

## **XII. SUBCONTRACTS**

The Contractor may not assign, subcontract or subgrant the performance of a contract or any portion thereof to any other subcontractor without the prior written approval of the State. If subcontracting is approved by the State, the Contractor remains responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under the contract. When a contract involves subcontracting (sub-agreement), the State should encourage the contractor to follow a fair and open award process and create clear and thorough subcontracts to enable the contractor to properly monitor the performance and compliance of the subcontractor(s). Contractors shall include the following provisions of Attachment C in Contractor's subcontracts for work that is to be performed solely for the State of Vermont or performed in the State of Vermont: (i) Fair Employment Practices and Americans with Disabilities Act, (ii) False Claims Act, (iii) Whistleblower Protections, (iv) Taxes Due the State, (v) Child Support, (vi) No Gifts or Gratuities, (vii) Certification Regarding Debarment, (viii) Certification Regarding Use of State Funds, (ix) State Facilities and (x) Location of State Data.

Standard state terms and conditions (Attachment C, "Sub-Agreements") clearly require prior notice to and the written approval of the State before a contractor may assign or subcontract the performance of any contract, in whole or in part.

## **XIII. CONTRACT AMENDMENTS, APPROVAL AND EXECUTION**

One purpose of this Bulletin is to minimize contract amendments, especially as they relate to significant unanticipated changes in the scope of work, contract duration and/or the contract maximum amount. It is generally desirable to avoid contract amendments because they may diminish the advantages of the competitive bidding process. Extensive contract amendments may indicate an Agency did not define and develop a thorough scope of work to be performed. 2

Agreements such as Letters or Memoranda of Understanding, designed to amend a contract are unacceptable.

### **A. Contract Amendments:**

#### **1. Amendment Requirements:**

- a.** Contract Amendments shall be required for any change that alters the essential terms of the original contract, including but not limited to the following examples:
  - a change to the contract that expands or decreases the Statement of Work and/or Deliverables;
  - a change to the contract that expands or decreases the payment amount beyond what is defined in the original contract;
  - a change to the payment provisions beyond those defined in the original contract;
  - a change to extend the contract duration beyond the original duration defined in the original contract; and,
  - any other change to an Attachment, for which the contractor is to be held accountable or which would increase risks to the State.

- b. All contract amendments must include the original contract number and a sequential amendment number. An Amendment should describe, with specific reference to the applicable sections of the contract, what is being added, deleted or otherwise modified. A new Form AA-14 must show the original contract number and the amendment number.
- c. All contract amendments and Change Orders must include the following certifications:
- i. **Taxes Due to the State.** Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.
  - ii. **Certification Regarding Suspension or Debarment:**  

Contractor certifies under the pains and penalties of perjury, as of the date this contract amendment is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Amendment is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at:  
<http://bgs.vermont.gov/purchasing/debarment>.
  - iii. **Child Support** (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs):  

Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.



***NOTE: The issuance of a revised Attachment C does not necessitate a contract amendment, in and of itself. However, agencies shall include the most current Attachment C when issuing an Amendment to an existing executed contract, replacing the Attachment C in effect at the time of the original contract execution.***



***NOTE: Agencies must not use multiple contracts to procure goods and/or services which can reasonably be procured through one contract, nor use the contract amendment process to avoid the requirements in this Bulletin, relating to competitive solicitation and approvals.***



***NOTE: Contract extension, renewal, or increases should be contingent upon prior satisfactory contractor performance, as determined by the Agency's evaluation process.***

## **B. Amendment Approval and Execution:**

### **1. Contract Amendment Package:**

For Amendments requiring approval by the AGO, the Secretary and, in certain cases, the Chief Information Officer, a complete “Contract Amendment package” (package) will be sent to the Department of Finance and Management for handling. The “package” must include:

- a copy of the original executed contract, including all Attachments and the initial Form AA-14;
- a copy of all previously executed Amendments, including all related Attachments and Forms AA-14; and
- the current proposed Amendment, including all Attachments and the new Form AA-14.

