



**STATE OF VERMONT**

**AGENCY OF ADMINISTRATION**

**BULLETIN NO. 3.5**

**PROCUREMENT AND CONTRACTING PROCEDURES**

**ISSUED BY: Susanne Young, Secretary of Administration**

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## I. AUTHORITY

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

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

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

## II. PURPOSE AND POLICY

This Bulletin applies to the procurement of all goods and services and the required documentation of such procurements, regardless of dollar amount, for all Agencies/Department, as defined herein, of the State of Vermont (SOV) government.

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

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

## III. DEFINITIONS

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

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

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

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

**Appointing Authority:** is an Agency head in accordance with AoA [Bulletin 3.3](#), including those officers occupying appointive positions defined in [32 V.S.A. 1003 \(b\)](#). "Appointing Authority" includes: (1) the exempt deputies of Agency secretaries and department commissioners; (2) elective officers and their deputies who head operating departments; and (3) exempt heads of divisions, boards, committees and commissions not reporting to a department commissioner or Agency

secretary. The Appointing Authority has management and oversight responsibilities for the solicitation, procurement and contracting process for services and for the ongoing oversight and monitoring of contract compliance through contract expiration or termination. Appointing Authority shall be responsible for compliance with the policy and procedural directives of this Bulletin.

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

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

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

<http://bgs.vermont.gov/commissioner/adminpolicies/0034>

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

<http://bgs.vermont.gov/purchasing-contracting/forms/bda>

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

**Chief Information Officer (CIO):** Secretary of the Agency of Digital Services; this refers to the State CIO, not an Agency CIO.

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

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

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

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

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

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

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

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

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

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

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

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

**Independent Contractor:** as a general rule, an individual under Contract with the State is an Independent Contractor if the State has the right to control or direct only the result of the work and not what will be done and how it will be done. People such as doctors, dentists, veterinarians, lawyers, accountants, construction Contractors and subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally Independent Contractors. However, whether these people are Independent Contractors or Personal Services Contractors depends on the facts in each case, to be determined in accordance with [IV.B.2.](#) of this Bulletin.

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

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

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

**No-Cost Contract:** See Zero-Dollar Contract – section [IV.A.6.](#)

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

**Order of Precedence:** the sequential legal hierarchy of the contract attachments used to determine the order in which each attachment controls in the case of dispute. Order of Precedence is particularly relevant when an Agency is including terms which are intended to supersede standard State terms or Contractor template terms which may be attached to the agreement.

**Performance-Based Contracting:** best practice that focuses on the measurable outputs, quality, and outcomes/results of the service or goods provided by the Contractor. PerformanceBased Contracts are designed to ensure that contract deliverables are well defined and provide that contract payment, as well as any contract extension, renewal, or price increase, is tied to the successful completion of defined deliverables



and accomplishment of desired performance (results). It may also include contract Retainage (as defined herein), which is held back until successful performance can be demonstrated.

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

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

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

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

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

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

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

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

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

**Services:** this term should be broadly interpreted and includes Personal and Professional Services such as, but not limited to, construction, consulting, design and engineering, investment management, Information Technology activities, real estate services, and the maintenance of equipment.

**State of Vermont Employee:** an individual employed by the State of Vermont and paid through the State of Vermont payroll system in an exempt, classified, limited service, temporary, elected, or appointed position, excluding “Contractors paid on payroll”. Workers who provide attendant care, personal care, companion care, respite care, or support services to persons who receive financial assistance from the Agency of Human Services (AHS), and whose payroll service is provided directly by the State or by an intermediary payroll

service organization acting under the authority of the State, shall not be considered State of Vermont employees except for the limited purposes of Workers' Compensation coverage and unemployment insurance. (See [33 V.S.A. § 6321](#).)

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

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

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

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

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

**Zero-Dollar Contract (a.k.a. No-Cost contract):** means a Contract for Service in which a Vendor is willing to accept compensation for services other than direct payment by the State. For examples and further information refer to section [IV.A.6](#).

[END SECTIONS I-II-III]

## IV. CONTRACTS FOR SERVICE: PERSONAL SERVICE; NON-PERSONAL SERVICE; INDEPENDENT CONTRACTORS AND PRIVATIZATION

### A. Contract for Services

Generally, State of Vermont employees should be used to perform essential governmental functions. However, there are circumstances which justify the use of Contractors to complete certain tasks, rather than employees, which may be determined at the discretion of the Appointing Authority. Once the determination has been made to enter into a Contract for Service, applicable State law and the policies and procedures set forth in this Bulletin will apply, regardless of amount.

Contracts for Service are further categorized into Personal Service and Non-Personal Service (Independent Contractor). Both Contracts for Service and Non-Personal Service Contracts may be determined to be Privatization Contracts in accordance with [3 V.S.A. § 341\(3\)](#). The determination process as to whether a Contract for Service is to be categorized as Personal Service or Non-Personal Service and as Privatization is must be done in a specific order and must be in compliance with Federal and State laws.

There are various types of services which may be contracted, including the following examples:

1. **Professional Services Contracts:** Contracts with professionals such as physicians, nurses, lawyers, engineers, architects, certified public accountants, surveyors, mental health counselors, educators, consultants, investment managers and IT project managers. In addition to the State's standard insurance requirements, professionals must agree to carry professional liability insurance coverage in an amount not less than \$1 million per claim/\$1 million aggregate. Coverage limits will be subject to the approval of the Director of Risk Management (see Insurance Coverage Limit section [IX.A.6](#))
2. **Construction Contracts:** Contracts for infrastructure construction, renovation or rehabilitation projects, including such State facilities as State-owned or leased buildings, roads and bridges.
3. **Marketing Contracts:** Contracts for advertising (print, radio, television (TV), and web/internet, but not to include employee recruiting); collaterals (brochures, fact sheets, folders, etc.); website design (not to include technical components); trade shows and events; direct mail campaigns; and sponsorships.
4. **Financial Transaction Contracts:** Contract with a bank or other entity to handle in-bank or on-line financial transactions. The majority of Contracts previously and incorrectly referred to as "No-Cost" are in reality "Financial Transaction" Contracts, which may result in "no net-cost" to the State. These Contracts involve an outside Vendor providing a service to manage financial transactions for the State – either online or in person. Vendors include web-portal organizations, banks and other financial institutions. The Vendors handling these financial transactions (license, permit, registration fees, credit card transactions, etc.) on behalf of the State, may be compensated from: the gross fee (revenue) charged in the transaction; via an additional "convenience fee" added to the cost of the transaction; or a combination of the two. Depending on the terms of the Contract, the funds may be remitted to the State:
  - via a lock-box, under agreement with the State Treasurer's Office;

- by the Vendor, at the gross amount, followed by payment of the fee from the State to the Vendor; or;
- by the Vendor, at the net amount, where the Vendor retains their compensation prior to remittance.

In the second bullet above, Agencies/ must execute the Contract for a maximum amount based on the estimated value the Vendor will be paid during the term of the Contract. Agencies shall process payments using a purchase order(s) (P.O.) against the contract. In the third bullet above, where the Vendor retains an amount equal to the additional convenience fee ONLY, a P.O. is not necessary as the State is not issuing payment to the Vendor.

**5. Zero-Dollar (or No-Cost) Contracts:** are occasionally used when a Vendor performs services for compensation other than direct payment made by the State. Zero Dollar Contracts must use the standard State contract forms, including the standard attachment C. Agencies must understand that simply because compensation is not made by invoice and direct payment, Vendors will still have performance obligations and pose risks to the State. Agencies are also cautioned to be aware of potential conflict of interest issues. Examples of Zero -Dollar (or "No- Cost") Contracts include the following:

- the Vendor contracts with the State to perform services which benefit employees or consumers, and payment is derived from third party payers;
- the Vendor performs services for the State in exchange for the opportunity to utilize State facilities or other assets (excluding data; see [IV.A.4](#) above) such as Statehouse cafeteria food service; and
- Financial Transaction Contracts.

**6. Information Technology Services Contracts:** see special IT Contract [IV.E](#) below.

**7. Other Contracts for Services:** Contracts with persons or legal entities not included in subsections (1) through (7) above.

## **B. Personal Service Contract**

### **1. Description.**

A Contract for Service can be either Personal Service Contract or Non-Personal Service Contract (Independent Contractor). Personal Service Contracts have characteristics of an employment relationship not commonly found in Independent Contractor relationships, but they may trigger certain requirements under Federal and State taxation and labor laws, such as the requirement to withhold Federal Insurance Contributions Act (FICA), and provide unemployment and Workers' Compensation coverage. Agencies must appropriately classify whether each individual performing services for the State is either as an Independent Contractor or an employee-like Personal Services Contractor.

### **2. Determination Process.**

The general rule is that an individual is an Independent Contractor if the Agency/Department for which the services are performed, has the right to control or direct only the result of the work and not the means and methods of accomplishing the result. Appointing Authorities must determine whether proposed Contracts for Service meet **ANY** of the criteria below:

- a. The Agency will supervise the daily activities or methods and means by which the Contractor provides services;
- b. The services provided are the same or substantially similar as those provided by classified State employees within the Agency;
- c. The Contractor does not customarily engage in an independently established trade, occupation, profession or business.

If a Contract for Service meets **ANY** one of these criteria Appointing Authorities should review Internal Revenue Service (IRS) Publication [15-A](#), attached to this Bulletin as Appendix I(f) which provides additional information on the differences between an Independent Contractor and an employee and gives examples from various types of occupations. If there is no reasonable basis to classify a Contractor as an Independent Contractor, Agencies must consider whether the services could be provided under an actual employment arrangement, such as permanent, temporary or limited service appointment. If employment is not feasible, then Agencies should consider restructuring the contractual relationship in a way that does not trigger Federal and State requirements applicable to employers. Personal Services Contracts (i.e., Contracts that do not pass the Independent Contractor test applied by the IRS) must be carefully structured to ensure compliance will all Federal and State requirements. Consult Appendix I(f) of this Bulletin and the Department of Human Resources (DHR) for guidance.

All Personal Services Contracts must be paid through the State of Vermont Human Resource (VTHR) payroll system.

### **C. Non-Personal Service Contract**

Non-Personal Service Contracts generally have the characteristics of Independent Contractor relationships, where the State has only the right to control or direct the result of the work and not the details of what and how the work will be done. For example, individuals such as (but not limited to) doctors, dentists, veterinarians, lawyers, accountants, construction contractors and subcontractors, public stenographers, or auctioneers who exercise a high degree of independence in performing services and are in an independent trade, business, or profession in which they offer their services to the public.

### **D. Privatization Contract**

A Privatization Contract is a Contract for Service valued at \$25,000 or more per year that satisfies the criteria below:

*(i) provides services which are the same, or substantially similar to, and in lieu of services provided, in whole or in part, by permanent, classified State employees;*

**AND**

*(ii) results in a reduction in force of at least one permanent, classified employee, or the elimination of a vacant position of an employee covered by a collective bargaining agreement.*



**NOTE: Unless otherwise permitted by applicable Agency statute, no Agency may enter into a Privatization Contract, unless the procedure set forth at [3 V.S.A. § 343](#) is followed.**

## **E. Contracts for Information Technology**

Information Technology (IT) Contracts can be Contracts for Service or Commodity Contracts. Contracts related to Information Security and Information Technology Activities can include the procurement of hardware and/or software (with or without a services component), system implementation, IT consulting services, license and other end user agreements, maintenance and support services, hosting services and Service Level Agreements (SLA). Further information specific to Information Technology contracting is located in the [IT Guideline](#), located both on the AoA and OPC websites.

The IT Guideline covers, among other things, best practices for IT procurements and terms and conditions which may be needed to address issues particular to IT Contracts, such as, licensing, intellectual property, data ownership, and security concerns.

**IT Contract for Service:** Generally speaking, an IT Contract will be considered a Contract for Service subject to this Bulletin - including the Contract for Service determination process and the AGO certification - when a Vendor is providing professional services such as implementation, configuration, data migration, consulting and/or training, either on-site or off-site. An IT Contract for Service may include maintenance and support services that are provided on-site or by virtual access to State IT systems.

**IT Commodity Contract:** Generally speaking, an IT Contract will be considered a Commodity when the product or service is provided “as-is” to all consumers equally either as a physical software, license and other end user agreements, or hardware or as a subscription software as a service, platform as a service or infrastructure as a service. The Vendor will not have virtual access to State systems for purposes of maintenance and support.

