

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EMPLOYMENT SECURITY
Administrative Hearings Services**

RFP NHES 2021-06

Section 1 – Overview and Schedule

A. Executive Summary

New Hampshire Employment Security (“NHES”) administers all aspects of the State of New Hampshire’s Unemployment Compensation (“UC”) System under RSA Chapter 282-A and related federal statutes and regulations, including the determination and adjudication of individuals’ eligibility for UC benefits and for benefits provided under the Federal CARES Act (“CARES Act”), the Continued Assistance for Unemployed Workers Act of 2020 (“CAA”), the American Rescue Plan Act of 2021 (“ARPA”) and any amendments or successors thereto, and the Lost Wages Assistance Program (“LWA”) established by President’s Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019 (8/8/2020) (the “Presidential Memorandum”) (collectively, the “Programs”).

The COVID-19 crisis has resulted in an unprecedented volume of claims for UC and other unemployment benefits under the Programs. Initial Determinations of eligibility for such benefits are made by the Department’s Certifying Officers. Claimants and, in some cases, employers, have statutory rights to appeal such determinations. Appeals are adjudicated by the Department’s Appeal Tribunal Chairs (“AT” or the “Tribunal”). See RSA 282-A:53.

In order to efficiently manage the appellate process, and to ensure prompt payment of benefits to eligible claimants, the Department seeks to engage one or more law firms to provide attorneys to process and adjudicate a portion of these appeals, by conducting administrative hearings and issuing decisions, acting by designation as the AT with respect to such proceedings. Although ATs are generally required to be employees of NHES, or “merit staff” as provided in federal law, the Families First Coronavirus Relief Act (“FFCRA”) granted the States and U.S. Territories emergency flexibility with respect to the use of non-merit staff to adjudicate unemployment claims. Any contracts for work to be performed under this procurement shall be limited by the duration of the flexibility afforded by the FFCRA, CARES Act, CAA and successor legislation and guidance.

A. Schedule

The following table provides a Schedule of Events for this RFP through contract finalization and approval. The Agency reserves the right to amend this Schedule at its sole discretion and at any time through a published Addendum.

EVENT	DATE	LOCAL TIME
RFP Released to Proposers (Advertisement)	May 19, 2021	
Proposer Inquiry Period Ends	May 28, 2021	5 PM
Final Agency Responses to Proposer Inquiries	June 2, 2021	5:00 PM
Proposers Submit Proposals	June 4, 2021	2:30 PM
Estimate Timeframe for Proposer Oral Presentations and Interviews (if applicable)	June 14, 2021	TBD
Estimated Notification of Selection and Begin Contract Negotiations	June 21, 2021	

Section 2 - Description of Agency/Program Issuing the Request for Proposals

NHES's Appeals Division consists of an Administrator and 10 Appeal Tribunal Chairs, among other staff.

Appeal Tribunal Chairs are responsible for reviewing the decision of the Certifying Officer and claimant's appeal request, scheduling a telephonic hearing, taking documentary evidence and testimony, and rendering an appeal decision. See RSA 282-A:56.

Section 3 – Proposed Scope of Work

Suitable vendor will be expected to provide attorneys with experience in employment and administrative law to serve as Appeals Chairs.

Attorneys qualified to perform these services shall:

1. Be members in good standing of the New Hampshire Bar;
2. Not be currently the subject of any inquiry or investigation for any possible infraction under the New Hampshire Rules of Professional Conduct;
3. Have no ethical conflicts to performing the services; e.g. representing claimants or employers before Department adjudicators; and
4. Be competent to adjudicate issues pertaining to claimants' eligibility for UC and related benefits under the Programs, including a working knowledge of RSA Chapter 282-A, the

CARES ACT, the CAA, the ARPA and the Presidential Memorandum; and be prepared to research and apply all state and federal laws which may be relevant to a claimant's eligibility for benefits under the Programs in light of the facts of a specific case.

