

STATE OF VERMONT

AGENCY OF ADMINISTRATION

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CONTRACTING PROCEDURES

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I. PURPOSE AND POLICY

This Bulletin establishes the general policy and minimum standards for soliciting services and products from vendors outside of state government, processing the related contract(s), and overseeing established contracts through their conclusion. It is the policy of the State of Vermont to obtain high quality services and materials in a cost effective manner through the use of an open and competitive contract solicitation process, to ensure proper development and review of contracts prior to their being signed, and to oversee established contracts effectively through their completion. Supervisors, as defined in this Bulletin, have management and oversight responsibilities for the procurement and contracting process for services and for the ongoing oversight of contracts through their conclusion.

Products/commodities are purchased through the Division of Purchasing and Contract Administration, Department of Buildings and General Services (See Section IV. C.)

Supervisors are directed to oversee these responsibilities in a manner consistent with this policy and with the provisions of this Bulletin.

II. DEFINITIONS OF TERMS USED IN THIS BULLETIN

Agency – an agency, department, 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.

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

Blanket delegation of authority (BDA) – a formal document through which the Commissioner of Buildings and General Services delegates authority to other agency/department heads to make certain types of purchases directly, without going through the Division of Purchasing and Contract Administration, Department of Buildings and General Services. Agencies and departments must follow the terms and conditions in their approved BDA.

Capital Lease – meets one or more of the following four criteria: (1) the lease term is greater than 75% of the property’s estimated economic life; (2) the lease contains an option to purchase the property for less than fair market value; (3) ownership of the property is transferred to the lessee at the end of the lease term; (4) the present value of the lease payments equals or exceeds 90% of the fair market value of the property.

(Leasing equipment through a capitalized lease is not allowed; contracts cannot be used to circumvent this provision.)

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

Contract – any legally enforceable agreement between an agency and another legal entity to provide services and/or products. (The term contract includes all such agreements whether or not characterized as a “contract,” “agreement,” “miscellaneous agreement,” “letter of agreement,” “purchase order,” “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.

Products – broadly interpreted and includes equipment, materials, information technology hardware or software, supplies, printing, and other commodities.

Prior – broadly, though not yet universally, understood to mean “preceding in time or order,” or more succinctly, “before.” Thus, when an approval is required “prior” to the execution or commencement of a contract, the administrator should construe this in all cases to mean the approval should be requested and received “before” the contract is signed or commenced.

Retainage – A portion of contractor’s earned funds withheld until the project is complete. The amount withheld helps ensure that the work is completed.

Services – broadly interpreted, and includes personal and professional services of an individual or of persons working for a business enterprise, construction services, design and engineering services, information technology services, real estate services, and the maintenance of equipment.

Supervisor – any secretary, commissioner, executive director, elected officer, or other head of an agency.

Secretary – the Secretary of Administration.

III. WHEN TO USE A CONTRACT

Contracts are normally used to acquire specific, clearly defined services and/or products from entities or individuals other than state agencies or employees of the State. This includes situations where the State is seeking or is offered a service or product for which it will not pay and may even acquire revenues, for example, wireless internet access at State facilities.

A. GRANTS VERSUS CONTRACTS

Although grants are most commonly used for the direct support of persons, they are also commonly given to organizations that perform public benefit activities with a high degree of independence. Promises made by a grantee in a grant agreement are as enforceable as are promises by a contractor.

The degree of agency supervision is key when deciding whether to issue a contract or award a grant. In general, grants are appropriate when an agency will retain very little control over the grantee's performance. At the other extreme, the necessity for close or frequent supervision indicates that an employment (temporary or permanent) agreement should be used, particularly if an individual is expected to work regular hours. Contracts are generally appropriate when the agency's supervisory control falls between these two extremes. (See Section B below regarding the differences between contractors and employees.)

A grant should only be used in the following circumstances:

- a. Appropriated funds are characterized in the law as "grants."

OR

- b. The principal purpose is to support or stimulate an activity that benefits an individual (or group) rather than the agency itself (or wards of the State), and there will be no substantial state oversight of the funded activity, other than providing guidance upon request and accumulating information on the progress achieved and periodic financial monitoring of the program or activity.

When a proposed "grant" does not meet the above test, an agency should utilize a contract. For example, a grant would be appropriate when the purpose is to serve the individuals within a client population, such as "developmentally disabled adults in the

Springfield area.” In contrast, a contract would be appropriate when the purpose is to supply services to individuals specified by the contracting agency, such as medical services to inmates in a correctional facility.

B. CONTRACTS FOR SERVICES: CONTRACTORS VERSUS EMPLOYEES

Generally, services should be obtained from state employees rather than from contractors. Contractors should not be used to do the continuing work of the government,

nor when an agency of the State is able to provide comparable services at competitive market rates.

ABC Test

Unless all three of the following "ABC" conditions are met, a service contract is not appropriate and an employment option is recommended:

- a. The agency will not exercise supervision over the daily activities, times of work, or the means and methods by which the contractor provides services, either in fact or under the terms of the contract. The agency, however, may ensure that the contractor meets performance specifications contained in the contract.
- b. The service provided is not of the kind usually provided by the agency.
- c. The contractor customarily engages in an independently established trade, occupation, profession, or business. If the contractor retains the ability to engage other clients during the contract term, this normally proves the existence of an independently established business.

Federal and state tax laws establish stringent rules regarding an agency “contractor” who has to be treated for tax purposes as an “employee.” An agency that is unaware of these tax rules can have an unexpected tax liability, including penalties, after the contract is completed, or may face an unexpected claim for unemployment or workers’ compensation. The fact that an agency chooses to characterize the relationship as “contractual” rather than as “employment” has little bearing on the outcome. An agency’s responsibility in these matters depends on the facts of

the relationship and not upon the manner in which it is described.

In order to minimize such risks, agencies generally should not enter into service contracts when the agency would be liable under state or federal law for income tax withholding, for F.I.C.A. taxes, or for unemployment or workers’ compensation. As stated in Vermont law, one test of whether a services contract may be subject to these taxes, and thus be considered state employment, is called “The ABC Test.” (See 3 V.S.A. § 342 for further discussion.)

If it is not appropriate to form a contract, an agency should use temporary employees, limited service employees, or permanent employees to do the work. As more fully described in Personnel Policy and Procedure, Section 5.1:

- a. Permanent classified or exempt positions can only be authorized by the Legislature.
- b. Limited service positions can be authorized by the Joint Fiscal Committee in connection with a grant, or by the Legislature itself.
- c. Temporary employees can only be hired with approval of the Commissioner of Human Resources in accordance with 3 V.S.A. § 331. Except when emergency approval is given by the Commissioner of Human Resources, a temporary employee cannot work for more than 1,520 hours per calendar year.

Notwithstanding the foregoing, however, an agency may enter into a service contract in the following cases:

- a. When a statute, other legislative authorization, or executive order explicitly directs that an agency may use contractors. An example would be highway construction and planning (19 V.S.A. § 10(1)). Such contracts, however, are not exempt from the procedures in this Bulletin.
- b. When the contractor has unique abilities not available in a pool of prospective employees and recruitment has been unsuccessful.
- c. For clerical or secretarial services provided by an established company that normally provides such services when necessary to replace a vacationing or otherwise absent employee.
- d. “Contracting out” may be specially approved by the Secretary if significant savings are likely in program cost and the contractor will not be asked to exercise sovereign powers, such as police power or eminent domain, to establish state policy, or to represent government policies to the public, in accordance with 3 V.S.A. § 342.

IV. KEY ISSUES

A. OPPORTUNITY TO COMPETE

Executive Order #3-20 requires all agencies of state government to adopt and implement the following policy:

The State of Vermont recognizes the important contribution and vital impact which small businesses have on the state's economy. In this regard, the state prescribes to a free and open bidding process that affords all businesses equal access and opportunity to compete for state contracts for goods and services. The state also recognizes the existence of businesses owned by minorities and women and directs all state agencies and departments to make a good faith effort to encourage these firms to compete for state contracts.

