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Justin Johnson, Secretary

MEMORANDUM

TO: Secretaries, Commissioners, Deputies and Exempt Heads
FROM: Justin Johnson, Secretary of Administration
CC: Business Managers
RE: **Bulletin 3.5 ~ Procurement and Contracting Procedures – Effective July 1, 2016**
DATE: June 20, 2016



It is critical to provide a copy of this memo and attachments to each employee in your Agency or department involved in the procurement, development, review, approval and monitoring of contracts.

1. BULLETIN 3.5 – ISSUED EFFECTIVE JULY 1, 2016

The newly revised [Administrative Bulletin 3.5 ~ Procurement and Contracting Procedures](#) becomes effective July 1, 2016. Procurement processes for which an RFP has already been posted, or contracts which are already developed and in negotiation as of June 30, 2016 may proceed under the previous version of the Bulletin.

This July 1st version addresses the 576 lines of comments, questions and suggestions we received. Each line was read and considered and resulted in numerous adjustments and changes. It is the responsibility of agencies and departments to read, understand and comply with this Bulletin.

2. AGENCY/DEPARTMENT TRAINING:

Sue Zeller, Chief Performance Officer, Deb Damore, Director of the Office of Purchasing & Contracting, and Jaye Pershing Johnson, AAG are arranging a Training “Road-Show” beginning in July. **We strongly recommend all staff involved in procurement, development, review, approval, monitoring, payment and accounting for contracts, including but not limited to management, legal, program, and business office staff, attend a training session for Bulletin 3.5.**

3. NEW AND NOTABLE IN BULLETIN 3.5:

- A. The Bulletin emphasizes following the federal definitions and rules for *Personal Service Contracts* and *Non-Personal Service Contracts*, and the State rules on Privatization Contracts. New definitions have been codified in [2016 Act 78](#) (H.530). The salient points in Bulletin 3.5 are listed below:
- If a contract is not solely a commodity contract, it is by definition a **Contract for Service**;
 - Contracts for Service are segregated into two categories: 1) Personal Service; and 2) Non-Personal Service;
 - The IRS determination of whether the relationship with a Contractor qualifies as Non-Personal Service (Independent Contractor) or as employee-like Personal Service must be made by each contracting Agency BEFORE the AGO Certification for compliance with the intent of the Bargaining Agreements.
 - If the Contractor is determined to be in an employee-like Personal Service relationship, per the IRS determination, the Contractor MUST be paid through VTHR as a “Contractor on Payroll” allowing for

federally mandated FICA withholding and State workers' compensation coverage and unemployment insurance coverage;

- e. The AGO Certification has a different purpose and does not change the IRS determination;
 - f. A new graphic visualization of the determination process is provided in the Bulletin;
 - g. Thresholds for AGO review for Contracts for Service and Agency determination of Privatization Contracts have been increased to \$25,000.
- B.** The Bulletin now allows use of a "Short-Form Contract including a Short-Form Attachment C" for Contracts for Service under \$25,000 – less restrictive terms & conditions for contractor allowed for low risk contracts. **MAY NOT BE USED** for higher risk contracts including: life safety, transport of persons, hazardous materials, construction, data usage or sharing, access to confidential information services, licensed professional, Zero-Dollar and/or Financial Transaction Contracts);
- C.** The Bulletin simplifies the rules for approvals of Contract Amendments;
- D.** All Sole Source contracts over \$10,000 now require the approval of the Secretary;
- E.** The Information Technology Guideline is provided as a companion to the Bulletin for purposes of IT procurement and contracting and carries the same authority.

4. CONTRACTING WAIVER PLANS

All Agencies and departments must submit new Contracting Plan Waiver requests on the required [template](#) and return them for approval by the Secretary of Administration by **September 30, 2016.**

5. NEW AND NOTABLE CHANGE TO VISION

In order to meet on-going reporting requirements pertaining to State contracting, additional contract data elements must be captured when entering contracts and contract amendments into VISION, the statewide financial system. These new elements include designating the "Process Used" to secure the agreement and the "Agreement Type." Although these elements are already required and captured when preparing Form AA-14, additional "Agreement Types" have been added to reflect the changes with the reissue of Administrative Bulletin 3.5. Use of the revised **Form AA-14 begins July 1, 2016**. Both "Processed Used" and "Agreement Type" are now required elements to be entered into VISION. The revised Form AA-14 is available in electronic format at: <http://aoa.vermont.gov/bulletins/3point5>.

The VISION modifications have been completed and will Go-Live **on Friday, July 1, 2016**. Please review the training material prior to Go-Live and take steps to ensure that all staff members are fully informed about these changes. As of July 1, 2016, all new contracts and all new amendments must have the newly required data elements entered into VISION or the contract cannot be moved to "approved" status. **Departments are required to update the necessary VISION information by October 1, 2016 for all other current contracts not otherwise amended.** A copy of the training material is attached and available on the F&M website under VISION Job Aids/Contract Performance Page Job Aid at: http://finance.vermont.gov/policies_procedures/vision_procedures#job_aid

This change will help with transparency and data knowledge by providing for full visibility of the types of contracts issued and the procurement process used for each.

6. CLOSING COMMENTS

Please bear in mind that the Bulletin is intended for the broadest application, across all agencies and departments. Should your unit of government have unique procurement or contracting needs, or if your unit requires additional clarification or specific language, these may be accommodated through the Contracting Plan Waiver process.

7. QUESTIONS

Please direct questions to Sue Zeller at: Susan.zeller@vermont.gov or (802) 828-6448.