



ADMINISTRATIVE BULLETIN 3.5 ~ PROCUREMENT & CONTRACTING PROCEDURES

EFFECTIVE JULY 1, 2016

Presented by:

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Disclaimer: This presentation is intended for training purposes only. It is not all inclusive and is not a substitute for reading, understanding and complying with Bulletin 3.5, in its entirety.

AUTHORITY AND PURPOSE

- 3 VSA § 2222(a)(2) provides the Secretary of Administration (SOA) with the authority to promulgate rules for the Executive Branch - such as Bulletin 3.5 ~ Procurement and Contracting Procedures;
- Purpose of Bulletin 3.5:
 - Applies to the procurement of **all contracts**
 - Requires supporting documentation regardless of dollar amount;
 - Provides guidelines for conducting procurements & contracting
 - Establishes minimum benchmarks and protocols to ensure the solicitation and awarding of contracts are **completed with sufficient competition.**
 - **Ensure fair and open competition; guard against favoritism;** improvidence; extravagance; fraud and corruption;
 - Ensure results meet needs
 - Provide for checks and balances and oversee agency procurement activities
 - **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.

TYPES OF CONTRACTS

1. Commodity & Non-Service
 1. Supplies, materials, goods, etc.
 2. IT Hardware & Software Purchases (includes software-as-a-service)
 3. IT License Agreements (including maintenance and upgrades)
2. **Contracts for Service (including Personal Service and Non-Personal Service)**
 1. Professional Service (licensed professionals);
 2. IT Implementation – Other IT may not be services, they may be commodity or Operating Expenses;
 3. Construction Services;
 4. Marketing Services – special contracts and rules exists from the CMO;
 5. Data Usage and/or Data Sharing – additional considerations such as: how the data will be used; security of the data; protection for confidential information; access to the data; ownership of the data; and return or destruction of data;
 6. Financial Transactions - Contract with a bank or other entity to handle in-bank or on-line financial transactions;
 7. Zero-Dollar (No-Cost) - occasionally used when a vendor performs services for compensation other than direct payment made by the State (may include Financial Transactions contracts);
 8. Other - other consultants and services.

CONTRACTS FOR SERVICE: PERSONAL SERVICE; NON-PERSONAL SERVICE AND PRIVATIZATION

■ New Definitions passed in 2016 Act 78 (H.530):

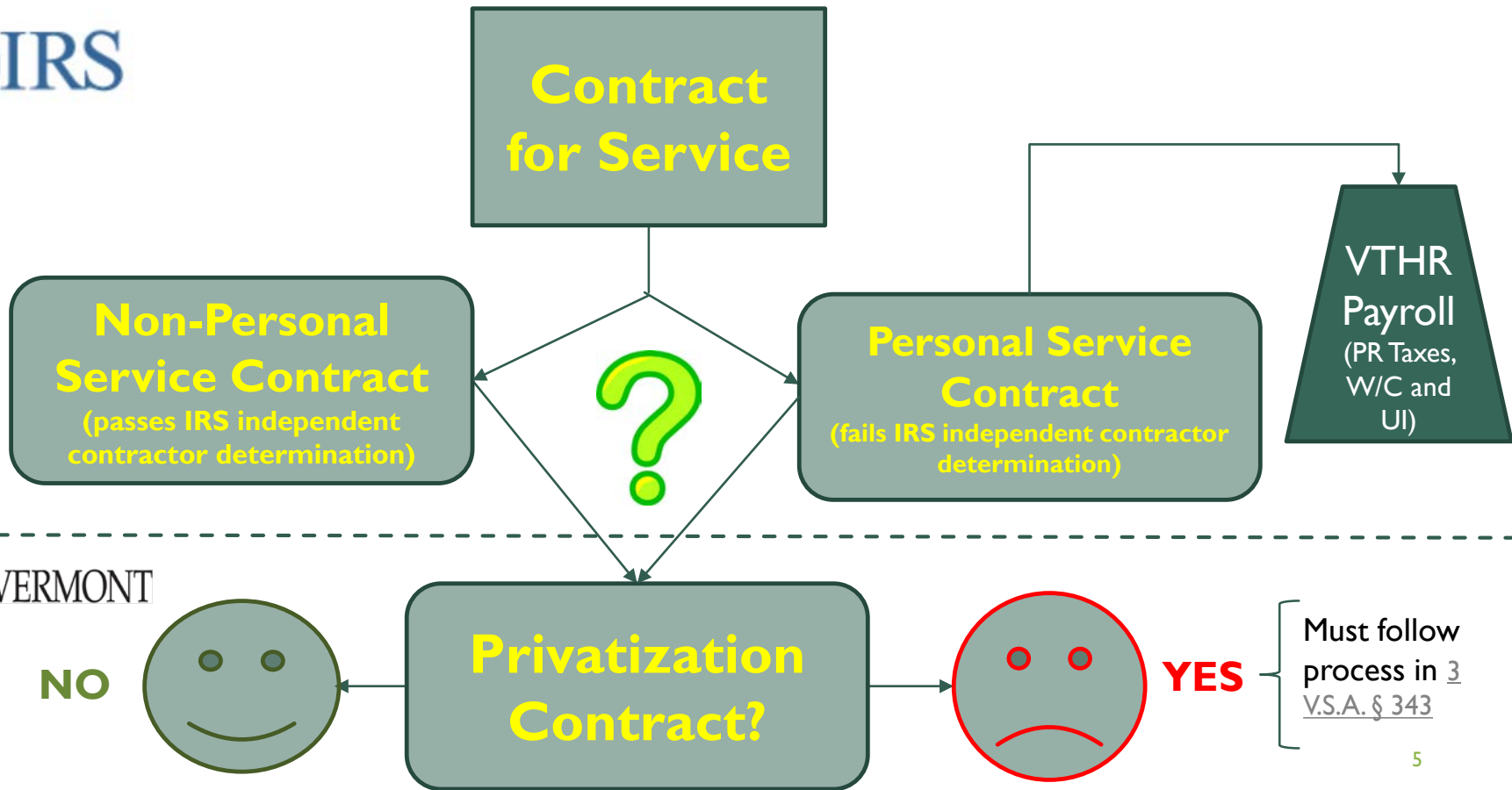
- **“Contract for services”** means an agreement or combination or series of agreements by which an entity or individual agrees with an agency to provide services as a contractor, rather than as an employee (3 V.S.A. § 341(4));
 - **“Personal Service Contract”** a contract for services that is categorized as personal services in accordance with procedures developed by the Secretary of Administration (Bulletin 3.5) and is consistent with subdivisions 342(1), (2), and (3) of this title ((3 V.S.A. § 341(4));
 - **“Privatization contract”** means a contract for services valued at \$25,000.00 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, or the elimination of a vacant position of an employee covered by a collective bargaining agreement (3 V.S.A. § 341(4))