In situations where the State is seeking or is offered services or products for which it will not have to pay and even may receive revenues, a fair and open bidding process should still be presented to ensure that all businesses have the opportunity to compete to provide the service(s) or product(s). In these circumstances, the ensuing contract for the service(s) or product(s) may be significantly different from those which involve State expenditure for the service(s) or product(s). However, the general spirit and intent of this Bulletin should still apply.

B. CONFLICT OF INTEREST

Employees with a conflict of interest or appearance thereof are not permitted to control or influence the bidding process and/or the awarding of contracts. The Executive Code of Ethics (Executive Order #3-45) sets standards that should be used as the primary guide. Additionally, every effort should be made to avoid even the appearance of a conflict of interest in the contracting process. (See Section VI. A.3.c. for more discussion of this issue.)

C. STATEWIDE CONTRACTS

The Department of Buildings and General Services (BGS) has the responsibility under 29 V.S.A. § 902 to contract for and/or purchase all supplies for state government. To simplify the acquisition process, BGS maintains numerous statewide contracts for supplies, which include materials, equipment, parts, and commodities. Unless otherwise approved in

advance, **these BGS contracts must be used by all state government entities.** To find out if a contract exists that meets an agency's need, contact the BGS Purchasing and Contract Administration Division or refer to the BGS web site at www.bgs.state.vt.us/pca/.

The Commissioner of Buildings and General Services can delegate authority to other agency/department heads to make certain types of purchases without going through the Division of Purchasing and Contract Administration. A "Blanket Delegation of Authority" (BDA) enables agencies to maintain the continuity of everyday operations. The purchases made under a BDA, however, are still subject to the underlying requirements of competitive bidding as stated in this Bulletin.

BDA#1 grants authority to make any single purchase up to \$3,500 provided that the item being purchased is not available through an existing state contract, is not otherwise restricted by statute or administrative bulletin (for example, filing cabinets are restricted by 3 V.S.A. § 219), and is not an ongoing need of the department. (For items that are needed on an ongoing basis, departments are expected to work with Purchasing and Contract Administration to establish a contract.) Specific authority covering certain classes of items (for example, fresh produce purchased from local farmers at market prices) can be requested through the Division of Purchasing and Contract Administration. All BDAs, including BDA#1, are subject to the ongoing approval of the Commissioner of Buildings and General Services and can be revoked or modified at any time. All purchases made under a Blanket Delegation of Authority are subject to annual audit to determine compliance with this Bulletin and with the applicable BDA.

If the needed item(s) is (are) not available under an existing contract and is (are) not covered by an existing BDA, the agency must prepare a requisition through the VISION system and have said requisition budget checked for sufficient funding by the VISION system.

D. CONTRACT DURATION

An agency should carefully consider what term (period of time) is appropriate for a contract. In certain situations, such as when purchasing goods or services for which there is an ongoing need, the agency must decide what period of time best meets the State's immediate and longer-term needs. Considerations should include, among other things, the nature of the goods or services to be obtained and the status of any particular industry or

market involved. Generally, shorter contracts are favored over longer contracts. Accordingly, an agency must have good cause or the statutory authority to contract for more than two years at a time. Such good cause must be approved in advance of the signing of the contract by the Secretary, unless the agency has in place an approved contracting plan that allows for base contracts of longer than two years. If it is reasonable to believe that the State might want to extend the contract beyond a base period, this fact should be noted. The maximum for any such extensions is two additional years.

E. PRICE

Price should always be a substantial consideration in selecting a contractor except in a Qualification-Based Selection process. (See section VI. C. Qualification-Based Selection.) Price, however, is often not the only consideration. An agency should establish selection criteria that provide for the overall best interests of the State. In addition to price, the criteria may also include factors such as qualifications, experience, quality of past work, references, and timeliness, among others.

V. APPLICABLE BIDDING THRESHOLDS, CONTRACT TYPES, AND REQUIREMENTS

A. MONETARY THRESHOLDS

1. Contracts \$15,000 or Less

While a competitive solicitation process is preferable, a supervisor may enter into a contract for \$15,000 or less without a standard competitive solicitation process. At the time of contract execution, the supervisor must place in the official contract file a written explanation for selecting the contractor. Such explanation must include the following:

- a. A description of the qualifications of the contractor that demonstrates that the vendor will provide high quality services or products
- b. A description of the prices charged by the vendor and an explanation as to why such charges are both cost effective and reasonable

2. Contracts Greater Than \$15,000 but Not More Than \$100,000 – Standard or Simplified Bid Process

A supervisor may enter into a contract over \$15,000 but not more than \$100,000 following either a standard bid or a simplified bid process. A “simplified bid process” means that the agency has developed a specific and detailed statement of work for the service or product desired and has solicited written price quotations from vendors providing the specified services or products. The statement of work to be performed and request for price quotations must be provided in a timely manner to at least three potential bidders. If the agency is unsure whether the contract will fall below the \$100,000 threshold, in order to avoid rebidding the work, the use of a standard bid process is recommended.

3. Contracts Greater Than \$100,000 – Standard Bid Process

A supervisor may enter into a contract greater than \$100,000 only after adherence to a standard bid process in compliance with the provisions of this Bulletin.

4. No-Cost Contracts

In situations where the State is seeking services for which it will not have to pay, and which may even produce revenue for the State, a standard bid process is to be used.

B. ADDITIONAL REQUIREMENTS

In some cases, state or federal statutes require bidding at lower amounts. Such statutes must be followed. For example, 19 V.S.A. § 10(1) requires bidding of transportation contracts above \$50,000, and 29 V.S.A. § 161 requires public bidding of building contracts above \$50,000.

C. INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS CONTRACTS

22 V.S.A § 901 requires the Department of Innovation and Information (DII) to review all information technology requests for proposal with a value of over \$10,000¹; to review and approve computer systems or computer system upgrades with a cost in excess of \$150,000¹; to support the statewide development of broadband telecommunications infrastructure and services; to purchase

¹ Refer to current 22 V.S.A. § 901 limits.

telecommunications services or facilities at rates competitive within the national marketplace; to share bandwidth with service providers or other users; and to establish equipment co-location....

The Chief Information Officer/Commissioner of the Department of Information and Innovation must review all RFPs for information technology or telecommunication prior to their posting. Adequate time must be allowed for the review of the request to be completed prior to its being posted (refer to Section VI (2) of this bulletin). Information technology request-for-proposal requirements can be found at www.cio.vermont.gov.

The Chief Information Officer must review and approve all information technology and telecommunications contracts with a cost of \$150,000 or more, unless the Secretary of Administration has waived this requirement or the Secretary of Administration has approved a contracting plan including information technology contracts. Additionally, contracts for the purchase of information technology equipment or software must comply with State policies, which can be found under “Quick Links” at the Department of Information and Innovation web site: www.cio.state.vt.us.

D. CONTRACTS FOR INSTALLATION, MAINTENANCE, AND SUPPORT OR TRAINING SERVICES

Any contract that involves the contractor’s personnel coming onto state property to provide service, maintenance, training, or technical support related to existing equipment should be developed as a contract for services under this Bulletin. All such contracts must therefore include Attachment C: Standard State Contract Provisions and comply with all other applicable provisions of this Bulletin.

Any contract for the purchase of a product, commodity, equipment, or software that also involves the contractor’s personnel coming onto state property to install or service the purchased item or to train state personnel in the use of the item purchased should be developed as a commodities contract under this Bulletin by submitting a requisition to the Division of Purchasing and Contract Administration, Department of Buildings and General Services.

Any contract for the license of proprietary software, regardless of whether that also includes the contractor’s personnel coming onto state property to install or service the

purchased item or to train state personnel in the use of the item purchased, should be developed as a contract for services under this Bulletin. All such contracts must therefore include Attachment C: Standard State Contract Provisions and comply with all other applicable provisions of this Bulletin. With such contracts, the vendor will usually have a standard licensing agreement that the vendor will want to incorporate into the contract. Such standard licensing agreements often contain terms that are inconsistent with Attachment C and should be reviewed by the Office of Attorney General.

E. MARKETING CONTRACTS

For purposes of this Bulletin, a marketing contract includes advertising (print, radio, TV, and web/internet, but not to include recruiting); collaterals (brochures, fact sheets, folders, etc.); web site design (not to include technical components); trade shows and events; direct mail campaigns; and sponsorships. Any contract for services relating to marketing with a value of greater than \$15,000 requires the prior approval of the Chief Marketing Officer (CMO), Agency of Commerce and Community Development.

