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Neale F. Lunderville, Secretary

MEMORANDUM

TO: Agency/Department Heads of Transportation; Military; Forrest, Parks & Recreation; Fish & Wildlife; and Buildings & General Services
CC: Business Managers for above, Tom Pelham, Jim Reardon, Bill Griffin, Mike McShane, Jaye Johnson, Susan Zeller, Bill Duchac, Budget Analysts
FROM: Neale F. Lunderville
RE: Addendum to Bulletins 3.5 ~ Engineering/Architectural Design Services
DATE: November 8, 2010

Application of this Addendum is limited to Agencies and Departments that contract directly for engineering and/or architectural design services. Please forward a copy of this Addendum to each departmental staff member involved in the issuance and/or monitoring of contracts.

LIMITED ISSUE ADDENDUM TO BULLETIN 3.5 – EFFECTIVE 11-01-2010

After 3 years of discussions with the design professionals (engineers and architects) about issues they have with the State's standard Attachment C terms regarding liability and insurance, the Attorney General's Office (AG), the Departments of Finance & Management, and BGS-Risk Management have developed alternate language that may be used for certain professional engineering and architectural design service contracts, when necessary, and in accordance with certain criteria. This Addendum does not provide agencies/departments with carte blanche authority to use this language as a matter of normal contracting business practices. The alternate language is shown on the bottom of page 2; the criteria regarding the use of alternate language when contracting directly with Licensed Engineers/Architects for design services are as follows:

1. Use of the alternate language will be limited to situations where it is absolutely necessary and justified (for example, when there is a single bid on essential services, when the use of alternate language will mean a substantial reduction in the cost of services);
2. The alternate language applies only to engineering/architectural design contracts executed directly between the State of Vermont and licensed engineers, architects, or their firms;
3. Alternate language shall not apply to engineering or architectural design services when those services are included as a sub-contract to any other party such as a general contractor;
4. Agencies/Departments may amend their Bulletin 3.5 Contracting Plans to include this alternate language for approval by the Secretary of Administration or their designees, as provided under Section VI(D)(3) of Administrative Bulletin 3.5 PLUS approval by the Attorney General's Office (AG);
5. Inclusion of the language in a Contracting Plan approved by the Attorney General's Office and the Secretary of Administration or their designees approves only the form of the language; it does not grant authority to use such language at will;
6. Any contract which includes the alternate language in the approved format requires prior approval and signature by the Secretary of Administration and the Chief Assistant Attorney General, in addition to agency or department internal Assistant Attorney General (AAG) or legal counsel.



7. We recognize that requiring AG approval and signature on each contract with the alternate language included requires an extra step and may seem counter intuitive to the general purpose of an approved Contracting Plan; however, in this case, the Attorney General's Office will be monitoring the use of the alternate language to insure proper application and limited use.

Please refer questions to Susan Zeller, Deputy Commissioner of Finance & Management at: Susan.zeller@state.vt.us or (802) 828-6448; or Bill Griffin, Chief Assistant Attorney General at (802) 828-5503 or BGriffin@atg.state.vt.us.

“Alternate Language for Engineering and/or Architectural Design Services contracts, for inclusion in Attachment D:

Attachment C, Paragraph 6 is deleted in its entirety and replaced with the following:

- 6. Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

Party will be providing engineering design services or architectural design services under this contract. Party will not be providing any construction services under this contract. Before commencing work on this contract and throughout the term of this contract, party shall procure and maintain professional liability insurance for all services performed under this contract, with minimum coverage of \$1,000,000 per occurrence, \$2,000,000 aggregate.

Party shall not be obligated to defend the State and its officers and employees against claims or suits arising solely from the Party's provision of engineering design services or architectural design services. Party's obligation to defend the State and its officers and employees against all other claims or suits as provided in Attachment C and Party's other obligations under Attachment C shall remain in effect.