

STATE OF VERMONT

AGENCY OF ADMINISTRATION

BULLETIN NO. 3.5



PROCUREMENT AND CONTRACTING PROCEDURES

ISSUED BY: Kristin Clouser, Secretary of Administration

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PART 1 – AUTHORITY

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

[Executive Order #3-20](#) and this Bulletin further establish a statewide policy favoring an open and competitive bidding process for the selection of Suppliers, in accordance with the policies described in this Bulletin. 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.”

The Department of Buildings and General Services, 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) may update and re-issue 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.



Resource: The official version of this Bulletin, including any Addenda, is maintained on the Agency of Administration’s website at: <https://aoa.vermont.gov/bulletins>.

PART 2 – PURPOSE AND POLICY

This Bulletin applies to the procurement of all goods and services, regardless of dollar amount, by an Agency, as defined herein.



This Bulletin provides guidelines for conducting procurements and establishes benchmarks and protocols to solicit and award contracts with an appropriate level of competition. The State is generally interested in obtaining optimal solutions at reasonable prices, through procurement efforts that: are efficient and cost effective; promote fair and open competition; guard against favoritism, fraud, and corruption; and protect the interests of the State and its taxpayers. Each Agency may develop individual processes and policies applicable to its needs, in addition to the minimum stated requirements of this Bulletin.

This Bulletin and any associated Agency-specific process or policy do not create and will not be construed to create a private right of action to enforce their terms and do not affect private rights or procedures otherwise available to the public.


PART 3 – DEFINITIONS

In addition to the definitions set forth in this Section, see the glossary of acronyms in [Appendix V](#): Acronyms to this Bulletin.

Term	Definition
3.1 Addendum	The formal document used to make a change to a publicly posted RFX or Solicitation.
3.2 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.
3.3 Agency-Wide Contracts	A shared Contract used by departments or divisions within an Agency.
3.4 Appointing Authority	<p>An Agency head, or authorized designee in accordance with AoA Bulletin 3.3, Delegation of Authority, including those officers occupying appointed positions defined in 32 V.S.A. § 1003(b). “Appointing Authority” includes:</p> <ul style="list-style-type: none"> (a) The exempt deputies of Agency secretaries and department commissioners (b) Elective officers and their deputies who head operating departments; and (c) Exempt heads of divisions, boards, committees, and commissions not reporting to a department commissioner or Agency secretary. <p>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. The Appointing Authority shall be responsible for compliance with the policy and procedural directives of this Bulletin.</p>
3.5 Best and Final Offer (BAFO)	An optional step in the evaluation phase of the RFP process in which one or more Bidders are requested to modify their proposals.
3.6 Bidder (a.k.a. Offeror)	A party who submits a proposal or quote or bid/offer in response to a Solicitation (RFX).

Term	Definition
3.7 Bidding Integrity	<p>The policy and practice intended to prevent a conflict of interest in bidding when an Agency receives assistance with the preparation or planning of Solicitation Documents from Contractors or Suppliers.</p> <p> Resource: Refer to the Bidding Integrity Policy at: http://bgs.vermont.gov/commissioner/adminpolicies/0034</p>
3.8 Blanket Delegation of Authority (BDA)	<p>A formal document issued by the Office of Purchasing and Contracting delegating authority to Appointing Authorities to make certain types of purchases directly. Agencies must follow the terms and conditions in their approved BDA.</p> <p> Resource: BDAs may be found at: http://bgs.vermont.gov/purchasing-contracting/forms/bda</p>
3.9 Capital Lease	<p>See Section 7.3.</p>
3.10 Chief Information Officer (CIO)	<p>The Secretary of the Agency of Digital Services; this refers to the State CIO, not an Agency CIO.</p>
3.11 Commodity	<p>See Section 4.7.</p>
3.12 Confidential Information	<p>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(10)(A) and other information exempt from disclosure under 1 V.S.A. § 317(c).</p>
3.13 Conflict of Interest	<p>A direct or indirect personal interest of a State of Vermont Employee, or the appearance thereof, in the award or performance of a Contract, or such an interest, known to the State of Vermont Employee, by a member of his /her immediate family or household, or of a business associate. (see 3 V.S.A. § 1203).</p>


Term	Definition
3.14 Construction Services	See Section 4.1.2
3.15 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 characterized as a “contract,” “agreement,” “statement of work (SOW) 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.
3.16 Contract for Service	An agreement, 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 (see 3 V.S.A. § 341(4)). This shall include all such agreements whether characterized as a “contract,” “agreement,” “purchase order,” “procurement,” “license agreement,” “maintenance agreement,” “support agreement,” “statement of work (SOW) agreement,” or other similar term.
3.17 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.
3.18 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.
3.19 Contractor	Any party with which the State has a signed Contract.
3.20 Cybersecurity	The protection of an information system or information stored on such system against any act or attempt, direct or indirect, successful or unsuccessful, to gain unauthorized access, use, disclose, disrupt, modify, or destroy the information system or information stored on such information systems (see 3. V.S.A. § 3301(b)(1)).
3.21 Deliverable	The contracted product or service desired and expected to be received.

Term	Definition
3.22 Financial Transaction Contract	See Section 4.1.4
3.23 Grant	<p>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.</p> <p> Resource: Refer to AoA Bulletin 5, Policy for Grant Issuance and Monitoring, for further information.</p>
3.24 Independent Contractor	An individual under Contract with the State where 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. Individuals who are in an independent trade, business, or profession in which they offer their services to the public are generally Independent Contractors. However, whether these individuals are Independent Contractors or Personal Services Contractors depends on the facts in each case, to be determined in accordance with Section 4.2 of this Bulletin.
3.25 Information Technology (IT) Activities	<p>(a) The creation, collection, processing, storage, management, transmission, or conversion of electronic data, documents, or records; and</p> <p>(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. § 3301(b)(2)).</p>
3.26 Life Safety	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 Contracts for Service that could pose a significant increase to the SOV's liability or the SOV's ability to manage its risk.
3.27 Marketing Services	See Section 4.1.3

Term	Definition
3.28 No-Cost Contract	See Section 4.1.5
3.29 Non-Personal Service Contract	A Contract for Service with an Independent Contractor. See Section 4.4.
3.30 Order of Precedence	The sequential hierarchy, or ranking, of the various documents forming a contract used to ensure the intended interpretation of the contract in the case of potential ambiguities or inconsistencies among the contract's terms. Order of Precedence is particularly relevant when an Agency is including terms that are intended to supersede standard State terms or Contractor template terms which may be attached to the agreement.
3.31 Performance-Based Contracting	A best practice that focuses on the measurable outputs, quality, and outcomes/results of the service or goods provided by the Contractor. Performance Based 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.
3.32 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.
3.33 Personal Service Contract	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 4.2 of Bulletin 3.5 (see 3 V.S.A. § 341(2)). All other Contracts for Service are Non-Personal Service Contracts.
3.34 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.
3.35 Privatization Contract	See Section 4.5.

Term	Definition
3.36 Products	This term should be broadly interpreted and includes equipment, goods, materials, information technology hardware or software, supplies, printing, and other commodities.
3.37 Professional Services	See Section 4.1.1
3.38 Proprietary Information	Information of the State or a Supplier 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 (1 V.S.A. §§ 315-320) .
3.39 Qualification Based Selection	The specific process prescribed under the federal Brooks Act for the selection of architects and engineers, and the general process of evaluating bidders based on qualification before considering the price or cost of the bid/proposal.
3.40 Quick Quote	The State's streamlined process for procuring Commodities.
3.41 Retainage	The 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.
3.42 Retainer Contract	A Contract that specifies the scope of the potential services that may be rendered upon request, the cost of the services, and the process for requesting services. Retainer Contracts do not guarantee any work, but generally establish standard terms and conditions and set maximum not-to-exceed prices. Specific service requests are made through separate Statement of Work agreements written against the Retainer Contract. Retainer Contracts are commonly used by the Agency of Digital Services (ADS), the Department of Buildings and General Services (BGS), and the Chief Marketing Officer (CMO).

Term	Definition
3.43 Requisition	A request submitted through the state's VISION System to the Office of Purchasing & Contracting to initiate a purchasing process for Commodities. A Requisition contains details of the requested product such as description, quantity, delivery times and places, and special terms and conditions. It serves as the authorization for the division to proceed to acquire the item(s). It is important that the Requisition include a realistic estimate of the cost of the item(s) being requested.
3.44 RFx (a.k.a. Solicitation)	Any manner of request or solicitation outlined in this Bulletin pertaining to State procurement of services or goods, inclusive of both simplified bidding and formal, publicly posted requests. The request may be for proposals or quotes or bids concerning desired services or goods. The request may also be for information or comments that will assist the State in its development of a request for proposals or quotes or bids.
3.45 Secretary	The Secretary of Administration (SOA).
3.46 Statutorily Based Selection	Where legislation specifically directs the State's procurement and contracting activity, such as, for example: (a) naming in law the Supplier(s) with whom the State must contract for certain products or services or (b) requiring the State to conduct an RFP or other procurement activity.
3.47 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.
3.48 Sole Source Contract	A Contract procured without first undertaking a competitive process.
3.49 Solicitation Documents (a.k.a. Sourcing Documents)	Documents that formally solicit bids or proposals, whether cost-based or otherwise, for services or products for the State.

Term	Definition
3.50 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).
3.51 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.
3.52 Statement of Work (SOW)	A written statement describing the work to be performed, specific need(s) to be addressed and/or products to be delivered (subject to BGS’s exclusive authority over commodities purchases), as described in this Bulletin.
3.53 Statewide Contract	<p>A Contract negotiated by the Office of Purchasing and Contracting (OPC) and accessible to all Agencies of the State.</p> <div data-bbox="565 1121 643 1199">  </div> <p>Resource: To find out if a Contract exists that meets an Agency’s need, contact the OPC or refer to OPC’s web site at: http://bgs.vermont.gov/purchasing-contracting/contract-info</p>
3.54 Supplier (a.k.a. Vendor)	Any party with which the State may sign a Contract offering goods and/or services.
3.55 Uniform Guidance	The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200.
3.56 VTBuys	The State of Vermont’s online platform for sourcing (competitive solicitations), contracting, Supplier management, and procurement activities.
3.57 Zero-Dollar (or No-Cost) Contract	See Section 4.1.5



PART 4 – CONTRACT TYPES AND SPECIAL CONSIDERATIONS

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 as discussed throughout this section below.