■ New Definition in Bulletin 3.5 (did not need to be in statute – if it is a Contract for Service, but NOT a Personal Service Contract, then it is a Non-Personal Service Contract, by default):

- **“Non-Personal Service Contract”** – contracts with individuals such as (but not limited to) 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 retained under non-personal services contracts and generally have the characteristics of **Independent Contractors**.

■ ALL PERSONAL SERVICE, NON-PERSONAL SERVICE AND PRIVITIZATION CONTRACTS **ARE** CONTRACTS FOR SERVICE.

CONTRACT FOR SERVICE DETERMINATION: PERSONAL, NON-PERSONAL OR PRIVATIZATION?



WHEN MUST WE PAY CONTRACTORS THROUGH PAYROLL?

- The IRS determination is based on:
 - 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; or
 - 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, it is presumptively determined to be a **Personal Services Contract**. Continue with IRS test – see Publication 15A. IRS doesn't care if you characterize as “contractual” rather than as “employment”.

- When IRS determination deems the relationship as “employment” or “employee like”– the IRS requires the “employer” (State of VT) to pay employer FICA, Workers' Compensation and Unemployment Insurance coverage, and deduct employee FICA (SS and Medicare) from the payments to the contractor;
- Working with AGO, AAG, in-house counsel or DHR general counsel may help.

IS A PRIVATIZATION CONTRACT PERSONAL OR NON-PERSONAL SERVICE?

- Privatization contracts may be either Personal Service or Non-Personal Service;
 - **What matters** is whether a contract for services 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. For additional information, refer to Section V.D.2. and 3.a. of Bulletin 3.5.*

WHAT COULD HAPPENS IF AN “EMPLOYEE-LIKE” CONTRACT IS NOT PAID THRU PAYROLL?

- Should the Contractor file a Workers’ Compensation or Unemployment claim, VDOL will make their own determination based on federal law;
- If VDOL determines the contract failed the IRS Independent Contractor criteria and should have been handled as an “employee-like” personal service contract, paid through payroll, and covered by State Workers’ Comp and/or Unemployment Insurance, the department will be required to pay the cost of the WC or UI claim and perhaps penalty and interest;
- Last year a claim cost a department \$8,000 - contractor filed for unemployment after the contract term expired;
 - Contractor was hired to do work that was backlogged due to a vacant position; and
 - Dept. had another position actively doing the same work;

AGO CERTIFICATION VS. IRS DETERMINATION

- Isn't the AGO certification # VSA§ 311(a)(10) (formerly called the “ABC” test) the same as the IRS Determination (also referred to as an ABC test)?
 - No – although similar, they are different;
 - IRS determines whether the contractor is an “independent contractor” or in an “employee-like relationship” with SOV for federal payroll tax and labor law requirements;
 - If deemed “employee-like” the contractor must be paid according to IRS tax rules and USDOL insurance rules (FICA, W/C and UI – but no other benefits);
 - AGO certification looks at whether the contract is in conflict with the “intent” of the bargaining units agreements:
 - Although the first three items considered are close to the IRS 3-point determination, the AGO certification goes on to allow for 9 exclusions;
 - These 9 exclusions have no impact on the IRS determination.

SHORT-FORM CONTRACT PACKAGE (INCLUDING SHORT-FORM ATTACHMENT C)

- Only for limited purchases of service not exceeding 12 months and \$24,999.99;
 - Except: **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;**
- Must be used together as a package (Short-Form Contract and “Mini” C);
- Why? FY 2014 and FY 2015 combined:
 - Contracts below \$25k = 2% Dollars but 56% of # contracts
 - Administratively burdensome for everyone:
 - Appointing Authority approval
 - No AGO certification required
 - Everyone can spend more time on bigger value contracts
 - Acceptable business risk

ALTERNATIVES TO CONTRACTS FOR SERVICE

- **MOUs or MOAs** – **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.
- **Grants:**
 - Used 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**
 - 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**
 - 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.”
- **Capital Leases** – Capital Leases meet one of 4 special criteria – they are accounted for as a form of State Debt – you must have special permission from AoA and Treasurer's office to enter into a capital lease.