For marketing contracts valued at \$15,000 or less, supervisors must refer to and comply with applicable statewide marketing guidelines, policies, and standards issued by the CMO.

F. PRIVATIZATION CONTRACTS

Any contract that would result in the reduction in force of at least one permanent, classified state employee is likely to fall within the definition of “privatization contract” as described in 3 V.S.A. § 341. Privatization contracts require special procedures and prior review in accordance with 3 V.S.A. § 343. For additional information refer to Section VII. C. 4. of this Bulletin.

VI. THE BIDDING PROCESS

A. STANDARD BIDDING

1. Bid Documents (“Requests for Proposals”)

Additional guidelines for the creation and issuance of Requests for Proposals (RFPs), including a sample RFP template, are available at <http://www.bgs.state.vt.us/pca/index.html>. The actual document is updated

frequently to reflect changes in state law. The most current version can always be found at http://www.bgs.state.vt.us/PCA/pdf/rfp_shell.doc.

a. Cover Page: An RFP package should include a cover page that includes the following:

1. Name and address of contact person
2. Due date, time, and location of responses
3. Notification of the time and location for any scheduled bidders' conference, including a statement as to whether attendance is a condition of selection
4. Any other special requirements of the RFP process

b. Introduction: The RFP itself should explain its purpose and the nature of the services that are sought, for example: "The purpose of this RFP is to obtain from independent management consulting firms proposals to perform a management study of the Division of Bulletin Creation."

c. Brief description of the agency: The RFP should provide needed general information, such as the type of government unit, the agency's statutory authority, budget size, number of employees, and population served, and its mission or purpose. For any associated governmental units, explain their involvement or relationship to the agency organization. Briefly explain the mission or purpose of the organization. It is usually efficient to supply information from existing documents as an attachment to the RFP. Also describe any recently published documents that may contribute to the scope of services, such as financial audits, program reviews, or technical studies.

d. Statement of work to be performed: The bid documents must include a statement of work to be performed and/or products to be delivered. The purpose of this statement is to provide prospective vendors with clear and concise but thorough information regarding the requested work. At a minimum, the statement should include in detail the following: a description of the work to be performed, a schedule (including when the work is to be completed, any interim completion dates and/or deliverables), the expected outcomes and/or products, and related performance and/or quality standards. A thorough and well-structured statement of work to be performed enhances

the responsiveness of vendors during the solicitation process, promotes the reliability and comparability of proposals, and minimizes the need for contract negotiations and subsequent contract amendments.

e. Context for the work and management structure: The bid documents should provide the vendor with a brief overview of the recent history leading to the agency's decision to seek a contractor. This overview will provide vendors with a better understanding of the purpose and context of the work. The bid document should include a statement about the management structure. A description in *general* terms of how the contract will be monitored by the contracting agency should be included along with a statement that a *specific* monitoring process will be defined in the contract with the selected bidder. The goal is for bidders to understand that the State is going to monitor their activities and performance under a contract in order to prevent problems or to detect them early, to determine any need for technical assistance, and to ensure that the contract terms are met and that State expenditures are appropriate, effective, and efficient.

f. Bid and contract requirements: Bid documents should clearly explain to bidders the procedural and substantive requirements of the bidding process. For example, the date, time, and address to which bids must be delivered should be explicitly stated. In addition, this section should include information regarding any on-location views of the work area, any pre-bid informational conferences, and any special requirements for submissions with the bid, such as bid bonds, qualification profiles, resumes of key personnel performing the work, etc.

The bid documents should describe the key elements of the contract to be signed with the vendor winning the bid. The recommended method of meeting this requirement is to attach to the bid documents a copy of the basic contract documents which the selected vendor will be expected to execute. Each bid document must include a copy of Attachment C: Standard State Contract Provisions or its equivalent as approved by the Attorney General.

g. Price quotation form: The bid documents, except for those using a Qualifications-Based Selection process, should include a price quotation

form. The form should explicitly allow for price quotations for the core services or products requested and for each incremental phase of a project if relevant. In any case, when contract extensions are contemplated, the quotation form should explicitly provide for a price quotation applicable to each such extension. Additionally, the form should allow for separate price quotations for optional services or products that an agency may consider adding to or deleting from the basic bid.

h. Basis for selection: The bid documents should clearly explain the selection criteria to be used by the agency. If certain factors in the selection process are relatively more important than others, the degree of such relative importance should be clearly stated and, if possible, quantitatively profiled.

2. Public Notice Regarding the Standard Bid

The opportunity to bid for the proposed work must be broadly publicized. At minimum, such solicitation shall include posting on the Electronic Bulletin Board (EBB), which is operated by the Agency of Commerce and Community Development as part of the Vermont Business Assistance Network (VBAN). Current instructions for posting on the EBB can be found at the following link:

<http://www.vermontbidsystem.com>.

Other methods of solicitation may include advertising in newspapers, direct mailings to potential vendors, direct mailings to vendors on a prequalified list (see Section VI B below), and/or publication in trade journals. It is important for an agency to maintain a list of those requesting bid documents. The time between the initial public notice and the opening of bids should be at least two weeks. For relatively complex work, additional time should be permitted to allow potential vendors a reasonable opportunity to obtain the documents and prepare a responsive bid.

3. Contractor Selection and Documentation

a. Selection: The bid most responsive to the selection criteria established in the bid documents should be accepted. When appropriate, a supervisor may establish a contract selection committee to review the bids and make a written recommendation. At minimum, the agency shall post public notification of its decision on the Electronic Bulletin Board.

b. Documentation: A complete copy of the bid documents, vendors solicited, price quotations, bids received, and any written selection justifications must be placed in the contract file. For cost-based bids, when other than the lowest bid is accepted, there must be documentation concerning the quality of services, products, or other relevant considerations offered by a higher priced vendor that justify the award of the contract to the higher priced vendor. For qualifications-based selection processes, documentation of the basis for ranking each bidder's qualifications must be placed in the contract file.

c. Apparent conflict of interest: If a reasonable person might conclude that a contractor was selected for improper reasons, the supervisor should disclose that fact in writing to the Attorney General and the Secretary and document the reasons why selecting the desired contractor is still in the best interests of the State.

4. Pre-Bid (Bidders') Conferences and Adjustments to Bid Documents

For large or complex work, it is recommended that the agency hold a pre-bid conference where agency staff can review with potential vendors the scope of services for the work and other content of the bid documents. Any change to the interpretation of the bid documents resulting from a pre-bid conference, or from any other information upon which the agency intends bidders to rely, such as responses to bidders' questions, should be broadly publicized, including at minimum a notice on the Electronic Bulletin Board.

5. The Bid Opening

A public bid opening and reading of bids should be the norm and is required for contracts over \$100,000. Two staff members from the agency administering the bid process should be in attendance at the bid opening. Bids that have not been received prior to the established time for the receipt of bids shall be returned unopened to the bidder. With the approval of the Attorney General, the State agency administering the bid process may waive technical non-compliance when doing so is in the best interest of the State. Such waivers must be fully documented and included in the contract file.

B. PRE-QUALIFIED BIDDING

In order to streamline the bidding process in cases where a type of work is routinely bid on, it can be more efficient for an agency to establish a list of pre-qualified vendors. A pre-qualified vendor is one who has been determined by an agency to be generally qualified to perform a type of work that is routinely put out to bid by the agency. All vendors who are determined qualified to perform the type of work for which the pre-qualification list has been established, and who so request it, should be included on the list by the agency.

At least once in a two year period, an agency using a pre-qualified bidding process must publicly solicit the opportunity to be placed upon the list. The agency should establish clear criteria for the qualifications that, if met, allow potential vendors to be included on the pre-qualification list. Additionally, during the period between formal list revisions, the agency must maintain an ongoing process that allows additional vendors to request review and inclusion on the pre-qualification list.

When soliciting bids from a pre-qualified list, the public notice requirement shall include the restriction that bidding is limited to those on that pre-qualification list and provide information as to how vendors can be included on this list in the future.