### **2. Appointing Authority Approval Required:**

The Appointing Authority must approve all contract Amendments.

### **3. Attorney General’s Office and Secretary of Administration Approvals Required:**

In addition to the approval of the Appointing Authority, approval by the **AGO and the Secretary** prior to execution of an Amendment is required in any of the following circumstances:

a) for any amendment to a contract originally procured as a sole source, except that prior approvals of the AGO and the Secretary shall not be required where the amendment is only to extend duration and increase the maximum amount as expressly contemplated under the terms of the original contract, and the maximum amount of the contract remains under \$100,000 (with no change to scope of work or other contract terms); or

b) any amendment to a competitively sourced contract originally procured using a simplified bid or RFP, if the cumulative effect of the amendment and all prior amendments increases the contract price by 25% or more, except that prior approvals of the AGO and the Secretary shall not be required where the amendment is only to extend duration and increase the maximum amount as expressly contemplated under the terms of the original contract (with no change to scope of work or other contract terms).

### **4. Chief Information Officer (CIO) Approval Required:**

In addition to approval by the Appointing Authority, AGO and the Secretary, the CIO’s approval is required for any and all contract amendments concerning a contract for an Information Technology Activity and Information Security, as follows:

- a. All contracts originally for cloud services (SaaS, PaaS and IaaS) regardless of dollar value (refer to the IT Guideline for more information);
- b. All Information Technology and Information Security contracts which originally involved the processing, storing, or transmission of information protected by State or federal law, including protected health information, personally identifiable information, federal tax information and education information;

- c. The original contract was less than \$500,000, plus the cumulative effect of all amendments increases the contract price above \$500,000; or
- d. The original contract was \$500,000 or more, and the cumulative effect of all amendments has increased the contract price by 25% or more.

**C. Execution of Amendments:**

Only an Appointing Authority may execute a contract amendment. Prior to executing an Amendment, it is the **responsibility of the Appointing Authority to ensure** the Amendment:

- is warranted;
- has obtained all required prior approvals; *and*
- is not being employed to significantly expand and/or change the scope of work, thereby jeopardizing the integrity of the competitive process.

**D. Amendment Number and VISION Record:**

As with the original contract, each contract Amendment must have a sequential Amendment number appended to the original VISION contract number. All Amendments which change the duration, end date or maximum amount must be entered into the VISION system to update the existing contract record (see [VISION Procedure #3](#)). Maintaining the correct contract information for payment and reporting purposes is also required by [3 V.S.A. § 344 \(a\)](#).

## **XIV. NOVATION AND ASSIGNMENT**

**A. Novation**

Contractors may change during the term of a contract, as a result of a corporate merger or reorganization. Sometimes the old contractor will be dissolved and sometimes it will continue to operate. When a Vendor asks permission to substitute one party for another, with the intent of assigning all of the rights and responsibilities of the contract, the State, the old contractor and the new contractor must enter into a **Novation**.

In a Novation the original contract is extinguished and is replaced by a new one in which a third party takes up rights and obligations which duplicate those of one of the original parties to the contract. Typically, the State will want the new contractor to agree to take on not only future rights and obligations, but liability for past obligations. Novation is only possible with the consent of the original contracting parties as well as the new party. The benefit of the bargain, or “consideration,” must be stated for the Novation. A form of Novation may be found at: <http://bgs.vermont.gov/purchasing/forms>.

It must be noted that Finance and Management will require a new Contract number in VISION and the maximum contract amount must be the original contract amount, less any amounts paid to the old contractor through the date of the Novation.

**B. Assignment**

Assignments are used only when the State and the Contractor seek to contractor rights of payment or other contract benefits to a creditor or another Vendor. Before executing a Novation or Assignment, Agencies should consult with in-house counsel, an in-house AAH or the Office of the Attorney General.

[END SECTION XII - XIV]