

I. AUTHORITY

In accordance with [3 V.S.A. § 2222\(a\)\(2\)](#), this Bulletin establishes the general policy and minimum standards for soliciting, awarding, processing, executing and overseeing contracts, as well as managing contract compliance.

The Office of Purchasing and Contracting (OPC) is responsible for making all purchases of goods/products, including fuel, supplies, materials and equipment for all Agencies. Further, OPC is responsible for administering solicitation, procurement and contracting, as set forth in the Bulletin.

The Secretary of Administration (Secretary or SOA) will update and reissue this Bulletin periodically. In lieu of an official re-issue, Addenda to this Bulletin may be issued and released, and shall have the same force and effect as an official issuance of the Bulletin. The current official issued version of this Bulletin, as posted on Agency of Administration's website, along with any subsequently released Addenda to this Bulletin can be found at: <http://aoa.vermont.gov/bulletins/3point5>.

II. PURPOSE AND POLICY

This Bulletin applies to the procurement of all goods and services and the required documentation of such procurements, regardless of dollar amount, for all agencies, as defined herein, of the State of Vermont government.

This Bulletin provides guidelines for conducting procurements and contracting and establishes minimum benchmarks and protocols to ensure the solicitation and awarding of contracts for services are completed with sufficient competition. The State process is designed to: ensure fair and open competition; guard against favoritism, improvidence, extravagance, fraud and corruption; ensure the results meet Agency/department needs; provide for checks and balances and oversee Agency procurement activities; and protect the interest of the State and its taxpayers.

Agencies and departments may develop individual processes and procedures applicable to their needs, in addition to the minimum stated requirements of this Bulletin.

III. DEFINITIONS

In addition to the definitions set forth in this Section, please note the glossary of acronyms attached to this Bulletin [Appendix V](#): Acronyms Used in This Bulletin.

Addendum: means an addition to or amendment of a bid solicitation (e.g., Request for Proposal or other documents that formally solicit bids).

Agency: an Agency, department, commission, committee, authority, division, board, or other administrative unit of the Executive Branch, including the elected offices as well as those having express statutory authority to enter into contracts.

Agency-Wide Contract: a shared Contract used by departments or divisions within an Agency.

Appointing Authority: is an Agency head in accordance with Agency of Administration Bulletin 3.3, including those officers occupying appointive positions defined in [32 V.S.A. 1003 \(b\)](#). "Appointing Authority" includes: (1) the exempt deputies of Agency secretaries and department commissioners; (2) elective officers and their deputies who head operating departments; and (3) exempt heads of divisions, boards, committees

and commissions not reporting to a department commissioner or Agency secretary. The Appointing Authority has management and oversight responsibilities for the solicitation, procurement and contracting process for services and for the ongoing oversight and monitoring of contract compliance through contract expiration or termination. Appointing Authority shall be responsible for compliance with the policy and procedural directives of this Bulletin.

Assignment: a formal agreement whereby one Vendor assigns the rights of payment or other contract benefits to another Vendor. See [Section XII](#) Assignments and Novations.

Best and Final Offer (BAFO): a BAFO process is an optional step in the evaluation phase of the RFP process in which offerors are requested to modify their proposals.

Bid Documents: “Requests for Proposals” or other documents that formally solicit bids, whether cost-based or otherwise, for services or products for the State.

Bidding Integrity: refers to the policy and practice intended to prevent a conflict of interest in bidding when an Agency receives assistance with the preparation or planning of Bid Documents from contractors or Vendors, who later intend to participate as a bidder. Refer to the Policy at:

<http://bgs.vermont.gov/adminpolicies/policy34>

Blanket Delegation of Authority (BDA): a formal document which delegates authority from the Office of Purchasing and Contracting to appointing authorities to make certain types of purchases directly. Agencies must follow the terms and conditions in their approved BDA. BDAs may be found at:

<http://bgs.vermont.gov/purchasing/bda>

Capital Lease: See section [VI.CC](#).

Chief Information Officer (CIO): Agency of Administration, Commissioner of the Department of Information and Innovation; this refers to the State CIO, not an Agency CIO.

Commodity: Collective term given to tangible products purchased for the State.

Confidential Information: information deemed “confidential”, or otherwise protected from unauthorized disclosure, by State or Federal law, such as, but not limited to, federal tax information, personal health information protected under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191(HIPAA), “education records” as defined under the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA), “personally identifiable information” as defined in [9 V.S.A. § 2430\(5\)\(A\)](#) and other information exempt from disclosure under [1 V.S.A. § 317\(c\)](#).