C. QUALIFICATION-BASED SELECTION

With the prior approval of the Secretary, in situations where the contract sought is for professional design services, such as architects or engineers, a Qualification-Based Selection process may be used. The first consideration in this process is the selection of the most qualified vendor who can meet the contract requirements; the second consideration is cost. Vendors are ranked by qualification, then cost is negotiated with the most qualified bidder; if this negotiation is not satisfactory to the State, cost is negotiated with the next most qualified bidder, and so on, until a satisfactory agreement is reached and a contract negotiated.

The Qualification-Based Selection is **required** for contracts that are supported by certain Federal funds if (1) the contract is for engineering and design services, (2) the contract is for \$100,000 or more, and (3) the services relate directly to a highway construction project. Under these circumstances, the prior approval of the Secretary is not required.

D. EXCEPTIONS AND WAIVERS

1. Sole Source

Every reasonable effort should be taken to promote a competitive solicitation process when selecting a contractor. However, in extraordinary circumstances, negotiating with only one contractor may be appropriate. Examples of when a sole source contract might be appropriate include when time is critical for performance of the required services (such as emergency repairs) and/or when only one contractor is capable of providing the needed service or product. In other than an emergency situation a supervisor desiring to execute a sole-source contract that has a value of greater than \$15,000 but no more than \$100,000 must forward a copy of the proposed contract, notice of intent to execute, and a justification for the contract to the Secretary at least two weeks prior to the planned execution date. If, by ten business days after receipt by the Secretary, the Secretary does not object, the contract may be executed. For sole source contracts having a value of more than \$100,000, the Secretary must approve the contract prior to its execution by the supervisor. At least four weeks should be allowed to obtain this approval.

2. Waivers

The Secretary may waive provisions of this Bulletin on a case-by-case basis pursuant to a written request from a supervisor. Any such request must describe in detail the basis for the request and the specific component(s) of the contracting process for which the waiver is sought and must be granted prior to the signing of the contract by either the State or the contractor. Copies of all waivers granted by the Secretary, and the requests submitted therefore, must be retained in the contract file.

3. Contracting Plans

For specific classes of contracts exhibiting characteristics that cannot reasonably be accommodated within the requirements of this Bulletin, the Secretary may approve a written contracting plan that provides an acceptable alternative to any requirement of this Bulletin (for example, contracts with multiple training specialists that provide a particular kind of training to a specific group, such as police officers or casework specialists, and that takes place frequently on an annual basis but for which an exact time or number of trainings cannot be predicted accurately). *All such contracting plans approved pursuant to prior versions of this Bulletin must be*

resubmitted for renewed approval to the Secretary within 3 months of the effective date of this Bulletin revision. Existing Contracting plans remain in effect until the Secretary has acted on the new request for approval.

VII. CONTRACT DRAFTING AND REQUISITE APPROVALS

A. DRAFTING THE CONTRACT

All contracts, regardless of dollar amount, must comply with the following:

1. Description of the Work

Describe the work to be performed or products to be delivered by the contractor, including the schedule for performance, time frame for deliverables, and applicable standards by which the contractor's performance and products will be measured.

2. Monetary Amounts and Payment Process

Specify a maximum amount of money to be paid by the State under the contract, and describe how, when, and for what the contractor will be paid.

3. Attachment C: Standard State Contract Provisions

Include Attachment C (see Appendix II: Attachment Guidelines) or an equivalent provision that has been approved by the Attorney General. Any change or substitute language to the Standard Provisions must be approved by the Attorney General prior to the contract signing, or in the case of changes to the insurance provisions by the Director of Risk Management.

4. Additional Insurance Considerations

It is very important that appropriate insurance be included in the contract to protect the State's interests. Standard insurance coverage provisions are included in Attachment C and are intended to cover most of the situations encountered. However, professional service contracts may require additional types of insurance such as professional liability. Higher insurance limits also may be necessary under certain circumstances such as when relatively dangerous or hazardous activities are contemplated. Agencies should consult with the Director of Risk Management for guidance in such instances. Conversely, there may be instances in which the limits may be reduced or eliminated altogether from the contract. Such modifications,

however, may only be undertaken with a waiver from either the Director of Risk Management or the Attorney General.

5. Accountability

In very specific terms, address how the contractor is accountable for his/her work or product. Specific performance measures improve accountability in the contracting process because they provide an objective standard to determine if the contractor has successfully completed the contractual obligations and if the services or products delivered meet quality standards. In addition to the kind of services and/or products to be provided, the statement of work to be performed, as noted in Section VI. A. 1. d., must specify the time line for the accomplishment of defined measurable deliverables, including interim production steps and/or products to be delivered during the provision of the entire scope of work, and measurable standards that are to be maintained during the contract performance period and by which products will be found acceptable.

6. Penalties and Retainage

Penalties and retainage should be considered for all contracts, whether required or not, and in all contracting plans.

Penalties may be structured such that they reflect graduated levels for increasing degrees of failure to meet standards or deliver products. The method of imposing the penalties that the contractor might incur must be clearly defined. The penalties that are imposed should generally be assessed and reflected in the next invoice payment as opposed to being held off until the final settlement of all contract payments.

If a penalty is levied, an explanation must be included that details the amount of monetary compensation the State will receive if the contractor fails to perform the work as required by the contract. This explanation must also include the circumstances under which the penalties shall be applied, such as the failure to meet schedules, maintain performance and staff levels, or other measurable standards. An example of the language might be as follows: “The *liquidated damages* for a delay in delivery beyond the contracted delivery date is \$500/day for each day beyond said date of XX/XX/XX.”

When retainage is utilized, the contract must also set an amount of retainage that the State withholds from each payment to the contractor, less any outstanding penalties. The retainage is paid only after the completion of the contract to the satisfaction of the State. Retainage should generally be at least 5% of the total contract amount paid. The contract must specify any additional conditions, such as a contract close-out process between the contractor and the State that must be met prior to payment of the retainage.

7. Monitoring

Describe the contract management and monitoring process. Whether or not penalties and retainage are part of the contract, the document should include a section that describes specifically how the agency will monitor the contract. The level of contract monitoring required should be based on the agency's assessment of the risk for delay in or failure to deliver the services and/or products that the contractor presents. In assessing the risk, the agency should consider factors such as the amount of funds involved, the length of the contract, the complexity of the contract, the history of the contractor both in general and with state government, the amount of subcontracting that will be involved, and any other relevant issues.

The kinds of contract monitoring processes and steps can include, but are not limited to, the following: periodic contractor reports, invoice reviews, on-site visits, scheduled meetings, audits, independent performance reviews, surveys of users/clients, and post-contract audit or review. This section may also describe a process for identification, discussion, and resolution of disputes between the Contractor and the State both during the period of the contract and after its termination.

8. Appropriate Format

When a contract extends for more than one page, or has an attachment(s), number each page sequentially with the total number of pages within the pagination, for example, "Page 3 of 6."

For contracts of \$15,000 or less, an adequate short contract could consist of a single sheet, labeled "Contract," stating the parties and the essential terms with Attachment C: Standard State Contract Provisions attached. The terms are the statement of work to be performed or products to be delivered, the beginning and

ending dates or date of delivery, the amount payable (maximum amount for services contracts), and payment provisions.

For contracts greater than \$15,000, in the interests of consistency, use a standard format. A sample of the “Standard State Contract for Services” is included in this Bulletin as Appendix I.

When the complexity or other aspects of a contract dictate the use of other than the Standard State Contract form, an agency must ensure that all the terms of the Standard Contract (and its Standard Provisions) are included or that the Attorney General has approved any substitute provisions. The tax status certifications, child support, and equal opportunity clauses are particularly important because they are statutorily required. Without the prior written permission of the Department of Human Resources, a contract cannot restrict the ability of the contractor to hire state employees. When an agency has many contractors doing the same work for similar rates of pay, the preference is for the agency to prepare an individual Form AA-14 for each contractor. However, the agency may use Form AA-16 “Miscellaneous Agreement,” rather than preparing an individual Form AA-14 for each contractor. Form AA-16 is used to authorize payment of persons, such as foster grandparents, special education hearing officers, and other volunteers or contractors where many persons provide similar services. However, use of Form AA-16 does not change, reduce, or eliminate an agency’s responsibility to record and track the individual vendor contract and payments in accordance with the requirements of this Bulletin and in VISION, the State financial system.