Qualified attorneys shall:

1. Using vendor's or personal technology resources, attorneys shall be provided VPN access to the Department's claim management system New Hampshire Unemployment Insurance System ("NHUIS") to view the Department's Determinations of Unemployment Compensation, appeal requests, exhibits filed by the parties, and any other relevant documents.
2. Schedule a telephonic administrative hearing. Using NHES-provided templates, provide notice of the scheduled hearing to interested parties. State Administrative Rule Emp. 202.01(c) requires at least eight (8) days notice of the scheduled hearing.
3. Conduct telephonic administrative hearings of appeals by claimants and/or employers of the Department's Determinations regarding the eligibility of claimants to receive UC or other benefits under the Programs. Such hearings shall be conducted under and in accordance with RSA 282-A: 53 – 59, N.H. Admin R. PART Emp. 207 and relevant provisions of the State Administrative Procedures Act, RSA 541-A. The hearings typically have a duration of 30 to 60 minutes. Hearings will be conducted and written Decisions will be issued with relevant factual and legal findings regarding claimants' eligibility to receive UC or other benefits under the Programs within 30 days of receipt of the appeal by vendor from NHES.

Successful proposals will result in a not-to-exceed fixed price contract. Selected firms shall submit itemized invoices to NHES by the end of each calendar month. Payment shall be made no more than 30 days from date of invoice. Firms should include administrative support in their cost estimates for this work.

Section 4 – Process for Submitting a Proposal

A. Proposal Submission, Deadline, and Location Instructions

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

State of New Hampshire
Department of Employment Security
c/o
Jill Revels, Business Administrator
45 South Fruit Street
Concord, NH 03301
Jill.D.Revels@nhes.nh.gov

Proposals must be clearly marked as follows:

STATE OF NEW HAMPSHIRE

RESPONSE TO RFP NHES 2021-06

Administrative Hearings Services

Unless waived as a non-material deviation in accordance with Section 6B, late submissions will not be accepted and will be returned to the proposers unopened. Delivery of the Proposals shall be at the Proposer's expense. The time of receipt shall be considered when a Proposal has been officially documented by the Agency, in accordance with its established policies, as having been received at the location designated above. The Agency accepts no responsibility for mislabeled mail or mail that is not delivered or undeliverable for whatever reason. Any damage that may occur due to shipping shall be the Proposer's responsibility.

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

- a) If submitted by US Mail, one (1) original and three (3) clearly identified copies of the Proposal, including all required attachments along with one (1) copy of the Proposal with all Confidential Information fully redacted, as provided for in Section 7E of this RFP; OR
- b) If submitted by e-mail, one (1) clearly identified electronic copy of the Proposal, including all required attachments along with one (1) electronic copy of the Proposal with all Confidential Information fully redacted, as provided for in Section 7E of this RFP.

Proposers who are ineligible to bid on proposals, bids or quotes issued by the Department of Administrative Services, Division of Procurement and Support Services pursuant to the provisions of RSA 21-I:11-c shall not be considered eligible for an award under this proposal.

B. Proposal Inquiries

All inquiries concerning this RFP, including but not limited to, requests for clarifications, questions, and any changes to the RFP, shall be submitted via email to the following RFP designated Points of Contact:

TO: Erika Randmere, Administrator, Appeals Unit, New Hampshire Employment Security, Erika.Randmere@nhes.nh.gov

Inquiries must be received by the Agency's RFP Points of Contact no later than the conclusion of the Proposer Inquiry Period (see Schedule of Events section, herein). Inquiries received later than the conclusion of the Proposer Inquiry Period shall not be considered properly submitted and may not be considered.

The Agency intends to issue official responses to properly submitted inquiries on or before the date specified in the Schedule section, herein; however, this date is subject to change at the Agency's discretion. The Agency may consolidate and/or paraphrase questions for sufficiency and clarity. The Agency may, at its discretion, amend this RFP on its own initiative or in response to issues raised by inquiries, as it deems appropriate. Oral statements, representations, clarifications, or modifications concerning the RFP shall not be binding upon the Agency. Official responses by the Agency will be made only in writing by the process described above. Vendors shall be responsible for reviewing the most updated information related to this RFP before submitting a proposal.