COMPETITIVE BIDDING AND THRESHOLDS

- Competitive process of procurement is King! State and Federal preference
 - EO #3-20 *“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.”*
- Types of Competitive Bidding Process
 - 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.
 - Standard Bid – value is greater than \$100,000 and process is publically advertised
 - Simplified Bid – value is less than \$100,000 and a minimum of 3 quotes are solicited
 - Statewide Contracts – open for use by all Agencies
 - Retainer Contracts – pre-qualified contractors for a specific type of service such as IT web or marketing (updated every 2 years)
 - BDAs – authority for departments to purchase products directly under \$3,500 (not covered under an existing contract). Restrictions include:
 - Services
 - IT <http://bgs.vermont.gov/purchasing/forms>
 - Print <http://bgs.vermont.gov/purchasing/print>
- P-Card – The Purchasing Card is authorized for purchasing and paying for noncontract transactions with a total value of \$3,500 or less per transaction. The Purchasing Card is authorized as a form of payment on contracts that have been identified and approved by Purchasing. Program requirements are available on-line at <http://bgs.vermont.gov/purchasing/pcard> .

RF(X)

- **Request for Information (RFI)** - Generally used to obtain information, such as capabilities, practices, systems, licenses, etc. to address a particular need to help develop an effective RFP.
- **Request for Comment (RFC)** – A process whereby the State issues a future/proposed RFP in order to solicit input about all or a portion of the RFP structure, language, methodology, etc.
- **Request for Proposal (RFP)** - Usually used for recurring requirements or very complex purchases or agreements.
- **Request for Quote (RFQ)** – Generally used for a one-time bid and buy requirement.

RFP POSTINGS AND BID ADMINISTRATION

- RF(x)s are posted to the Purchasing & Contracting web-site, with notices posted to what we consider the EBB (Electronic Bulletin Board).
- Example of Key elements to an RFP:
 - Agency Objectives and Background
 - Scope of Services – formation and foundation of an effective contract starts with the drafting of the solicitation.
 - Detailed Requirements – Identify minimum requirements that the agency deems essential to the program.
 - Performance Standards
 - Method of Award and Evaluation Criteria – minimum qualifications?
 - Single Point of Contact
 - Pre Bid Meeting ? If yes, optional or mandatory?
 - RFP Timeline/Calendar
 - Question / Response Deadline
 - Due date and time for submission of proposals
 - Minimum insurance requirements

COOPERATIVE CONTRACTS

- Cooperative Initiatives: BGS has specific statutory authority to enter into and participate in cooperative procurements and contracts as well as piggybacking off existing contracts.
 - Whenever feasible, Vermont participates in various cooperative purchasing opportunities.
 - We actively seek opportunities to leverage our spend and resources.
 - Vermont benefits substantially in being a participant in multi-state contract bidding. Lower pricing derived from much greater combined quantities is the prime motivation. Another advantage would be the greater influence over vendors that will meet special requirements.

WAIVERS AND CONTRACTING WAIVER PLANS

- The SOA may waive any non-statutory requirement of Bulletin 3.5;
- No Waivers Allowed for State or Federal statutes,
- Common Waiver Requests (Bidding Process):
 - Sole Source Request (justification to do a non-competitive award);
 - Duration (justification to exceed 4-year max duration when in the best interest of the State);
 - Threshold Approvals (example: BGS \$500k for commodities);
 - Insurance Requirements (may be reduced by Manager of Risk Management or SOA);
- Agencies may develop a written **Contracting Waiver Plan (Plan)** to propose acceptable alternatives to non-statutory requirements of 3.5. The Plan provides a process to request modifications for certain classes of contracts or requirements that cannot reasonably be accommodated within the policies of Bulletin 3.5, or which will allow for more efficient operations without an undue increase in risk to the State. The Plan must be submitted to the SOA for approval; the SOA may approve or deny the Plan, in whole or in part. Plans must be renewed each time 3.5 is revised.

DRAFTING THE CONTRACT

- Standard State Contract Forms (Templates and Attachments); start with the basics <http://bgs.vermont.gov/purchasing/forms>
 - Standard State Contract Form
 - Attachment A – Scope of Work (the formation and foundation of an effective contract starts with the drafting of the solicitation)
 - Attachment B – Payment Provisions
 - Attachment C – Standard State Contract Provisions
 - Attachment D – Approved Modifications to Attachment C, modifications to a Contractor document or other required Terms and Conditions
 - Additional Attachments as necessary

DRAFTING THE CONTRACT (CONTINUED)

- 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 authorization 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.

PERFORMANCE MEASURES & ACCOUNTABILITY

- 3 V.S.A. § 2313 requires State contracts to include performance measures which enable the contracting Agency to hold the contractor/grantee accountable and assess the performance of their services and deliverables under the terms of the Scope 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.
- 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.
- Contract Statement Of Work (Attachment A) must specify the timeline for the deliverables, including interim steps, and measurable standards to be maintained during the contract performance period.