4.1 Contracts for Services

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

Type of Service	Description
4.1.1 Professional Services	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 10.1.6.1).
4.1.2 Construction Services	Contracts for infrastructure construction, renovation, or rehabilitation projects, including such State facilities as State-owned or leased buildings, roads, and bridges.
4.1.3 Marketing Service	Contracts for advertising and promotional campaigns to increase awareness and/or spur behavior change including, but not limited to: <ul style="list-style-type: none"> (a) Marketing and branding strategy (b) Developing creative materials (brochures, fact sheets, social media posts, etc.) (c) Website design (not to include hosting or hardware/software) (d) Photography and video production (e) Print, radio, television, direct mail, and digital advertising (f) Media planning and buying

Type of Service	Description
	<p>Any contracts for marketing services above \$10,000, must be with a Supplier who has been prequalified by the CMO. Marketing suppliers must apply to become a prequalified marketing supplier prior to initiating work with a state entity.</p> <p> Resource: Find out more information about the Prequalified Marketing Vendor program at https://cmo.vermont.gov/.</p> <p>Any Contract for Service relating to marketing with a value greater than \$25,000 requires the prior approval of the Chief Marketing Officer (CMO).</p> <p> Resource: State agencies must follow applicable statewide marketing guidelines, policies, and standards issued by the CMO, available at: https://cmo.vermont.gov/.</p>
4.1.4 Financial Transactions	<p>Contracts for Services to manage financial transactions for the State – either on-line or in person (e.g., license, permit, or registration fees, etc.). The Contractor may be compensated for this service with a share of the gross fee (revenue) charged in the transaction and/or via an additional “convenience fee” added to the cost of the transaction. 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. Depending on the terms of the Contract, the funds may be remitted to the State:</p> <ul style="list-style-type: none"> (a) Via a lockbox, under agreement with the State Treasurer’s Office; (b) By the Contractor, at the gross amount, followed by payment of the fee from the State to the Contractor; or (c) By the Contractor, at the net amount, where the Contractor retains their compensation prior to remittance. <p>Where funds are to be remitted to the State at the gross amount, the Agency must execute the Contract for a maximum amount based on the estimated value the Contractor will be paid during the term of the Contract and the Agency shall process payments using purchase orders against the Contract.</p> <p>Where funds are to be remitted to the State at the net amount and the Contractor retains an amount equal to the additional convenience fee, purchase orders are not necessary because the State will not be issuing payments to the Contractor.</p>

Type of Service	Description
4.1.5 Zero-Dollar (or No-Cost) Contracts	<p>A Contract for Service in which the Contractor accepts compensation for Services 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, the Contractor 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:</p> <ul style="list-style-type: none"> (a) Contracts with the State to perform services which benefit employees or consumers, and payment is derived from third party payers; and (b) Contracts with the State to perform services for the State in exchange for the opportunity to utilize State facilities or other assets.
4.1.6 Information Technology Services	See Section 4.6
4.1.7 Other Contracts for Services	Contracts with persons or legal entities not included in subsections (1) through (7) above.

4.2 Legal Services

Agencies may not contract out for legal services without specific approval from the AGO as required under AoA [Bulletin 17.10](#), Employment of Private Legal Counsel. Agencies shall notify the AGO before posting an RFX or executing a Sole Source Contract for legal services.



Resource: Further guidance and instructions concerning this process is maintained online at <https://ago.vermont.gov/contracts/>.

4.3 Personal Service Contracts

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.

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; and
- (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](#), 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 with all Federal and State requirements.



Resource: Consult (IRS) Publication 15-A (available on-line at <https://www.irs.gov/publications>) and the Department of Human Resources (DHR) for guidance.

4.4 Non-Personal Service Contracts

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.

4.5 Privatization Contracts

As defined under [3 V.S.A. § 341\(3\)](#), a Privatization Contract is 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.



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

Special and stringent requirements apply to Privatization Contracts. 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 a cost savings to the State of at least 10% compared to the cost of having the service provided by classified State employees. DHR approval of any proposed Privatization Contract shall be required in addition to any other approval(s) required based on the contract amount and/or waiver requested.

4.6 Contracts for Information Technology

Information Technology (IT) Contracts can be Contracts for Service or Commodity Contracts. Agencies with questions about whether an IT Contract is a Contract for Service or a Commodity Contract should consult with OPC or ADS. Contracts related to Cybersecurity and Information Technology Activities can include the procurement of hardware and/or software (with or without a services component), system implementation, IT consulting services, maintenance and support services, hosting services and Service Level Agreements (SLA).

Agencies must follow ADS standards for the management, organization, and tracking of IT Activities. Certain IT Activities may require an Independent Review (IR) in accordance with [3 V.S.A. § 3303\(d\)](#).

Further information specific to IT contracting is in the Information Technology Procurement Guideline (IT Guideline). 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.



Resource: The Information Technology Procurement Guideline (IT Guideline), available online at: <https://bgs.vermont.gov/purchasing-contracting/publications>.

4.6.1 Contracts for “Broadband Internet Access Services”

Contracts for “Broadband Internet Access Services”, as defined in [3 V.S.A. § 348](#), must include the following certification:

These contracts include provision of broadband Internet access service to the State. Provider hereby certifies that, as required in [3 V.S.A. § 349](#), except and to the extent it has been granted a waiver from the Secretary of Administration, it is in compliance with the consumer protection and net neutrality standards established in [3 V.S.A. § 348](#) in providing broadband Internet access service in the State of Vermont.

4.7 Commodity Contracts

For purposes of this Bulletin, Commodity is the collective term given to tangible products purchased for the State. Commodities include, but are not limited to, materials, equipment, parts, supplies, fuel, printing, and, as mentioned above in [Section 4.6](#), certain purchases of hardware and software. Procurement authority for Commodities rests with the OPC.

4.8 Contracts with State of Vermont Employees and/or Retirees





[Vermont Personnel Policy No 5.1 “Employment Categories”](#) prohibits employees from entering into an employment arrangement or contract agreement 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 proposed Contract with a former State of Vermont Employee executed within one year of the individual's date of separation from State service or official retirement date. DHR approval is required in addition to any other 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.

4.9 Statewide and Retainer Contract

When utilizing a statewide and/or retainer contract, Agencies shall consider and address whether and under what conditions further competition may be required. Agency determinations shall be in writing and maintained in the contract file. Agency questions can be directed to the Office of Purchasing and Contracting.

Items	Statewide and Retainer Contract
4.9.1 Statewide Contract	<p>To simplify the acquisition process, the OPC maintains numerous Statewide Contracts for supplies, which include materials, equipment, parts, and commodities.</p> <div>  <p>Note: Unless otherwise approved in advance, these Statewide Contract must be used by all Executive Branch entities.</p> </div> <div>  <p>Resource: 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.</p> </div> <div>  <p>Note: Other Agencies may create Statewide Contracts, such as Statewide Marketing Contracts, only when authority is expressly granted by the Secretary or applicable law.</p> </div>
4.9.2 Statewide Marketing Contracts	<p>The Chief Marketing Officer (CMO) shall be the only named State party on, and point of initiation for, all Statewide Marketing Contracts. Statewide Marketing Contracts are individual master contracts that are already in place for marketing services between the State of Vermont and a select group of marketing firms. These individual firms were awarded a master contract following a full competitive bid and selection process. The Statewide Marketing Contracts allow state entities to obtain marketing services from these firms without having to go through an additional full RFP process for each project.</p> <div>  <p>Resource: The CMO's Statewide Marketing Contracts are available at: https://cmo.vermont.gov/.</p> </div>
4.9.3 IT Retainer	OPC maintains agreements with Suppliers pre-qualified to allow

Items	Statewide and Retainer Contract
Contracts	<p>Agencies to quickly and efficiently obtain certain IT consulting and technical services. These pre-qualified Suppliers provide services in many functional areas or categories ranging from strategy and analysis services to Information System Security and Systems Engineering. The Suppliers have agreed to the Standard State Terms and Conditions.</p> <div data-bbox="540 499 621 577"> </div> <p>Resource: Additional information and the procedures required for an Agency to access these Retainer Contracts is located at: http://bgs.vermont.gov/purchasing%20and%20contracting/current%20contrats/information-technology.</p>
4.9.4 Construction Retainer Contracts	<p>OPC maintains agreements with Suppliers pre-qualified to allow Agencies to quickly and efficiently obtain a variety of construction-related professional services, such as construction trade services (to perform small renovation projects, miscellaneous and/or emergency repairs), architectural services, engineering services, and project management services.</p> <div data-bbox="540 919 621 997"> </div> <p>Resource: Additional information and the procedures required for an Agency to access these Retainer Contracts is located at: https://bgs.vermont.gov/content/construction-retainer-services-trade-professional-consulting-project-management-contracts.</p>

4.10 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 direct single purchases 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, or print procurement.



Resource: The Print Procurement directive issued by the Secretary of Administration dated June 7, 2023 is online at: https://bgs.vermont.gov/sites/bgs/files/files/purchasing-contracting/Forms/Print_Procurement_Requirements_Supersedes_02-13-12_Print_Directive_06-07-23.pdf.



Note: All IT purchases shall be made under an existing Statewide Contract, IT Retainer Contract, or in accordance with the IT Guidelines.

For Commodities 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.



Resource: Blanket Delegations of Authority (BDAs) as issued by the Office of Purchasing & Contracting are maintained online at: <https://bgs.vermont.gov/purchasing-contracting/forms/bda>



Resource: If the needed item(s) are not available under an existing Contract and are not covered by an existing BDA, the Agency must prepare a Requisition through the VISION system in accordance with the https://finance.vermont.gov/sites/finance/files/documents/Train_Support/VISION_Manuals/FIN-Requisition_Manual.pdf and have the Requisition budget checked for sufficient funding by the VISION system.