B. OBTAINING A CONTRACT NUMBER

The agency must enter the contract into the VISION system to obtain a contract number, regardless of dollar amount. Each VISION contract record shall include a representative “long description” that accurately describes the contract; descriptions such as “Personal Services” or the name of the issuing department are not acceptable. For contracts greater than \$15,000 (or for lesser amounts if required by your agency/department procedures) Form AA-14 (Contract Summary and Certification Form) must be completed. It is the responsibility of the agency to obtain any required signatures on Form AA-14 before approving the contract in the finance system.

C. REQUIRED PRIOR APPROVALS

An agency may be required to obtain prior approval of a contract from the Secretary, the Attorney General (AG), in-house assistant attorney general (AAG), Chief Information Officer (CIO), Chief Marketing Officer (CMO), or Commissioner of Human Resources. A contract requiring prior approval cannot be executed until after all required approvals have been obtained. Only *one* contract package (original contract, one copy of the contract, original Form AA-14, sole source waiver, and other relevant documentation) should be circulated for approval and execution. Sending separate copies to the prior-approval parties is not acceptable.

1. Attorney General Review

According to 3 V.S.A. § 311(a)(10), the Attorney General (AG) must give prior written approval to any contract for services valued at over \$10,000 per year to determine if it is consistent with the intent of the classified service system.

The AG or in-house AAG must review contracts that do not use the Standard State Contract for Services and are in excess of \$15,000 to ensure that the form of the contract is appropriate (approval “as to form”). Upon request, the AG will review “as to form” contracts for \$15,000 or less. Reviewing “as to form” can help ensure that expectations of the parties and payment plans are clear and enforceable. This review “as to form” is highly recommended for complex contracts.

2. Secretary of Administration

The Secretary, or his/her designee, must give prior approval to any sole source contract over \$100,000 and any contract in an amount over \$250,000.

The Department of Finance and Management, Division of Budget and Management (F&M) must receive the original package, with all prior approval signatures necessary, at least two weeks before the planned execution date. If less time is available, a letter of explanation should be attached. For contracts taking effect on July 1, contracts should be submitted no later than June 1. F&M will forward the contract package and its own recommendation to the Secretary for final approval. If approved, the Secretary will return the package to F&M where one copy of the signed Form AA-14 and contract will be retained and the remaining documents will be returned to the agency.

3. Start of Work after Approval

If work on an approved contract is not initiated within 120 days of being signed by the State, the agency must resubmit the contract and accompanying Form AA-14 for re-approval before the work can begin.

4. Privatization Contracts

Special and stringent requirements apply to privatization contracts. Any contract that would result in the reduction in force of at least one permanent, classified state employee is likely to fall within the definition of “privatization contract” (see 3 V.S.A. § 341 for complete definition). No state government entity may enter into a privatization contract unless it has first notified the Commissioner of the Department of Human Resources (DHR) and subsequently worked with DHR to follow the procedure specified in 3 V.S.A. § 343 that requires that the state entity notify the Vermont State Employees Association (VSEA) of its intent to enter into a privatization contract 35 days prior to the beginning of any open bidding process, including an informal bidding process. Additionally, the state entity must demonstrate by use of an accounting process specified in 3 V.S.A. § 343 that the proposed contract will result in a saving to the State of at least 10% compared to the cost of having the service provided by classified state employees. The Agency of Administration and the Office of the Attorney General must review any privatization contract. No privatization contract will be approved unless it is submitted with documentation that the state entity has complied with all the requirements contained in 3 V.S.A. § 341 and § 343.

5. State of Vermont Retiree Contracts

The Commissioner of Human Resources (DHR) must review and approve any contract with a State of Vermont retiree executed within 1 year of said retiree’s official retirement date. DHR approval is required in addition to the normal approval(s) required based on the contract amount and/or waiver requested.

D. NO APPROVALS REQUIRED

When prior approvals by the Attorney General or the Secretary are not required, the agency must still obtain a contract number from the VISION finance system and track payment(s) in VISION (see section IX of this Bulletin).

VIII. CONTRACT EXECUTION, REQUISITE FILINGS, AND RECORDS

A. EXECUTION

A contract must be signed by the appropriate supervisor or his/her designee, consistent with Bulletin 3.3, which relates to signature authorizations.

B. FILINGS

After a contract has been fully executed, the agency must deliver a copy of the entire contract, as executed, to the contractor.

C. CONTRACT FILE

An agency must maintain an up-to-date contract file that is an official public record. In addition to the documentation described above, agencies must keep all contracts and the following documents on file as public records for at least three years after the contract's term expires:

1. The signed original contract, all amendments and associated Form AA-14s or Form AA-16s, all waivers and other documentation associated with the contract, a sole source authorization, if applicable
2. For contracts of \$15,000 or less, the written explanation for contractor selection
3. For contracts greater than \$15,000 but not more than \$100,000, the statement of work to be performed, price quotations, a list of vendors solicited, and any written determinations of the supervisor
4. For contracts greater than \$100,000, the documents described in subsection 3 above, the bid documents, vendor bids, any adjustments to or written interpretations of the bid documents, any staff analyses and/or recommendations regarding the bid
5. For contracts of more than two years duration, a written explanation detailing the reasons for the longer than normal contract length

IX. PAYMENTS TO CONTRACTORS

All payments to contractors for contracts shall be made and tracked through the VISION System, and in accordance with VISION Procedure #3 – Purchase Order

Procedure. This procedure is located on the VISION web site at:

<http://finance.state.vt.us/VISIONDocuments.htm#Procedures>.

X. CONTRACT AMENDMENTS

One purpose of this Bulletin is to minimize contract amendments, especially as they relate to significant changes in the scope of services and/or contract price amount. It is generally desirable to avoid contract amendments because they emphasize negotiations between an agency and a contractor and thus can diminish the advantages of the competitive bidding process. Also, extensive contract amendments may indicate that an agency did not define and develop a thorough statement of work to be performed for the contract. However, instances will occur when a contract amendment is justified. In such instances, the agency should negotiate with the contractor to amend a contract in the best interests of the State. Post-contract agreements such as Letters or Memoranda of Understanding are generally considered unenforceable.

Generally, a supervisor may execute a contract amendment. An amendment must be approved in advance by the AG and the Secretary in either of the following situations: The amendment is the third or more to the contract; or the cumulative effect of the amendment and all prior amendments increases the contract price above the following thresholds:

- a. \$18,750, for sole source agreements originally *under \$15,000*
- b. More than 25% for contracts of original amounts greater than \$15,000 but *less than \$250,000*
- c. More than 15% for contracts of original amounts *\$250,000 or greater*

A contract amendment must include the original contract number and a sequential amendment number. It also should describe what parts of the contract are deleted or changed and what parts added. Prior approval requests to the AG and/or the Secretary should be forwarded to F&M and include two copies of the current contract, a description of the proposed amendment and a revised Form AA-14. The revised Form AA-14 should show the original contract number. The amendment should not be signed or entered into the Financial System until the revised Form AA-14 has been approved.

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

XI. COMPLIANCE REVIEWS

In order to promote compliance with the provisions of this Bulletin, the Department of Finance and Management and Buildings & General Services will conduct management reviews of performance relative to the policy and requirements herein.

XII. SUBCONTRACTOR MONITORING

When a contract involves subcontracting, the contract should encourage the contractor to follow the spirit and intent of this Bulletin by engaging in a fair and open bidding process and establishing a clear and thorough contract to monitor the subcontractor(s)' performance and compliance with appropriate accountability mechanisms.

APPENDICES

Appendix I – Standard State Contract for Services

Appendix II – Attachment Guidelines

Attachment A: Specifications of Work to Be Performed

Attachment B: Payment Provisions

Attachment C: Standard State Contract Provisions

Attachment D: Other Contract Provisions

Appendix III – Investment Contracts

Appendix IV – State of Vermont Contract Approval Request,
Form AA-14

Appendix V – Bulletin 3.5 Quick Reference Guide

APPENDIX I

STANDARD STATE CONTRACT FOR SERVICES

Use of the Standard State Contract is recommended. In most cases, if used, contracts can be quickly written and will consist of only a few pages.