ATTACHMENT C – STANDARD STATE TERMS & CONDITIONS FOR CONTRACTS AND GRANTS

- Attachment C, effective 7/1/16 (“New C”) has been reorganized to segregate terms specific to grants in a separate section;
- New C has broken out Independence and Defense Immunity (the combined version was often at issue);
- New C has reduced standard auto insurance requirement– down to \$500k – except construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1 million, combined single limit.
- New C has additional sections required by the Legislature: Whistleblower Protections, False Claims Act
- New C has best practice contract law additions: Force Majeure, Sovereign Immunity, Taxation on Purchases, Marketing, State Facilities, Location of State Data, and Continuity of Performance.;
- ABSOLUTELY, POSITIVELY No Changes to Attachment C are allowed– any changes and/or additional terms & conditions must be made using Attachment D;
 - Work with AGO, AAG, or inhouse counsel on Attachment D.

INSURANCE COVERAGE AND CERTIFICATE OF INSURANCE

- Departments must keep a valid Certificate of Insurance, including workers compensation coverage, as required, on file for active contracts;
- A process must be in place to secure a new Certificate of Insurance once coverage has expired;
- Certificates of Insurance may be filed in each contract file, or all together with cross-references;
- Auto Coverage lowered to \$500,000;
 - Except for ***life safety, transport of persons, hazardous materials, construction, data usage or sharing, and/or access to confidential information.***;
 - *Why? Low Claims experience and makes it easier for small vendors to comply.*

WORKERS' COMPENSATION INSURANCE

- Departments must keep a valid Certificate of Insurance, including workers compensation coverage, as required, on file for active contracts;
- State can now cover all contractors paid on payroll and the anomaly of Sole Person LLCs who have elected not to have W/C coverage (allowed in VT);
- When contracting with out-of-state vendors, their Workers' Comp insurance carrier must be licensed to write coverage for Workers' Compensation in Vermont. Not all carriers are licensed to cover W/C in Vermont. Attachment C language:
 - *Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary, to comply with Vermont law.

CONTRACT APPROVALS

- Form AA-14 Contract Summary and Certification is used to collect required signatures
- Appointing Authority must sign all contracts & is responsible overall;
- SOA and AGO depends on:
 - \$ Threshold, Competitively Bid;
 - \$ Threshold, Sole Source Waiver;
 - Special Contract Type;
- CIO, CMO and Commissioner of DHR depends on Contract Type;
- Every contract must be entered into VISION system, regardless of \$.
- Contract Amendments follow similar but somewhat different rules.

E-SIGNATURES

- The State currently uses a hosted e-signature system, but other systems approved by DII may be used (example: Abode only for Military);
- Very important that e-signatures are obtained in order (if applicable):
 1. Department Appointing Authority
 2. Agency Appointing Authority
 3. AGO
 4. CIO, CMO, DHR
 5. F&M Budget Analyst
 6. SOA
- Very important that contract package documents are in the required order to ensure ease of review by e-signers;
- BUT – departments wanting to adopt e-signature going forward must get approval from the Commissioner of Finance & Management to adopt use of e-signature due to constraints.

CONTRACT EXECUTION, CONTRACT FILE AND OTHER ITEMS

- Procurement process must be documented from RFP through Contract Execution and completion/payment;
 - Check-list provided for contract file – adherence will help eliminate audit findings;
- Conflict of Interest – if it looks like a duck...
- Statewide, Master, Retainer Contracts and BDA
- Subcontractors – The contractor may not subcontract the contract with SOV, in whole or in part, without prior approval by the State. Even with approval, the original contractor remains responsible and liable for the work and monitoring the subcontractor.
- Novation & Assignment – used when a contract is transferred to a new entity or the contractor is purchased by another organization. Always work with the AGO or legal counsel.

CONTRACT AMENDMENTS

- Amendments are now easier to do and get approved:
 - No 3rd Amendment approval rule;
 - Allows for Amendments (for optional years/periods to be pre-approved if explicitly detailed in original contract and no changes are made);
- All Amendments must be approved by Appointing Authority;
- No AGO or SOA approval required if:
 - “Sole Source” Amendment, and
 - Only to extend duration and increase the maximum amount as expressly contemplated under the terms of the original contract, and
 - Maximum amount of the contract remains under \$100,000 (with no change to scope of work or other contract terms);
 - Contract procured as Simplified bid or RFP, and
 - Cumulative effect of the amendment and all prior amendments increases the contract price by up to 25%, and
 - Only extends duration and increases the maximum amount as expressly contemplated under the terms of the original contract (with no change to scope of work or other contract terms).

CHANGE ORDERS

- CHANGE ORDERS ARE NOT CONSIDERED LEGALLY ENFORCEABLE– only appointing authorities can legally obligate the State;
- To obligate the State, change orders must be periodically consolidated and turned into executed contract amendments; when an Amendment is triggered;
- It does not matter if your contract allows a “project manager” to approve change orders because statutorily only Appointing Authorities may obligate the State;
- Some industries accommodate change orders and have industry practices and case law to control how the change order process will work and be enforceable (Construction under AIA practices – court tested);
- With the exception of Construction contracts where change orders are part of industry practice, the AGO and SOA must pre-approve contracts which include a change order process;
- Recently, IT Implementation projects have begun to use change order processes– BUT change orders must periodically be consolidated and turned into executed contract amendments; when an Amendment is triggered;
- If your contract is not Construction or a major IT Implementation do not expect to be able to justify employing a change order process or get it approved.

