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Susanne R. Young, Secretary

TO: Agency and Department Heads and Elected Officials

CC: Brad Ferland, Deputy Secretary of Administration
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FROM: Susanne Young, Secretary of Administration 

DATE: December 12, 2018

SUBJECT: Mandatory Language for Sole Source Contracts and Amendments to Sole Source Contracts

Effective December 16, 2018, Vermont law (3 V.S.A. § 347) requires State sole source contracts for services to include a certification by the contractor regarding compliance with 17 V.S.A. § 2950, a campaign finance law restricting campaign contributions by certain sole source contractors and otherwise limiting sole source contracting by a party sufficiently connected to a campaign contribution to a State officer or a candidate for a State office. Reference 17 V.S.A. § 2950 (available at: <https://legislature.vermont.gov/statutes/section/17/061/02950>).

As a practical matter, because the requirement set forth in 3 V.S.A. § 347 applies not only to a single sole source contract valued at \$50,000 but also to “multiple sole source contracts valued in the aggregate at \$100,000 or more,” every sole source contract for services, including contracts under \$10,000, must be clearly identified as a sole source and include the required contractor certification. To implement this requirement, the following updates are being made to State contracting forms and policies:

1. Bulletin 3.5 has been updated to add a new subsection (d) within Section VIII(D)(1) (The Bidding Process, Exceptions and Waivers, Sole Source Contracts), to read as follows:

d. Mandatory Language for All Sole Source Contracts

As directed by 3 V.S.A. § 374, all Sole Source Contracts executed on or after December 16, 2018, shall include a certification by the Contractor as to its compliance with the campaign contribution restrictions set forth in 17 V.S.A. § 2950. To implement this requirement, a Contract procured as a Sole Source, and every amendment to the Contract, must include language that identifies the contract as a sole source, along with the requisite Contractor certification. Therefore, all Sole Source Contracts, regardless of dollar amount, and any amendment to the Contract, shall include the following language:

“This Contract results from a “sole source” procurement under State of Vermont Administrative Bulletin 3.5 process and Contractor hereby certifies that it is and will remain in compliance with the campaign contribution restrictions under 17 V.S.A. § 2950.”

To facilitate compliance with this requirement, it is incumbent upon the contracting Agency to ensure that the above language is included whenever executing or amending a Contract that has been procured as a Sole Source.

2. Bulletin 3.5 Section III (Definitions) has been updated to include a definition for sole source contracts, as follows:

Sole Source Contract: means a Contract that is entered into without first undertaking a competitive process described in this Bulletin.

3. Bulletin 3.5 Section XIII(A)(1) (Contract Amendments, Approval and Execution, Contract Amendments, Amendment Requirements) has been updated to add a new subsection (e), to read as follows:
 - e. All Contract Amendments and Change Orders to a Contract originally procured as a Sole Source must include the mandatory certification language set forth under Section VIII(D)(1)(d) of this Bulletin.
4. All pertinent State contracting forms (Standard and IT Contract Forms, Short Form Contract, Contract Amendment Form, and Novation and Amendment Form) have been updated to prompt inclusion of the mandatory sole source certification language described above. **It will be incumbent upon users, however, to remove the language from the form when it is not applicable.** Current forms are maintained online at:

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

5. Form AA-14 Section III has been updated to require an affirmative indication that either the Contract Form includes the sole source self-certification language, or the requirement is not applicable.

As ever, and to ensure compliance with this new law, Agencies and Departments are expected to use current forms when generating a contract or amendment. Furthermore, to enable accurate reporting to the contractors and candidates who must comply with this law, Agencies and Departments must ensure contract records in VISION are correct, complete, and always up to date. Periodically Agencies and Departments will be required to verify the accuracy of contract records in VISION.

A competitive bid process is always preferred, and waivers of the bid process will not be granted absent a clear and convincing link between the service sought and the Agency conclusion that there is only one potential contractor capable of providing the service required. Any Agency or Department desiring to enter into a sole source contract having a value greater than \$10,000 must submit a sole source justification memo to the Department of Finance and Management **before** circulating the Form AA-14 and contract package for any required approvals. 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 Administrative Bulletin 3.5.

The use of “sole source” or “no-bid” contracts is contrary to the competitive process supported by the State and will be avoided except when no available alternative exists. See Bulletin 3.5 Section VIII(D) for further information.

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It is imperative all Agencies and Departments ensure the required sole source certification language is included whenever executing or amending a contract that has been procured as a sole source.

Immediate Action Items:

If a sole source contract, amendment or change order is presented to you for approval on or after December 16, 2018, confirm the contract terms include the required sole source certification. This may require further communication with the potential contractor before final execution of the contract.

Please call Deb Damore, 802-828-5784, or email at deborah.damore@vermont.gov if you have any questions.