The Standard Contract describes only the central terms. It also incorporates four attachments, each of which is discussed in a separate appendix to this Bulletin. Attachments A and B are used to describe what the contractor will do and how the contractor will be paid (see Appendix II).

Attachment C: Standard State Contract Provisions normally will be a preprinted document that contains standardized provisions on a variety of subjects (See Appendices III and IV for text and commentary). When the preprinted document cannot convey all the terms and conditions the agency wants to include, additional terms can be added as an Attachment D. (See Appendix II, Attachment D for sample provisions.)

Paragraph #1 of the contract should identify the contractor's form of business organization. Possibilities include an individual, a sole proprietorship (an individual acting under a business name), a partnership, an unincorporated association, a corporation, a municipality, a state, or a federal agency. The form of organization is important because, except for an individual doing business in his/her own name, every legal entity doing business must register with the Secretary of State. If you are not sure if the contractor is doing business as an individual, call the Secretary of State's office, Corporations Division.

Any business with employees or that is required to pay Sales and Use tax should have a federal tax identification or social security number. The Departments of Taxes and Finance and Management can use this information to withhold payment to a contractor who is not in good standing with respect to taxes owed to the State.

In the signature blocks type in the Contractor's full legal name. If the contractor is an individual, cross out the word "title."

The most current electronic copy of the Standard State Contract for Services is available at:

[HTTP://WWW.BGS.STATE.VT.US/PCA/PDF/STANDARD%20CONTRACT%20FOR%20SERVICES%20-%20NO%20SS%20-%202003-13-08.PDF](http://www.bgs.state.vt.us/pca/pdf/standard%20contract%20for%20services%20-%20no%20ss%20-%202003-13-08.pdf)

*** * * THE FOLLOWING IS A SAMPLE ONLY**

ACCESS THE TEMPLATE DOCUMENT THROUGH THE LINK ABOVE * * *

STATE OF VERMONT Contract # _____

STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, _____ (hereafter called “State”), and _____, with ___ principal place of business in _____, (hereafter called Contractor”). Contractor’s form of business organization is _____. It is the contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of _____. Detailed services to be provided by the contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$_____.00.

4. **Contract Term.** The period of contractor’s performance shall begin on _____, 20__ and end on _____, 20__.

5. **Prior Approvals.** If approval by the Attorney General’s Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

- Approval by the Attorney General’s Office /is/is not/ required.
- Approval by the Secretary of Administration /is/is not/ required.
- Approval by the CIO/Commissioner DII /is/is not/ required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Cancellation.** This contract may be canceled by either party by giving written notice at least ___ days in advance.

8. **Attachments.** This contract consists of ___ pages including the following attachments which are incorporated herein:

Attachment A - Specifications of Work to be Performed

Attachment B - Payment Provisions

Attachment C – “Standard State Contract Provisions,” a preprinted form (revision date 5/23/2008), except that the following numbered paragraphs are not included:

_____.

Attachment D - Other Contract Provisions

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

By the State of Vermont:

Date: _____

Signature: _____

Name: _____

Agency: _____

By the Contractor:

Date: _____

Signature: _____

Name: _____

Title: _____

(End Standard State Contract for Services)

ATTACHMENT GUIDELINES

Attachment A: Specifications of Work to Be Performed

Attachment A of a Standard State Contract describes the nature and extent of the Contractor’s obligations. This is the most important part of the contract. To avoid problems later, you should make the description clear, unambiguous and complete. Specify all performances and products to be delivered. Avoid “legalese;” plain English is sufficient and preferred.

The following checklist should be helpful in writing specifications:

- 1. Does the work statement let the contractor know what is ahead? Is it specific enough to allow the contractor to make a list of human resources and, if necessary, special facilities, equipment, subcontracts and/or consultants needed to accomplish the work?
- 2. Is general and background information separated from directions to the contractor and required performance? The minimum that the contractor is expected to do should be clearly described.
- 3. Have the agency’s responsibilities to the contractor been clearly identified? If not, the State could find it more difficult to enforce its rights under the contract.
- 4. Will it be possible to measure performance? Are the end results and specific duties of the contractor stated in such a way that he/she/it knows what is required and the agency official who orders payment can tell whether payment is due? Have the type and quantity of reports required of the contractor (technical, financial, progress, etc.) been described and specified? Is there a date for each task or outcome the contractor must deliver? If elapsed time is used, does it specify calendar days or work days? Are the desired quantities shown?
- 5. Are all documents necessary to the contract included by reference and properly cited, e.g., RFP, work plan?

Attachment B: Payment Provisions

The main body of the Standard State Contract only states the maximum amount to be paid. Attachment B describes payments in more detail. Attachment B should tell the Contractor

1. whether payment will be made based upon the passage of time or upon delivery of a product;
2. what bills, invoices or other proof of work the contractor must submit before being paid;
3. when and how much the contractor will be paid, and what deductions will be made from payments; and
4. whether any expenses will be reimbursed, and to what limits.

Payments can be made periodically, upon completion of specific tasks, by percentage of the total contract performance or by some combination of these methods. As a general rule, payments should be made only after work has been completed and delivered. One reason for this policy is the possibility of default and insolvency. An agency may not be able to recover its money from a contractor in receipt of a large prior payment and then having filed for bankruptcy. Also, if the contractor breaches the contract, a prior payment may not be recoverable without filing a lawsuit.

Periodic and Progress Payments

Most contracts provide for periodic payments, usually monthly. To document work performed and to remind the agency to make payments, most contracts require the contractor to submit an invoice or bill showing the amount of work accomplished during the work period. Usually the contract will provide for an hourly or daily rate of payment, so the invoice should show the number of hours or days worked.

A more complicated provision provides for “progress payments,” or payments made on completion of designated steps in the contract work. A progress payment might be made, for example, when a preliminary report is submitted and accepted. Such a payment provision should define carefully what the contractor must finish to be entitled to each intermediate payment. A variation of the progress payment calls for payment when a specified percentage of the work has been completed.

Progress payments are useful because they require an agency to examine the work being done, but they also have pitfalls. When writing these provisions, make the steps

realistic estimates of the way the work will be performed. If the contractor cannot complete the specific steps until near the end of the contract, then the contractor may have cash flow problems and be unable to bid for or perform the work.

Retainage

When a final product is required, such as a final report, it is good practice to keep a significant amount of money, usually at least 5 percent, as a “retainage” to ensure performance.

[THE FOLLOWING IS AN EXAMPLE ONLY]

1. The State shall pay contractor as follows:
2. The State shall not be responsible for expenses of the contractor.

or

1. The State shall reimburse contractor for reasonable and necessary expenses incurred in performance of this contract, in accordance with state reimbursement offered to state employees, and not to exceed a total amount of \$_____.

2. Contractor will submit a bill or invoice on or about _____ to

Name: _____

Title: _____

Department: _____

Address: _____

3. The Contractor agrees to a 5% retainage of the total contract fee subject to review, approval, and acceptance of Contractor’s final report by the State.

Attachment C: Standard State Contract Provisions

Attachment C is a copy of a preprinted form containing Standard Provisions for State Contracts. The Standard Provisions form normally will be included in its entirety in a contract as Attachment C. All services contracts should require basic insurance coverage and limits (see Attachment D for professional liability and owner's protective liability insurance provisions). The AG or the Director of Risk Management must review and approve exceptions in advance.

The most current electronic version of Attachment C is available at:

<http://www.bgs.state.vt.us/pca/pdf/BGS-Purchasing-Standard-Contract-Services-AttachC.pdf>

***** THE FOLLOWING IS A SAMPLE ONLY**

ACCESS THE TEMPLATE DOCUMENT THROUGH THE LINK ABOVE ***

ATTACHMENT C: STANDARD STATE CONTRACT PROVISIONS May 23, 2008

1. **Entire Agreement:** This contract represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** This contract will be governed by the laws of the State of Vermont.
3. **Appropriations:** If this contract extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this contract, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of exiting appropriation authority.
4. **No Employee Benefits For Contractor:** The contractor understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the contract. The contractor understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the contractor, and information as to contract income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
5. **Independence, Liability:** The Contractor will act in an independent capacity and not as officers or employees of the State.