PUBLIC RECORDS

- Each department should have an assigned “public records officer” responsible for meeting Vermont Public Records Act (1 VSA § 315-320) requirements and recording the requests in the State database.
 - If records officer is not a lawyer, always contact and work with AGO, AAG, or in-house counsel when a public records request is received;
- As relates to Contracts:
 - During RFP process, all bidder responses remain “closed” until a contract is awarded and executed, or, until the State has not awarded and has decided not to go out for re-bid.
 - RFP responses from bidders should note all confidential or proprietary items in their responses and WHY. We may not agree that their reason is valid and may need to work with them. It is never allowed for a bidder to say their entire RFP response is confidential.
 - After execution of a contract – all documents associated with the bid, including all vendor proposals and evaluation notes, are then considered available for review by the public.

PUBLIC ENDORSEMENTS

- Writing/providing a recommendation to any vendor/person for their general use, is prohibited;
- The State cannot give the appearance of “endorsing” a person, product, or company;
- The entire procurement process could be tainted as not “open and fair” if it appears that the State had already “recommended” or endorsed a particular vendor in writing;
- 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.

INFORMATION TECHNOLOGY (“IT”) GUIDELINE

- The Guideline is designed to provide guidance to Agencies who are involved in the procurement of Information Technology Activities.
- The goal of the Guide was to establish a standard framework for the procurement of information technology activities, increase awareness of the numerous issues and risks Agencies may face when conducting IT procurements and to provide assistance for effectively addressing those issues and risks.
- The procurement of IT products and services requires special diligence and the application of best practices to obtain secure, best-value IT solutions for the State. IT Products and services differ in complexity and analysis from other commodity and service procurements because technology is constantly changing due to new service offerings, technical modifications and improvements, new delivery technologies and security concerns.
- The Information Technology Procurement Guideline is a companion document to Bulletin 3.5 has the same authority of rule and can be found at <http://bgs.vermont.gov/purchasing/forms>

FORM AA-14 ~ CONTRACT SUMMARY & CERTIFICATION / AND VISION CHANGES

- Form AA-14 revised as of 7/1/16
 - Includes new types of contracts – check all that apply
- VISION contract section requires entry of these expanded data elements on the AA-14
- This will allow us to better report annually on:
 - Type of procurements process (standard bid, simplified bid, QBS, sole source or statutory)
 - Contract Category (commodity, personal service, non-personal service); and
 - Contract Type (construction, architecture & engineering, marketing, IT, professional service, data usage, retiree/former employee, financial transaction, zero-dollar, privatization and other)

RESOURCES

■ Resources:

- Bulletin 3.5, Guidance Documents, Contracting Waiver Plans, Templates and Aids online at: <http://aoa.vermont.gov/bulletins/3point5>
- Sue Zeller, CPO:susan.zeller@Vermont.gov or 802-828-6448
- Deb Damore, Director Office of Purchasing & Contracting:
deborah.damore@vermont.gov or 802-828-5784
- RFPs & Contract Templates, Standard Attachments, Other Forms and Useful Purchasing Info: <http://bgs.vermont.gov/purchasing>
- Deb Damore, Director Office of Purchasing & Contracting:
deborah.damore@vermont.gov or 802-828-5784
- General Purchasing Assistance: <http://bgs.vermont.gov/purchasing> or 802-828-2211
- Jaye Pershing Johnson, AAG:jaye.johnson@vermont.gov or 802-828-5623
- Jesse Moorman, AAG:jesse.moorman@vermont.gov or 802-828-5520
- Michele Anderson, DHR General Counsel:Michelle.Anderson@vermont.gov or 802-828-6233 (personal service contracts & privatization contracts)

ADDITIONAL RESOURCES

■ Office of Purchasing & Contracting Web -Site

At <http://bgs.vermont.gov/purchasing> you will find information regarding OPC staff and areas for which they are responsible. In addition, there is a listing of current statewide contracts giving important details with links to the actual text. You will also find the latest bid opportunities, news, frequently asked questions, and document templates. The information is updated continually to provide you with the most up to date information.

■ Office of Purchasing & Contracting Staff

The Purchasing Agents are always available to answer questions. They can assist you with questions related to contracts, bid opportunities, and bid questions. A list of Purchasing Agents can be accessed with the following link:

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




QUESTIONS?

■ Questions?