Please refer to the [IT Guideline](#) and consult with OPC, ADS or the AGO with questions about whether an IT contract is more appropriately a Contract for Service or a Commodity.

## **F. Commodity Contracts**

For purposes of this Bulletin, Commodity is the collective term given to tangible products purchased for the State. These include, but are not limited to, materials, equipment, parts, supplies, fuel, and printing. Hardware and software (license and other end user agreements) are considered commodities and some web-based services may be considered commodities, as discussed above. Procurement authority for commodities rests with the OPC.

## V. AGO CERTIFICATION FOR BARGAINING AGREEMENT(S) COMPLIANCE

Each Contract for Services valued at \$25,000 or more per year shall require certification by the AGO to the Secretary of Administration that such Contract is not contrary to the spirit and intent of the classification plan and merit system and standards under [3 V.S.A. § 342](#). A Contract for Services may be certified by the AGO if (a) all three of the provisions of Part 1 of this section are met; or (b) one or more of the exceptions described in Part 2 of this section apply.

### **Part 1 - AGO Certification**

*First, a Contract for Services valued at \$25,000 or more per year will be reviewed to determine if **ALL** of the following three requirements are met:*

1. The Agency will not supervise the daily activities or methods and means by which the Contractor provides services, other than supervision necessary to ensure the Contractor meets contractual performance expectations and standards;  
**AND**
2. The services provided are not the same as those provided by classified State employees within the Agency (*note: this factor is applied to the Agency only and not to the State as a whole*);  
**AND**
3. The Contractor customarily engages in an independently established trade, occupation, profession or business.

*[Continued next page.]*

## **Part 2 - AGO Certification**

*If the proposed Contract for Services does not meet **ALL THREE** of the above Part 1 criteria, then **YOUR** Agency must consider whether the Contract meets **ANY ONE** of the following exceptions:*

1. The services are not available within the Agency or are of such a highly specialized or technical nature that the necessary knowledge, skills or expertise is not available within the Agency.
2. The services are incidental to a Contract for purchase or lease of real or personal property.
3. There is a demonstrated need for an independent audit, review or investigation; or independent management of a facility is needed as a result of, or in response to, an emergency such as licensure loss or criminal activity.
4. The State is not able to provide equipment, materials, facilities or support services in the location where the services are to be performed in a cost-effective manner.
5. The Contract is for professional services, such as legal, engineering, or architectural services, that are typically rendered on a case-by-case or project-by-project basis, and the services are for a period limited to the duration of the project, normally not to exceed two years or provided on an intermittent basis for the duration of the Contract.
6. The need for services is urgent, temporary or occasional, such that the time necessary to hire and train employees would render obtaining the services from State employees imprudent. Such Contract shall be limited to 90 days' duration, with any extension subject to review and approval by the Secretary of Administration.
7. Contracts for the type of services covered by the Contract are specifically authorized by law.
8. Efforts to recruit State employees to perform work, authorized by law, have failed in that no applicant meeting the minimum qualifications has applied for the job.
9. The cost of obtaining the services by Contract is lower than the cost of obtaining the same services by utilizing State employees. When comparing costs, the provisions of section [3 V.S.A §343](#) shall apply.

[END SECTIONS IV-V]



## **VI. ALTERNATIVES TO CONTRACTS FOR SERVICE AND SPECIAL AGREEMENT TYPES**

If contracting for services is not appropriate, an Agency should consider using temporary employees, limited service employees or permanent employees to do the work. The State Department of Human Resources Personnel Policy and Procedure, [Section 5.0](#) establishes the following guidelines:

- Permanent classified or exempt positions shall only be authorized by the Legislature.
- Limited service positions may be authorized by the Joint Fiscal Committee in connection with a Grant or by the Legislature itself.
- Temporary employees may only be hired with approval of the Commissioner of Human Resources in accordance with [3 V.S.A. § 331](#). Please consult with the Human Resources Representative for your Agency, to ensure hiring a temporary employee is in accordance with the statutory limitations.

### **A. Memorandum of Understanding or Memorandum of Agreement**

A Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA), is not a Contract and is generally not enforceable. An MOU or an MOA **may only** be used between State Agencies and units of the Executive, Legislative and Judicial branches of Vermont State government, as required by Federal Agencies, or with municipalities (for example: towns, cities, school districts, fire districts, county units, etc.), or political sub-divisions (such as regional planning commissions) of the State. An MOU or MOA permitted hereunder, does require approval by the Appointing Authority and review by the AGO or internal counsel. If an MOU is proposed and is intended to have the effect of a binding and enforceable contract, an Agency should be using a Contract. Use of an MOU or MOA to circumvent this Bulletin is prohibited.

### **B. Grants versus Contracts**

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 a service or a product 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.

Grants are commonly issued for the direct support of persons and are also issued to organizations that perform public benefit activities with a high degree of independence. Grantees often adhere to programmatic requirements of a State or Federal program under which the Grant is issued and may be required to submit financial and programmatic reports to the granting Agency.

A Grant should only be used in the following circumstances:

- a.** 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 direct State oversight of the funded activity, other than providing guidance upon request, accumulating information on progress/results achieved, and periodic financial, programmatic and performance monitoring of the program or activity.

**AND**

b. When the Grant contains Federal funds, it meets the definition of a subrecipient relationship as found in the Federal Uniform Guidance ([2 CFR Chapter I, Chapter II, Part 200](#) - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).


**OR**

c. Appropriated funds are characterized in the law or are designated in the Grant agreement as “grants,” or designated by a grantor/funding organization as “grants.”

Federal Uniform Guidance identifies the characteristics below to distinguish between a grantee (other than individuals who are eligible for this assistance) and Contractor relationships. These characteristics should be considered when determining whether to enter into a grant agreement or a Contract for goods and services:

Examples - Grantee (Subrecipient)	Examples - Contractor
Determines who is eligible to receive what Federal assistance	Provides the goods and services within normal business operations
Has its performance measured in relation to whether objectives of a Federal program are met	Provides similar goods or services to many different purchasers
Has responsibility for programmatic decision making	Normally operates in a competitive environment
Is responsible for adherence to applicable Federal program requirements specified in the Federal award	Provides goods or services that are ancillary to the operation of the Federal program
Uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity	Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons

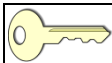
All of the characteristics listed above may not be present in all cases. Agencies must evaluate the features of each agreement individually to determine whether it appears more like a Contract or a sub-award. Refer to the subrecipient/Contractor determination tools and guidance provided on AoA [Bulletin 5](#) for further information.

 **NOTE:** Use of a federally approved indirect cost rate, or the de minimus allowed indirect rate as per the Uniform Guidance, is NOT required for State Contracts.

### C. Capital Leases

No Agency, department or unit of State government is authorized to enter into a Capital Lease without the approval of the Secretary of Administration and the Treasurer. A Contract shall be considered a Capital Lease if it 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. Special accounting

rules apply to Capital Leases which requires their value to be included in the State's total debt. Refer to the Secretary's Directive Memo on [Capital vs. Operating Leases](#) for additional information.



***NOTE: Accounting rules require the value of Capital Leases be included in the State's debt total. As such, they are subject to the annual debt limit set by the General Assembly. Use of a Capital Lease in order to avoid the requirements of either Bulletin 3.5 or Bulletin 5, is EXPRESSLY PROHIBITED.***

#### **D. Agreements to Receive or Access Confidential Information**

On occasion a party other than the State of Vermont will request a copy of or access to Confidential Information held or collected by the State in circumstances where it is appropriate for an Agency of the State to allow or facilitate such request. A written agreement between the State and such a party is required in such a case to address many of the issues and risks inherent in sharing or disclosing Confidential Information (see Section IX.A.8). The agreement will not be subject to the competitive procurement requirements of this Bulletin, unless either: (a) the Agency is obtaining services from the other party in connection with the disclosure of Confidential Information; or (b) the Agency is conveying to the other party an exclusive right to receive or access certain Confidential Information. However, before entering into such agreements, Agencies must obtain approvals from the ADS, the AGO, and the Secretary of Administration (see Section X.B.).

[END SECTION VI]

## VII. COMPETITIVE BIDDING AND THRESHOLDS

### A. Competitive Bidding

[Executive Order #3-20](#) and this Bulletin establish a statewide policy favoring a free and open bidding process for the selection of Vendors. Executive Order #3-20 states:

*“The State of Vermont recognizes the important contribution and vital impact that 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.”*

Competition in the procurement process serves both State Agencies/Departments and potential bidders by ensuring the procurement process produces an optimal solution at a reasonable price, and allowing qualified Vendors an opportunity to obtain State business. In addition to complying with existing statutory and regulatory requirements, State procurements shall comply with the following general principles:

- **Notice:** It is the State’s intent to ensure Vendors are aware of opportunities to compete for State business;
- **Process:** Clear and understandable process: make the process more accessible to Vendors with clearly defined procurement criteria;
- **Predictability:** provide a consistent process while conducting the procurement; and
- **Transparency:** document the procurement process clearly and consistently, including information gathering and decisions made relating to the procurement.

Although Vermont does not have a statute, rule or administrative requirement which mandates preference be given to State residents or products, all other considerations being equal, preference will be given to resident bidders of the State and/or products raised or manufactured in the State.

### B. Bidding Monetary Thresholds

In some cases, State or Federal statutes or regulations require bidding at lower amounts. Such statutes shall take precedence over this Bulletin and shall be adhered to. Agencies/Department should consult with Agency counsel or the Office of the Attorney General if there is a question about the applicability of State or Federal law to Agency procurements.

#### 1. Services Below \$100,000 - Standard or Simplified Bid Process

For a Contract estimated to be under \$100,000, an Agency may choose to follow either a Simplified Bid (described herein at section [VIII.A](#)) or Standard Bid process (described herein at section [VIII.B](#)). If the Agency is unsure whether a Contract will exceed the \$100,000 threshold, to avoid rebidding the work, the use of a Standard Bid process is recommended.

#### 2. Services Greater Than \$100,000 – Standard Bid Process

An Agency may enter into a Contract greater than \$100,000 only after adherence to a Standard Bid process (issuance of a formal Request for Proposals), as set forth herein (section [VIII.B](#)).

[END SECTION VII]

## VIII. THE BIDDING PROCESS

### A. Simplified Bidding

#### 1. General.

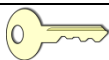
A standard bidding process is always preferred. However, a “simplified bidding process” may be used when the anticipated Contract amount is less than \$100,000. A simplified bidding process requires an Agency to develop a specific and detailed Statement of Work for the service and/or product desired and solicit price quotations from at least three potential Vendors known to provide the specified services or products. However, the Simplified Bid process does not require a public bid posting nor a public bid opening.



**NOTE: Contracts that result from the Simplified Bid process may not exceed \$100,000, without a written waiver from the Secretary.**

#### 2. Procedures for the Simplified Bid Process

- a. Prepare written specifications before soliciting bids. Elements that should be included are:
- i. General statement of services required (Statement of Work)
  - ii. Performance requirements;
  - iii. Expectations regarding service location, schedule, including deadlines for deliverables and/or milestones, if applicable;
  - iv. Other specific State requirements or conditions.
- b. Solicit price quotations from 3 or more qualified Vendors. Price quotations may be obtained through: telephone or verbal quotes, facsimile quotations, e-mail quotes or written bids. All communications with the Vendors to obtain price quotes must be documented (emails, fax, notes from phone calls, etc.);
- c. The Vendors solicited must understand they will be required to enter into a standard State Contract for Service, including Attachment C, should they be selected;
- d. All records relating to the Simplified Bid process, including proposals and a record of the selection process, shall be retained in the Contract file in accordance with the Agency’s records retention schedule;
- e. The quotation most responsive to the selection criteria should be selected;
- f. The Vendors solicited must understand that Vendor-required documentation, if any, must be made available at the time of bid and shall be subject to negotiation, should they be selected.



