inspections of providers, facilities, and/or hosting facilities as appropriate.
- 1.2. The Contractor shall:
 - 1.2.1. Utilize the appropriate current report format for the type of inspection requested.
 - 1.2.2. Ensure reports are completed accurately and according to the requirements of the specific licensure, certification, and/or permit sought.
 - 1.2.3. Ensure completed reports are legible and any comments are clear, concise, and objective.
 - 1.2.4. Provide completed reports and supporting documentation, as applicable, to the OPLC no later than two (2) business days after completing the inspection.
- 1.3. The Contractor shall be available to provide evaluations and inspections, statewide,
- 1.4. The Contractor shall maintain a current valid and unrestricted license as a New Hampshire dental provider and a general anesthesia/deep sedation permit.
- 1.5. For the purposes of this agreement, all references to days shall mean business days, which are Monday through Friday excluding State and Federal Holidays, from 8:00 A.M. to 4:00 P.M. (EST).
- 1.6. The Contractor shall provide dates and times of anticipated availability for all inspections to the OPLC for the following year no later than ten (10) days from the contract effective date, with updates provided by e-mail as changes in availability occur.
- 1.7. The Contractor shall response to all requests from the OPLC or inspections no later than two (2) business days from receiving the request by:
 - 1.7.1. Sending an email to the OPLC either confirming or refusing the opportunity to conduct an inspection; and
 - 1.7.2. Including an attestation indicating no conflict of interest exists between the Contractor and the provider, facility, and/or host facility, as appropriate; or
 - 1.7.3. Including a statement indicating a conflict of interest exists between the Contractor and the provider, facility, and/or host facility, as appropriate.
- 1.8. The Contractor may refuse the opportunity to conduct an inspection up to three (3) times during the term of the agreement. The Contractor agrees that:

AD

1/9/24



Exhibit B

- 1.8.1. An attestation of conflict of interest must identify the relationship between both parties that constitutes the conflict of interest.
- 1.8.2. Pursuant to Paragraph 9 of Form P-37, General Provisions, refusing opportunities to conduct inspections may result in termination of the contract.

2. Scope of Work

- 2.1. The Contractor shall conduct initial inspections and subsequent evaluations of dental facilities and/or dental offices to ensure compliance with statutory and regulatory provisions, including but not limited to, NH Revised Statutes Annotated (RSA) 317-A and NH Administrative Rules, DEN 300, Licensing Requirements, Part DEN 304, Use of General Anesthesia and Sedation by Dentists in order to assist the Board of Dental Examiners (hereinafter, 'the Board') with the issuance of appropriate licensure, certification and/or permit. The Contractor shall be available to:
 - 2.1.1. Conduct comprehensive evaluations of providers for permits to administer Deep Sedation/General Anesthesia or Moderate Sedation in accordance with Part DEN 304, Use of General Anesthesia and Sedation by Dentists. The Contractor shall ensure evaluations include, but are not limited to:
 - 2.1.1.1. Inspection of equipment, medications, and documents.
 - 2.1.1.2. Observation of a Board-approved simulated emergency management, in order to:
 - 2.1.1.2.1. Evaluate a provider's ability to diagnose and manage the physiologic consequences for patients whose level of sedation becomes deeper than initially intended; and
 - 2.1.1.2.2. Evaluate a provider's training, skill, medication, and equipment to identify and manage the simulated emergency.
 - 2.1.1.3. Other item and/or topic areas as may be required by the OPLC in accordance with current laws and regulations.
 - 2.1.2. Conduct facility, inspections, which included but is not limited to:
 - 2.1.2.1. Evaluating equipment, medications and documents supplied by the facility, or hosting facility as applicable, to ensure compliance with the Office Anesthesia Evaluation Manual 2018 of the American Association of Oral and Maxillofacial Surgeons.
 - 2.1.2.2. Conducting other activities as may be required by the Board in accordance with current laws and regulations.