■ **THANK YOU!**

Notable Changes and Improvements in Bulletin 3.5 – July 1, 2016 Page 1 of 13

✓	Reduced minimum posting of RFP to 5 business days from 10 days;
✓	Implementation of 2-page short-form contract/terms & conditions in effort to streamline contracting for eligible services under \$25k – recognizes the reduced risk for general contracts; No changes or amendments allowed.
✓	Clarification between AGO Certification (vs. intent of classification system) and Federal A-B-C test for Independent Contractors;
✓	AGO certification required at \$25k and greater (no longer required for \$10,000.00 - \$24,999.99);
✓	New definition for “Contract for Service” – aligns with federal definition;
	<ul style="list-style-type: none"> ○ Redefined “Personal Service” to align with federal definition; <ul style="list-style-type: none"> ▪ Clear requirement to pay contractor through VTHR if deemed “Personal Service” for failing federal A.B.C test; ○ New definition for “Non-Personal Service” aligns with federal definition (vis à vis “Independent Contractor”)
✓	New threshold for “Contract for Service” and “Privatization” set at \$25k or greater;
✓	New graphic flow chart for Contract Determination (IRS A.B.C. test) and Privatization;
✓	New threshold for “Marketing” contracts at \$25k;
✓	Reduced number of Amendments requiring AGO and Secretary of Administration approval
	<ul style="list-style-type: none"> ○ Elimination of 3rd or more Amendments requiring approval (based on higher thresholds now); ○ No approval required for amendments that extend duration only (no changes to scope, price or other terms); ○ No approval required for amendments that increase the maximum amount in conjunction with extension of contract duration (no changes to scope or other terms), but only if such extension and increase are options specified under the terms of the original agreement (and, for sole source contracts, only if the maximum amount remains under \$100K); ○ Otherwise, approval required for all sole source amendments, and new single threshold for approval for amendments to competitively sourced contracts (25% cumulative price increase);
✓	Reduction in standard auto insurance coverage limit to \$500k, except for life safety, transport of persons, hazardous material, Data Use and Sharing, and construction – again – recognition of reduced risk and nominal claims experience;
	<ul style="list-style-type: none"> ○ Elimination of auto insurance requirement for all drop ship service;
✓	Inclusion of formal change order process for Construction and IT implementation contracts (only);
✓	Revisions to Attachment C:
	<ul style="list-style-type: none"> ○ Separation of and clarification to “Independence and Defense”, and “Indemnity” clauses which reflects current practice and simplifies AGO review; ○ Inclusion of statutory provisions such as False Claims Act, Whistleblower Protection and Public Records Information; ○ Clarification and language added for Workers’ Comp Insurance;
✓	New direction on order of document in “contract package” for e-signature system(s);
	<ul style="list-style-type: none"> ○ Suggested naming conventions for e-signature system(s)
✓	Contracting Aids:

- Separate IT Guideline – supplemental guidance document focused on IT procurement and contracting and carries the authority of 3.5;
- Reorganized flow of document in the order of the process;
- Better explanation and expansion of types of contract for service
- Expanded explanation of when an MOU/MOA may be used and when it may not;
- Addition to Form AA-14 and VISION - new data elements to allow better reporting of contract types and procurement process until new e-Procurement module is in place;
- Contract File checklist (helps avoid audit findings);
- Addition of  “KeyNote” boxes throughout Bulletin (referred to as “Kessler KeyNote” by the 3.5 Team);
- Contracting Waiver Plan template – allows for Approval or Denial by Secretary of Admin by individual waiver item; No need for back and forth revisions;
- Guidance documents for developing well written Attachments A and B;
- More guidance for simplified bid usage;
- Expanded Definitions from 13 in prior version to 49 – all “common terms” defined;
- Added an Acronym directory;
- Guidance/Policy on providing public endorsements;
- Guidance/Policy on Public Records;

✓ July 2016 Bulletin 3.5 Road Show Training scheduled;

✓ Planning to hold twice a year Bulletin 3.5 training program at CAPS;

✓ Updated 3.5 Quick Reference Guide;

✓ Updated contract and RFP templates are online at: <http://bgs.vermont.gov/purchasing/forms>

✗ Harder to do sole sources; Secretary of Admin approval required at \$10k;

✗ Ban on MOUs except between SOV units, municipalities and political subdivision (such as regional planning commissions); and between SOV and Feds;

STATE OF VERMONT STANDARD SHORT FORM FOR ELIGIBLE SERVICES

Contract # _____

Use of this Short Form is not authorized and the Standard State Contract Form must be used if any of the following apply: (i) the Contract Term is more than 12 months; (ii) the Maximum Amount is more than \$24,999; (iii) the Scope of Work involves 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.

- 1. **Parties.** This is a contract for services between the State of Vermont, _____ (hereafter called "State"), and _____, (hereafter called "Contractor"). It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
- 2. **Contract Term.** The period of Contractor's performance shall begin on _____ and end on _____. Either party may cancel this agreement by giving written notice at least thirty (30) days in advance.
- 3. **Maximum Amount and Payment Provisions.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified herein, a sum not to exceed \$_____.00. This maximum amount is not a guaranteed amount. Payment shall be contingent upon satisfactory performance by the Contractor. Payment terms shall be Net 30 days from an error-free invoice. Invoices must detail all work performed during the invoice period and the amount(s) payable therefore in accordance with the schedule for deliverables and/or rates for services set forth below. For any schedule for deliverables set forth herein, Contractor shall only submit invoices following State acceptance of the applicable deliverable or deliverable milestone.

DELETE THESE INSTRUCTIONS AND DESCRIBE HERE how, when and under what circumstances the Contractor may submit invoices to the State, and to whom within the State invoices must be submitted. As applicable, include the invoice schedule for delivered products, the rates for services performed (which could be fixed price, hourly, or otherwise), and additional reimbursements (if allowable, and require submission of receipts as applicable). Do not include due dates for State payment to Contractor. Rather, dates or schedules indicated here are to define either to deliverable deadlines (in which case State acceptance of the deliverable will trigger submission of an invoice) and/or specific dates or time periods after which the Contractor can submit an invoice.