**NOTE: If all price quotations received as a result of a Simplified Bid process exceed the \$100,000 threshold Agencies must then engage in a Standard Bid process.**

## B. Standard Bidding (“Requests for Proposals” or “RFP”)

### 1. General.

A standard RFP is required for all services which are anticipated to exceed a maximum Contract amount of \$100,000 or more. An RFP is recommended for use when a bid process is more complex and the response requires the bidder to provide a solution or long term commitment. The RFP must contain all requirements and conditions of the particular procurement process. An RFP must contain a clear and concise Statement of Work and describe the criteria the State is going to utilize to select the Vendor. The ground rules need to be reasonable and create a level playing field applicable to all potential bidders, and the Agency needs to follow its own ground rules. This Bulletin provides basic guidance relating to the RFP documentation and process. Additional guidelines for the creation and issuance of RFPs, including a sample RFP template, and the most current versions of all State procurement and Contract forms are available on the Office of Purchasing and Contracting website at: <http://bgs.vermont.gov/purchasing-contracting/forms>.

Once an RFP or bid solicitation has been issued, and prior to the submission of bids, an Agency may issue an Addendum which may modify any aspect of the RFP. Except as clarified and amended by an Addendum, the terms, conditions, specifications, and instructions of the solicitation and any previous solicitation Addenda, remain as originally written. Such Addenda shall be publicly posted where the RFP is displayed and/or in accordance with instructions indicated in the RFP. Best practice is to have all Addenda acknowledged and/or signed and returned by all bidders with their proposals. If a deadline extension is granted to any bidder it must be granted to all of the bidders. The State does not accept late proposals.

When issuing an Addendum, be as specific as possible, noting the document, the project, the change and where the changes can be found. Addenda shall be published within a reasonable time prior to the submission of bids, to allow prospective bidders to consider the Addenda in preparing proposals.



***NOTE: An RFP may only be amended by issuing a written Addendum prior to the submission of bids, and within a reasonable time period.***

Disclosures for the purposes of bidding integrity are critical to bidding transparency. Refer to policy on-line at: <http://bgs.vermont.gov/commissioner/adminpolicies/0034>.

### 2. RFP Components

All State Agency RFPs must include the following components:

**a. Cover Page:** Includes: (1) Name and address of State 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; and any other special requirements of the RFP process

**b. Introduction:** Explain the purpose and the nature of the services being sought, for example: “The purpose of this RFP is to obtain proposals from independent management consulting firms to perform a management study of the Division of Bulletin Creation.”

c. **Brief description of the Agency:** Provide necessary general information about the Agency, if appropriate, such as: the type of government unit; the Agency's statutory authority; number of employees; population served; and mission or purpose.

d. **Statement of Work to be performed:** Include a Statement of Work (SOW) to be performed and/or products to be delivered. The purpose of this SOW is to provide prospective bidders with clear, concise and thorough information regarding the requested work. At a minimum, the SOW should include the following: (1) a description of the work to be performed; (2) a schedule (including when the work is to be completed, any interim completion dates and/or deliverables); (3) the expected outcomes and/or products, and related performance and/or quality standards. A thorough and well-structured SOW, together with specific detailed deliverables enhances the responsiveness of bidders during the solicitation process, promotes the reliability and comparability of proposals, and minimizes the need for contract negotiations and amendments. Depending on the complexity of the work to be performed, an Agency may want to consider hiring an expert to assist with the development of an appropriate Statement of Work for inclusion in the RFP. The appropriate investment of work at this stage of the contracting process will result in time savings and greater efficiency not only for the contracting process, but also the project ahead.

e. **Purpose and management structure:** Provide a brief overview of recent history leading to the decision to seek a Contractor. This overview will provide a better understanding of the purpose and context of the work. The bid document should include a statement about the contract management structure, with a description of how the Contract will be monitored by the contracting Agency. Bidders should understand the State is going to monitor their activities and performance in order to detect and prevent problems, and to ensure the contract terms are met and State expenditures are appropriate, effective, and efficient.

f. **RFP Response Requirements:** 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 must 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, and resumes of key personnel performing the work, etc.

g. **Bidder Confidentiality and Access to Public Records:** All responses and other information disclosed in connection with an RFP become the property of the State and, once the resulting Contract is finalized, may be subject to disclosure under the State's Access to Public Records Law, [1 V.S.A. § 315](#) et seq. Accordingly, the RFP must instruct the bidder to identify any material included in the response that is considered by the bidder to be proprietary or otherwise exempt from public disclosure in the event of a Public Records request, pursuant to [1 V.S.A. § 317\(c\)](#). The bidder's response must include a written explanation for each marked section that would support a reasonable claim of exemption, such as, for example, a description of the proprietary nature of the information and the harm that would occur should the material be disclosed. Additionally, the RFP must instruct the bidder to include a redacted copy of its response. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances can the entire response or price information be marked confidential. Should the Agency have concerns about the submitted redactions/explanations or lack thereof, the Agency may invite the bidder to provide sufficient explanation and/or appropriate redaction.

rights:

**h. Reservation of State's Rights:** Each RFP must reserve the following State

- to accept or reject any and all bids, in whole or in part, with or without cause in the best interest of the State;
- to waive technicalities in submissions; (A technicality is a minor deviation from the requirements of an RFP that does not impact the substantive terms of the bid/RFP and can be considered without a material impact on the RFP process, etc.). If uncertain of whether a condition qualifies as a technicality, consult with the OPC or AGO for clarification. For example, a late bid is NOT considered a technicality;
- to make purchases outside of the awarded Contracts where it is deemed in the best interest of the State; and
- to obtain clarification or additional information.

**i. Contract Elements:** The RFP should describe the key elements to be included in the Contract. The RFP shall include a copy of the Contract documents: Standard State Contract shell; Attachment A; Attachment B; Attachment C; Attachment D, and any other applicable Attachments.

Any other Contract terms or conditions which may be applicable to the particular service to be procured must be set out in the RFP. For example, with respect to contracts for IT services, the State requires language relating to: Information Security; Intellectual Property Ownership; Confidential Information; access to data; and cyber liability insurance. Agency counsel or the AGO should be consulted for advice on these additional contract terms.

For IT procurements, Risk Management shall be consulted prior to RFP issuance to determine cyber liability and breach notification amounts. Risk Management's determination regarding cyber liability and breach notification amounts, and Terms and Conditions must be identified in the RFP.

**j. Price quotation or bid proposal form:** The RFP, except for those using a Pre-Qualification selection process (section [VIII.C](#)), should include a price quotation form. The form should explicitly include the price components for the core services or products requested, and for each incremental phase of a project, if relevant. If contract extensions are contemplated, the quotation form should explicitly provide a detailed price quotation for each such extension. The form should allow for separate price quotations for optional services that an Agency may request.

**k. Worker's Compensation; State Contract Compliance Requirement:** For all Contracts for Services, as well as all State construction and transportation projects, with a total project cost exceeding \$250,000, the RFP must include language mandating the bidders comply with provisions and requirements of [2009 Act 54, Section 32](#): (1) for the Self-Reporting of information relating to past violations, convictions, suspensions, and any other information related to past performance and likely compliance with proper coding and classification of employees requested by the applicable Agency; and (2) subcontractor reporting requirements. Requirements and forms are identified online and/or directly in RFP templates located on the Office of Purchasing and Contracting website at: <http://bgs.vermont.gov/purchasing-contracting/forms>.

**l. Construction and Transportation Projects:** For all State construction and transportation projects with a **total project cost exceeding \$250,000**, the RFP must include language mandating the Contractor record a pay period census of workers onsite each day and upon request submit this record to



authorized State Agencies and shall become public information. “Total project cost” is defined as the cumulative direct and indirect cost incurred to complete the stated project goal, including planning, design and engineering services, materials procurements, construction services, and construction management and oversight.

**m. Basis for selection:** The RFP must clearly explain the selection criteria to be used. If certain factors are more important than others, the degree of such relative importance should be clearly stated and, if possible, quantitatively profiled.

### 3. Request for Information (RFI)

If an Agency does not have sufficient information from which to develop an effective RFP, the Agency may issue a RFI to obtain information on the subject matter of the eventual contract, such as capabilities, practices, systems, licenses, standards, etc. An RFI may be solicited, following the requirements in the section below “Public Notice Regarding the Standard Bid” or individual RFI requests may be sent directly to a representative number of organizations for information. With the information gained, the Agency should then be able to develop an effective RFP resulting in a number of valid competitive RFP responses.



***NOTE: An Agency shall not negotiate a Contract directly with RFI respondents. Subsequent to issuance of an RFI, a Contract may only be developed in response to a separate RFP or a Simplified Bid, to ensure the integrity of the competitive process.***

### 4. Request for Comment

A Request for Comment (RFC) is the process whereby the State issues a future/proposed RFP to the Vendor community in order to solicit input about all or a portion of the RFP structure, language, methodology (or any other aspect of the future/proposed RFP). The use of an RFC allows the Agency to gather information (comments or responses) and to revise the planned RFP if necessary and appropriate, in an effort to create an RFP that will yield the highest number of bidders and a successful outcome for the State.

### 5. Public Notice Regarding the Standard Bid

At minimum, all RFPs, RFIs and RFCs shall include posting on the Electronic Bulletin Board (EBB), operated by the Agency of Commerce and Community Development (ACCD) as part of the Business to Business registry. Instructions for posting to the EBB are available at: <http://www.vermontbidsystem.com>. However, all IT related RFPs, RFIs and RFCs will be posted by OPC (see [IT Guideline](#)).

The opportunity to bid for the proposed work must be broadly publicized. Other methods of solicitation include: advertising in newspapers; direct mailings to potential Vendors; direct mailings to Vendors on a prequalified list (section [VIII.C](#)); and/or publication in trade journals. It is important for an Agency to maintain a list of those entities or individuals requesting bid documents.

The time between the initial public notice on the EBB (and other methods of solicitation) and the opening of bids must be at least five business days. For RFPs with a relatively complex Statement of Work, allowing potential Vendors a longer response time is highly recommended, to ensure well-constructed bid responses.

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

RFPs for large or complex projects shall require a pre-bid meeting (conference). The purpose of the pre-bid meeting (conference) is for the State to have an opportunity to review the Statement of Work and other RFP documents with bidders to ensure the State and the Vendors fully understand the requirements of the RFP. If a pre-bid meeting (conference) is required it must be identified in the RFP and describe the form and format the meeting shall take (i.e. in person, conference call, etc.). During the meeting, Agencies may provide an overview of the requirements, opportunity for Agencies/Departments and Vendors to pose questions, and hear responses to questions related to the RFP. All information exchanged at the meeting, answers to questions and clarifications given must be documented, and posted to the EBB and/or as indicated in the RFP. The documentation must include a statement that bidders may not rely on any verbal responses.

## 7. 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 attend the bid opening. Bids received after the established submission deadline shall be returned unopened to the bidder. The Agency administering the bid process may waive technical non-compliance when doing so is in the best interest of the State, and with the approval of the AGO. Such waivers must be fully documented and included in the Contract file.



***NOTE: A late bid may NOT be waived as technical non-compliance.***

## 8. Contractor Selection, Documentation and Apparent Conflict of Interest

### a. Selection:

- i. The bid most responsive to the selection criteria established in the RFP should be accepted. Agency staff with the relevant subject matter expertise should review each proposal for responsiveness in accordance with the requirements outlined in the RFP. When appropriate, an Appointing Authority (Agency) may establish a contract selection committee to review the bids.
- ii. If it is determined by the Agency that an on-site interview is required prior to a final selection, the sole point of contact as stated in the RFP should contact finalist(s) to schedule interviews and to provide an agenda for the interviews.
- iii. An Agency may request a Best and Final Offer (**BAFO**) from a bidder or several bidders in an effort to award a Contract in the best interest of the State. The Agency may consider requesting a BAFO when:
  - no single proposal addresses all the specifications;
  - all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;
  - additional information is needed in order for the evaluation committee to make a decision;

- differences between proposals are too slight to distinguish; all cost proposals are too high or over the budget;
- multiple Contract awards are necessary to achieve regional or Statewide coverage for an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed.

iv. Agencies shall post public notification on the EBB, of the Contract award after the Contract has been fully executed.

b. **Documentation:** A complete copy of the RFP, Vendors solicited, price quotations, bids received, and written selection justifications must be placed in the contract file. When other than the lowest responsible bid is selected, for instance RFPs that include a specific selection criterion; the file must include written documentation consistent with the RFP selection criteria justifying the selection. Please reference the [Contract File Checklist](#) for a complete list of documents required to be retained.

c. **Apparent conflict of interest:** If a reasonable person might conclude a Contractor was selected for improper reasons, the Appointing Authority should disclose this fact in writing to the AGO and the Secretary and document the reasons why selecting the desired Contractor is still in the best interests of the State.