AD

1/9/24



Exhibit B

- 2.1.3. Ensure compliance with the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students.
- 2.1.4. Ensure compliance with the NH Revised Statutes Annotated (RSA) 317-A, Dentists and Dentistry.
- 2.1.5. Ensure advanced training and/or competencies completed by providers are recognized by the current American Dental Association (ADA) Guidelines for the Use of Sedation and General Anesthesia by Dentists.
- 2.1.6. Ensure training in anesthesiology and related academic subjects, as described in requirements of the Commission on Dental Accreditation (CODA) for each advanced subject.
- 2.1.7. Ensure the provider is certified in Advanced Cardiac Life Support (ACLS), Basic Life Support (BLS) and, for pediatric certification, Pediatric Advanced Life Support (PALS).
- 2.2. The Contractor shall be available for a minimum of seven (7) hours per month to complete full inspections, ensuring work hours are not subdivided among groups of providers or individual providers in the same practice group.
- 2.3. The contractor shall assist the OPLC with arranging and completing unannounced inspections of dental facilities and/or offices.
- 2.4. The Contractor shall be available to assist the OPLC, Division of Enforcement, in preparation for testimony before the Boards for administrative hearings based on completed inspections, as required by the OPLC.

Mina D. Fahmy, DDS

RFA 2024-DENTA-01-ANEST

Exhibit B

Page 3 of 1

Contractor Initials

MD

Date

1/9/24

**Office of Professional Licensure and Certification
Dental Anesthesia Inspector Services**

EXHIBIT C

5. In lieu of hard copies, all invoices may be assigned an electronic signature and emailed to oplc.accountspayable@oplc.nh.gov, or invoices may be mailed to:
Heather Kelley, Director of Operations
Office of Professional Licensure and Certification
7 Eagle Square
Concord, NH 03301.
6. Payments may be withheld pending receipt of required reports or documentation as identified in Exhibit B, Scope of Services and in this Exhibit C.
7. Notwithstanding paragraph 18 of the General Provisions P-37, changes limited to adjusting encumbrances between State Fiscal Years, may be made by written agreement of both parties and may be made without obtaining approval of the Governor and Executive Council.

**State of New Hampshire
Office of Professional Licensure and Certification
Amendment #1**

This Amendment to the Dental Anesthesia Inspection Services contract is by and between the State of New Hampshire, Office of Professional Licensure and Certification ("State" or "OPLC") and Peter P. Reich, DMD ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on May 1, 2024, (Item #55), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 18, and Exhibit A, Paragraph 1.1, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

WHEREAS, the parties agree to extend the term of the agreement, increase the price limitation, or modify the scope of services to support continued delivery of these services; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties hereto agree to amend as follows:

1. Form P-37 General Provisions, Block 1.7, Completion Date, to read:
December 31, 2025
2. Form P-37, General Provisions, Block 1.9, Contracting Officer for State Agency, to read:
Jesse G. Wilcox, Contracts Administrator.

All terms and conditions of the Contract and prior amendments not modified by this Amendment remain in full force and effect. This Amendment shall be effective upon Governor and Council approval.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below.

State of New Hampshire
Office of Professional Licensure and Certification

12/5/2024
Date

Deanna E. Jurin
Name: Deanna E. Jurin
Title: Executive Director

Contractor

12/5/2024
Date

Peter P. Reich
Name: Peter P. Reich
Title: DMD

Peter P. Reich, DMD

The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

1/16/25

Date

Jessica A King

Name: Jessica King

Title: Sr. Asst Attorney General

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:

Title:

Sam



STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
OFFICE OF THE EXECUTIVE DIRECTOR

53

Lindsey B. Courtney, J.D.
Executive Director

Heather A. Kelley
Director

7 EAGLE SQUARE, CONCORD, NH 03301-4980
Telephone: 603-271-2152
TDD Access: Relay NH 1-800-735-2964
www.oplc.nh.gov

February 27, 2024

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

REQUESTED ACTION

Authorize the Office of Professional Licensure and Certification (OPLC), to enter into contracts with the Contractors listed below in an amount not to exceed \$150,000.00 for all vendors for the provision of Dental Anesthesia Inspector Services, statewide for the OPLC. These contracts are a result of a competitive RFA-2024-DENTA-01-ANEST. These contracts shall be effective upon Governor and Executive Council Approval through December 31, 2024, with the option to extend for four (4) years. No minimum or maximum individual contract amounts are guaranteed. 100% Agency Funds.

Contractor Name	Vendor Code	Shared Price Limitation
Mina D. Fahmy, DDS (Pembroke, NH)	488645	\$150,000
Lily Hu, DMD (Kittery, ME)	396946	
Peter P. Reich, DMD (North Hampton, NH)	488326	

Funds to support this request are available in the following account:

01-21-2100-24040000 Division of Administration	<u>FY 2024</u>	<u>FY 2025</u>
046-500462 - Consultants	\$75,000	\$75,000

EXPLANATION

The purpose of this request is to ensure licensed dental examiners, anesthesiologists, and/or nurse anesthetists are available to inspect dental facilities for the use of anesthesia on behalf of the OPLC.