Conflict of Interest: a pecuniary interest of an employee or a Vendor, or the appearance thereof, in the award or performance of a Contract, or such an interest, known to an employee, by a member of his /her current or former family or household, or a business associate.

Contract: any legally enforceable agreement by which the State purchases products or services needed to carry out a project or program. (The term Contract includes all such agreements whether or not characterized as a “contract,” “agreement,” “purchase order,” “procurement,” “license agreement,” “maintenance agreement,” “support agreement,” or other similar term, but, does not include a legal agreement where the substance of the agreement meets the definition of a grant or subaward as defined in [Agency of Administration Bulletin 5](#).)

Contract for Service: means an agreement or combination or series of agreements by which an entity or individual agrees with an Agency to provide services under contract, rather than as an employee. This shall include all such agreements whether or not characterized as a “Contract,” “agreement,” “purchase order,” “procurement,” “license agreement,” “maintenance agreement,” “support agreement,” or other similar term.

Contract Monitoring: any planned, ongoing or periodic activity or process that measures and ensures contractor compliance with the terms, conditions, and requirements of a Contract.

Contracting Waiver Plan: a written waiver request document, signed by the Appointing Authority and approved by the Secretary of Administration (SOA), granting specific on-going waivers, exceptions and/or limits to certain sections, terms or elements of this Bulletin.

Contractor: any party with which the State has a signed Contract.

Deliverable: the contracted product or service desired and expected to be received.

Executed Contract: a Contract is considered executed when the Contract, including all Attachments, has been signed and dated by each party to the agreement.

Financial Transaction Contract: a Contract with an outside Vendor providing service to manage financial transactions for the State – either on-line or in person. Vendors include web-portal organizations, banks and other financial institutions. The Vendors handling these financial transactions (license, permit, or registration fees, etc.) for the State may be compensated for this service with a share of the gross fee (revenue) charged in the transaction, via an additional “convenience fee” added to the cost of the transaction, or a combination of the two.

Grant: means a legally enforceable agreement between an Agency (grantor) and a recipient (grantee or subrecipient) to carry out a program as defined in a grant agreement. It does not include payments to a contractor or payments to an individual who is a beneficiary of a program. When the grant is funded with Federal funds, the relationship between the State and the grantee must meet the definition of a subrecipient and the award is called a Subaward.

Independent Contractor: as a general rule, an individual under contract with the State is an independent contractor if the State has the right to control or direct only the result of the work and not what will be done and how it will be done. People such as doctors, dentists, veterinarians, lawyers, accountants, construction contractors and subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally independent contractors. However, whether these people are independent contractors or personal services contractors depends on the facts in each case, to be determined in accordance with [0.](#) of this Bulletin.

Information Security: protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, confidentiality, and availability of the information or systems (see [3 V.S.A. § 2222\(a\)\(9\)](#)).

Information Technology (IT) Activities: includes: (A) the creation, collection, processing, storage, management, transmission, or conversion of electronic data, documents, or records; and (B) the design, construction, purchase, installation, maintenance, or operation of systems, including hardware, software, and services which are performed, or are contracted under this Bulletin to perform, these activities (see [3 V.S.A. § 2222\(a\)\(10\)](#)).

Life Safety: means contracts for abatement services of any kind; air quality testing; contracts for elevator service; fire suppression system installation, service, or repair; contracts for services that could, directly or indirectly, pose a hazard to contractors or employees of the State; or any other Contract for Service that could pose a significant increase to the SOV’s liability or the SOV’s ability to manage its risk.

No-Cost Contract: See Zero-Dollar Contract.

Non-Personal Service Contract: means a Contract for Service with an Independent Contractor.

Novation: a three-party agreement among the State, the original contracting party and the new party, used to transfer the burden of a contract as well as the benefits under it. Like Assignment, Novation transfers the benefits under a contract but unlike assignment, Novation transfers the burden under a contract as well. See Section XII “Assignments and Novations”.

Order of Precedence: the sequential legal hierarchy of the contract attachments used to determine the order in which each attachment controls in the case of dispute. Order of Precedence is particularly relevant when an

Agency is including terms which are intended to supersede Standard State terms or Contractor template terms which may be attached to the Agreement.