### **C. Pre-Qualifying Vendors for Statewide or Retainer Contracts**

To streamline procurement for work routinely bid out, an Agency may employ prequalification procedures as a means of predetermining eligible Vendors from which an Agency may accept bids and proposals. Depending on the type of procurement and contract, prequalification may vary in formality and complexity. Prequalification may be determined through a structured process supported by approved specifications.

Pre-qualified Vendors must be identified through a standard solicitation process through which the Agency publicly solicits Vendors seeking the opportunity to be prequalified. This may take the form of placement on a pre-qualified list or award of a retainer-type contract, customarily with a maximum dollar amount, set duration, and providing no guaranteed assignment of work for the contract term. The Agency should establish clear criteria necessary for 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 at least every two years. All Vendors determined qualified by the Agency, and who so request it, should be included on the pre-qualified list.

An Agency’s internal procedures and this Bulletin should be consulted prior to utilizing pre-qualification to determine if established or recommended procedures exist. An Agency shall document their pre-qualification procedure in writing and in accordance with this Bulletin.

### **D. Exceptions and Waivers**

#### **1. Sole Source Contracts**

Use of “Sole Source” or “no-bid” Contracts is contrary to the competitive process supported by the State. Sole Source Contracts will be avoided except when no available alternative exists. A clear and convincing link must exist between the service requirements sought and the reasons why the Agency

deems the Sole Source Vendor or Contractor “the only one capable” of meeting the requirements. Possible Sole Source uses might include:

- an unusual and compelling urgency, such as when health, public safety, or the conservation of public resources is at stake;
- situations posing extreme financial consequences to the State;
- legislatively mandated situations; and,
- when required by a warranty or proprietary license agreement.

**a. Sole Source Contract \$10,000 or Less**

The Appointing Authority may enter into a Sole Source Contract for \$10,000 or less providing sole source justification exists and is documented in the contract file, and the Contract process complies with all other aspects of this Bulletin.

**b. Sole Source Contract Greater than \$10,000 (non-emergency)**

In other than an emergency situation, an Appointing Authority desiring to enter into a Sole Source Contract having a value greater than \$10,000 must obtain approval to Sole Source from the Secretary of Administration. Secretary approval may be requested by submitting a proposed Sole Source justification memo to the Department of Finance and Management (F & M) at least two weeks before circulation of the Form AA-14 and contract package for required approvals. If the Sole Source request involves Information Security or Information Technology, the justification memo must be approved by the CIO before it is approved by the Secretary of Administration. A copy of the approved Sole Source justification must be retained in the contract file.

Approval to Sole Source, when required by this section, must be obtained from the Secretary before a proposed Sole Source Contract is circulated for additional approvals as may be required under this Bulletin. A copy of the approved Sole Source justification must accompany the proposed Contract when circulating for approvals.

**c. Sole Source Contracts in Verifiable Emergency Situations**

In an emergency situation, a Sole Source Contract may be executed in accordance with Agency protocols and applicable law, **but** the Contract and the justification **must** be forwarded to the Secretary and the AGO within 10 business days of the contract execution. It is recommended the Agency notify the assigned Finance and Management Budget Analyst as soon as the emergency is known.

It is insufficient to justify a Sole Source agreement by stating that “this is the only Vendor/Contractor/party” qualified, or able to do the work. Such assertions must be verifiably documented. Acceptable examples may include: the single authorized agent for warranty work; the only entity or individual properly licensed within the 4-hour response time area; a legislatively-determined party; or a federally-mandated party.



**NOTE:** *A Sole Source Contract greater than \$10,000 may not be circulated for other required approvals (e.g., AGO, CIO), unless and until a Sole Source justification has been approved by the Secretary (and CIO if Sole Source for IT), and a copy of the approved justification must accompany the proposed Contract.*



**NOTE:** *Failure to allow sufficient time to follow the bidding and procurement process is not considered an emergency, and is not a justification for the use of a Sole Source Contract.*

## 2. One-Time Waivers (Other than Sole Source)

The Secretary may waive provisions of this Bulletin on a case-by-case basis pursuant to a written request from an Appointing Authority. Any request must specify the basis for the request and reference the Bulletin section(s) and language or variations from the standard State contract provisions for which the waiver is sought. Waiver approval must be granted by the Secretary prior to other required approvals and the signing of the contract by either the State or the Contractor. Copies of all waiver requests granted by the Secretary must be retained in the Contract file.

## 3. Agency/Department Contracting Waiver Plan

Agencies/Department may develop a written Contracting Waiver Plan (Plan) which shall propose acceptable alternatives to non-statutory requirements of this Bulletin. The Plan must be submitted to the Secretary for approval. Development of a Plan provides a process to request modifications for certain classes of Contracts or requirements that cannot reasonably be accommodated within the policies of this Bulletin, or which will allow for more efficient operations without an undue increase in risk to the State.

Plans must: a) be submitted on the [Bulletin 3.5 Contracting Waiver Plan](#) template; b) detail the referenced section(s) and Bulletin language for which a waiver(s) or modification(s) is requested, (c) provide detail of an acceptable alternative (if appropriate), and (d) be signed by the Appointing Authority. A Plan must clearly delineate any proposed deviations from this Bulletin and include written justification for each change requested. The Secretary may approve or reject the Plan, in part or in whole.

Approved Contracting Waiver Plans expire 90 days after re-issuance of this Bulletin, or upon a request from the Secretary, and must be resubmitted for the Secretary's approval within those 90 days.

A Plan must be one unified form detailing all waiver elements, and must be updated to include additional waiver items as they are requested. The Secretary will indicate approval or disallowance by individual change and return an executed copy of the Plan to the requesting Agency/Department.



**NOTE:** *Approved Contracting Waiver Plans expire 90 days after re-issuance of this Bulletin, or upon a request from the Secretary, and must be resubmitted for the Secretary's approval within those 90 days.*

[END SECTION VIII]

## IX. CONTRACT DRAFTING

### A. Drafting the contract

All Contracts, regardless of dollar amount, must comply with the drafting standards below:

#### 1. General Contract Restrictions

A Contract shall not:

- a. require the State to indemnify a Contractor;
- b. require the State to submit to binding arbitration or otherwise waive the State's right to a jury trial;
- c. establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit;
- d. waive the certifications regarding tax status, child support, use of State funds, or equal opportunity clauses, as are required by State law;
- e. restrict the ability of the Contractor to hire State employees without the prior written permission of the Department of Human Resources (DHR);
- f. designate a governing law other than the laws of the State of Vermont;
- g. constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution;
- h. limit the time within which a legal action may be brought;
- i. include a provision for automatic renewal ("evergreen" clause); or
- j. include a copy of the RFP or RFP response.

#### 2. Standard State Forms (Contract Templates and Attachments)



**NOTE: Standard State Forms and Templates are routinely updated. Agencies/Departments are responsible to ensure the use of the most current form/template at all times. The current in-force versions are maintained by OPC at: <http://bgs.vermont.gov/purchasing-contracting/forms>. Use of outdated forms/templates may result in delays in obtaining required approvals or rejection.**

##### a. Short Form Contract may be used for certain services below \$25,000

While use of the standard Contract form and full Attachment C is preferred, the Appointing Authority may authorize the use of the standard Short Form Contract and Short Form Attachment C ("Short Form") for limited purchases of service not exceeding 12 months and \$24,999.99. Amendment(s) to contracts that either increase the maximum price to \$25,000 or more, or extend the term of the Contract beyond 12 months, must be executed using the Standard Contract for Service template and shall be subject to the applicable review and approval process.

The Short Form shall not be used for services related to life safety, transport of persons, hazardous materials, construction, data usage or sharing, access to confidential information, services of licensed professionals, a Zero-Dollar Contract, and/or a Financial Transaction Contract. As with all Contracts, a current Certificate of Insurance (COI) for the Contractor is required on file, including professional liability insurance, if

applicable. Multiple “one-time” purchases entered into within the same 12-month period, and done intentionally, in order to avoid the requirements of this Bulletin are expressly prohibited.

The Short-Form is designed to expedite Contract drafting for low risk, small dollar procurements, and should be completed according to the instructions included within the form. The Short Form may not be used when additional Attachment(s) or terms and conditions are required. Any questions about whether or not a contract is eligible for the use of the Short Form should be directed to Risk Management at: [SOV.riskhelp@vermont.gov](mailto:SOV.riskhelp@vermont.gov).



**NOTE: The Short Form Contract may only be used for one time services below \$25,000 that do not exceed 12 months’ duration. If the maximum amount exceeds \$25,000 the State requires the use of the standard Contract for Service and the full Attachment C, etc. (see Appendix I for Short Form Contract and Short Form Attachment C).**



**NOTE: Regardless of the contract amount, the Short Form Contract may not be used when contracting for life safety, transport of persons, hazardous materials, construction, data usage or sharing, and/or access to Confidential Information.**

#### **b. Standard State Contract Forms (Templates and Attachments)**

All Contracts not eligible to use the Short Form Contract, must use one of the current standard Contract templates (“shell”) and adhere to the Attachment “letter” assignments for the standard Contract Attachments as follows:

- **Attachment A** – Statement of Work ([Appendix II](#));
- **Attachment B** – Payment Provisions ([Appendix III](#));
- **Attachment C** – Standard State Provisions for Contracts and Grants (“terms and conditions”);
- **Attachment D** – Approved Modifications to Attachment C, modifications to a Contractor document or other required terms and conditions (if necessary) ([Appendix IV](#));
- Additional Attachments may be lettered as necessary.

All modifications to Attachment C’s standard provisions shall be included in Attachment D which is to be referenced under the standard Contract shell “Order of Precedence”. All such modifications require pre-approval by the AGO before the Contract is executed by the Appointing Authority. Modifications to the insurance or audit provisions in Attachment C must be approved by the Director of Risk Management or the Auditor of Accounts, respectively, in advance of contract execution.



**NOTE: Under no circumstances may the actual Attachment C document itself, be modified. When changes or modifications are necessary, Agencies shall use Attachment D.**

Additional terms and conditions deemed necessary to the Contract shall be included in Attachment D. All requests and approvals for such modifications must be documented and retained in the contract file. For examples of common additional terms and conditions refer to [Appendix IV](#).

### 3. Standard Contract Elements

#### a. Parties to the Contract

The Parties to a Contract are: 1) the person(s) or legal entity responsible for performing the work, and 2) the State Agency or department responsible for Contract compliance, monitoring and payment. The legal information (name or business name from [IRS Form W-9](#)) must be the same as the party in the Contract. A valid W-9 must be dated within six months prior to the Contract effective date. Agency staff should work with their business office to review the W-9 and determine if the Vendor is active in Vermont Integrated Solution for Information and Organizational Needs (VISION), the Statewide financial system, with the correct legal name and remittance address. Refer to the [VISION Vendor Request Form](#), [Form W-9](#) and [Vendor FAQs](#).



**NOTE: If the Contract includes work being assigned to a sub-contractor, see section XII sub-contracts of this Bulletin.**

#### b. Contract Duration (Term)

Contracts must have a specific start and end date (term), defining the legal period in which the Contractor is authorized to perform the work, and for which the State will be obligated. The use of “Upon Execution” is not allowed. Including language that automatically renews or extends the Contract beyond the stated end Date (“evergreen clause”) is strictly prohibited.

An Agency should carefully consider what period of time is appropriate for contract performance. Considerations should include the nature of the services and the status of any particular industry or market involved.

**The base Contract term is a period of up to two years.** In certain situations, such as when purchasing services for which there is an ongoing need, the State may want to extend the Contract beyond a base two-year period. Language may be added to preserve the option(s) to extend for two additional one-year periods, for a total maximum of four years.

For IT Implementation contracts (as defined in the IT Guideline) the base contract term may include the period of implementation services, plus up to five years for annual operating costs (maintenance and service). Any request for a waiver of this provision for a longer period of time must be approved by the CIO before it is approved by the Secretary of Administration.

Agencies must plan accordingly to allow sufficient time for all required approvals and final contract execution BEFORE a Contactor begins work. Agencies must monitor contract end dates well in advance to allow sufficient time to prepare and process the required re-bidding. This re-bidding and resulting award constitutes a new Contract (even if the re-bid award goes to the same Vendor) and must have a new VISION contract number. Failure to allow sufficient time to re-bid a Contract is not an acceptable justification to request a Sole Source waiver.