PART 5 – AGO CERTIFICATION FOR COMPLIANCE WITH BARGAINING AGREEMENT(S)

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 the following three requirements are met:

- (a) 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
- (b) 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
- (c) The Contractor customarily engages in an independently established trade, occupation, profession, or business.

Alternatively, if the proposed Contract for Services does not meet all three of the above criteria, the Contract may be certified by the AGO if any of the following exceptions apply:

- (a) 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.
- (b) The services are incidental to a Contract for purchase or lease of real or personal property.
- (c) 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.
- (d) 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.
- (e) The Contract are 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.
- (f) 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.
- (g) Contracts for the type of services covered by the Contract are specifically authorized by law.
- (h) 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.
- (i) The cost of obtaining the services by Contract are 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.

PART 6 – ALTERNATIVES TO CONTRACTS FOR SERVICE

If contracting for services is not appropriate, an Agency should consider using temporary employees, limited-service employees, or permanent employees to do the work. [Vermont Personnel Policy No. 5.1 “Employment Categories”](#) establishes the following guidelines:

- (a) Permanent classified or exempt positions shall only be authorized by the Legislature.
- (b) Limited-service positions may be authorized by the Joint Fiscal Committee in connection with a Grant or by the Legislature itself.
- (c) 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.

PART 7 – SPECIAL AGREEMENT TYPES

7.1 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.

7.2 Grant Agreements


Whereas 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, Grants are commonly 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.

Agencies must evaluate the features of each agreement individually to determine whether it appears more like a Contract or Grant. Refer to guidance provided in AoA [Bulletin 5](#), Policy for Grant Issuance and Monitoring, for further information.



Note: Use of any indirect cost rate (e.g., a federally approved indirect cost rate, or the de minimus allowed indirect rate as per the Uniform Guidance), is NOT required for State Contracts.

7.3 Leases

Type of Lease	Description
7.3.1 Equipment Leases	<p>Agencies should consult with their Department of Finance and Management assigned budget analyst if a lease for equipment is being contemplated. A lease for equipment is subject to the competitive procurement requirements of this Bulletin. Because special accounting rules apply to leases which require their value to be included in the State's total debt, no Agency is authorized to enter into a lease for equipment without the prior approval of the Secretary of Administration and the Treasurer.</p> <p> Resource: If a lease has been entered into, a copy must be provided to VISION-ACFR@vermont.gov. Refer to AoA Bulletin 7.14, Equipment Revolving Fund as an alternative to a lease for equipment.</p>

Type of Lease	Description
7.3.2 Real Property Leases	Leases for real property are not subject to this bulletin. Agencies having responsibility for real property should consult with the Department of Buildings and General Services about leases for real property.

7.4 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 to allow or facilitate such request. A written agreement between the State and 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 10.1.6.3](#)). 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, and the AGO. Additionally, Agencies must provide notice to the Secretary of any such agreement upon execution.

PART 8 – COMPETITIVE BIDDING AND THRESHOLDS

8.1 Competitive Bidding

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 Suppliers 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:

- (a) **Notice:** Provide appropriate notice of opportunities to compete for State business;
- (b) **Predictability:** Provide a consistent process while conducting the procurement;
- (c) **Transparency:** Document the procurement process clearly and consistently; and
- (d) **Cost-effectiveness:** Ensure procurement processes are designed to secure optimal solutions at reasonable prices.

Although Vermont does not have a statute, rule, or administrative requirement that 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.

8.2 Approval Thresholds

The monetary thresholds established by this Bulletin for waivers and approvals shall apply to the total financial activity for the duration of the contractual relationship. The contractual relationship shall be inclusive of the contract base period and all planned renewal periods.

Unless otherwise required by law, it is the expectation that the contractual relationship will be not less than five years for a contract that is necessary to fulfill an Agency's ongoing need for goods or services. The issuance of short-term or single-year contracts to satisfy needs for goods or services which are known to be ongoing is a direct violation of the spirit and intent of this Bulletin.

Unless an Agency can demonstrate to the Secretary that the desired goods or services are needed only for a short and clearly defined duration, all monetary thresholds established by this Bulletin assume five years of financial activity.

8.3 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 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.

8.3.1 Contracts Up To \$250,000 - Standard or Simplified Bid Process

For a Contract estimated to not exceed \$250,000, an Agency may choose to follow either a Simplified Bid (described in [Section 9.1.2](#)) or Standard Bid process (described in [Section 9.3](#)). If

the Agency is unsure whether a Contract will exceed the \$250,000 threshold, to avoid rebidding the work, the use of a Standard Bid process is recommended.

8.3.2 Contracts Greater Than \$250,000 – Standard Bid Process

An Agency may enter into a Contract greater than \$250,000 only after adherence to a Standard Bid process (issuance of a formal Request for Proposals), as set forth herein ([Section 9.3](#)).

PART 9 - THE BIDDING PROCESS

9.1 Simplified Bidding (Contracts Up to \$250,000)


9.1.1 General



A standard bidding process is always preferred. However, a “simplified bidding process” may be used when the anticipated Contract amount will not exceed \$250,000 for the duration of the Contract including all planned renewals or extensions of the term and consistent with conditions identified in [Section 8.2](#) (Approval Thresholds). A simplified bidding process requires an Agency to develop a Statement of Work that identifies work to be performed, specific need(s) to be addressed and/or product(s) to be delivered (subject to BGS’s exclusive authority over commodities purchases), and that solicits price quotations from at least three potential Suppliers 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 \$250,000, without a written waiver from the Secretary.

9.1.2 Procedures for the Simplified Bid Process

	Procedures for Simplified Bid Process
9.1.2.1	<p>Prepare written specifications before soliciting bids. Elements must include:</p> <ul style="list-style-type: none"> (a) Statement of Work; (b) Performance requirements; (c) Expectations regarding service location, schedule, including deadlines for deliverables and/or milestones, if applicable; (d) Attachment C: Standard State Provisions for Contracts and Grants; and (e) Other specific State requirements or conditions, as applicable.
9.1.2.2	<p>Should requirements involve Cybersecurity or Information Technology, the Statement of Work (or whatever documents you are using to solicit) must be approved by the ADS Secretary/CIO before soliciting bids.</p>
9.1.2.3	<p>Solicit price quotations from 3 or more qualified Suppliers. Agencies should strive to solicit price quotations from 1 to 2 qualified Minority, Women, and Disadvantaged Business Enterprises (MW/DBE).</p> <div style="display: flex; align-items: flex-start;">  <p>Resource: Agencies may contact the Vermont APEX Accelerator (formerly VT Procurement Technical Assistance Center (PTAC)) at ACCD.APEX@vermont.gov for assistance with identifying qualified MW/DBEs.</p> </div>

	Procedures for Simplified Bid Process
	 <p>Resource: VT APEX Accelerator specializes in helping small businesses navigate the documentation associated with State and Federal procurement. Website is: https://accd.vermont.gov/economic-development/programs/ptac.</p> <p>Price quotations may be obtained through: telephone or verbal quotes, facsimile quotations, e-mail quotes or written bids. All communications with the Suppliers to obtain price quotes must be documented (emails, fax, notes from phone calls, etc.).</p>  <p>Note: If none of the price quotations received fall below the \$250,000 threshold, Agencies must engage in a Standard Bid process.</p>
9.1.2.4	The Suppliers solicited must understand they will be required to enter into a standard State Contract for Service, including Attachment C, should they be selected.
9.1.2.5	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.
9.1.2.6	The quotation most responsive to the selection criteria should be selected.
9.1.2.7	The Suppliers solicited must understand that Supplier-required documentation, if any, must be made available at the time of bid and shall be subject to negotiation, should they be selected.

9.2 Quick Quote for Commodities (Contracts Up To \$250,000)

A Quick Quote is a process for the one-time procurement of Commodities not covered by an existing Contract. Agencies may initiate this process by submitting a Requisition in VISION. The Quick Quote process results in a Purchase Order, which is in essence a contractual document for a one-time purchase. Agencies may be able to significantly streamline the process of moving from a Requisition to a Purchase Order if an Agency does the groundwork of seeking quotes from three Suppliers (a "Quick Quote"). Quick Quotes are subject to the same dollar threshold as Simplified Bidding.



Resource: For further information, please refer to the Buyer's Resource Guide online at: <https://bgs.vermont.gov/purchasing-contracting/publications>.

9.3 Standard Bidding (Contracts Over \$250,000)

9.3.1 General

An RFP is required for all services that are anticipated to exceed a maximum Contract amount

of \$250,000. An RFP is also recommended for complex procurements, such as when 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 Statement of Work and describe the criteria the State is going to utilize to select the Supplier. Agencies must evaluate bids in accordance with the criteria set forth in the RFP. This Bulletin provides basic guidance relating to RFP documentation and process.




Resource: Additional guidelines, including sample templates 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>.


9.3.2 RFP Components

All Agency RFPs must include the following components:

	RFP Components
9.3.2.1 Cover Page	Includes: <ul style="list-style-type: none"> (a) Name and address of State contact person (b) Due date, time, and location of responses (c) 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.
9.3.2.2 Introduction	Explains 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."
9.3.2.3 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.
9.3.2.4 Statement of Work to be performed	<ul style="list-style-type: none"> (a) A Statement of Work (SOW) is intended to provide potential bidders with a description of the service, solution and/or product being sought by the State (subject to BGS's exclusive authority over commodities purchases) and can take various forms. At a minimum, the SOW should include the following: <ul style="list-style-type: none"> (i) A description of the work to be performed, product(s) to be provided and/or the specific need(s) to be addressed; (ii) A schedule (including when the work is to be completed, any interim completion dates and/or deliverables); (iii) The expected outcomes and/or products, and related performance and/or quality standards.