Performance-Based Contracting: best practice that focuses on the measurable outputs, quality, and outcomes/results of the service or goods provided by the Contractor. Performance-Based Contracts are designed to ensure that contract deliverables are well defined and provide that contract payment, as well as any contract extension, renewal, or price increase, is tied to the successful completion of defined deliverables and accomplishment of desired performance (results). It may also include contract Retainage (as defined herein), which is held back until successful performance can be demonstrated.

Performance Management: a set of activities to ensure that outcomes are consistently being met and delivered in an effective and efficient manner; a methodology that should be employed to ensure the State receives the best contracted products, services and outcomes at a reasonable price.

Personal Service Contract: means a Contract for Service that is categorized as Personal Services consistent with 3 V.S.A. §342 in accordance with procedures set forth in Section [IV.B](#) of this Bulletin 3.5. All other Contracts for Service are Non-Personal Service Contracts.

Prior: for purposes of this Bulletin, “prior” means “preceding in time or order,” or more succinctly, “before.” Thus, when an approval is required “prior” to the execution or commencement of a contract, Agencies should construe this in all cases to mean the approval should be requested and received *before* the contract is executed or work commenced.

Privatization Contract: means a Contract for Service valued at \$25,000 or more per year, which is the same or substantially similar to and in lieu of services previously provided, in whole or in part, by permanent, classified State employees, and which results in a reduction in force of at least one permanent, classified employee, the elimination of a vacant position of an employee covered by a collective bargaining agreement, as further described in Section [IV.D](#) of this Bulletin 3.5.

Products: this term should be broadly interpreted and includes equipment, goods, materials, information technology hardware or software, supplies, printing and other commodities.

Proprietary Information: information of the State or a Vendor which may include any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, financial information or compilation of information which is not patented, which is known only to certain individuals within a commercial concern or the State, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it; also known as a trade secret. Proprietary information is exempt from disclosure under the State Public Records Act (see [1 V.S.A. §§ 315-320](#)).

Retainage: A portion of Contractor’s eligible payments withheld until the project is complete. The amount withheld strengthens the position of the State to enforce contract compliance and helps ensure that the work is completed without material error.

Retainer Contract (a.k.a. Blanket): a contract which specifies the nature of the potential services to be rendered and the cost of the service. Retainer Contracts generally establish standard terms and conditions, set maximum not-to-exceed prices, and satisfy many legal requirements associated with State procurements, such as public notice of bid, and Vendor responsibility. Specific service requests are made through separate Statement of Work agreements written against this contract. These are commonly used by the Departments of Information and Innovation, Buildings and General Services, and the Chief Marketing Officer.

Secretary: means the Secretary of Administration (or SOA).

Services: this term should be broadly interpreted and includes personal and professional services such as, but not limited to, construction, consulting, design and engineering, investment management, information technology activities, real estate services, and the maintenance of equipment.

State of Vermont Employee: an individual employed by the State of Vermont and paid through the State of Vermont payroll system in an exempt, classified, limited service, temporary, elected, or appointed position, excluding “contractors paid on payroll”. Workers who provide attendant care, personal care, companion care, respite care, or support services to persons who receive financial assistance from the Agency of Human Services, and whose payroll service is provided directly by the State or by an intermediary payroll service organization acting under the authority of the State, shall not be considered State of Vermont Employees except for the limited purposes of workers' compensation coverage and unemployment insurance. (See [33 V.S.A. § 6321](#).)

State of Vermont Retiree: an individual who has separated from State service and is eligible to participate in the State Defined Contribution Plan or Vermont State Employees’ Retirement System.

Statement of Work (SOW): means a written statement in a Request for Proposal, simplified bid or contract describing the State’s service needs and expectation.

Statewide Contract: a contract negotiated by the Office of Purchasing and Contracting (OPC) and accessible to all agencies of the State. To find out if a contract exists that meets an Agency’s need, contact the OPC or refer to the web site at <http://bgs.vermont.gov/purchasing/contractinfo>.

Uniform Guidance: means [2 CFR Chapter I, Chapter II, Part 200](#)-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Vendor: any party with which the State may sign a contract.

Zero-Dollar Contract (a.k.a. No-Cost contract): means a Contract for Service in which a Vendor is willing to accept compensation for services other than direct payment by the State. For examples and further information refer to Page [12](#).

[END SECTIONS I-II-III]