The Contractor 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 Contractor or of any agent of the Contractor. The State shall notify the Contractor in the event of any such claim or suit, and the Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Contractor may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Contractor 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 Contractor.

The Contractor shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Contractor.

6. **Insurance:** Before commencing work on this contract the contractor must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the contractor to maintain current certificates of insurance on file with the state through the term of the contract. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the contractor for the contractor's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the contractor shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this contract.

Automotive Liability: The contractor shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the contract. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this contract.

7. **Reliance by the State on Representations:** All payments by the State under this contract will be made in reliance upon the accuracy of all prior representations by the contractor, including but not limited to bills, invoices, progress reports and other proofs of work.
8. **Records Available for Audit:** The contractor will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the contract and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this contract.
9. **Fair Employment Practices and Americans with Disabilities Act:** Contractor agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the contractor under this contract. Contractor further agrees to include this provision in all subcontracts.
10. **Set Off:** The State may set off any sums which the Contractor owes the State against any sums due the Contractor under this contract; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
11. **Taxes Due to the State:**
 - a. Contractor understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - b. Contractor certifies under the pains and penalties of perjury that, as of the date the contract 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.
 - c. Contractor understands that final payment under this contract may be withheld if the Commissioner of Taxes determines that the Contractor is not in good standing with

respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

- d. Contractor also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Contractor has no further legal recourse to contest the amounts due.

12. **Child Support:** (Applicable if the Contractor is a natural person, not a corporation or partnership.) Contractor states that, as of the date the contract is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Contractor makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the contractor is a resident of Vermont, contractor makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

13. **Subcontractors:** Contractor shall not assign or subcontract the performance of his agreement or any portion thereof to any other contractor without the prior written approval of the State. Contractor also agrees to include all subcontract agreements and a tax certification in accordance with paragraph 11 above.

14. **No Gifts or Gratuities:** Contractor shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this contract.

15. **Copies:** All written reports prepared under this contract will be printed using both sides of the paper.

16. **Certification Regarding Debarment:** Contractor certifies under pains and penalties of perjury that, as of the date that this contract is signed, neither contractor nor contractor'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.

(End of Standard Provisions)

Attachment D: Other Contract Provisions

Many contracts can be fully described using the materials described in the preceding attachments. In some cases, however, agencies will want to add specially tailored provisions not available on preprinted forms or in the main contract itself. In addition, when contracting for professional services, agencies will be required (absent an appropriate waiver) to include a professional liability insurance provision.

Attachment D of the contract “Other Provisions” should be used for this purpose as suggested below:

Audit of federal sub-recipient: Under current interpretations of federal law, contractor will be considered a “sub-recipient” subject to the federal single audit act. Contractor will comply with audit requirements contained in Circular A-128/ Circular A110 and/or other applicable circulars of the U.S. Office of Management and Budget. The cost of such an audit will be borne by the contractor/is included in the payment provisions of this contract. *Comment: Current federal law defines a “sub-recipient” of federal money as an organization that receives federal assistance from a recipient (the agency) to carry out a program. Such sub-recipients are subject to federal audit requirements. However, if a contract is a “procurement contract to buy goods or services,” then the contractor is not a sub-recipient and is not subject to federal audit requirements. Most services contracts should be exempt from federal audit requirements for this reason. Agency officials should consult federal officials about whether the language above should be included in a particular contract.*

Availability of federal funds: This contract is funded in whole or in part by federal funds. In the event the federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract immediately, and the State shall have no obligation to pay Contractor from State revenues. **Comment:** *Use this clause when the state agency is not willing or able to compensate for the loss of federal funds on short notice. Agency fiscal officers should closely monitor funding availability and performance under these contracts, as the State may remain liable for expenditures made in good faith by the Contractor prior to notice of cancellation.*

Compliance with other laws: The Contractor agrees to comply with the requirements of [list specific applicable federal or state statutory or regulatory provisions], and

agrees further to include a similar provision in any and all subcontracts. **Comment:** *Use this clause to refer to any statutory or regulatory provisions that must by law, grant condition or otherwise, be included in the wording of the contract. This may include in particular cases the provisions of the Federal Rehabilitation Act of 1973 (Sec. 504), as amended; the Age Discrimination Act of 1975; and the Civil Rights Act of 1964.*

Confidentiality: *Sometimes agencies have legitimate needs to protect confidential information. The RFP can require contractors to maintain confidentiality, although the contract ultimately should duplicate this requirement. Conversely, bidders sometimes want to know how the State will treat the bidder's proprietary information. The RFP should state whether such information will be returned or retained by the agency.*

Contractors' liens: *Contractor will discharge any and all contractors' or mechanics' liens imposed on property of the State through the actions of subcontractors. Comment: On occasion a subcontractor may do some work to State property that could be construed by the subcontractor to give rise to a lien against the property. While artisans' (mechanics') liens cannot be enforced against State property (See 12 V.S.A. § 5601(a)), it is nevertheless best practice to require the contractor to correct the matter and thereby avoid litigation.*

Cost of materials: Contractor will not buy materials and resell to the State at a profit.

Identity of workers: The Contractor will assign the following individuals [*list individuals*] to the services to be performed under the provisions of this contract, and these individuals shall be considered essential to performance. Should any of the individuals become unavailable during the period of performance, the State shall have the right to approve any proposed successors, or, at its option, to cancel the remainder of the contract.

Individually identifying information: Contractor must not use or disclose any individually identifying information that pursuant to this contract is disclosed by the State to the contractor, created by the contractor on behalf of the State, or used by the

contractor for any purpose other than to complete the work specifications of this contract unless such use or disclosure is required by law, or when contractor obtains permission in writing from the State to use or disclose the information and this written permission is in accordance with federal and state law.

Legal services: Contractor will be providing legal services under this contract. Contractor agrees that during the term of the contract he or she will not represent anyone in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. After termination of this contract, contractor also agrees that he or she will not represent anyone in a matter, proceeding, or lawsuit substantially related to this contract.

Owner's protective liability insurance: The contractor shall carry liability insurance protecting the State and the contractor from all claims because of bodily injury or death and property damage, arising out of the work performed under the contract. The liability insurance shall be in an amount not less than \$1,000,000 and a certificate of insurance shall be furnished to the State before commencement of work. **Comment:** *Owners Protective Liability Insurance should be utilized when a contractor's business involves work at multiple job sites (not necessarily all for the State) and it is unclear whether the contractor would have adequate insurance coverage in the event of multiple occurrences at different sites. For example, contracts with large construction companies should include such a clause.*

Ownership of equipment: Any equipment purchased by or furnished to the contractor by the State under this contract is provided on a loan basis only and remains the property of the State.

Performance bond: The contractor shall, prior to commencing work under this contract, furnish to the State a payment and performance bond from a reputable insurance company licensed to do business in the State of Vermont, guaranteeing the satisfactory completion of the contract by the contractor and payment of all subcontractors, suppliers and employees. **Comment:** *Performance Bonds have limited application in contracts for services. This clause provides protection against failure of the contractor to perform adequately under the contract or distribute funds*

to subcontractors or suppliers. Since the cost of the bond will increase the State's cost, the clause should only be used on larger contracts or where there are significant concerns about a contractor's financial or other abilities. If a contractor is expected to handle large sums of money as agent for the State, the term "surety bond" should be substituted for "payment and performance bond."

Prior approval/review of releases: Any notices, information pamphlets, press releases, research reports, or similar other publications prepared and released in written or oral form by the contractor under this contract shall be approved/reviewed by the State prior to release. ***Comment:*** *All material published in connection with activities performed under State contract should be reviewed and approved by the appropriate official before release. When academic freedom becomes an issue, agency review but not agency approval may be appropriate.*

Professional liability insurance: Before commencing work on this contract and throughout the term of this contract, contractor shall procure and maintain professional liability insurance for any and all services performed under this contract, with minimum coverage of \$_____ per occurrence. ***Comment:*** *Professionals with whom the State contracts, such as lawyers, architects, engineers, and health care providers, must be required to maintain professional liability insurance in sufficient amounts to protect the State's interest from the consequences of negligence. The Director of Risk Management will determine the minimum amount appropriate for different classes of professionals.*

Progress reports: The contractor shall submit progress reports to the State according to the following schedule. [*insert schedule*] Each report shall describe the status of the contractor's performance since the preceding report and the progress expected to be made in the next successive period. Each report shall describe contractor activities by reference to the work specifications contained in Attachment A of this contract and shall include a statement of work hours expended, expenses incurred, bills submitted, and payments made. ***Comment:*** *This clause may be used either in Attachment A (Specifications of Work to be Performed) or here. It provides information for interim evaluation of the contractor's work and assists in detecting*

difficulties that may lead to necessary modification or cancellation of the contract. If payments are to be conditioned on receipt of progress reports, this should be clearly set forth in Attachment B: Payment Provisions.