	RFP Components
	<p>(b) The State's requirements in a SOW may also, for example, include:</p> <ul style="list-style-type: none"> (i) Details of what is sought by the State from which the bidders may not vary; (ii) An opportunity for the bidders to provide alternatives and/or options, if appropriate to the bid process; and/or (iii) A description of a capability the State is looking for generally, which permits the bidders to provide their own solutions within certain parameters and/or to address a certain need. <p>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 (subject to the State's Bidding Integrity policy). 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.</p> <div style="display: flex; align-items: flex-start;">  <div style="margin-left: 10px;"> <p>Resource: Disclosures for the purposes of bidding integrity are critical to bidding transparency. Refer to policy on-line at:</p> <p>http://bgs.vermont.gov/commissioner/adminpolicies/0034.</p> </div> </div>
9.3.2.5 Purpose and management structure	<p>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 contracts 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.</p>
9.3.2.6 RFP Response Requirements	<p>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.</p>
9.3.2.7 Bidder Confidentiality and Access to	<p>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</p>

	RFP Components
Public Records	State's Public Records Act, 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.
9.3.2.8 Reservation of State's Rights	Each RFP must reserve for the State the following rights: <ul style="list-style-type: none"> (a) To accept or reject any and all bids, in whole or in part, with or without cause in the best interest of the State; (b) 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.). A late bid is NOT considered a technicality. Agencies with questions about whether a condition qualifies as a technicality should consult with the OPC; (c) To conform the selection process, award and/or proposed contract language, at any time during the procurement, to comply with state or federal statute, regulation, or grant requirements; (d) To make purchases outside of the awarded Contracts where it is deemed in the best interest of the State; and (e) To obtain clarification or additional information.
9.3.2.9 Contract Elements	The RFP should describe the key elements to be included in the Contract, and a copy of the Contract documents. At a minimum, the RFP shall include the State's Standard Contract, including Attachment C 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 Standard Contract attached to the RFP. For example, with

	RFP Components
	<p>respect to contracts for IT services, the State requires language relating to: Cybersecurity; 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.</p> <p>For IT procurements, Risk Management shall be consulted prior to RFP issuance to determine the appropriate amounts of cyber liability and breach notification insurance coverage which must be identified in the RFP.</p>
9.3.2.10 Price quotation or bid proposal form	<p>The RFP, except for those using a Pre- Qualification selection process (Section 9.4), should include a price quotation form. The form should explicitly include the price components for the core services and/or products requested (subject to BGS's exclusive authority over commodities purchases), 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 and/or products that an Agency may request (subject to BGS's exclusive authority over Commodities purchases).</p>
9.3.2.11 Worker's Classification; State Contract Compliance Requirement	<p>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 Section 32 of Act No. 54 (2009), as amended by Section 17 of Act No. 142 (2010) and by Section 6 of Act No. 50 (2011):</p> <ul style="list-style-type: none"> (a) 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 (b) Subcontractor reporting requirements. <div style="display: flex; align-items: flex-start;">  <p>Resources: 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.</p> </div>
9.3.2.12 Construction and Transportation Projects	<p>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</p>

	RFP Components
	procurements, construction services, and construction management and oversight.
9.3.2.13 Basis for selection	<p>The RFP shall 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. Unless otherwise provided by law or authorized in this Bulletin, price must always be a factor considered in the selection process. Price, however, need not be the only or even primary consideration. An Agency should establish selection criteria that provide for the overall best interests of the State, including that the State secures an optimal solution at a reasonable price. Consequently, in addition to price, selection criteria may also include factors such as qualifications, experience, quality of past work, references and timeliness, and the ability of a specific proposal, approach, or technical solution to achieve State objectives, among other factor(s) relevant to the Agency's program goals. An Agency may set the relative importance of price, and all other factors, as it deems appropriate within its selection criteria. When assessing whether an offered price is reasonable, an Agency may consider not only the costs of goods and/or services to be provided but also other price-related factors such as potential cost savings or avoidance, anticipated revenues and/or added value to the Agency. The RFP shall reasonably identify all price and non-price factors, and their relative weights, for an Agency to best consider them in the selection process.</p> <p>If the Agency establishes selection criteria that assign numerical scores to proposals, the total points available must be expressly stated in the RFP. An Agency shall not establish selection criteria that provide for an unlimited number of total points available.</p>

9.3.3 Request for Information (RFI)

If an Agency does not have sufficient information from which to develop an effective RFP describing the work to be performed, specific need(s) to be addressed and/or product(s) to be delivered (subject to BGS's exclusive authority over commodities purchases), the Agency may issue an 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. A Contract may only be developed in response to a separate RFP or a Simplified Bid, to ensure the integrity of the competitive process.

9.3.4 Request for Comment

A Request for Comment (RFC) is the process whereby the State seeks input from the Supplier community about the structure, language, methodology, or any other aspect of an RFP the State plans to issue in the future. The 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.

9.3.5. Public Notice Regarding the Standard Bid

At minimum, all Solicitation Documents 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.



Resource: Instructions for posting to the EBB are available at: <http://www.vermontbidsystem.com>.



Resource: All IT related Solicitation Documents will be posted by OPC online at <http://www.bgs.state.vt.us/pca/bids/bids.php> until such time as VTBuys goes live.

The opportunity to bid for the proposed work should be broadly publicized. Additional methods of solicitation may include:

- (a) Advertising in newspapers;
- (b) Direct written communication (via email or otherwise) to potential or prequalified Suppliers; and/or
- (c) Publication in trade journals.

It is important for an Agency to maintain a list of those entities or individuals requesting Solicitation 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 complex RFPs, allowing potential Suppliers a longer response time is highly recommended to ensure well-constructed bid responses.

9.3.6 Pre-Bid Bidders' Conference

RFPs for large or complex projects may require a pre-bid meeting with bidders ("Bidders' Conference") to ensure the State and the Suppliers fully understand the requirements of the RFP. When a Bidders' Conference is desired, it must be identified in the RFP and the RFP must describe the form and format for the meeting (i.e., in person, conference call, etc.). During the meeting, the Agency may provide an overview of the requirements and afford the opportunity for the Agency and Suppliers (prospective bidders) to discuss questions related to the RFP. All information exchanged at the meeting, including answers to questions and clarifications concerning RFP requirements, 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. Similarly, a written question and answer period is recommended for each standard bidding process, with answers posted to the EBB and/or as indicated in the RFP.

9.3.7 Adjustments to Solicitation Documents

After an RFP or bid solicitation has been issued, and prior to the deadline for submission of bids, an Agency may issue an Addendum modifying any aspect of the RFP.



Note: An RFP may only be amended by issuing a written Addendum prior to the submission of bids, and within a reasonable time period, except as may be necessary to exercise rights specifically reserved in the RFP.

Except as clarified or changed 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. Any deadline extension granted to any bidder must be granted to all of the bidders. The State does not accept late proposals.

An Addendum should be reasonably specific, noting the document, the project, the change and where the changes can be found. Addenda should be published with reasonably sufficient time prior to the submission of bids for prospective bidders to consider prior to preparing proposals.

9.3.8 The Bid Opening

An Agency should document the name, city and state for each timely bid received in response to an RFP.



Resource: The Office of Purchasing & Contracting has developed the Bid Opening Tabulation Sheet (available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>) which an Agency may use to document this information.

A public bid opening and reading of bids is not required but may be conducted in the discretion of the Agency. Two staff members from the Agency administering the bid process should attend the bid opening. A public bid opening generally consists of reading aloud the name of the bidder, city and state for each bid received. Agencies having questions about how to conduct a public bid opening should consult with the Office of Purchasing and Contracting.

9.3.9 Late Bid Submissions

Bids received after the submission deadline established in the RFP shall be returned unopened to the bidder. A late bid submission may not be waived as technical non-compliance.

9.3.10 Technical Non-Compliance

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.

9.3.11 Supplier Selection

- (a) 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 bids.

- (b) When evaluating proposals/responses, Agencies should carefully consider any exceptions to terms specified by the Bidder, and consult with the AGO, ADS, Risk Management, or other offices of the State, as appropriate, before awarding a Contracts.
- (c) 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.
- (d) Once all Contracts resulting from the RFP are fully signed, the Agency shall post public notification of the Contract award(s) on the EBB.

9.3.12 Supplier References

Basing an award of Contract on prior work history and experience is only acceptable if the selection criteria stated in the RFP specified prior history and experience.

- (a) **Supplier References.** A Supplier 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.
- (b) **Selection.** Basing an award on prior work history means that the State will take into consideration the Supplier’s prior work for or with the State - good or bad. It also means that the State will weigh work history for all Suppliers. 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 Supplier must have an equal opportunity to win the award based on the selection criteria.

9.3.13 BAFO

An Agency is not required to request or accept a Best and Final Offer (BAFO) from any bidder. However, an Agency may request a BAFO from any bidder or several bidders in an effort to award a Contract in the best interest of the State, particularly to ensure the State secures the optimal solution at a reasonable price. The Agency may consider requesting a BAFO when:

- (a) No single proposal addresses all the specifications;
- (b) All or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;
- (c) Additional information is needed in order for the evaluation committee to make a decision.
- (d) Differences between proposals are too slight to distinguish; all cost proposals are too high or over the budget; and
- (e) 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.

9.3.14 Documentation

A complete copy of the RFP, Suppliers solicited, price quotations, bids received, and written selection justifications must be placed in the contract file. When other than the lowest cost responsible bid is selected, for instance where the RFP includes a specific selection criterion that assigns price a lower degree of importance relative to other selection criteria, the file must include written documentation consistent with the RFP selection criteria demonstrating how the selection is in the best interests of the State, particularly how the selected bid provides for the optimal solution at a reasonable price. Please reference the Contract File Checklist for a complete list of documents required to be retained (see Appendices).

9.3.15 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.

9.4 Pre-Qualifying Suppliers for Retainer Contracts

To streamline procurement, an Agency may employ pre-qualification procedures to identify eligible Suppliers from which an Agency may accept bids and proposals for routine procurements. Depending on the type of procurement, pre-qualification may vary in formality and complexity, but should be determined through a structured process supported by approved specifications.