**NOTE:** *In certain instances, Amendment(s) to exercise pre-defined option language (extension of duration and related price increase) may not require review and approval by the AGO and Secretary (see section [XIII.B](#)).*



**NOTE:** *Under no circumstances may any Contract be amended to extend beyond four years, in total, without a specific waiver approved by the Secretary.*

**c. Maximum Amount**

All Contracts must clearly disclose the maximum dollar amount for services, supplies, commodities and expenses on a “fixed price” basis or a “not to exceed” maximum dollar amount.

**d. Total Number of Pages**

The Contract and Attachments shall be sequentially numbered within the total pagination, for example, “Page 1 of 10”, with the total number of pages (in this example, 10), stated in the Contract.

For long, complex contracts requiring numerous Attachments, such as construction and transportation contracts, Agencies may choose to number the contract and each Attachment, within the pagination for each. For example, Contract pages 1-2, Attachment A, pages 1-1500; Attachment B, pages 1-2; Attachment C, pages 1-4; Attachment D, pages 1-2; Attachment E, pages 1-51; resulting in a total of 1,561 pages. However, the total number of pages shall be stated in the Contract.

**4. Description of the Work and Compliance (Attachment A)**

**a. Statement of Work**

All State Contracts must describe the work to be performed in clear, concise and complete statements. Attachment A of the standard State Contract should be used to detail the work to be performed or products to be delivered by the Contractor. A well written description will include the schedule for performance, identification of project deliverables, deliverable milestones, and standards by which the Contractor’s performance will be measured. This description of the work may also be referred to as the Statement of Work, Specifications of Work, Scope of Work or Subject Matter. Please refer to [Appendix II](#) for further guidance. The deliverables and milestones should be used to inform the payment terms in Attachment B. Attaching RFPs and RFP responses to contracts is not permitted. RFP responses can be long and complicated and may include both unnecessary information and introduce internally inconsistent terms within the Contract.

**b) Contract Compliance Monitoring**

The level of required contract compliance monitoring, if applicable, should be based on the assessment of the risk for delay or failure to deliver the services. In assessing the risk, Agencies should consider factors such as: amount of funds involved; contract duration; contract complexity; history of the Contractor with State government; amount of subcontracting involved; and other relevant issues. Whether or not

liquidated damages, service credits and/or Retainage are part of the Contract, the document should include a section that describes specifically how the Agency will monitor the contract for compliance.

Types of compliance monitoring processes and steps may include: (i) periodic Contractor reports; (ii) invoice reviews; (iii) on-site visits; (iv) scheduled meetings; (v) audits; (vi) independent performance reviews; (vii) surveys of users/clients; and (viii) 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 Contract duration and after expiration.



**NOTE:** Additional guidance on Statement of Work is available in this Bulletin as [Appendix II: Attachment A – Statement of Work Guidelines](#).

## 5. Payment Provisions (Attachment B)

### a. *Payment Amounts and Frequency:*

All State Contracts must describe how, when and under what circumstances Contractors submit invoices to the State. Attachment B of the standard State Contract should detail:

- Requirements and schedule for the submission of Contractor invoices;
- Whether payment will be made based upon: rates; hours worked; delivery of a service, or State acceptance of a deliverable;
- Whether payment or any portion thereof will be tied to the achievement of performance outcomes and/or measures;
- What documentation (bills, invoices or other proof of work) the Contractor must provide when invoicing the State;
- When and how much the Contractor will be paid, and what deductions, if any, will be made from payments; and
- The payment terms of Net 30 days, from the receipt of a complete and error free invoice, are the generally accepted payment term standard, in accordance with [Finance and Management Policy #5 ~ Payment Terms](#).



**NOTE:** Additional guidance on payments is available in this Bulletin as [Appendix III: Attachment B Payment Provision Guidelines](#).



**NOTE:** Contractor shall be paid based on documentation and itemization of work performed and included in invoicing, as required by [32 V.S.A. §463](#). If based on hourly prices, invoicing must contain a summary of the work performed and details, including dates and hours of work performed, and rates of pay for individuals.



***NOTE: Advance payments are strongly discouraged. First, advanced payment for work that is not performed or not satisfactory may not be recoverable without filing a lawsuit. Second, in the case of Contractor default and insolvency, the advanced payment may be subject to bankruptcy proceedings and may not be recoverable.***

**b. *Performance Measures and Accountability***

In accordance with [3 V.S.A. § 2313](#), State Contracts and Grants should include performance measures which enable the contracting Agency/Department to hold the Contractor/grantee accountable and assess the performance of their services and deliverables under the terms of the Statement of Work.

Contracts should include provisions, which link specific performance measures to the outputs, quality, and outcomes of the services provided. Contract payment should be expressly contingent upon State review, approval and acceptance of contract deliverables. In very specific language, the Contract should detail how the Contractor is accountable for the work or product. These specific performance measures provide objective standards for determining if the Contractor has successfully completed the contractual obligations and if the delivered services or products meet such standards.

The contract's Statement of Work to be performed (Attachment A), as noted in Appendix II, must specify the time line for the deliverables, including interim steps, and measurable standards to be maintained during the contract performance period.

**c. *Retainage***

The purpose of Retainage is to ensure the State retains sufficient funds in the event a Contractor does not perform in accordance with the specific requirements in the Contract. Retainage should be considered for all Contracts. When Retainage is utilized, the Contract sets an amount of funds to be withheld from each payment to the Contractor. The terms under which Retainage is paid must be detailed in the Contract. Retainage should generally be withheld at a minimum of 10% of the Contractor's invoice amount. The Retainage language in the Contract must specify any additional conditions and requirements that must be met prior to the release (payment) of the Retainage, in whole or in part. Such conditions might include contract close-out, final State acceptance and the submission of a separate Retainage invoice.

**d. *Liquidated Damages***

The term "Liquidated Damages" refers to an amount of money the parties agree, at the time of contract formation, shall be payable by the Contractor to the State as compensation for delay or failure to meet particular performance standards. Liquidated damages operate as an agreed-upon substitute for any actual damages suffered as a result of a breach, thereby enabling the parties to avoid litigation, and to continue performance under the Contract.

An amount fixed as liquidated damages must reflect a reasonable approximation of probable damages resulting from a particular breach and shall not operate as a penalty to punish the Contractor for late or substandard performance.

Liquidated damages are not appropriate for every Contract. Agencies considering whether to include liquidated damages provisions in a Contract shall consult with Agency counsel or the AGO.

**e. Reimbursable Travel Expenses**

The State strongly prefers Contractors include reimbursable travel expenses (mileage, airfare, lodging, meals, etc.) as part of their fixed or hourly rate(s), or include a fixed travel allowance amount. Reimbursing detailed invoices for travel expenses is administratively burdensome, requiring additional documentation, review, and accounting transactions in VISION. However, the amount the Contractor includes in the rate or as an allowance, must be determined to be reasonable. Reasonableness should be based on: 1) the agreed Statement of Work specifications for number of on-site days, weekly/monthly trips, over-night stays, mileage, etc.; and 2) standard travel costs, with consideration for Federal funding requirements, any limits that may apply, or per diems, such as Federal General Services Administration (GSA) rates for meals and lodging.

In cases where the reimbursement of detailed travel expenses cannot be avoided, such as when required by certain industries or professions, Agencies must obtain a waiver from the Secretary, or have such waiver in their approved Contracting Waiver Plan, prior to including reimbursable travel expenses in any Contract.

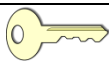
**6. Insurance Coverage Limits**

Appropriate insurance coverage limits are required in a Contract to protect the State’s interests. Standard Insurance Coverage provisions are included in Attachment C and are deemed appropriate to cover most contractual situations. However, Professional Service Contracts may require additional types of insurance such as professional liability or IT professional liability. Higher insurance limits may be required, such as when relatively dangerous or hazardous activities are contemplated. Conversely, reduced limits or decreases in coverage may be appropriate. Agencies/Department shall consult with the Director of Risk Management for guidance and approval, when considering the appropriateness of insurance requirements. All changes to the Standard Insurance Coverage limits in Attachment C require the prior approval of the Director of Risk Management. Such approval must be documented and retained in the contract file along with a current Certificate of Insurance (COI).

Special care should be paid to Workers’ Compensation coverage for Contracts with out-of-state Vendors. Vermont statute requires insurance carriers be specifically licensed to write Workers’ Compensation coverage in Vermont. Out-of-state Vendors may have Workers’ Compensation coverage valid in their home State, but their carrier may not be licensed to cover Workers’ Compensation for work actually performed by their employees in Vermont. Agencies may verify whether an out-of-state Vendor’s Workers’ Compensation carrier listed on the Certificate of Insurance is licensed in Vermont on the Department of Financial Regulations website by clicking [\[here\]](#).



***NOTE: Changes to insurance limits approved by the Director of Risk Management shall be documented in Attachment D, referencing the Attachment C Insurance section, to which the changes apply.***



***NOTE: Under no circumstances may the actual Attachment C document itself, be modified. When changes or modifications are necessary, Agencies shall use Attachment D.***



**NOTE: In the case of out-of-state Vendors, the Vendor's Workers' Compensation insurance carrier must be licensed to write Workers' Compensation for all work that will be conducted within Vermont.**

## **7. Intellectual Property Ownership**

[3 V.S.A. §346](#) allows the State to grant permission to Contractors the right to use or own intellectual property developed for the State, for the Contractor's commercial purposes. Refer to the [IT Guideline](#) for additional information.

## **8. Confidential Information**

When drafting an RFP or Contract that contemplates Contractor goods or services that will involve using, accessing, storing, processing and/or generating Confidential Information, Agencies will have the following additional considerations, such as: how the data will be used by the Contractor; security of the data; protection for Confidential Information; access to the data; ownership of the data; and return or destruction of data. Agencies must seek the advice of ADS Security and/or the AGO when preparing such RFPs or Contracts.

## **9. Change Order Process**

Most changes to a Contract will require a Contract Amendment and must adhere to the Contract Amendments, Approval and Execution process required in this Bulletin (section [XIII](#)). However, construction and IT implementation service providers typically utilize a formal Change Order process in order to implement minor scope changes without undue delay in a project. An Agency may choose to include a Change Order process in its construction and IT implementation Contracts using the standard Change Order process language from an approved template maintained by OPC. Any changes to the standard Change Order process will require Secretary and AGO approval, regardless of the Contract amount. Change Orders may also be referred to as "task orders," "change requests," and the like. In all instances, the Change Order process must include:

- Inclusion of the original Contract number and a sequential Change Order number, and describe which parts of the Contract are changed and which parts are added;
- Inclusion of the Contractor certifications required under Section [XIII.A.1. d](#) of this Bulletin;
- State approval of all Change Orders, as per the applicable template;
- Execution by both the State and the Contractor; and

All Change Orders executed during the Contract term shall be consolidated into executable Contract Amendments any such time as an amendment would otherwise be required, pursuant to the Contract Amendments, Approval and Execution process required in this Bulletin (section [XIII](#)). The executable Amendment will then be routed for the applicable Contract Amendment approvals as required by this Bulletin.

## **B. Obtaining a VISION Contract Number**

Regardless of dollar amount, Agencies must enter all Contracts, including Commodity Contracts into the VISION system to obtain a Contract number, record and track the Contract (see [VISION Procedure #3 – Purchase Order Procedure](#)). In addition, [3 V.S.A. § 344 \(a\)](#) requires: The Secretary of Administration shall maintain a database with information about Contracts for Services, including approved Privatization Contracts and approved Personal Services Contracts; this database is maintained in the VISION system.

Each VISION Contract record shall include a representative “long description” accurately describing the Contract subject matter; descriptions such as “Personal Services” or the name of the issuing Agency are not acceptable. For all Contracts of \$10,000 or greater (or for lesser amounts if required by your Agency 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 VISION finance system.

Prior to entering the Contract into the VISION system, Agencies must verify all existing Vendor information in the VISION system is correct and a current (within 6 months) Form W-9 is on file. If the form W-9 is out of date and/or a new Vendor record must be established, refer to the [VISION Vendor Request Form](#), [Form W-9](#) and Vendor [FAQs](#).