C. Restriction of Contact with Agency Employees

From the date of release of this RFP until an award is made and announced regarding the selection of a Proposer, all communication with personnel employed by or under contract with the Agency regarding this RFP is forbidden unless first approved by the RFP Points of Contact listed in the Proposal Inquiries section, herein. Agency employees have been directed not to hold conferences and/or discussions concerning this RFP with any potential contractor during the selection process, unless otherwise authorized by the RFP Points of Contact. Proposers may be disqualified for violating this restriction on communications.

D. Validity of Proposal

Proposals must be valid for one hundred and eighty (180) days following the deadline for submission of Proposals in Schedule of Events, or until the Effective Date of any resulting Contract, whichever is later.

Section 5 - Content and Requirements for a Proposal

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

1. Cover Letter.
2. Identify Firm Representative with Contact Information.
3. Firm Background/Profile – Proposal shall include an overview of the firm's practice areas with particular emphasis on employment and administrative experience.
4. Key Personnel – Proposal shall include the resume/CV of all attorneys firm proposes to provide services under this RFP. It is understood that any addition or change in key personnel shall be approved in advance by NHES.
5. Hourly Rate Table – Proposal shall include a table of hourly rates of all Key Personnel and associated support costs that will be billed. The Rates submitted should reflect the best available/government rate.
6. Project Plan – Based on the number of attorneys assigned to NHES cases, proposal will establish the number of appeals firm plans to accept, hold hearings, and resolve on a weekly basis.

7. Quality Assurance – Detailed process of review of appeal decisions before return to NHES.
8. Software Interface/Communications.

Section 6 – Evaluation of Proposals

A. Criteria for Evaluation and Scoring

Each responsive Proposal will be evaluated and considered with regard to the following criteria:

1. Qualifications of the Proposer
2. Experience and qualifications of proposed Key Personnel
3. Quality Control process
4. Cost

If the Agency, determines to make an award based on these evaluations, the Agency will notify the selected Proposer(s). Should the Agency be unable to reach agreement with the selected Proposer(s) during Contract discussions, the Agency may then undertake Contract discussions with the next preferred Proposer and so on, or the Agency may reject all proposals, cancel this RFP, or solicit new Proposals under a new acquisition process.

The Agency will use a scoring scale of 100 points, a maximum of 40 points awarded based on the Price Proposal, a maximum of 60 points awarded for the Technical Proposal, which will be distributed as set forth in the table below.

CATEGORIES	POINTS
TECHNICAL PROPOSAL with the following potential maximum scores for each Technical Proposal category;	
1. General Business Experience/Overall Qualifications of Proposer	20
2. Key Personnel and Quality Control Process	20
3. References from clients for whom similar work has been performed, if available	10
4. Availability	10
PRICE PROPOSAL POTENTIAL MAXIMUM POINTS	40
TOTAL POTENTIAL MAXIMUM POINTS AWARDED	100
[Add any additional categories]	

The Agency will select a Proposer based upon the criteria and standards contained in this RFP and from applying the weighting in this section. Oral interviews and reference checks, to the extent they are utilized by the Agency, will be used to refine and finalize scores.

B. Planned Evaluations

The Agency plans to use the following process:

- Initial screening to ensure that the Proposals are in compliance with submission requirements;
- Preliminary evaluation of the Proposals;
- Oral interviews (if necessary);
- Final Evaluation of Technical Proposals and scoring;
- Final Evaluation of [other categories] and scoring (If Applicable);
- Review of Price Proposals and final scoring;
- Select the highest scoring Proposer (s) and begin contract negotiation.

C. Initial Screening

The Agency will conduct an initial screening step to verify Proposer compliance with the technical submission requirements set forth in the RFP and the minimum content set forth in Section 5 of this RFP. The Agency may waive or offer a limited opportunity to cure immaterial deviations from the RFP requirements if it is determined to be in the best interest of the State.

D. Preliminary Technical Scoring of Proposals

The Agency will establish an evaluation team to initially score the Technical Proposals. This evaluation team will review the technical proposals and give a preliminary score to the technical proposals under the guidelines set forth in Section 6. Should a Proposer fail to achieve 50 Points in the preliminary scoring, it will receive no further consideration from the evaluation team and the Proposer's Price Proposal will be returned unopened. Price Proposals will remain sealed during the preliminary technical review.