Work product ownership: Upon full payment by the State, all products of the contractor's work, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by contractor.

APPENDIX III

INVESTMENT CONTRACTS

The Vermont Pension Investment Committee (VPIC), on behalf of the Vermont Retirement Systems (VSERS, VSTRS, and VMERS) as well as the Office of the State Treasurer are responsible for entering into contracts with investment managers. In order to best serve the public interest, flexibility is necessary in the negotiation and maintenance of investment management contracts.

Therefore, notwithstanding the foregoing provisions of Bulletin No. 3.5, the following exemptions from the requirements of Bulletin No. 3.5 may apply when determined necessary by the Treasurer's Office to serve the public interest:

- A. **Contract Duration.** While Bulletin No. 3.5 articulates a State policy favoring shorter contracts (not more than two years without a showing of good cause, with a maximum extension of two years), **the term of an investment management contract may be open-ended** so long as the State retains the right to terminate the contract for convenience, when appropriate.
- B. **Bidding Process.** While Bulletin No. 3.5 articulates the State's policy favoring the open, competitive bidding process, **the Treasurer's Office and VPIC may use a search and bidding process managed by its pension consultant.** The pension consultant shall identify candidates by using methods such as internal and external databases, client recommendations, and manager marketing calls. The pension consultant shall conduct appropriate manager due diligence. Final VPIC manager selection shall be subject to approval.
- C. **Select Manager.** Until December 31, 2008, should the VPIC select a manager that was identified as a finalist in a search conducted by the Vermont Retirement System pension board, the VPIC may enter into a contract with the same manager in the same asset class, without an additional search being conducted.
- D. **Drafting the Contract.** In certain instances the drafting of investment management contracts may vary from the provisions of Bulletin No. 3.5 forms and guidelines attached. Examples include contract duration, as discussed above, and payment to

contractors that may be a certain percentage of assets invested payable to the investment manager directly from the applicable investment fund.

Notwithstanding the foregoing, all investment management contracts must comply with applicable federal and state laws and regulations. Further, all investment management contracts must include the standard Attachment C liability language and in no event may a contract provide for the waiver of jury trial.

APPENDIX IV

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION,
FORM AA-14

The most current electronic version of Form AA-14 is available at:

<http://finance.state.vt.us/vision/documents/forms/AA-14%20Form%20March%202008.doc>

[THE FOLLOWING IS A SAMPLE ONLY – USE THE LINK ABOVE]

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION – Form AA-14 (7/1/2008)

I CONTRACT INFORMATION:

Agency/Department: _____ / _____	Contract #:	Amendment #:
Contractor:	Contractor Vendor No:	
Contractor Address:		
Starting Date:	Ending Date:	
Summary of contract or amendment:		

II FINANCIAL INFORMATION

Maximum Payable: \$ _____	Price Maximum: \$ _____	Prior Contract # (If Renewal): _____
Current Amendment: \$ _____	Cumulative amendments: \$ _____	% Cumulative Change: _____%
Maximum # Units: _____	# Unit Change: _____	Prior # Units: # _____
Rate: \$ _____	Prior Rate: \$ _____	
Source of Funds - Business Unit(s):		
General Fund: % _____	Federal Fund: % _____	Other Fund: % _____
Dept. ID: _____	Dept. ID: _____	Dept. ID: _____
		Fund Code: _____

III. SUITABILITY OF PERSONAL SERVICES CONTRACT

<input type="checkbox"/> Yes	<input type="checkbox"/> No	Does this contractor meet all 3 parts of the "ABC" definition of independent contractor? (See Bulletin 3.5) If not, please indicate why this work is being arranged through a contract.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Is agency liable for income tax withholding or FICA?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Should contractor be paid on the state payroll?

IV. PUBLIC COMPETITION

The agency has taken reasonable steps to control the price of the contract and to allow qualified businesses to compete for the work authorized by this contract. The agency has done this through:

Standard bid or RFP Simplified Bid Sole Sourced Qualification Based Selection

V. TYPE OF CONTRACT

Personal Service Construction Architect/Engineer Commodity Privatization Other

VI. CONFLICT OF INTEREST

By signing below, I certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.

Yes No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this contractor was selected for improper reasons: (If yes, explain)

VII. PRIOR APPROVALS REQUIRED OR REQUESTED

<input type="checkbox"/> Yes	<input type="checkbox"/> No	Contract must be approved by the Attorney General under 3 VSA §311(a)(10)
<input type="checkbox"/> Yes	<input type="checkbox"/> No	I request the Attorney General review this contract as to form
		No, Already performed by in-house AAG or counsel: _____ (initial)
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Contract must be approved by the CIO/Commissioner of DII, for IT hardware, software or services and Telecommunications over \$150,000
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Contract must be approved by the CMO, for Marketing services over \$15,000
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Contract must be approved by Commissioner of Human Resources (privatization and retiree contracts)
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Contract must be approved by the Secretary of Administration

VIII. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

I have made reasonable inquiry as to the accuracy of the above information:

Date	Agency / Department Head	Date	Approval by Agency Secretary (if required)
Date	Approval by Attorney General	Date	Approved by Commissioner of Human Resources
Date	CIO (initial)	Date	CMO (initial)
Date	Secretary of Administration		

DUE NOT USE - SAMPLE ONLY

APPENDIX V

BULLETIN 3.5 QUICK REFERENCE GUIDE

See the following page.

BULLETIN 3.5 QUICK REFERENCE GUIDE

	Citation	Competitive Requirements			Prior Approvals Required								
		Standard Bid	Simplified Bid	Qualification Based Selection	Supervisor ¹	Attorney General	Finance & Management	Secretary of Admin.	CIO	CMO	Comm DHR	Auditor of Accounts	
Monetary Thresholds ²	\$15,000 or less				✓								
	Greater than \$15,000 but less than \$100,000	✓	✓		✓	✓							
	Greater than \$100,000 but less than \$250,000	✓		✓	✓	✓							
	Greater than \$250,000	✓		✓	✓	✓	✓	✓					
	No-Cost Contract – all	✓			✓	✓	✓	✓					
Exceptions and Waivers	Sole Source Greater than \$15,000 but not more than \$100,000				✓		✓	✓					
	Sole Source Greater than \$100,000 (waiver letter plus contract)				✓	✓	✓	✓					
	Duration - Greater than 2 Years or 4 years if renewal option is included in original contract (waiver letter plus contract)				✓		✓	✓					
Type of RFP or Contract	Information Technology & Telecommunications Contract over \$150,000	22 V.S.A. § 901			✓	✓	✓	✓	✓				
	Information Technology & Telecommunications RFP over \$10,000	22 V.S.A. § 901			✓				✓				
	Marketing RFP	Act 71 § 205a			✓					✓			
	Privatization Contract	3 V.S.A. § 343			✓	✓	✓	✓			✓		
	State of VT Retiree				✓						✓		

NOTES:

- This guide is intended as a quick reference guide to monetary thresholds, primary waiver conditions, basic contract types and prior approval requirements. It is not all inclusive and is not a substitute for reading, understanding and complying with this Bulletin;
- Deviations from the requirements expressly listed in this guide and Bulletin require a written waiver request to the Secretary of Administration, approved “Blanket Delegation of Authority” or an approved Contracting Plan;
- Additional Agency or Departmental conditions, not included in this Bulletin, may apply.

¹ Supervisor - any secretary, commissioner, executive director, elected officer, or other head of an agency.

² Monetary Thresholds are Cumulative, if the original contract amount plus all amendments reaches a new threshold; the requirements for the higher threshold apply.