Pre-qualified Suppliers must be identified through a standard, public solicitation process which may result in the establishment of a pre-qualified list Suppliers and/or in multiple awards 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 Suppliers to be included on the pre-qualification list. Additionally, during the period between formal solicitations for pre-qualification, the Agency must maintain an ongoing process that allows additional Suppliers to request review and inclusion on the pre-qualification list at least every two years. All Suppliers reviewed and determined qualified by the Agency must 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. A pre-qualification procedure is not to be confused with Qualification-Based Selection defined in [Section 3.39](#).

9.5 Exceptions and Waivers

The Secretary may waive the provisions of this Bulletin on a case-by-case basis pursuant to a written request from an Appointing Authority.



Resource: Waiver requests may be made using the waiver request template available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>, which outlines the minimum information a waiver request must include.

Any request must specify the basis for the request and reference the Bulletin section(s) and

language or variations from either the sourcing process or the standard State contract provisions for which the waiver is sought.



Note: An Appointing Authority must seek a waiver prior to releasing an RFP, or executing the Contract, as appropriate. The Appointing authority must obtain waiver approval before seeking other required approvals and prior to executing the Contract.

Copies of all waiver requests granted by the Secretary must be retained in the Contract file.

9.5.1 One-time non-Sole Source Waiver

One-time non-Sole Source waiver requests must be submitted to the Agency's assigned budget analyst in the Department of Finance and Management (F&M), which acts as the clearinghouse for Secretary approval.



Resource: The Agency may use the waiver request template available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>.

9.5.2 Sole Source Contracts

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. Sole source procurements, regardless of dollar value, must be supported by a written justification demonstrating why competition cannot be obtained. A clear and convincing link must exist between the service requirements sought and the reasons why the Agency deems the Sole Source Supplier or Contractor “the only one capable” of meeting the requirements. It is insufficient to justify a Sole Source agreement by stating that “this is the only party” qualified, or able to do the work. Such assertions must be verifiably documented. Acceptable examples may include:

- (a) An unusual and compelling urgency, such as when health, public safety, or the conservation of public resources is at stake;
- (b) Situations posing extreme financial consequences to the State;
- (c) Legislatively mandated situations; and,
- (d) When required by a warranty or proprietary license agreement.

9.5.2.1 Sole Source Contracts in Verifiable Emergency Situations

In an emergency, an Appointing Authority may execute a Sole Source Contract 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, regardless of dollar value. Agencies may not enter into long-term contracts on an emergency basis. Emergency contracts must be of a duration sufficient to address the immediate impacts of the emergency and not longer. It is recommended the Agency notify the assigned Finance and Management Budget Analyst as soon as the emergency is known.



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.

9.5.3 Sole Source Waiver Requests

In all instances other than verifiable emergencies, an Agency's written justification for the sole source must be approved before the Agency may negotiate or sign the contract. The level of state approval(s) required for the sole source justification will depend upon the dollar value of the proposed contract and, in limited circumstances, the subject matter.

Value/Subject Matter	Level of Approval Required Prior to Contracting
Under \$25,000	Appointing Authority: The Appointing Authority may enter into a Sole Source Contract under \$25,000 if it determines that sole source justification exists. The justification shall be documented in the contract file, and the contract process must comply with all other aspects of this Bulletin.
\$25,000 to \$99,999	Department of Finance and Management Commissioner: Sole source waiver requests must be made using the waiver request template available online.
\$100,000 or greater	Secretary of Administration: Secretary approval must be requested by submitting a proposed sole source waiver request to the Department of Finance and Management.
Cybersecurity or Information Technology	State Chief Technology Officer (CTO): The CTO must approve all sole source waiver requests for Cybersecurity and IT Activities, regardless of dollar value. The sole source justification memo must be approved by the CTO before it is submitted for approval by the Department of Finance and Management Commissioner or the Secretary of Administration (whenever such approval is required).



Resource: Sole source waiver requests must be made using the waiver request template available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>.

If there is an urgent nature to the sole source waiver request, the Agency may identify the request as "Time Critical". A copy of the approved sole source justification must be retained in the contract file.

Approval to sole source, as required by this section, must be obtained before the proposed Sole Source Contract is negotiated and signed. If the proposed Sole Source Contract requires specific approvals beyond the Appointing Authority prior to signing, a copy of the approved justification must accompany the proposed Sole Source Contract when circulating for such approvals and shall be retained in the contract file.

9.5.3.1 Mandatory Language for All Sole Source Contracts for Services

As directed by [3 V.S.A. § 347](#), all Sole Source Contracts for Services 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 for Services 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 for Services, 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 for Services that has been procured as a Sole Source.



Note: This requirement does not apply to Commodity Contracts, only to Contracts for Services.

9.5.4 Agency Contracting Waiver Plan

Agencies may develop a written Contracting Waiver Plan (Plan) which shall propose acceptable alternatives to the non-statutory requirements of this Bulletin. 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) Include all requested waivers for the Agency and be submitted on the Contracting Waiver Plan Template available at <https://aoa.vermont.gov/bulletins/3point5>;
- (b) Detail the referenced section(s) and Bulletin language for each requested waiver or modification,
- (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. 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, in consultation with other offices of state government, as needed, may approve or reject the Plan, in part or in whole.

The Plan must be submitted to the Secretary for approval with a cover memo providing a clear and complete justification for each requested waiver. If the Plan identifies requirements concerning any other state office (DHR, CMO, ADS, etc.), then the Plan must be submitted to the other office(s) for review and input before it is submitted to the Secretary.



Note: Approved Contracting Waiver Plans expire 90 days after re-issuance of this Bulletin, or otherwise upon notice from the Secretary.

PART 10 – CONTRACT DRAFTING

10.1 Drafting the Contract

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

10.1.1 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, nor restrict the ability of the State to hire Contractor employees;
- (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);
- (j) include a copy of the RFP or RFP response; or
- (k) include products that contain hydrofluorocarbons as prohibited in [10 V.S.A. § 586](#).

10.1.2 Standard State Forms (Contract Templates and Attachments)

Agencies are expected to use standard state forms and templates for conducting procurement and contracting activities.



Resource: The current versions of State forms and templates are maintained by OPC online at: <https://bgs.vermont.gov/purchasing-contracting/forms>

10.1.2.1 Standard State Contract Templates and Attachments

Standard State Contract Templates and Attachments.

- (a) State forms and templates are updated routinely. Agencies are responsible to always ensure the use of the most current form/template. Use of outdated forms/templates may result in delays in obtaining required approvals or rejection.
- (b) All Contracts must use one of the current standard Contract templates ("shell") and

adhere to the Attachment “letter” assignments for the standard Contract Attachments as follows:

- (i) Attachment A – Statement of Work ([Appendix II](#));
 - (ii) Attachment B – Payment Provisions ([Appendix III](#));
 - (iii) Attachment C – Standard State Provisions for Contracts and Grants;
 - (iv) Attachment D – Other Provisions (Note: Attachment D may include approved modifications to Attachment C, modifications to a contractor document, or other required terms and conditions. [See Appendix IV](#)); and
 - (v) Additional Attachments may be lettered as necessary.
- (c) Attachment C. Except for Short Form Contracts authorized under this Bulletin, all Contracts procured by the State shall include the Standard State Provisions for Contracts and Grants (Attachment C). No Contract may include modified Attachment C terms without prior approval from the AGO, and the following state officials, as applicable:
- (i) The State Director of Risk Management must approve modifications to the insurance provisions in Attachment C.
 - (ii) The State Auditor of Accounts must approve modifications to the audit provisions in Attachment C.
 - (iii) The State Chief Information Security Officer (CISO) at ADS must approve modifications to the provisions in Attachment C regarding the use and protection of state information.
- (d) Agencies should seek approval from the state officials listed above before requesting AGO approval of any Attachment C modifications.
- (e) An Appointing Authority is not authorized to sign a Contract with modified Attachment C terms unless and until such modifications have received the specific approvals required by this Bulletin. All requests and approvals for such modifications must be documented and retained in the contract file.
- (f) Additional terms and conditions deemed necessary to the Contract may also be included in Attachment D. For examples of common additional terms and conditions refer to [Appendix IV](#).



Note: Attachment C may not be modified directly. Approved modifications may be included in Attachment D.

10.1.2.2 Short Form Contract

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

- (a) 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 Services not exceeding 12 months and \$24,999.99. Amendment(s) to contracts that either increase the maximum price to \$25,000 or more, or that extend the term of the Contract beyond 12 months, must be executed using the Standard Contract for Services template and shall be subject to the applicable review and approval processes prescribed by this Bulletin.



Note: 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. 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.

- (b) 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. Refer to Appendix I for Short Form Contract and Short Form Attachment C. The Short Form Attachment C may not be used with any other type of contract form and can only be used with the Short Form Contract. The Short Form may not be used when additional Attachment(s) or terms and conditions are required.



Resource: Questions about whether a contract is eligible for the Short Form should be directed to Risk Management at: SOV.riskhelp@vermont.gov.