E. Oral Interviews

If the Agency determines that it is appropriate, proposers may be invited to oral interviews and/or product demonstrations including demonstrations of any proposed automated systems or technology components. The Agency retains the sole discretion to determine whether to conduct oral interviews, with which proposers; and the number of interviews. Proposers are advised that the Agency may decide to conduct interviews with less than all responsive proposers.

The purpose of oral interviews and product demonstrations is to clarify and expound upon information provided in the written Proposals. Proposers are prohibited from altering the basic substance of their Proposals during the oral interviews and product demonstrations. The Agency may ask the Proposer to provide written clarifications of elements in their Technical Proposal regardless of whether it intends to conduct Oral Interviews.

Information gained from oral interviews and product demonstrations will be used to refine technical review scores assigned from the initial review of the Proposals.

F. Final Technical Scoring of Proposals

Following Oral Interviews, Reference Checks (if appropriate) and/or review of written clarifications of proposals requested by the Agency, the evaluation team will determine a final score for each Technical Proposal.

G. Price Proposal Review

Price proposals will be reviewed upon completion of the final technical scoring of proposals. The Proposer's Price Proposal will be allocated a maximum potential score of 40 points. Proposers are advised that this **is not a low bid award** and that the scoring of the price proposal will be combined with the scoring of the technical proposal to determine the overall highest scoring Proposer.

The following formula will be used to assign points for costs:

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

For the purpose of use of this formula, the lowest proposed price is defined as the lowest price proposed by a Proposer who has scored above the minimum necessary for consideration on the Technical Score.

H. No Best and Final Offer

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

I. Final Selection

The Agency will conduct a final selection based on the final evaluation of the initial proposals or, if requested, as a result of the Best and Final Offer and begin contract negotiations with the selected Proposer(s).

J. Rights of the Agency in Accepting and Evaluating Proposals

The Agency reserves the right to:

- Make independent investigations in evaluating Proposals;
- Request additional information to clarify elements of a Proposal;

- Waive minor or immaterial deviations from the RFP requirements, if determined to be in the best interest of the State;
- Omit any planned evaluation step if, in the Agency's view, the step is not needed;
- At its sole discretion, reject any and all Proposals at any time; and
- Open contract discussions with the second highest scoring Proposer and so on, if the Agency is unable to reach an agreement on Contract terms with the higher scoring Proposer(s).

SECTION 7 – Terms and Conditions Related To The RFP Process

A. RFP Addendum

The Agency reserves the right to amend this RFP at its discretion, prior to the Proposal submission deadline. In the event of an addendum to this RFP, the Agency, at its sole discretion, may extend the Proposal submission deadline, as it deems appropriate.

B. Non-Collusion

The Proposer's signature on a Proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and Work quoted have been established without collusion with other Proposers and without effort to preclude the Agency from obtaining the best possible competitive Proposal.

C. Property of the Agency

All material received in response to this RFP shall become the property of the State and will not be returned to the proposer. Upon Contract award, the State reserves the right to use any information presented in any Proposal.

D. Confidentiality of a Proposal

Unless necessary for the approval of a contract, the substance of a proposal must remain confidential until the Effective Date of any Contract resulting from this RFP. A Proposer's disclosure or distribution of Proposals other than to the Agency will be grounds for disqualification.

E. Public Disclosure

Pursuant to RSA 21-G:37, all responses to this RFP shall be considered confidential until the award of a contract. At the time of receipt of proposals, the Agency will post the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the Department of Administrative Services pursuant to this RFP, the Agency will post the name, rank or score of each proposer. In the event that the contract does not

require Governor & Executive Council approval, the Agency shall disclose the rank or score of the Proposals at least 5 business days before final approval of the contract.