- 4. **Scope of Work.** The subject matter of this contract is _____. Detailed services to be provided by the contractor are as follows:

DELETE THESE INSTRUCTIONS AND DESCRIBE HERE the work to be performed and/or the products to be delivered by the Contractor. Use clear, concise and complete statements to describe Contractor obligations. Do not use shorthand or outline format. A well written description should include the schedule for performance, identification of project deliverables, deliverable milestones, and standards by which the contractor's performance will be measured and accepted by the State. The deliverables and milestones should be used to inform the payment terms in Section 3 above.

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

By the State of Vermont:

By the Contractor:

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

STANDARD STATE PROVISIONS - FOR ELIGIBLE CONTRACTS UNDER \$25,000
JULY 1, 2016

1. Governing Law, Jurisdiction and Venue: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by the State or the Contractor in connection with this Agreement shall be brought in the Superior Court, Civil Division, Washington Unit.

2. Independence: The Contractor will act in an independent capacity and not as officers or employees of the State.

3. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

4. Insurance: Before commencing work on this Agreement the Contractor must provide certificates of insurance to show that the following minimum coverages are in effect. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor's operations.

Workers Compensation: With respect to all operations performed, the Contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary, to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Contractor shall carry general liability insurance. The policy shall be on an occurrence form and limits shall not be less than: \$1,000,000 Per Occurrence \$1,000,000 General Aggregate \$1,000,000 Products/Completed Operations Aggregate.

Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Automotive Liability: The Contractor shall carry automotive liability insurance Limits of coverage shall not be less than: \$500,000 combined single limit.

5. Fair Employment Practices and Americans with Disabilities Act: Contractor agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Contractor under this Agreement. Contractor further agrees to include this provision in all subcontracts.

6. Taxes Due to the State:

- a. Contractor understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Contractor certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Contractor understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Contractor is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Contractor also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Contractor has no further legal recourse to contest the amounts due.

7. Child Support: (Applicable if the Contractor is a natural person, not a corporation or partnership.) Contractor states that, as of the date the Agreement is signed, he/she: (a) is not under any obligation to pay child support; or (b) is under such an obligation and is in good standing with respect to that obligation; or (c) has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan. Contractor makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Contractor is a resident of Vermont, Contractor makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

(End of Standard Provisions)

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED JULY 1, 2016**

1. Definitions: For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party’s indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

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

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

A. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired

in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

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

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

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and

liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

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

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

24. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

25. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

26. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

27. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

28. Termination: In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

29. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

30. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

31. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

32. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(End of Standard Provisions)

I. CONTRACT INFORMATION:

Agency/Department: / Contract #: Amendment #:
 Vendor Name: VISION Vendor No:
 Vendor Address:
 Starting Date: Ending Date: Amendment Date:
 Summary of agreement or amendment:

II. FINANCIAL & ACCOUNTING INFORMATION

Maximum Payable: \$ Prior Maximum: \$ Prior Contract # (If Renewal):
 Current Amendment: \$ Cumulative amendments: \$ % Cumulative Change:
 Business Unit(s): ; ; - [notes:] VISION Account(s): ;
 Estimated Funding Split: % GF % SF % EF % Other
 % TF % GC-FUND % FF (name)

III. PROCUREMENT & PERFORMANCE INFORMATION (section A & B)

A. The agency has taken reasonable steps to control the price of the contract and to allow qualified organizations to compete for the work authorized by this contract. The agency has done this through:
 Standard bid or RFP Simplified Bid Sole Sourced Qualification Based Selection Statutory
 B. Does this contract include performance measures to evaluate the quality and/or results of the service? Yes No

IV. TYPE OF AGREEMENT (select all that apply)

Personal Service Construction Arch/Eng. Marketing Info. Tech. Prof. Service Data Use
 Non-Personal Service Retiree/Former SOV EE Financial Trans Zero-Dollar Privatization Other
 Commodity

V. SUITABILITY FOR CONTRACT FOR SERVICE

Yes No n/a Does this contract meet the federal determination of an Independent Contractor? If "NO", the contractor must be set up and paid on payroll through the VTHR system.

VI. CONTRACTING PLAN APPLICABLE

Is any element of this contract subject to a pre-approved Agency/Dept. Contracting Waiver Plan? Yes No

VII. CONFLICT OF INTEREST

By signing below, I (Agency/Dept. Head) certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.
 Yes No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

VIII. PRIOR APPROVALS REQUIRED OR REQUESTED

Yes No Agreement must be Certified by the Attorney General under 3 V.S.A. § 342 (sign line #4 below)
 Yes No I request the Attorney General review this agreement As To Form _____ (AAG initial)
 Yes No Agreement must be approved by the Comm. of DII; for IT hardware, software or services and Telecommunications over \$500,000
 Yes No Agreement must be approved by the CMO; for Marketing services over \$25,000
 Yes No Agreement must be approved by Comm. Human Resources (Privatization, Retirees & Former Employees)
 Yes No Agreement must be approved by the Secretary of Administration

IX. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

I have made reasonable inquiry as to the accuracy of the above information (sign in order):

1-Date	1-Agency/Department Head	2-Date	2-Agency Secretary (if required)
3a-Date	3a-CIO	3b-Date	3b-CMO
		3c-Date	3c-Commissioner DHR
4-Date	4-Attorney General	5-Date	5-Secretary if Administration

To:	Secretary of Administration
From:	[name of Agency or Dept.]
Subject:	Bulletin 3.5 Contracting Waiver Plan

The development of a Contracting Waiver Plan is provided for in Administrative Bulletin 3.5 ~ Procurement and Contracting Procedures (“Bulletin”). The following outlines such waiver(s)/modification(s) to the requirements of the Bulletin for which the agency/department listed above requests approval from the Secretary of Administration.