10.1.3 Standard Contract Elements

	Standard Contract Elements
10.1.3.1 Parties to the Contract	<p>The Parties to Contract are:</p> <ul style="list-style-type: none"> (a) The Contractor responsible for all work performed under the Contract, and (b) The Agency responsible for Contract compliance, monitoring, and payment. <div style="display: flex; align-items: flex-start;"> <p>Resource: The Agency must ensure that the Contractor’s legal name and business name, if applicable, from Contractor’s IRS Form W-9 (https://www.irs.gov/pub/irs-pdf/fw9.pdf) is captured accurately in the Contract.</p> </div> <p>The Agency must also ensure that the Contractor is active in the State’s financial system, Vermont Integrated Solution for Information and Organizational Needs (VISION), and that the Contractor has a current W-9 on file with the State. A current W-9 must be dated within twelve months prior to the Contract effective date.</p>
10.1.3.2 Contract Duration (Term)	<ul style="list-style-type: none"> (a) Contracts must have a specific start and end date (term), defining the legal period in which the Contractor is authorized and obligated to perform the work. The use of “Upon Execution” is not allowed. Including language that automatically renews or extends the Contract beyond the

	Standard Contract Elements
	<p>stated end date (“evergreen clause”) is strictly prohibited.</p> <p>(b) An Agency should carefully consider what period of time is appropriate for contract performance. Considerations should include the nature of the services and the industry or market involved.</p> <p>(c) The Contract term may be issued for a period of up to five years inclusive of any renewal options that may be contemplated. The State may want a contract term with a base period of five years with no renewals. Alternatively, the State may want a base Contract term of two or three years, and then extend the Contract beyond the base Contract period. Language may be added to preserve the option(s) to extend for two or three additional one-year periods or any combination thereof, for a total maximum of five years. Consideration should be given to the Contract term to ensure the State does not find itself locked into higher pricing if prices should fall over time, etc. A contract amendment is required to extend the term of a Contract.</p> <p>(d) For Architectural and Engineering Contracts, the Contract term may be issued for a period of up to six years inclusive of any renewal options that may be contemplated.</p> <p>(e) 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 ADS Secretary/CIO before it is approved by the Secretary of Administration.</p> <p>(f) Under no circumstances may any Contract extend beyond the applicable durations referenced above without a specific waiver approved by the Secretary. 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 constitute a new Contract (even if the re-bid award goes to the same Contractor) 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.</p>
10.1.3.3 Maximum	All Contracts must clearly disclose the maximum dollar amount payable by the State for services, supplies, commodities, and

	Standard Contract Elements
Amount	expenses on a “fixed price” basis or a “not to exceed” maximum dollar amount. The maximum dollar amount of the Contract shall cover only those amounts payable by the State during the duration of the Contract. If a Contract includes one or more options to renew (or extend) the duration of the Contract, any amounts payable attributable to such renewal or extension shall not be included in the maximum amount unless and until the renewal option is exercised via an amendment.
10.1.3.4 Total Number of Pages	<p>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.</p> <p>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.</p>

10.1.4 Description of the Work and Compliance (Attachment A)

	Description of the Work and Compliance (Attachment A)
10.1.4.1 Statement of Work	All State Contracts must describe the work to be performed or products to be delivered by the Contractor in clear, concise, and complete statements. Attachment A of the standard State Contract should be used for this purpose. 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. See 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.
10.1.4.2 Contract Compliance	The level of required contract compliance monitoring, if applicable, should be based on the assessment of the risk for

	Description of the Work and Compliance (Attachment A)
Monitoring	<p>delay or failure to deliver the Services and/or Products. 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.</p> <p>Types of compliance monitoring processes and steps may include:</p> <ul style="list-style-type: none"> (a) periodic Contractor reports; (b) invoice reviews; (c) on-site visits; (d) scheduled meetings; (e) audits; (f) independent performance reviews; (g) surveys of users/clients; and (h) post-contract audit or review. <p>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.</p>

10.1.5 Payment Provisions (Attachment B)

	Payment Provisions (Attachment B)
10.1.5.1 Payment Amounts and Frequency	<ul style="list-style-type: none"> (a) All State Contracts must describe how, when, and under what circumstances Contractors submit invoices to the State. (b) Standard State payment terms are Net 30 days from the receipt of a complete and error free invoice, in accordance with Finance and Management Policy #5 ~ Payment Terms. (c) 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.

	Payment Provisions (Attachment B)
	<p>(d) 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.</p> <p>(e) Additional guidance on payments is available in this Bulletin as Appendix III: Attachment B Payment Provision Guidelines.</p>
10.1.5.2 Performance Measures and Accountability	<p>(a) 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.</p> <p>(b) 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.</p> <p>(c) The contract's Statement of Work to be performed (Attachment A), as noted in Appendix II, must specify the timeline for the deliverables, including interim steps, and measurable standards to be maintained during the contract performance period.</p>
10.1.5.3 Retainage	<p>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</p>

	Payment Provisions (Attachment B)
	invoice.
10.1.5.4 Liquidated Damages	<p>(a) 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 specified 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.</p> <p>(b) 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.</p> <p>(c) 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.</p>
10.1.5.5 Reimbursable Travel Expenses	<p>(a) 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:</p> <p>(i) The agreed Statement of Work specifications for number of on-site days, weekly/monthly trips, over-night stays, mileage, etc.; and</p> <p>(ii) 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.</p> <p>(b) In cases where the reimbursement of detailed travel expenses is appropriate, rate schedules developed by the State of Vermont and set forth in Administrative Bulletin 3.4 shall be considered the default rate schedule. If there is no applicable rate schedule developed by SoV, or the schedule does exist but is not appropriate, a federal rate (GSA) schedule must be referenced. If there is no applicable federal rate schedule, or the schedule does</p>

	Payment Provisions (Attachment B)
	exist but is not appropriate, the Agency must develop and reference its own rate schedule and must obtain a waiver from the Secretary or have such waiver in their approved Contracting Waiver Plan, prior to including such rates in any Contract.

10.1.6 Insurance Coverage Limits

Appropriate insurance coverage limits are required in Contract to protect the State's interests. Standard insurance requirements are included in Attachment C and are deemed appropriate to cover most contractual situations.



Note: Prior to executing Contract, the Agency must collect a certificate of insurance (COI) from the Contractor showing that the contractually required insurance coverages and minimums are in effect. Agencies must also ensure that the Contractor provides an updated COI annually throughout the term of the Contract.



Resource: Agencies should refer to the State's Risk Management website: (<https://aoa.vermont.gov/secretary/Risk-Management>) or consult directly with the Director of Risk Management for guidance and approval, as needed, when considering the appropriateness of insurance requirements.

When relatively dangerous or hazardous activities are contemplated, additional coverages or higher insurance limits may be required. For certain low-risk services, reduced limits or decreases in coverage may be authorized.



Note: Any changes to the Standard insurance provisions in Attachment C shall 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 Suppliers who will be working in Vermont. Vermont law requires insurance carriers to be specifically licensed to write Workers' Compensation coverage in Vermont. Out-of-state Suppliers may have Workers' Compensation coverage valid in their home state, but their carrier may not be licensed to cover Workers' Compensation for work performed by their employees in Vermont.



Resource: Agencies may verify whether an out-of-state Supplier's Workers' compensation carrier listed on the Certificate of Insurance is licensed in Vermont on the Department of Financial Regulation's website at <https://dfr.vermont.gov/> or the Department of Labor's website at <https://labor.vermont.gov/>.

10.1.7 Intellectual Property Ownership

It is generally in the State's interest to own the intellectual property developed for the State under a Contract. Under limited circumstances, and in accordance with 3 V.S.A. §346, the State may grant a Contractor the right to use or own intellectual property developed for the State, for the Contractor's commercial purposes.

10.1.8 Confidential Information

Standard requirements included in Attachment C address data use and protection in contractual situations. When drafting an RFX or Contract that contemplates Contractor goods or services that will involve accessing, storing, processing and/or generating Confidential Information, Agencies should consider whether additional protections are warranted because of how the data will be used or generated by the Contractor or the existence of specific requirements in law, regulation, or policy concerning the security of the data; access to the data; ownership of the data; and return or destruction of data. Agencies must seek the advice of the Chief Information Security Office (CISO) at ADS when preparing any such RFX or Contract. Refer to the IT [Guideline](#) for additional information.

10.1.9 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 ([Part 14](#)). However, construction and IT implementation service providers typically utilize a formal Change Order process 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:

- (a) 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;
- (b) Inclusion of the Contractor certifications required under [Section 14.1.1 \(iii\)](#) of this Bulletin;
- (c) State approval of all Change Orders, as per the applicable template; and
- (d) Execution by both the State and the Contractor.

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 14.1](#)). The executable Amendment will then be routed for the applicable Contract Amendment approvals as required by this Bulletin.

10.2 Obtaining a VISION Contract Number

Regardless of dollar amount, Agencies must enter all Contracts into the VISION system to obtain a Contract number, and to 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 to 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. It is the responsibility of the Agency to obtain all prior

approvals required for a Contract in accordance with this Bulletin before approving the Contract in the VISION finance system.

Prior to entering the Contract into the VISION system, Agencies must verify all existing Supplier information in the VISION system is correct and a current (within 6 months) Form W-9 is on file.



Resource: If the form W-9 is out of date and/or a new Supplier record must be established, refer to the [VISION Supplier Request Form, Form W-9](#) and Supplier [FAQs](#).

PART 11 – CONTRACT ROUTING AND APPROVALS

11.1 Contract Package and Routing

	Contracts Package and Routing
11.1.1 Contract Package	<p>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.</p> <p>Contract Packages must be circulated electronically, and only in accordance with an ADS-approved electronic signature system.</p>
11.1.2 Content and Order of Package Documents	<p>To expedite the review and approval process, a Contract Package must consist of the following documentation, and should be assembled in the following order:</p> <ul style="list-style-type: none"> (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) Memo(s) to AGO; (e) 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 Note to File, a Recommendation for Award, an approved Sole Source Request, or an approved One-Time Waiver); (f) Proposed Contract or Contract Amendment, including all Attachments (in alpha- numeric order); and (g) For any Contract Amendment, include the original Contract, all prior Amendments, and the corresponding AA-14s in appropriate order.
11.1.3 Document Naming Convention for ADS-approved electronic signature	<p>Agencies circulating Contract Packages electronically for review and approvals should consider utilizing a standard naming convention, for example:</p> <ul style="list-style-type: none"> (a) Standard Contract Package (requiring signature on AA-14 only): <ul style="list-style-type: none"> (i) “CONTRACT # AND AMEND# (IF APPLICABLE)”

	Contracts Package and Routing
system	<p>SUPPLIER NAME AA-14 SIGN</p> <p>(b) 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:</p> <p>(i) “CONTRACT # SUPPLIER NAME AA-14 AND SOLE SOURCE SIGN”</p> <p>(c) 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:</p> <p>(i) “CONTRACT # AND AMEND# (IF APPLICABLE) SUPPLIER NAME AA14 and Waiver for XXXX SIGN”</p> <p>(d) For a One-Time Waiver made prior to RFP or Contract:</p> <p>(i) “WAIVER for XXXX Sign”</p> <p>(e) 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:</p> <p>(i) “EXPEDITE CONTRACT # AND AMEND (IF APPLICABLE) SUPPLIER NAME AA14 SIGN”</p>

11.2 Approvals - Required Prior Approvals




Note: An Appointing Authority shall not execute Contract requiring prior approvals until all such required approvals have been obtained.