This request represents three (3) of three (3) contracts that will be presented to the Governor and Executive Council for consideration and approval. There are no minimum or maximum number of inspections guaranteed to any one contractor. Contractors will be added to a list of contracts approved by the agency to conduct inspections on behalf of the OPLC.

Contractors must conduct initial inspections and subsequent evaluations of dental facilities and/or dental offices to ensure compliance with statutory and regulatory provisions, including but not limited to, New Hampshire Revised Statutes Annotated (RSA) 317-A and NH Administrative Rules, DEN 300, Licensing Requirements, Part DEN 304, Use of General Anesthesia and Sedation by Dentists, to assist the OPLC and Board of Dental Examiners with the issuance of appropriate licensure, certification, and/or permit..

Inspector services include the review of information received to ensure that all materials are in order and ready for Board Review. Information reviewed could include, but is not limited to, office records, responses, radiographic films, reports from other agencies and reports from other states.

The OPLC selected the Contractors through a competitive bid process using a Request for Application (RFA) that was posted on the OPLC's website from December 11, 2023 through January 12, 2024. The OPLC received seven (7) responses that were reviewed and scored by a team of qualified individuals. The Scoring Sheet is attached.

In the event that Agency Funds become no longer available, General Funds will not be requested to support this program.

Based on the foregoing, I am respectfully recommending approval of the contractors in the table above.

Respectfully submitted,



Lindsey B. Courtney
Executive Director

Dental Anesthesia Inspector (RFA-2024-DENTA-01-ANEST) Final Score Sheet

Maximum Points Available	Benjamin Farr, DDS, MD	Daniel DeTolla, DDS, MD	Jonathan Bean, DDS	Lily Hu, DMD	Mina Fahmy, DDS	Peter Reich, DMD	Thomas Burt, DMD, MD
	Non-Compliant	Non-Compliant	Non-Compliant				Non-Compliant
(Q1) Describe, in narrative form*, your capability to perform the entire scope of work in this RFA, including any specialized classes, trainings and/or seminars attended.	40			35	25	40	
(Q2) Describe, in narrative form*, your experience in conducting peer reviews. Include a sample summary report with redactions of any personally identifiable information.	25			25	10	25	
(Q3) Describe, in narrative form*, your experience in the specialty for which you are applying. Include length of service in your profession and any achievements attained.	35			35	32	30	
Totals:	100			95	67	95	

Reviewer Name	Reviewer Title
Jessica F. Kallipolites	Director, Division of Enforcement
John Garrigan	Chief Administrative Prosecutor
Puneet Kochar, DMD	Dentist, President, Board of Dental Examiners
Howard J. Ludington, DDS	Dentist, Board of Dental Examiners

Subject: Dental Anesthesia Inspector (BSA-2024-DENTA-01-ANEST)

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 Office of Professional Licensure and Certification		1.2 State Agency Address 7 Eagle Square Concord, NH 03301	
1.3 Contractor Name Peter P. Reich, DMD		1.4 Contractor Address [REDACTED] North Hampton, NH 03862	
1.5 Contractor Phone Number [REDACTED]	1.6 Account Unit and Class 010-021-2100-24040000-46-500462	1.7 Completion Date December 31, 2024	1.8 Price Limitation Shared Price Limitation \$150,000
1.9 Contracting Officer for State Agency Heather A. Kelley, Director of Operations		1.10 State Agency Telephone Number (603) 271-0142	
1.11 Contractor Signature Peter P. Reich, Date: 1/2/24		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature [Signature], Date: 1/17/24		1.14 Name and Title of State Agency Signatory Lindsey B. Courtney, Executive Director	
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: J. D. Ladd, On: 4/16/2024			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

Office of Professional Licensure and Certification
Dental Anesthesia Inspector Services

EXHIBIT A

Revisions to General Provisions

1. Revisions to Form P-37, General Provisions
 - 1.1. Paragraph 3, Effective Date: Completion of Project, is amended by adding subparagraph 3.4 as follows:
 - 3.4. The parties may extend the Agreement for up to four (4) additional years from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.
 - 1.2. Paragraph 8, Event of Default: Remedies, subparagraph 8.2.3, is amended as follows:
 - 8.2.3 Give the Contractor a written notice specifying the Event of Default and suspending payments, in whole or in part, to be made under this Agreement, until the Event of Default is cured.
 - 1.3. Paragraph 14, Insurance is deleted in its entirety.