	Bulletin 3.5 Section, and Title	Waiver(s)/Modification(s) Requested:	Justification and Acceptable Alternative	Approved	
				Y	N
<i>Note: “Tabbing” through the last column/row of the table will add an additional row; keep “tabbing” to add more rows.</i>					
1.0	VI.A.2.b: Contract Duration; [EXAMPLE ONLY]	For all contracts issued to widget consultant for the ABC program, contract duration will be 4 years with 2 one-year renewals allowed in the initial contract. [EXAMPLE ONLY]	In the widget industry, a 4-year term is the norm. Generally, these contracts do not exceed \$5,000. Therefore we do not see a substantial risk and feel that the increase in duration is appropriate. [EXAMPLE ONLY]		
2.0	VI.A.5: Insurance Coverage Limits [EXAMPLE ONLY]	Language to be added in Attachment D: <i>“The automobile liability coverage limit required under Attachment C Section 7 of this Contract is hereby modified such that Contractor’s limits of coverage shall not be less than \$250,000 combined single limit.”</i> [EXAMPLE ONLY]	For hearing officers and seminar training consultants, the agency requests a waiver from the insurance provisions in Bulletin 3.5 to allow for the acceptance of these contractors’ individual personal automobile liability insurance with lower coverage than the \$1M minimum required under Attachment C, section 7. [EXAMPLE ONLY]		
3.0	VI.A.5 Insurance Coverage Limits [EXAMPLE ONLY]	Department seeks to file all insurance certificates together, rather than individually, in each Contract File. [EXAMPLE ONLY]	The insurance certificates will be marked with the contract number and filed in contract number order to allow for control and audit. [EXAMPLE ONLY]		

This document represents the complete Plan, including all common waiver(s)/modification(s) requested. Should addition modification be requested, this document shall be resubmitted, in its entirety, including the additional requested items. Prior approval of an item by the Secretary of Administration does not ensure automatic re-approval. The Plan shall remain in effect until such time as a revised Plan is submitted, the Bulletin is reissued, or upon repeal by the Secretary of Administration. A copy the Approved Plan must be maintained and available for audit purposes. Individual one-time waivers should not be included in this Plan.

Submitted By: Agency/Department Appointing Authority		Approved as noted by: Secretary of Administration or Designee	
Name:	Date:	Name:	Date:
Signature:		Signature:	

Agency/Department:		Request for Information (RFI)	Standard Bid	Simplified Bid	Qualified Based Selection (QBS)	Sole Source	
Contract Number:							
Contract File Document Check List							
[Retain completed Check List in Contract File]		←←← Check all that apply →→→					Comments
REQUEST FOR PROPOSAL (RFP), REQUEST FOR INFORMATION (RFI) AND CONTRACT DOCUMENTS							
• Actual RFP/RFI Document							
• Vendor Questions							
• Posted Responses to Vendor Questions							
• RFP Addendums							
• Public Notice of Solicitation (if applicable)							
• EBB Notification							
• Other sources (if applicable)							
• RFP/RFI Responses							
• List of vendors solicited (notified)							
• Pre-bid List (if applicable)							
• Price quotations							
• Selection criteria							
• Award Documentation							
• Staff analyses/selection sheets							
• Bid Tabulation Sheets							
• Letter of Recommendation							
• Statement of work							
• Sole Source Waiver Request (approved) or Justification							
• Waiver Request Other (approved) or Justification							
• Fully Executed Original Contract with all Attachments							
• Subcontractor Authorization (if applicable)							
• Signed Contract Summary and Certification Form AA-14							
• Correspondence, including emails							
• Correspondence with vendor							
• Correspondence with approvers about contract							
• Suspension & Debarment verification							
• State site verification							
• Federal site verification (if applicable)							
• Certificate of Insurance (valid)							
• Contract Change Order or Amendment Package							
• Letter of Intent (if applicable)							
BONDS (IF APPLICABLE)							
• Bid							
• Performance							
• Payment							
• Guarantee							
WORKERS COMP FORMS (IF APPLICABLE)							
• Self-Reporting							
• Subcontractor Reporting							
CONSTRUCTION CONTRACTS ONLY							
• DBE or MWBE (if applicable)							
• Waste Reduction Forms (if applicable)							
INSTRUCTIONS:							
1. This Contract File Check List is a tool to ensure proper documentation is retained in the official Contract File, including a completed version of this Check List.							
2. Documents associated with a "clear" box, if applicable, must be included in the Contract File. "Shaded" or "highlighted" boxes do not apply.							
3. Complete Contract Files must be retained for at least three (3) years after the contract's term expires.							