Items	Approvals – Required Prior Approvals
11.2.1 Attorney General	<p>The Attorney General, or his/her designee, must give prior approval as follows:</p> <p>(a) A Contract for Service valued at \$25,000 or more per year must be certified by the AGO, as detailed in Part 5 of this Bulletin and 3 V.S.A. §342.</p> <p>(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.</p> <p>(c) Regardless of dollar amount, a Contract for Service must</p>

Items	Approvals – Required Prior Approvals
	<p>be reviewed and approved “As to Form” in any of the following circumstances:</p> <ul style="list-style-type: none"> (i) Contracts that use Supplier-required forms (for example, “small print” terms and conditions) or documentation other than the Standard State Contracts. (ii) Privatization Contracts. (iii) Contracts that include a Change Order process (a.k.a. task orders, change requests, see Section 10.1.6.4). (iv) Financial Transaction Contracts. (v) Zero-Dollar contracts. (vi) Equipment leases as described in Section 7.3.1. (d) Agreements to Receive or Access Confidential Information as described in Section 7.4. (e) Contracts for the retention of legal services pursuant to Administrative Bulletin 17.10 as described in Part 4. <p>Upon request, the AGO will review a Contract “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. AGO review “As to Form”, though not required for Contracts under \$25,000, is highly recommended for Contracts that are complex or pose substantial risk to the State.</p> <p>The AGO may decline to approve a Contract “As to Form” when the 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 9.5.1.</p>
11.2.2 Secretary of Administration	<p>The Secretary, or his/her designee, must give prior approval to:</p> <ul style="list-style-type: none"> (a) Contracts, including SOW Agreements, with maximum amounts over \$2,000,000; (b) Privatization Contracts; (c) Contracts that include a Change Order process (a.k.a. task orders, change requests) as described in Section 10.1.6.4. (d) Financial Transaction Contracts; (e) Equipment leases as described in Section 7.3.1.

Items	Approvals – Required Prior Approvals
	<p>(f) Zero-Dollar (or No-Cost) Contracts;</p> <p>(g) Contracts that the AGO has declined to approve "As to Form"; and</p> <p>(h) Contracts with Internet service providers (ISP).</p> <p>Whenever a Contract requiring the Secretary's approval is supported by a pre-approved waiver (sole source or other) the Contract approval package must be submitted to the Department of Finance and Management (F&M). F&M acts as a clearinghouse for Contract packages requiring approval by the Secretary that include a pre-approved Sole Source request and/or one-time waiver request. F&M will forward the Contract package and its own recommendation to the Secretary for final approval.</p> <p>Contract packages must be submitted to the Secretary (or F&M, as applicable) for approval 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.</p>
11.2.3 State Treasurer	<p>The State Treasurer, or his/her designee, must give prior approval to:</p> <p>(a) Equipment leases as described in Section 7.3.1 having a total lease value (total cost over the lease term) greater than \$50,000.</p>
11.2.4 Commissioner of Human Resources	<p>The Commissioner of Human Resources, or his/her designee, must give prior approval to:</p> <p>(a) Privatization Contracts as described in Section 4.5.</p> <p>(b) Contracts with State of Vermont Employees and/or Retirees as described in Section 4.8.</p>
11.2.5 State Chief Information Officer	<p>The State Chief Information Officer (CIO), or his/her designee, must give prior approval to:</p> <p>(a) Solicitations for Information Technology and Cybersecurity prior to posting, including RFPs, Simplified Bids, and Requests for Information;</p> <p>(b) Contracts for Information Technology and Cybersecurity, regardless of dollar value;</p> <p>(c) Agreements to Receive or Access Confidential Information described in Section 7.4;</p> <p>(d) Contracts for cloud services (SaaS, PaaS, and IaaS) regardless of dollar value (see IT Guideline for more</p>

Items	Approvals – Required Prior Approvals
	<p>information); and</p> <p>(e) Contracts that will involve the electronic processing, storing, or transmission of Confidential Information.</p>
<p>11.2.6 Chief Marketing Officer</p>	<p>The Chief Marketing Officer, or his/her designee, must give prior approval to:</p> <p>(a) Contracts for Service relating to marketing with a value greater than \$25,000 as detailed in Section 4.1.3</p> <div data-bbox="537 575 623 659">  </div> <p>Note: If the Contract is \$25,000 or less and includes marketing services, the CMO must be sent a copy upon execution.</p>

PART 12 – SIGNING AND ADMINISTERING CONTRACTS

12.1 Debarment Check Prior to Contract Signing



Resource: Prior to executing Contract, an Agency must confirm the Contractor is not 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, by checking the System for Award Management (SAM) Exclusions list maintained by the General Services Administration at: <https://sam.gov/content/home>.



Resource: Also, an Agency must confirm that the Contractor is not named on the State's debarment list at: <https://bgs.vermont.gov/purchasing-contracting/debarment>. For further information, see [Finance and Management Policy No. 1, Suspension and Debarment](#).

12.2 Signing the Contract

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



Note: The Appointing Authority shall not sign a Contract requiring prior approvals until all such required approvals have been obtained.

Contracts may be signed by hand in wet ink or electronically signed through an ADS authorized e-signature system. Faxed or scanned copies of handwritten signatures are also valid.

12.3 Contract Administration

Once a Contract has been fully signed by the parties, 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 be familiar with the Contract requirements and establish a schedule of activities for ensuring compliance by both the Contractor and the Agency Contract compliance monitoring activities include:

- (a) Ensuring that all required certificates (e.g., certificate of insurance, worker classification/subcontractor reporting form, performance bonds, etc.) are obtained from Contractor prior to execution of the Contract;
- (b) Ensuring that Contractor provides updated certificates periodically as required under the Contract;
- (c) Ensuring that all required reports are delivered;

- (d) Monitoring and coordinating subcontractor approval, if any;
- (e) Monitoring Contractor performance and coordinating any State review and approvals of deliverables;
- (f) Monitoring invoicing and payments;
- (g) Amendment processing and administration; and
- (h) Conducting contract closeout, including ensuring all final Contractor reporting and deliverables have been received and 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 all deliverables in the event of a situation affecting 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.

12.4 Contract File

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.



Resource: 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.

12.5 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.

[Vermont Personnel Policy No. 5.6 "Employee Conduct"](#), the Executive Code of Ethics ([Executive Order #04-22](#), codified as [3 App. V.S.A. ch.3, § 96](#)) and the State Code of Ethics ([3 V.S.A. §§ 1201-1205](#)) set standards and procedures by which all public servants shall abide.

Employees are required to avoid even the appearance of a conflict of interest in the contracting process [\(see 3 V.S.A. § 1203\(a\)\)](#).

If the employee's conflict arises from their decision-making authority in the contracting process, or any other job assignment or duty that is not solely ministerial or clerical in nature, the employee shall either make a public statement or a statement to their immediate supervisor recusing themselves from the matter. Further, every Contractor shall be required to disclose in writing any actual, potential, or perceived conflict of interest.

Employees may request either guidance or an advisory opinion from the State Ethics Commission in making an initial determination whether a conflict of interest exists. Once recused, a public servant shall not in any way participate in or act to influence a decision regarding the Contract.

PART 13 – SUBCONTRACTS

A Contractor may not assign or subcontract the performance of a Contract or any portion thereof to any other entity without the prior written approval of the State. If the subcontractor 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 will involve subcontracting, 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). A Contractor shall be required to include the following provisions of Attachment C in the Contractor's subcontracts for work that is to be performed solely for the State of Vermont or performed in the State of Vermont:

Section 10 ("False Claims Act");

Section 11 ("Whistleblower Protections");

Section 12 ("Confidentiality and Protection of State Information");

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 30 ("State Facilities"); and

Section 32.A ("Certification Regarding Use of State Funds")



Resource: Prior to providing approval of a subcontractor, an Agency must confirm the subcontractor is not 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, by checking the System for Award Management (SAM) Exclusions list is maintained by the General Services Administration at: <https://sam.gov/content/home> . Also, an Agency must confirm that the subcontractor is not named on the State's debarment list at: <https://bgs.vermont.gov/purchasing-contracting/debarment>



PART 14 – CONTRACT AMENDMENTS




One purpose of this Bulletin is to minimize 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.



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.

14.1 Requirements for Contract Amendments

	Requirements for Contract Amendments
14.1.1 When an Amendment is Required	<p>(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.</p> <ul style="list-style-type: none"> (i) a change to the Contract that expands or decreases the Statement of Work and/or Deliverables; (ii) a change to the Contract that expands or decreases the payment amount beyond what is defined in the original Contract; (iii) a change to the payment provisions beyond those defined in the original Contract; (iv) a change to extend the contract duration beyond the original duration defined in the original Contract; and, (v) any other change to an Attachment, for which the Contractor is to be held accountable or which would increase risks to the State. <p> Note: Contract extension, renewal, or cost/price increases should be contingent upon prior satisfactory contractor performance, as determined by the Agency's evaluation process.</p>
14.1.2 Form of Amendment	<p>All Contract Amendments must include the original contracts number and a sequential Amendment number.</p> <p> Note: A new Form AA-14 must show the original contract number and the Amendment number.</p> <p>Letters or Memoranda of Understanding designed to amend a Contract are unacceptable. An Amendment should describe what is being added, deleted, or otherwise modified, with specific reference to the applicable sections of the Contract.</p>

	Requirements for Contract Amendments
	 <p>Resource: A form for Contract Amendments, designed to assist Agencies in meeting the above requirements, is available online at: https://bgs.vermont.gov/purchasing-contracting/forms</p>
14.1.3 Attachment C	<p>When issuing Contract Amendment, Agencies shall ensure that the Contract is updated to include the current version of Attachment C in effect at the time of the Amendment.</p>  <p>Note: The issuance of a revised Attachment C does not necessitate a Contract Amendment, in and of itself.</p>
14.1.4 Required Contractor Certifications	<p>All Contract Amendments and Change Orders must include the following certifications:</p> <ul style="list-style-type: none"> (a) 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. (b) 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. (c) Certification Regarding Suspension or Debarment: Contractor certifies under the pains and penalties of perjury that, 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. <p>Contractor further certifies under pains and penalties of perjury that, as of the date these 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</p>  <p>Resource: A form for Contract Amendments, designed to assist Agencies in meeting the above requirements, is available online at: https://bgs.vermont.gov/purchasing-contracting/forms</p>

	Requirements for Contract Amendments
14.1.5 Sole Source Certification	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 9.5.2 of this Bulletin.