[END SECTION IX]

## **X. CONTRACT ROUTING AND APPROVALS**

### **A. Contract Package and Routing**

#### **1. Contract Package**

A Contract or Contract Amendment requiring one or more prior approvals beyond that of the Appointing Authority shall be circulated with the relevant supporting documentation required herein (“Contract Package”) to enable timely and accurate consideration of the requested approval(s). Only one Contract package shall be circulated for approval.

Contract Packages may be circulated electronically, but only in accordance with a ADS-approved electronic signature system. However, Agencies wishing to begin electronic submission to F&M after July 1, 2016, must first receive the permission of the Commission of Finance and Management, or designee. Sending separate copies to the prior-approval parties or circulating electronically to all prior approval parties at the same time is not acceptable. All approvals required must be obtained sequentially, in the order shown on Form AA-14.

The Department of Finance and Management acts as the clearinghouse for Contract packages requiring approval by the Secretary that include a pre-approved Sole Source request and/or one-time waiver request. In such cases, F&M must receive the Contract 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. However, 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 a copy of the signed Form AA-14 will be retained; the remaining documents will be returned to the Agency.

#### **2. Content and Order of Package Documents**

To expedite the review and approval process, any request for approval of a Contract or Contract Amendment must consist of the following documentation, and the Contract Package, whether circulated in hard copy or via a ADS-approved electronic signature system, must be assembled in the following order:

- a.** Form AA-14;
- b.** Internal review or routing document, if used by the requesting Agency (for example, BGS issues a Request for Review (RFR) document provides a quick summary of the contract, term, amount, and signatures);
- c.** ADS Review Verification Sheet (if applicable) (see [IT Guideline](#) for additional information);
- d.** Cover memo or other document summarizing and/or justifying the requested Contract or Contract Amendment (for example, as applicable and appropriate, this document may be a Recommendation for Award, Sole Source Request, One-Time Waiver, or a Note to File);
- e.** Proposed Contract or Contract Amendment, including all Attachments (in alpha-numeric order);
- f.** For any Contract Amendment, include the original Contract, all prior Amendments, and the corresponding AA-14s in appropriate order.

### 3. Document Naming Convention for ADS-approved electronic signature system:

Agencies circulating Contract Packages electronically for review and approvals should consider utilizing a standard naming convention, for example:

- Standard Contract Package (requiring signature on AA-14 only):  
“CONTRACT # AND AMEND# (IF APPLICABLE) VENDOR NAME AA-14 SIGN”
- If Contract Package includes Sole Source Request (requiring signature on AA-14 and Sole Source Memo) add “and Sole Source” to end of Standard Contract Package title:  
“CONTRACT # VENDOR NAME AA-14 AND SOLE SOURCE SIGN”
- If Contract Package includes One-Time Waiver Request (requiring signature on AA-14 and Waiver Memo), add “and Waiver for XXX” to end of Standard Contract Package title: “CONTRACT # AND AMEND# (IF APPLICABLE) VENDOR NAME AA14 and Waiver for XXXX SIGN”
- For a One-Time Waiver made prior to RFP or Contract: “WAIVER for XXXX Sign”
- For Expedited Requests, begin title with the word “Expedite”. ONLY Contracts, Amendments, Sole Source requests and waivers that have urgency may be named using “Expedite” as the first word in the title. For example, a Standard Contract Package would be titled as follows:  
“EXPEDITE CONTRACT # AND AMEND (IF APPLICABLE) VENDOR NAME AA14 SIGN”

#### B. Approvals - Required Prior Approvals



**NOTE: The State shall not execute a Contract requiring prior approvals until all such required approvals have been obtained.**

An Agency may be required to obtain prior approval of a Contract from the Secretary, the Office of the Attorney General (AGO) (which includes in-house assistant attorney general), Chief Information Officer (CIO), Chief Marketing Officer (CMO), or Commissioner of Human Resources.

If documentation other than the Standard State documentation is used, Appointing Authorities should consult with Agency general counselor the AGO to confirm contract terms, particularly those in “small print” Vendor documents, are consistent with State law and policy. In the case of Contracts in an amount less than \$25,000 (\$0 - \$24,999) which may pose substantial risk to the State, Agency general counsel or the AGO should be consulted to determine if modifications to Contractor forms are required.

#### 1. Attorney General

The Attorney General, or his/her designee, must give prior approval as follows:

- a. A Contract for Service valued at \$25,000 or more must be certified by the AGO, as detailed in section [V](#) of this Bulletin and [3 V.S.A. §342](#).
- b. A Contract for Service valued at \$25,000 or more must be reviewed and approved “As to Form” to ensure that the agreement: (a) complies with all applicable statutory requirements and State policy; (b) generally could be interpreted to be legal, valid, binding and enforceable; and (c) appropriately protects the interests of the State.



- c. Regardless of dollar amount, a Contract for Service must be reviewed and approved “As to Form” in any of the following circumstances:
  - Vendor-required forms (for example, “small print” terms and conditions);
  - Privatization Contracts;
  - Contracts including a Change Order process (a.k.a. task orders, change requests, see section [IX.A.8](#));
  - Financial Transaction Contracts;
  - Zero-Dollar contracts.
- d. Agreements to Receive or Access Confidential Information described in Section VI.D
- e. Contracts for the retention of legal services must be approved by the AGO pursuant to the process set forth in AoA [Bulletin 17.10](#).

Upon request, the AGO will review contracts “As to Form” where such approval is not otherwise required, as above. Reviewing “As to Form” can help ensure project scope, project roles and responsibilities of the parties and payment provisions are clear and enforceable. This review “As to Form” is highly recommended for complex Contracts.

The AGO may decline to approve Contracts “As to Form” when a Contract is not consistent with State law and policy or discretionary choices made by the Agency pose risk concerns unacceptable to the AGO or the Director of Risk Management. Should the AGO decline to approve a contract “As to Form,” the Agency may still request approval to enter into the Contract from the Secretary, in accordance with section VIII.D.2.

## 2. Secretary of Administration

The Secretary, or his/her designee, must give prior approval to:

- a. Contracts with maximum amounts over \$500,000;
- b. Sole Source Contracts greater than \$10,000;
- c. Privatization Contracts;
- d. Contracts which include a Change Order process (a.k.a. task orders, change requests, see section [IX.A.8](#));
- e. Financial Transaction contracts;
- f. Agreements to Receive or Access Confidential Information described in Section VI.D;
- g. Zero-Dollar contracts;
- h. Waiver requests other than Sole Source;
- i. All Contracts which the AGO has declined to approve "As to Form".
- j. All Contracts with Internet service providers.

## 3. Commissioner of Human Resources

### a. 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, or the elimination

of a vacant position of an employee covered by a collective bargaining agreement is likely to fall within the definition of “Privatization Contract” (see [3 V.S.A. § 341](#) for complete definition). No Agency may enter into a Privatization Contract unless it has first notified the Commissioner of Human Resources and subsequently worked with the DHR to follow the procedure specified in [3 V.S.A. § 343](#). The Agency shall be required to 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 Agency must demonstrate, by use of an accounting process specified in [3 V.S.A. § 343](#), that the proposed Contract will result in cost savings to the State of at least 10% compared to the cost of having the service provided by classified State employees. DHR approval is required in addition to the normal approval(s) required based on the contract amount and/or waiver requested.

#### **b. Contracts with State of Vermont Employees and/or Retirees**

State Personnel [Policy 5.1](#) (Simultaneous Employment) prohibits employees from entering into a Contract agreement or other employment which will result in concurrent payments from the State of Vermont under more than one employment category, unless approved by the Commissioner of Human Resources.

The Commissioner of Human Resources (DHR) must also review and approve any contract with a former State of Vermont employee or retiree executed within one (1) year of the employee’s date of separation or official retirement date. DHR approval is required in addition to the normal approval(s) required based on the Contract amount and/or waiver requested. The Commissioner of DHR shall maintain a list of all Contracts, approved or rejected, with former State of Vermont employees.

#### **4. State Chief Information Officer**

The State Chief Information Officer (CIO), or his/her designee, must give prior approval to:

- a.** All RFPs for Information Technology and Information Security contracts, regardless of dollar value, prior to posting;
- b.** Agreements to Receive or Access Confidential Information described in Section VI.D:
- c.** Contracts for cloud services (SaaS, PaaS and IaaS) regardless of dollar value (see [IT Guideline](#) for more information);
- d.** Contracts which will involve the electronic processing, storing, or transmission of Confidential Information;
- e.** Sole Source Contracts for Information Technology Activities and Information Security; and
- f.** Information Technology and Information Security Contracts over \$500,000.

Agencies must follow CIO/ADS standards for the management, organization and tracking of Information Technology activities. These standards may be obtained from the Agency of Digital Services (ADS) or found at <http://digitalservices.vermont.gov/>.

Certain IT Activities may require an Independent Review (IR) in accordance with [3 V.S.A. § 2222\(a\)\(9\) and \(10\)](#). Refer to the IT Guideline for additional information about Information Technology requirements and duties of ADS/the State CIO.

## 5. Marketing Service Contracts

Any Contract for Service relating to marketing with a value greater than \$25,000 requires the prior approval of the Chief Marketing Officer (CMO). Vendors of marketing services must be on the CMO's list of pre-qualified Vendors. For marketing Contracts valued at \$25,000 or less, Agencies must refer to and comply with applicable Statewide marketing guidelines, policies, and standards issued by the CMO and available at: <http://cmo.vermont.gov/>.

[END SECTION X]

## XI. CONTRACT EXECUTION AND CONTRACT FILE

### A. Execution

A Contract must be signed <sup>(1)</sup> by the appropriate Appointing Authority or his/her designee, consistent with AoA [Bulletin 3.3](#), *Delegation of Authority for Signing Documents*, and a fully executed copy maintained in the Contract File. The Agency/Department Agency must provide a copy of the entire Contract, as executed, to the Contractor.

*<sup>(1)</sup> Signatures may be affixed on the signature page in writing, or through a ADS authorized e-signature system. Faxed or scanned copies of hand written signatures are also valid. Counterparts: In situations where signature pages are executed separately by the parties, each signature page shall be deemed an original.*

### B. Contract Administration and Contract File

Once a Contract has been executed, Agencies must properly administer Contractor performance to ensure compliance with the contract terms. A successful Contract is equally dependent on post-award administration as it is on a well-written Statement of Work (SOW) and thoughtful payment terms. The process of contract administration begins with the solicitation documentation and continues through from the time of contract award until the work has been completed and accepted, any disputes or adjustments have been resolved, final payment has been made and the Contract is formally closed out.

The individual administering the Contract for the Agency (Contract Administrator) must read and become familiar with the Contract and contract requirements in order to establish a schedule of activities for ensuring compliance by both the Contractor and the Agency. Contract compliance monitoring will include:

- Ensuring that all required certificates and reports are delivered;
- Monitoring and coordinating subcontractor approval, if any;
- Monitoring Contractor performance and coordinating any State review and approvals of deliverables;
- Monitoring invoicing and payments;
- Amendment processing and administration; and
- Conducting contract closeout, including ensuring all final Contractor reporting and deliverables have been received an accepted prior to final payment.

The Contractor's performance must be measured by all performance elements and criteria established in the Contract. While the reporting, collection, monitoring and evaluation of Contractor performance data may be a collective effort by other contract stakeholders, the contract administration function should act as a repository for all performance data and act as overseer to ensure that contractual performance requirements are monitored and reported.

The Contract Administrator will need to be aware of all Agency-Contractor activities, communications and status surrounding any and all deliverables in the event of a situation affecting any area of the contractual relationship and/or status. For example, if a deliverable is late, unacceptable or there is some other dispute, the Contract Administrator may be responsible for coordinating the required communication and resolution. Therefore, the Contract Administrator should obtain copies of the relevant paper trail, as the contract file must include complete supporting data regarding such a situation.

The Contract Administrator will process any termination documentation - for breach, default, non-appropriation of funds or if the Agency terminates for convenience. When termination occurs for any reason except the end of the contract term, notices must be given to the Contractor in accordance with the contractual requirements.

An Agency must maintain an up-to-date contract file. Agencies must keep all Contracts and the required documents on file as Public Records for at least three years after the Contract's term expires. A Contract File Check List, detailing all required documentation for the official contract File, is provided in [Appendix I](#). An official Contract file is required for all Requests for Information (RFI), Requests for Proposal (RFP) and all Contracts awarded regardless of type of bid or waiver involved. Agencies must download the Contract File Check List and use it as a tool to ensure compliance with the documentation standard for public records and audits.