The content of each Proposer's Proposal shall become public information upon the award of any resulting Contract. Any information submitted as part of a response to this request for proposal (RFP) may be subject to public disclosure under RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP will be made accessible to the public online via the website Transparent NH (<http://www.nh.gov/transparentnh/>). However, business financial information and proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV. If you believe any information being submitted in response to this request for proposal, bid or information should be kept confidential as financial or proprietary information; you must specifically identify that information in a letter to the agency, and must mark/stamp each page of the materials that you claim must be exempt from disclosure as "CONFIDENTIAL". A designation by the Proposer of information it believes exempt does not have the effect of making such information exempt. The Agency will determine the information it believes is properly exempted from disclosure. Marking of the entire Proposal or entire sections of the Proposal (e.g. pricing) as confidential will neither be accepted nor honored. Notwithstanding any provision of this RFP to the contrary, Proposer pricing will be subject to disclosure upon approval of the contract. The Agency will endeavor to maintain the confidentiality of portions of the Proposal that are clearly and properly marked confidential.

If a request is made to the Agency to view portions of a Proposal that the Proposer has properly and clearly marked confidential, the Agency will notify the Proposer of the request and of the date the Agency plans to release the records. By submitting a Proposal, Proposers agree that unless the Proposer obtains a court order, at its sole expense, enjoining the release of the requested information, the Agency may release the requested information on the date specified in the Agency's notice without any liability to the Proposers. By submitting a Proposal, the Proposer agrees that the Department shall not be liable to the Proposer for any release of information pertaining or belonging to the Proposer which the Proposer has submitted to the Department in response to or in connection with this RFP.

F. Non-Commitment

Notwithstanding any other provision of this RFP, this RFP does not commit the Agency to award a Contract. The Agency reserves the right, at its sole discretion, to reject any and all Proposals, or any portions thereof, at any time; to cancel this RFP; and to solicit new Proposals under a new acquisition process.

G. Proposal Preparation Cost

By submitting a Proposal, a Proposer agrees that in no event shall the Agency be either responsible for or held liable for any costs incurred by a Proposer in the preparation of or in connection with the Proposal, or for Work performed prior to the Effective Date of a resulting Contract.

H. Ethical Requirements

From the time this RFP is published until a contract is awarded, no bidder shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any bidder that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any bidder who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from bidding on the RFP, or similar request for submission and every such bidder shall be disqualified from bidding on any RFP or similar request for submission issued by any state agency. A bidder that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the department of administrative services, which shall note that information on the list maintained on the state's internal intranet system, except in the case of annulment, the information, shall be deleted from the list.

I. Challenges on Form or Process of the RFP

Any challenges regarding the validity or legality of the form and procedures of this RFP, including but not limited to the evaluation and scoring of Proposals, shall be brought to the attention of the Agency at least ten (10) business days prior to the Proposal Submission Deadline. By submitting a proposal, the Proposer is deemed to have waived any challenges to the agency's authority to conduct this procurement and the form and procedures of this RFP.

Section 8 – Contract Terms and Award

A. Non-Exclusive Contract

Any resulting Contract from this RFP will be a non-exclusive Contract. The State reserves the right, at its discretion, to retain other Contractors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal.

B. Award

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

C. Standard Contract Terms

The Agency will require the successful bidder to execute a Firm Fixed Price/Not to Exceed Contract using the Standard Terms and Conditions of the State of New Hampshire which is attached as Appendix A.

The Term of the Contract will be for one year from the date of approval, contingent upon the continued grant of flexibility under the Programs to use non-merit staff to perform the subject work. There is no guaranteed volume of work. The contract term may be extended by an additional term at the sole option of the State, subject to the parties' prior written agreement on terms and applicable fees for each extended term. contingent upon satisfactory vendor performance, continued funding and Governor and Executive Council approval.

To the extent that a Proposer believes that exceptions to the standard form contract will be necessary for the Proposer to enter into the Agreement, the Proposer should note those issues during the Proposer Inquiry Period. The Agency will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion. If the Agency accepts a Proposer's exception the Agency will, at the conclusion of the inquiry period, provide notice to all potential proposers of the exceptions which have been accepted and indicate that exception is available to all potential proposers. Any exceptions to the standard form contract that are not raised during the proposer inquiry period are waived. In no event is a Proposer to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this solicitation.