PPR
4/17/24

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.

Contractor Initials: *MPB*

Date: *1/2/24*

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.

**Office of Professional Licensure and Certification
Dental Anesthesia Inspector Services**

EXHIBIT A

Revisions to General Provisions

1. Revisions to Form P-37, General Provisions

1.1. Paragraph 3, Effective Date: Completion of Project, is amended by adding subparagraph 3.4 as follows:

3.4. The parties may extend the Agreement for up to four (4) additional years from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.

1.2. Paragraph 8, Event of Default: Remedies, subparagraph 8.2.3, is amended as follows:

8.2.3 Give the Contractor a written notice specifying the Event of Default and suspending payments, in whole or in part, to be made under this Agreement, until the Event of Default is cured.

1.3. Paragraph 14, Insurance is deleted in its entirety.

PPR
1/12/24



Exhibit B

Scope of Services

1. Provisions Applicable to All Services

- 1.1. The Contractor shall provide dental anesthesia inspector services to assist the Office of Professional Licensure and Certification (OPLC) inspections of providers, facilities, and/or hosting facilities as appropriate.
- 1.2. The Contractor shall:
 - 1.2.1. Utilize the appropriate current report format for the type of inspection requested.
 - 1.2.2. Ensure reports are completed accurately and according to the requirements of the specific licensure, certification, and/or permit sought.
 - 1.2.3. Ensure completed reports are legible and any comments are clear, concise, and objective.
 - 1.2.4. Provide completed reports and supporting documentation, as applicable, to the OPLC no later than two (2) business days after completing the inspection.
- 1.3. The Contractor shall be available to provide evaluations and inspections, statewide.
- 1.4. The Contractor shall maintain a current valid and unrestricted license as a New Hampshire dental provider and a general anesthesia/deep sedation permit.
- 1.5. For the purposes of this agreement, all references to days shall mean business days, which are Monday through Friday excluding State and Federal Holidays, from 8:00 A.M. to 4:00 P.M. (EST).
- 1.6. The Contractor shall provide dates and times of anticipated availability for all inspections to the OPLC for the following year no later than ten (10) days from the contract effective date, with updates provided by e-mail as changes in availability occur.
- 1.7. The Contractor shall response to all requests from the OPLC or inspections no later than two (2) business days from receiving the request by:
 - 1.7.1. Sending an email to the OPLC either confirming or refusing the opportunity to conduct an inspection; and
 - 1.7.2. Including an attestation indicating no conflict of interest exists between the Contractor and the provider, facility, and/or host facility, as appropriate; or
 - 1.7.3. Including a statement indicating a conflict of interest exists between the Contractor and the provider, facility, and/or host facility, as appropriate.
- 1.8. The Contractor may refuse the opportunity to conduct an inspection up to three (3) times during the term of the agreement. The Contractor agrees that:
 - 1.8.1. An attestation of conflict of interest must identify the relationship between both parties that constitutes the conflict of interest.

Peter P. Reich, DMD

Exhibit B

Contractor Initials

PR

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1.8.2. Pursuant to Paragraph 9 of Form P-37, General Provisions, refusing opportunities to conduct inspections may result in termination of the contract.

2. Scope of Work

2.1. The Contractor shall conduct initial inspections and subsequent evaluations of dental facilities and/or dental offices to ensure compliance with statutory and regulatory provisions, including but not limited to, NH Revised Statutes Annotated (RSA) 317-A and NH Administrative Rules, DEN 300, Licensing Requirements, Part DEN 304, Use of General Anesthesia and Sedation by Dentists in order to assist the Board of Dental Examiners (hereinafter, 'the Board') with the issuance of appropriate licensure, certification and/or permit. The Contractor shall be available to:

2.1.1. Conduct comprehensive evaluations of providers for permits to administer Deep Sedation/General Anesthesia or Moderate Sedation in accordance with Part DEN 304, Use of General Anesthesia and Sedation by Dentists. The Contractor shall ensure evaluations include, but are not limited to:

2.1.1.1. Inspection of equipment, medications, and documents.

2.1.1.2. Observation of a Board-approved simulated emergency management, in order to:

2.1.1.2.1. Evaluate a provider's ability to diagnose and manage the physiologic consequences for patients whose level of sedation becomes deeper than initially intended; and

2.1.1.2.2. Evaluate a provider's training, skill, medication, and equipment to identify and manage the simulated emergency.