### C. Conflict of Interest

Employees with a conflict of interest or appearance thereof, shall not participate in, control or influence the bidding process, the awarding of Contracts, or the approval of payments against said Contracts. Department of Human Resources (DHR) [Employee Policy 5.6](#) and the Executive Code of Ethics (Executive Order #09-11, codified as [3 V.S.A. § E03-53](#)) set standards that shall be used as the primary guide. Additionally, every effort shall be made to avoid even the appearance of a conflict of interest in the contracting process (see Section [III](#) for definitions). Further, every Contractor shall be required to disclose in writing any actual or potential conflict of interest.

### D. Statewide and Retainer Contracts

#### 1. Statewide Contracts

To simplify the acquisition process, the OPC maintains numerous Statewide Contracts for supplies, which include materials, equipment, parts, and commodities. Unless otherwise approved in advance, **these Statewide Contracts must be used by all Executive Branch entities.** To find out if a Statewide Contract exists that meets an Agency's need, contact the Office of Purchasing and Contracting or refer to the web site at <http://bgs.vermont.gov/purchasing-contracting/contract-info>.

Other Agencies may create Statewide Contracts, such as Statewide Marketing Contracts, **only when authority is expressly granted by the Secretary or applicable law.**

#### 2. Marketing Master Contracts

The Chief Marketing Officer (CMO) shall be the only named State party on, and point of initiation for, all Marketing Master Contracts. The CMO requires a process similar to the approach to IT Retainer Contracts described below when establishing Master Marketing Contracts as well as the subsequent agreements executed pursuant to them (SOWs). Agencies should access policies and services through Master Marketing Contracts including: a) Media Buying, b) Creative Services, and c) Photography here: <http://cmo.vermont.gov/document/pre-qualified-marketing-vendors-list>.

#### 3. IT Retainer Contracts

OPC maintains a number of Vendors pre-qualified to allow Agencies to quickly and efficiently obtain certain IT consulting and technical services. These pre-qualified Vendors provide services in

many functional areas or categories ranging from strategy and analysis services to Information System Security and Systems Engineering. The Vendors have agreed to the Standard State Terms and Conditions.

This results in a two-step approach to procurement. The first step is qualifying a group of Vendors under a set of requirements or functional areas. The second step allows State Agencies/Departments to solicit responses from those pre-qualified Vendors for a business need defined in a Statement of Work-Request for Proposals (SOW-RFP), and come to agreement by signing a Statement of Work (SOW) Agreement. The appropriate process and all forms to be used are set forth in each “retainer” agreement for the information of both the Vendors and the Agencies. Once an Agency has elected a Vendor using this process, it should obtain a copy of the applicable Retainer Contract for purposes of the complete contract file and contract compliance monitoring.

This SOW-RFP process is not intended for projects that would result in Contracts of more than \$100,000. These larger projects require the formal Request for Proposals process. The limit per Agency SOW Agreement to be entered into using the SOW-RFP process is \$100,000. Limits may be waived by the Chief Information Officer. Retainer Contracts are subject to dollar limits as well, requiring that Agencies verify the Retainer Contract balance remaining before obligating additional SOW-RFP Agreements against the Retainer Contract.

Additional information and the procedures required to access these Retainer Contracts is located at: <http://bgs.vermont.gov/purchasing%20and%20contracting/current%20contrats/information-technology>.

#### **E. Blanket Delegation of Authority (BDA)**

OPC may delegate authority to Appointing Authorities to make certain types of purchases directly. A 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 authorizes Appointing Authorities to make any single purchase up to \$3,500 provided the item being purchased is not available through an existing State Contract, is not otherwise restricted by statute or Administrative Bulletin, and is not an ongoing need of the department. ***BDA #1 may not be used to purchase services, IT purchases, and print procurement (in accordance with the Print Procurement directive issued by the Secretary of Administration dated February 13, 2012). All IT purchases shall be made under an existing Statewide Contract, IT Retainer Contract or in accordance with the IT Guidelines.***

For items needed on an ongoing basis, Agencies are expected to work with the OPC 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 OPC. All BDAs, including BDA#1, are subject to the ongoing approval of the OPC and can be revoked or modified at any time. All purchases made under a BDA may be subject to audit to determine compliance with this Bulletin and with the applicable BDA.

If the needed item(s) 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 in accordance with the [VISION Requisitions Manual](#) and have the requisition budget checked for sufficient funding by the VISION system.

[END SECTION XI]

## **XII. SUBCONTRACTS**

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

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

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

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

Agreements such as Letters or Memoranda of Understanding (MOU), designed to amend a Contract are unacceptable.

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

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

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

- b. All Contract Amendments must include the original contract number and a sequential Amendment number. An Amendment should describe, with specific reference to the applicable sections of the Contract, what is being added, deleted or otherwise modified. A new Form AA-14 must show the original contract number and the Amendment number.
- c. When issuing a Contract Amendment, Agencies/Departments shall ensure that the Contract is updated to include the current version of Attachment C in effect at the time of the Amendment.
- d. All Contract Amendments and Change Orders must include the following certifications:
  - i. **Taxes Due to the State.** Contractor certifies under the pains and penalties of perjury that, as of the date this Contract Amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.
  - ii. **Certification Regarding Suspension or Debarment:**

Contractor certifies under the pains and penalties of perjury, as of the date this Contract Amendment is signed, neither 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.

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

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



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



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





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

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

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

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

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

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

The Appointing Authority must approve all Contract Amendments.

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

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

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

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

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

The CIO's approval is required for any and all Contract Amendments concerning a Contract for an Information Technology Activity and Information Security, as follows:

- a.** All Contracts originally for cloud services (SaaS, PaaS and IaaS) regardless of dollar value (refer to the [IT Guideline](#) for more information);
- b.** All Information Technology and Information Security Contracts which originally involved the processing, storing, or transmission of information protected by State or

Federal law, including protected health information, personally identifiable information, Federal tax information and education information;

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

### **C. Execution of Amendments:**

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

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

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

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

## **XIV. CONTRACTOR NAME CHANGE OR OTHER CHANGE IN CIRCUMSTANCES**

If a Contractor's name should change during the term of a contract, Agencies should consult with counsel or the Office of the Attorney General about whether and how to properly document the change in the contract. In certain circumstances, Finance and Management will require a new Contract number in VISION with a revised Contract amount that appropriately accounts for any amounts already paid under the Contract.

There may further be circumstances in which there is such a change in the Contractor's identity, organization or capital structure, such as may occur with a merger or acquisition involving the Contractor, or other reason why it may be appropriate to agree to a novation of a Contract. Agencies should obtain specific advice and appropriate forms from counsel or the Attorney General's Office when considering this approach.

Note that Standard State Contracting forms do not allow assignment of a Contract by a Contractor without the State's written agreement. Agencies should obtain specific advice from counsel or the Attorney General's Office when a Contractor attempts to make an assignment or requests the State's agreement to do so.

[END SECTION XII - XIV]

## **XV. ACCOUNTING FOR PAYMENTS TO CONTRACTORS**

All contractual payments shall be made through and tracked in the VISION System, in accordance with [VISION Procedure #3 – Purchase Order Procedure](#). Contracts for Service will be coded to the appropriate expenditure account, per the Chart of Accounts, and will no longer default to #507XXX series of accounts. Only those Contract for Service which are definitively categorized as Personal Service or Privatization Contracts, as detailed in Section [IV.B](#) and [IV.D](#), respectively, of this Bulletin will be coded to the #507XXX series of Third Party Personal Service accounts.

In the case of Financial Transaction contracts, including certain “Zero-Dollar” Contracts (see section [III](#) Definition) and regardless of whether the State receives the Gross or Net amount, accounting for the transaction must be done in accordance with Generally Accepted Accounting Principles (GAAP).

## **XVI. COMPLIANCE REVIEWS**

In order to promote compliance with the provisions of this Bulletin, the Department of Finance and Management, the Office of Purchasing and Contracting and the Chief Performance Officer may conduct management reviews relative to this Bulletin, as deemed necessary.

## **XVII. FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)**

For some contracts funded through Federal awards, the requirements of the Federal Funding Accountability and Transparency Act (FFATA) may apply. Contracting Agencies are responsible for determining if a Contract meets the requirements of FFATA, including: Contractors have a valid DUNS number; are active Federal System for Awards (SAM) registrants; and reporting of all sub-awards (Contracts) in the FFATA Sub-award Reporting System (FSRS). For additional information about these requirements, refer to Finance and Management [Policy No. 8 ~ Federal Funds Accountability and Transparency Act Compliance](#) and the federal [Uniform Guidance \(2 CFR Part 200](#) - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

## **XVIII. PUBLIC RECORDS REQUESTS**

Agencies/Departments should work closely with the AGO, embedded AAG or Agency counsel on Public Records requests involving contracts and bid documents. Contracts and all documents sent to the State in response to an RFP/RFI are public records which are exempt from disclosure to the public until a Contract is awarded and fully executed. Once the Contract has been fully executed, or the State has decided not to execute a Contract and will not pursue a new or related RFP/RFI process, all documents associated with the bid, including all Vendor proposals and evaluation notes, are then considered available for review by the public and subject to disclosure in accordance with the State’s Access to Public Records Law, [1 V.S.A. § 315](#), et seq..

If an Agency receives a Public Records request and the response to the request includes materials marked or identified by the bidder as proprietary and confidential according to [1 V.S.A. Chapter 5](#), the Agency shall immediately contract the AGO, embedded AAG or Agency counsel.

## **XIX. PUBLIC ENDORSEMENTS**

Writing a recommendation or giving a recommendation to any Vendor or to any person for their general use, is prohibited. The State cannot give the appearance of “endorsing” a person, product, or company. If one of the bidders produces a written recommendation from the State, it would appear as if the entire process of providing for an “open and fair” bidding process is suspect. It could be interpreted that the State had already “recommended” or endorsed a particular Vendor. Even the appearance of a pre-determined “recommendation” is strictly prohibited. An Agency may respond to a specific inquiry about a specific Vendor or project, but all responses shall be limited to factual statements.

When issuing an RFP, basing an award of a Contract on prior work history and experience is only acceptable if the selection criteria specified prior history and experience.

- A. Selection.** Basing an award on prior work history means that the State will take into consideration the Vendor’s prior work for / with the State - good or bad. It also means that the State will weigh work history for all Vendors. For example, if 2 of 3 bidders worked for the State previously and performed well, it is reasonable to assume both would see a positive impact of their work history on their overall scoring under the selection criteria. Every Vendor must have an equal opportunity to win the award based on the selection criteria.
- B. Vendor References.** A Vendor should list prior State work experience and non-State work experience in their RFP response. As part of the RFP review process, both the State and non-State entities listed must be contacted to verify whether the prior work experience was or was not satisfactory. When contact with another unit of State occurs in this fashion, it is considered reference verification and not a “recommendation” or endorsement.

[END SECTIONS XV - XIX]

## **XX. APPENDICES**

### **Appendix I – Standard State Contract Templates, Forms and Other Links**

a. **Standard State Contract Templates**

i. **Standard Contract for Service Template**

ii. **Information Technology (IT) Contract Template**

iii. **Short-Form Contract for Service Template w/Term & Conditions**  
[restricted use to some Contracts under \$25,000 – see section [V.B.1.](#)]

b. **Contract Amendment Template**

c. **Form AA-14 – Contract Summary and Certification Form**

d. **Contract File Check List**

e. **Bulletin 3.5 Contracting Waiver Plan form**

f. **IRS Publication 15 -A**

[Note: Refer to §2 for IRS rules determining Contractor vs. Employee.]

## Appendix II: Attachment A – Statement of Work Guidelines

The Statement of Work (SOW) is the area in a Contract where the work to be performed is described. The SOW will contain reference to any milestones, reports, deliverables, and services expected to be provided by the Contractor, as well as outline any obligations of the State. The SOW should also contain a timeline for all deliverables.

The problem most often seen with SOWs is a lack of specificity. A well-written SOW is a clearly descriptive scope which identifies the responsibilities of both parties and avoids any ambiguity.

