

THE STATE OF NEW HAMPSHIRE



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PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

June 27, 2012

G & C Date 7-11-12
Item Number 48
Approved ✓

His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, NH 03301

Your Excellency and Honorable Councilors:

REQUESTED ACTION

Pursuant to RSA 365:37, II and III, authorize the Public Utilities Commission to enter into a contract with The Liberty Consulting Group, 65 Main St., P.O. Box 1237, Quentín, PA 17083, Vendor Code No. 166984 effective on the date of Governor and Council approval to December 31, 2013, in an amount not to exceed \$125,000.00. Funding is 100% Utility Assessment.

Funds will be available, pursuant to RSA 365:37, II, in account 02-81-81-810010-33260000-046-500464, Liberty Utility Project, General Consultants, for FY 2013 and FY 2014, with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office, if needed and justified.

<u>FY2013</u>	<u>FY2014*</u>	<u>Total</u>
\$100,000	\$25,000	\$125,000

(*Pending Budget Approval for FY 2014)

EXPLANATION

The Public Utilities Commission (Commission) respectfully requests authority to enter into a contract in an amount not to exceed \$125,000.00 with The Liberty Consulting Group (Liberty), a consulting firm specializing in the regulated utilities industry, to provide engineering consulting services. Pursuant to RSA 365:37, III (effective June 5, 2012), the Commission shall seek approval of Governor and Council for contracts with experts greater than \$100,000 for certain types of investigations or proceedings. RSA 365:37, II allows to the Commission to assess the costs of experts against the impacted utility and any other parties to the proceeding.

Liberty will render services on a "needs be" basis up to 625 hours over the life of the contract. Liberty will be expected to work on a broad range of electric and gas utility related assignments primarily in the area of

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distribution engineering up to 34KV. Projects could include reliability assessment of distribution systems, analysis and review of electric and natural gas transmission and distribution systems, outages, and replacement energy procurement practices.

With a limited number of utility engineers on staff, the Commission has relied on engineering consulting services over the past several years for various technical investigations and proceedings, including review of weather-related service outages and PSNH's costs associated with its wet flue gas desulfurization "Scrubber" project at Merrimack Station. Accordingly, a Request for Proposals (RFP) was issued on January 19, 2012. The Commission received nine responses to the RFP. The Director and Assistant Director of the Commission's Electric Division reviewed the responses, ranked the responses according to the criteria set out in the RFP, and recommended that the Commission enter into contracts with Liberty as well as with Accion Group, Inc. and Jacobs Consultancy. The contract with Jacobs Consultancy will be submitted for approval in August 2012.

Contracting with three separate consulting firms provides the Commission with the ability to address both anticipated and unanticipated engineering needs as efficiently as possible. The price limitation assigned to each vendor is based on an assessment of potential proceedings over the next two years. Therefore, the three consulting contracts are not fixed price contracts but are structured such that the Commission will assign work to one of the contractors on a project by project basis, as needed, and the utility is only assessed the costs as services are rendered by one of the contractors. All three contracts will end December 31, 2013.

As noted in the RFP, cost was a consideration but not the determining factor in the selection of the contractors. The bid responses were measured against criteria such as the quality and extent of the applicant's familiarity and expertise in utility operations, experience providing similar services in New Hampshire and to other utility commissions, and accessibility of staff. The lowest cost bidders did not possess the necessary technical expertise or the range of experience required for this engagement. All three selected contractors have extensive experience in the areas requested as well as substantial experience working on utility matters for the Commission. Therefore, the Commission has selected, subject to Governor and Council approval, The Liberty Consulting Group to provide utility engineering consulting services. Liberty's proposal was competitive, responsive to the RFP and offered personnel with outstanding qualifications.

The contract amount will not affect the General Fund. Liberty will be contracted to work on projects as they arise and the funds will be assessed pursuant to RSA 365:37, II which permits the Commission to obtain experts and assess the costs to the utility.

Your consideration of our request is appreciated.

Respectfully submitted,



Amy L. Ignatius
Chairman

Attachments:

Agreement with Exhibits

Bidding Information

RSA 365:37 Expense of Investigations

Subject: 2012 Consulting Services - The Liberty Consulting Group

FORM NUMBER P-37 (version 1/09)

AGREEMENT
The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

Form with fields for State Agency Name, Contractor Name, Account Number, Completion Date, Price Limitation, Signatures, and Notary Public information.

2. EMPLOYMENT OF CONTRACTOR/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 A 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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

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

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account 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 B which is incorporated herein by reference.