2.1.1.3. Other item and/or topic areas as may be required by the OPLC in accordance with current laws and regulations.

2.1.2. Conduct facility, inspections, which included but is not limited to:

2.1.2.1. Evaluating equipment, medications and documents supplied by the facility, or hosting facility as applicable, to ensure compliance with the Office Anesthesia Evaluation Manual 2018 of the American Association of Oral and Maxillofacial Surgeons.

2.1.2.2. Conducting other activities as may be required by the Board in accordance with current laws and regulations.

2.1.3. Ensure compliance with the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students.

2.1.4. Ensure compliance with the NH Revised Statutes Annotated (RSA) 317-A, Dentists and Dentistry.

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Exhibit B

- 2.1.5. Ensure advanced training and/or competencies completed by providers are recognized by the current American Dental Association (ADA) Guidelines for the Use of Sedation and General Anesthesia by Dentists.
- 2.1.6. Ensure training in anesthesiology and related academic subjects, as described in requirements of the Commission on Dental Accreditation (CODA) for each advanced subject.
- 2.1.7. Ensure the provider is certified in Advanced Cardiac Life Support (ACLS), Basic Life Support (BLS) and, for pediatric certification, Pediatric Advanced Life Support (PALS).
- 2.2. The Contractor shall be available for a minimum of seven (7) hours per month to complete full inspections, ensuring work hours are not subdivided among groups of providers or individual providers in the same practice group.
- 2.3. The contractor shall assist the OPLC with arranging and completing unannounced inspections of dental facilities and/or offices.
- 2.4. The Contractor shall be available to assist the OPLC, Division of Enforcement, in preparation for testimony before the Boards for administrative hearings based on completed inspections, as required by the OPLC.

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EXHIBIT C

Payment Terms

1. This Agreement is one of multiple agreements for services as described in Exhibit B, Scope of Services. *No maximum or minimum client and service volume is guaranteed.* Accordingly, the price limitation among all agreements is identified in Form P-37, Block 1.8, Price Limitation for the duration of the agreement.
2. This Agreement is funded with 100% Agency Funds.
3. The Contractor agrees to provide the services in Exhibit B, Scope of Service in compliance with funding requirements. Failure to meet the scope of services may jeopardize the Contractor's current and/or future funding.
4. Payment for services shall be made as follows:
 - 4.1. Payment shall be on an all-inclusive per deliverable reimbursement rate of:
 - 4.1.1. \$300 for each provider evaluation completed, as described in Exhibit B, Scope of Services; and
 - 4.1.2. \$750 for each comprehensive evaluation completed, as described in Exhibit B, Scope of Services.
 - 4.2. The Contractor shall submit an invoice in a form satisfactory to the State by the twentieth (20th) working day of each month, which identifies and requests reimbursement for evaluations completed in the prior month. The Contractor shall:
 - 4.2.1. Ensure each invoice is completed, dated, and returned to the OPLC in order to initiate payment.
 - 4.2.2. Keep detailed records of activities related to contract services.
 - 4.2.3. Ensure invoices include, but are not limited to:
 - 4.2.3.1. Case identifiers.
 - 4.2.3.2. Number of hours worked.
 - 4.2.3.3. Contractor Name.
 - 4.2.3.4. Vendor Number.
 - 4.2.3.5. Contract Name and Number.
 - 4.3. The State shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available.
 - 4.4. The final invoice shall be due to the State no later than forty (40) days after the contract Form P-37, Block 1.7 Completion Date.

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**Office of Professional Licensure and Certification
Dental Anesthesia Inspector Services**

EXHIBIT C

5. In lieu of hard copies, all invoices may be assigned an electronic signature and emailed to oplc.accounts payable@oplc.nh.gov, or invoices may be mailed to:
Heather Kelley, Director of Operations
Office of Professional Licensure and Certification
7 Eagle Square
Concord, NH 03301
6. Payments may be withheld pending receipt of required reports or documentation as identified in Exhibit B, Scope of Services and in this Exhibit C.
7. Notwithstanding paragraph 18 of the General Provisions P-37, changes limited to adjusting encumbrances between State Fiscal Years, may be made by written agreement of both parties and may be made without obtaining approval of the Governor and Executive Council.

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