A well-written SOW consists of a highly tailored series of carefully worded statements that answer the following questions:

- What work is to be done?
- What are the deliverables?
- Who is going to do the work?
- When is the work going to be done?
- How will the work be performed?
- How can you tell when the work is completed?
- How will you measure the performance of the work: How Much Did We Do? How Well Did We Do It? Is Anyone Better Off?

### A Statement of Work should include the following components:

1. **Need Statement** - Succinctly describe the State need that the work of this Contractor will address.
2. **Goals of the Agreement** - At the beginning of this section, complete the following sentence (please be succinct): The goal of this project is to... Complete the sentence with a brief description of the goal(s) and how the goal(s) shall be met. Goals can be technical, economic or social. Please be brief, two to three sentences maximum.
3. **Objective of the Agreement/Deliverables** - Complete this section with the affirmative obligations of the contractor, the objectives of the contract/project or goals to be achieved and the deliverables. Objectives and goals should be measurable.

**X Poor Example:** Task: Assess class needs for public health awareness.  
Deliverable: Write curriculum to address needs.

The problem with the above example is that nothing is specified. The task should be measurable, and the deliverable must be quantifiable.



**Good Example: Task:** Survey 4 classes of 20 students in asthma awareness. Each class will answer a 25-question survey that assesses their general knowledge of asthma issues as they relate to public health. One reviewer should take up to 1 hour with each class to take the survey and another 2 hours per class to assess the data.

**Deliverable:** A 10 - hour curriculum for graduate student classes of up to 20 students that addresses issues of deficiencies in public health awareness in asthma prevention and care.

By reading the tasks and deliverables, the associated costs should be easily constructed, aiding in the construction of a detailed Attachment B, Payment Provisions. More importantly, in reviewing the deliverables, there should be no question about what is expected of the performing party. A SOW may contain many deliverables, but each should be broken down into tasks and products to specify what is expected.

- 4. Administration** - If there are meetings, calls, conferences, or other “soft” deliverables, they should be outlined in the administration portion of the SOW. Any requirement that is not an end product of a specific task, but is required of the performing party, needs to be described in the administration section of the SOW.



**Poor Example:** The Contractor will be required to give periodic reports of progress during the soybean season with more frequent reports during the height of the season.

The problem with the above example is it does not specify what needs to be in the reports, what “periodic” or “more frequent” means, and when the “height of the season” is.



**Good Example:** The Contractor *shall* be required to give weekly reports consisting of: wind pattern analysis, fungi spore distribution, and potential risk areas. During the height of the season, May 15 - July 15, the Contractor may be required to give twice - weekly reports.

- 5. Timeline** - This section lays out all dates for the project tasks and deliverables. Also included are the dates for the administration portion of the SOW.
- 6. Key Elements** - Between the Needs Statement, Goals of the Agreement, Objectives/Deliverables, Administration, and Timeline components of the SOW, there should be no ambiguity as to what is expected of the performing party. Together, these elements should paint a thorough picture of what is expected, when, and in what form, while noting any special requirements.

## Appendix III: Attachment B Payment Provision Guidelines

The main body of the Standard State Contract only states the maximum amount to be paid. Attachment B describes how and when payments will be made. Although the Payment Provisions (Attachment B) need not be long in the case of simple contracts, a well-written Attachment B is vital to eliminating payment problems during the contract term.

The language below may be used as the standard opening paragraph for Attachment B:

*“The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this Agreement, item 3. State of Vermont payment terms are Net 30 days from date of invoice; payments against this contract shall comply with the State’s payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this Attachment. The following provisions specifying payments are as follows:”*

The following requirements and/or areas to consider may assist Agencies/Departments in developing well-written payment terms:

### 1. **PRICING: What is the price based on and does it relate to Attachment A?**

- Units of work measures, such as hourly rates, hourly rates by specified position(s) or equipment;
- Specific and measurable deliverables, tasks or benchmarks;
- Progress payments based on days/weeks/months;
- Achievement of outcomes and/or performance measures toward the final result, as outlined in Statement of Work-Attachment A;
- Quality standards;
- Formal acceptance process for deliverables;
- Additional items included in the price, such as fuel surcharges, environmental fees, etc.;
- Retainage provisions.

### 2. **INVOICE SUBMISSION, APPROVAL AND ACCEPTANCE: What is the invoice and payment process?**

- Detailed invoices are required, per [32 V.S.A. §463](#). A detailed invoice must include the following details;
  - The name and address of the Contractor (letterhead or signed by Contractor);
  - Specific language itemizing the deliverables, units of measure, steps achieved, or progress made;
  - Dates of service or specific dates worked;
  - The Contract number and the name of the project;
  - Delivery tickets (proof of purchases), receipts or other documents to be attachments to substantiate the invoice;
- Other invoice review and approval considerations may include:
  - To whom and where the Contractor remits the invoice for pre-payment review and approval;
  - The invoicing schedule, preferably on a monthly basis.
  - How will you know when the work being billed is acceptable – who decides?



- Who is(are) authorized approvers for the invoice?
- Address the process for invoices not approved due to: unacceptable work; missing a deadline; incomplete work; etc.
- Address the process for handling and resolving payment disputes.
- Address any funding contingencies upon which this contract is based that could affect payment to the Vendor (i.e., Federal Grant Awards, Legislative Appropriation, etc.).

**3. CONTRACTOR PAYMENTS: What can the Contractor expect?**

- Standard State payment policy is Net 30 days, from date of error free invoice receipt;
- The preferred method of payment is by ACH (**A**utomated **C**learing **H**ouse is a secure payment transfer system that connects all U.S. financial institutions. The *ACH* network acts as the central clearing facility for all Electronic Fund Transfer (EFT) transactions that occur nationwide.);
- To provide a current IRS Form W-9, signed within the last 6 months.
- Retainage provisions.
  
- **PAYMENT QUESTIONS: Whom should the contractor communicate with if they have a question about their payment or method of payment (check, ACH Transfer, etc.)?** In addition, the State Treasurer's Office maintains a Vendor Portal on which Vendors may access any payment made electronically, by ACH or wire:  
<http://www.vermonttreasurer.gov/content/accounting/vendor-login>.

## Appendix IV: Attachment D – Examples of Common Additional Term & Conditions

Many contracts can be fully described using the Contract and standard Attachments A, B and C. In some cases, however, agencies will want to add additional provisions tailored to a specific need or their Contracting Waiver Plan, not available in the Standard Contract and Attachments.

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 “Approved Modifications to Attachment C” should be used for these modifications, as necessary. Consult with the AGO or the Director of Risk Management to ensure you are selecting the correct language.

**Below are examples** of the more common modifications, including explanatory guidance where necessary.

***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.

**Guidance:** *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.*

***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 claim.

**Guidance:** *Licensed Professionals with whom the State contracts, such as lawyers, architects, engineers, health care providers, etc. must be required to maintain professional liability insurance in sufficient amounts to protect the State’s interest from the consequences of negligence. It is important to note that “professional liability” is a generic category of coverage including types such as: Physician’s medical malpractice; architect’s errors & omissions; etc. The Director of Risk Management will determine the minimum amount appropriate for different classes of professionals.*

***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.

**Guidance:** *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.

**Guidance:** 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, retained or destroyed 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.

**Guidance:** 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.

**Information Technology Terms & Conditions:** See IT Guideline for specific Attachment D terms & requirements related IT Activities.

**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.

**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.

**Guidance:** *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.

**Guidance:** *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.*

**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.

**Guidance:** *This clause may be used either in Attachment A (Specifications of Work to be Performed) or Attachment B. 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 V: Acronyms Used in This Bulletin

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**AA-14:** State of Vermont Contract Summary and Certification form

**ACH:** Automated Clearing House

**AAG:** Assistant Attorney General

**ADS:** Agency of Digital Services (formerly Department of Innovation and Information)

**AG:** Attorney General

**AGO:** Attorney General's Office

**AoA:** Agency of Administration

**BAFO:** Best and Final Offer

**BDA:** Blanket Delegation of Authority

**BGS:** Building and General Services

**CFR:** Code of Federal Regulations

**CIO:** Chief Information Officer, Agency of Administration

**CMO:** Chief Marketing Officer

**CPO:** Chief Performance Officer

**DHR:** Department of Human Resources

**DUNS:** Data Universal Numbering System

**EBB:** Electronic Bulletin Board

**EFT:** Electronic Fund Transfer

**FAQ:** Frequently Asked Questions

**F&M:** Department of Finance and Management

**FERPA:** Family Education Rights and Privacy Act

**FFATA:** Federal Funds Accountability and Transparency Act

**FICA:** Federal Insurance Contributions Act

**FSRS:** Federal Subaward Reporting System

**GAAP:** Generally Accepted Accounting Principles

**GSA:** Federal General Services Administration

**HIPAA:** Health Insurance Portability and Accountability Act

**IaaS:** Infrastructure as a Service

**IRS:** Federal Internal Revenue Service

**IT:** Information Technology

**LLC:** Limited Liability Company

**MOA/MOU:** Memorandum of Agreement; Memorandum of Understanding

**OMB:** Federal (White House) Office of Management and Budget

**OPC:** Office of Purchasing and Contracting

**PaaS:** Platform as a Service

**P.O.:** Purchase Order

**RFP/RFI/RFC/RFQ:** Request for Proposal; Request for Information; Request for Comment or Request for Quote

**SaaS:** Software as a Service

**SAM:** Federal System for Awards Management

**SLA:** Service Level Agreement

**SOA:** Secretary of Administration

**SOV:** State of Vermont

**SOW:** Statement of Work

**V.S.A.:** Vermont Statutes Annotated

**VISION:** Vermont Integrated Solution for Information and Organizational Needs

## **Appendix VI: Bulletin 3.5 Quick Reference Guide**

[Continued on next page.]

BULLETIN 3.5 QUICK REFERENCE GUIDE				Competitive Process			Prior Approvals Required						
				Standard Bid	Simplified Bid	Pre-Qualified Vendors	Supervisor <sup>1</sup> (Appointing Authority)	Attorney General	Finance & Management	Secretary of Admin. (SOA)	CIO	CMO	Comm DHR
Competitive Process, Waivers & Approvals	<b>1. Original Contracts Awarded - by Competitive Process</b>												
	\$1 to \$24,999.99 – Short-Form Contract and Short-Form Attachment C may be used, for one-time, annual services, except for life safety, hazardous materials, transport of persons and data usage/sharing. However, a current insurance certificate must be on file.				✓								
	\$25,000 but less than \$500,000				✓	✓		✓					
	\$500,000 or greater				✓			✓		✓			
	Zero-Dollar Contracts				✓			✓		✓			
	<b>2. Original Contract Awarded – No Competitive Process (“Sole Source”)</b>												
	Sole Source Award \$10,000 or less				Direct Award, non-competitive process			✓					
	Sole Source Award greater than \$10,000				Direct Award, non-competitive process			✓		✓	✓		
	If applicable, IT Sole Source needs CIO approval prior to SOA				Direct Award, non-competitive process			✓				✓	
	<b>3. Original Contract Waiver Requests – Contracting Plans</b>												
Waiver Requests Other than Sole Source (refer to dollar thresholds)				✓	✓	✓	✓		✓	✓			
Special Contract Type Added Approvals	<b>4. Contract Types Requiring Additional Approvals (in addition to Prior Approvals listed above #1, 2 and 3)</b>												
	Information Technology & Security RFP										✓		
	Information Technology & Security Contracts over \$500,000										✓		
	IT & Security Contracts (electronic processing, storing, or transmission of confidential information)										✓		
	IT & Security Contracts for Cloud Services										✓		
	Marketing Contracts											✓	
	Privatization Contracts								✓		✓		✓
	State of VT Employees & Retiree Contracts												✓
	Contracts including a Change Order Processes								✓		✓		
	Financial Transaction Contracts & Zero-Dollar								✓		✓		
Agreements to Receive or Access Confidential Information								✓		✓	✓		

- This guide is intended as a quick reference 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;
- Additional Agency or Departmental conditions, not included in this Bulletin, may apply.

<sup>1</sup> Supervisor – a.k.a. the Appointing Authority: any secretary, commissioner, executive director, elected officer, or other exempt head of a department or agency.

<sup>2</sup> Monetary Thresholds are cumulative - if the original contract amount plus all amendments reaches a new threshold; the requirements for the higher threshold apply.