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

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 30:7-c or any other provision of law.

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

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all 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 opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

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

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

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

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

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

The signature is written in blue ink and appears to be "J. B. [unclear]". The date is written in blue ink as "06/11/13".

8. EVENT OF DEFAULT/REMEDIES.

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

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 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 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

9.2 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.

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

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

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. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials JA
Date 6/2/12

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

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. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

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

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.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

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

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

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

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

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

[Handwritten Signature]
[Handwritten Date: 5/15/12]

EXHIBIT A
SCOPE OF SERVICES

1. Introduction:

The Liberty Consulting Group (the Contractor) will provide to the Commission utility and/or technical consulting services from time to time and solely at the request of the Commission for up to 625 hours. The services shall be solely at the request of the Commission, who will request and direct the Contractor's activities as the Commission deems appropriate.

2. Scope of Services:

Services will include a broad range of electric and gas utility-related assignments. Projects may include:

- Analysis and review of utility design or operations
- Analysis and review of electric utility transmission systems
- Analysis and review of natural gas transmission and distribution systems
- Reliability assessment of distribution systems
- Analysis and review of outages and replacement energy procurement practices
- Advice on regional power and gas supply issues
- Advice on natural gas interstate pipelines, storage and FERC proceedings
- Participating and/or assisting the Commission in FERC proceedings
- Oversight of condemnation actions
- On-site and/or distributed generation
- Smart metering/smart GRID

In addition to providing analysis and recommendations on the above issues, the Contractor may also be asked to provide the following:

- Analytical support in technical sessions, negotiations and settlements
- Review and comment on proposed rules
- Prepare and deliver reports and testimony
- Participate in NHPUC and/or FERC hearings

Contractor Initials

Date



6/16/12

3. Statement of Work – Deliverables – Work Plan:

Over the term of the Contract, certain work assignments may require a statement(s) of work. In the event the Commission determines that a statement of work is required, one will be provided to the Contractor who will then pre-determine the number of hours to complete the assignment. The Contractor will submit a written quote, schedule and work plan to the Commission for approval. Prior to commencing work for each specific statement of work, the Commission shall provide the Contractor with a Notice to Proceed. At no time may the Contractor commence any work without first obtaining a Notice to Proceed from the Commission.

Contractor Initials

Date

JR
6/16/12

EXHIBIT B

BUDGET, LIMITATION ON PRICE, AND PAYMENT

1. **Estimated Budget:** The Contractor will charge for professional consulting services for time involved and expenses incurred for an amount not to exceed \$125,000.00. Services will be provided as presented in Contractor's proposal dated February 8, 2012 and at the following hourly rates:

Personnel	Hourly Rates
John Antonuk	\$290
Robert Stright	\$290
Richard Mazzini	\$275
Dr. Howard Axelrod	\$265
Dr. Charles King	\$265
Larry Nunnery	\$250
Donald Spangenberg	\$250
Phillip Teumim	\$250
Randall Vickroy	\$250
Christine Kozlosky	\$250
David Berger	\$250
Mark Lautenschlager	\$250
John Adger	\$250
Jim Letzelter	\$250
John Sherrod	\$250
Giulio Freda	\$240
Robert Falcone	\$240
Dennis Kalbarczyk	\$235
Sandra Donovan	\$235
Albert Yu	\$235
Philip Weber	\$235
Alan Salzberg	\$235
William Novak	\$235
Benjamin Stein	\$235
Yavuz Arik	\$235
Michael Antonuk	\$140
Administration	\$40

Contractor Initials

Date

JR
2/8/12

2. **Price Limitation:** In no event will the contract exceed \$125,000.00.

3. **Method of Payment:** Payment to be made on completion of the work on the basis of monthly invoices which are supported by a summary of activities that have taken place in accordance with the terms of the contract, along with a detailed listing of expenses incurred. Invoices will provide adequate back-up including the dates and hours worked per individual during the month and the service provided during those hours as well as copies of receipts supporting other expenses incurred. Invoices shall be submitted to: Business Office, New Hampshire Public Utilities Commission, 21 S. Fruit St., Suite 10, Concord, NH 03301-2429.

Payments hereunder are contingent upon the availability of funds assessed pursuant to RSA 365:37, II. The Commission will assess the costs of the contract to the appropriate party(ies) and upon payment of the assessment, will in turn process payment to the Contractor.

Contractor Initials

Date

[Handwritten Signature]
[Handwritten Date: 6/6/12]

EXHIBIT C
SPECIAL PROVISIONS

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Contractor Initials A
Date 6-13-12