14.2 Prior Approvals Required for Contract Amendments

	Prior Approvals Required for Contract Amendments
14.2.1 Contract Amendment Package	<p>An Amendment shall be circulated for required approvals in the same order as required for approval of a Contract. When routing a proposed Amendment for required approvals, Agencies must include a complete package of documents describing the Amendment. The “package” must include:</p> <ul style="list-style-type: none"> (a) a memorandum summarizing the intended changes proposed by the amendment; (b) a copy of the original executed Contract, including all Attachments and the initial Form AA-14; (c) a copy of all previously executed Amendments, including all related Attachments and Forms AA-14; and (d) the current proposed Amendment, including all Attachments and the new Form AA-14.
14.2.2 Appointing Authority Approval Required	The Appointing Authority must approve all Contract Amendments.
14.2.3 Special Approvals Required	The CMO, State Treasurer, and/or DHR must approve an Amendment, prior to its execution, if the original Contract required such approval, or if a monetary threshold requiring any such approval is triggered by the Amendment (for example, CMO approval would be required if a contract for marketing services is amended to increase the maximum amount payable to \$25,000 or more).
14.2.4 Secretary of Administration Approvals Required	<ul style="list-style-type: none"> (a) The Secretary must approve an Amendment, prior to its execution, under the following circumstances: <ul style="list-style-type: none"> (i) For amendments to a competitively sourced contract, whenever the cumulative effect of the amendment and all prior amendments increases the maximum amount payable by the State (i) by \$500,000 or more, or (ii) by 50% or more, unless the amendment is a

	Prior Approvals Required for Contract Amendments
	<p>Renewal, as defined below in part B of this section.</p> <p>(ii) For amendments to a sole sourced contract, whenever the cumulative effect of the amendment and all prior amendments increases the maximum amount payable by the State (i) by \$100,000 or more, or (ii) by 25% or more, or (iii) to an amount that would have originally required the Appointing Authority to obtain an approved sole source waiver from Finance and Management or the Secretary, unless the amendment is a Renewal as defined below in this section.</p> <p>(b) Prior approval of the Secretary shall not be required where either:</p> <p>(i) The Amendment is only to extend contract duration (provided there is no increase to the maximum amount payable by the State and no change to the scope of work or other contract terms).</p> <p>(ii) The Amendment is a “Renewal”. A Renewal is an amendment to exercise an option to continue the contractual relationship beyond the base contract term, as permitted by the language of the original contract. A Renewal may only amend the contract to (i) extend the duration of the contract and (ii) increase the maximum amount payable by the State. Both the extension of duration and the amount by which the contract maximum increases due to the extension must be clearly specified in the original contract. That is, renewal options are identified in the contract term and the Agency’s cost experience in the event of extension is easily calculable from original contract payment provisions. If the amendment includes any other changes, it is not a Renewal and is subject to the requirements for Secretary approval set forth above in subpart (a) of this section.</p>
14.2.5 Attorney General’s Office Approval Required	Prior approval of the AGO shall be required when a Contract for Services valued below \$25,000 is amended to increase the value of the contract to \$25,000 or more and otherwise whenever prior approval of the Secretary is required for an Amendment.
14.2.6 State Chief Information Officer (CIO) Approval Required	The CIO must approve an Amendment, prior to its execution, if the original Contract required CIO approval, or if a change to the scope of work or other contract terms would require CIO approval under any of the circumstances listed at Section 11.2.5.

14.3 Signing Contract Amendments

Only an Appointing Authority may sign a Contract Amendment for the State. Prior to signing an Amendment, it is the responsibility of the Appointing Authority to ensure the Amendment:

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

14.4 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. Amendments to contract duration (e.g., end date) or maximum amount payable 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\(a\)](#).

14.5 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 AGO 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 AGO 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 AGO when a Contractor attempts to make an assignment or requests the State's agreement to do so.

PART 15 – MISCELLANEOUS

15.1 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 Contracts for Service that are definitively categorized as Personal Service or Privatization Contracts, as detailed in [Section 4.2](#) and [Section 4.5](#) respectively, will be coded to the #507XXX series of Third Party Personal Service accounts.

In the case of Financial Transaction Contracts, and certain Zero-Dollar Contracts, 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).

15.2 Compliance Reviews

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.

15.3 Federal Funding Accountability & Transparency Act (FFATA)

For all Contracts funded in part with Federal monies, the requirements of the Federal Funding Accountability and Transparency Act (FFATA) may apply. Contracting Agencies must determine if Contract meets the requirements of FFATA.



Resource: For more information about FFATA, please visit, <https://www.fsrs.gov/>.

Determination includes verifying the Contractor have a valid Unique Entity ID (UEI) (formally referred to as a Data Universal Numbering System (DUNS) number); and reports all sub-awards (Contracts) in the FFATA Sub-award Reporting System (FSRS) when applicable.



Resource: For additional information about these requirements, refer to Finance and Management [Policy No. 8 ~ Federal Funds Accountability and Transparency Act Compliance](#) and the Uniform Guidance.

15.4 Public Records Requests

With exception of publicly posted Solicitation Documents, all public records pertaining to an active or ongoing solicitation activity are considered exempt from disclosure pursuant to the exemption provided for records relating specifically to negotiation of contracts at [1 V.S.A. § 317\(c\)\(15\)](#). Once all Contracts resulting from the solicitation activity have been fully signed, or the State has decided to discontinue the solicitation activity (i.e., the State will not award a Contract and will not pursue a new or related solicitation), all public records associated with the solicitation, including all bids, proposals, evaluation notes, etc., are no longer considered subject to the foregoing exemption and may be available for public copying or inspection unless one or more other exemptions to disclosure apply, in accordance with the State's Public Records Act, [1 V.S.A. § 315](#), et seq. Agencies should consult with internal

counsel or the AGO, as needed, on public records requests for documents pertaining to a solicitation, especially where a bidder has marked or identified materials as proprietary and confidential.

15.5 Public Endorsements

To promote an open and fair bidding process, the State cannot give the appearance of “endorsing” a person, product, or company. Therefore, providing a verbal or written recommendation to any Vendor, Supplier, or Contractor or to any person for their general use, or serving as a reference for any Vendor, Supplier, or Contractor, is prohibited. If a bidder were to produce a written recommendation from the State, or list a SOV Employee as a reference, it could be interpreted that the State had already recommended or endorsed that bidder. Even the appearance of a pre-determined recommendation is strictly prohibited. An Agency may respond to a specific inquiry about a specific Supplier or project, but all responses shall be limited to factual statements.

PART 16 – APPENDICES

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

- (a) Standard State Contract Templates, including Attachment C
<https://bgs.vermont.gov/purchasing-contracting/forms>
- (b) [Form AA-14 – Contract Summary and Certification Form](#)
- (c) [Contract File Check List](#)
- (d) [Bulletin 3.5 Contracting Waiver Plan form](#)
- (e) IRS Publication 15 -A <https://www.irs.gov/pub/irs-pdf/p15a.pdf>



Note: Refer to §2 of IRS Publication 15 -A for IRS rules determining Contractor vs. Employee.

16.2 Appendix II: Attachment A – Statement of Work Guidelines


The Statement of Work (SOW) is the area in Contract where the work to be performed is described. The SOW should 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:

- (a) What work is to be done?
- (b) What are the deliverables?
- (c) Who is going to do the work?
- (d) When is the work going to be done?
- (e) How will the work be performed?
- (f) How can you tell when the work is completed?
- (g) How will you measure the performance of the work:
 - (i) How Much Did We Do?
 - (ii) How Well Did We Do It?
 - (iii) Is Anyone Better Off?

A Statement of Work should include the following components:

	Components of a Statement of Work
16.2.1 Need Statement	Succinctly describe the State need that the work of this Contractor will address.
16.2.2 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.
16.2.3 Objective of the Agreement - Deliverable	<p>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.</p> <div style="display: flex; align-items: flex-start;">  <div> <p>Note: Poor example: Task - Assess class needs for public health awareness.</p> <p>Deliverable: Write curriculum to address needs.</p> <p>The problem with the above example is that nothing is specified. The task should be measurable, and the deliverable must be</p> </div> </div>

	Components of a Statement of Work
	<p>quantifiable.</p> <p> Note: 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.</p> <p>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.</p> <p>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.</p>
16.2.4 Administration	<p>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.</p> <p> Note: 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.</p> <p>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.</p> <p> Note: 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.</p>
16.2.5 Timeline	<p>This section lays out all dates for the project tasks and deliverables. Also included are the dates for the administration portion of the SOW.</p>
16.2.6 Key Elements	<p>Between the Needs Statement, Goals of the Agreement, Objectives/Deliverables, Administration, and Timeline</p>

	Components of a Statement of Work
	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.

16.3 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. Attachment B of the standard State Contracts should detail:

- (a) Requirements and schedule for the submission of Contractor invoices;
- (b) Whether payment will be made based upon rates; hours worked; delivery of a service, or State acceptance of a deliverable;
- (c) Whether payment or any portion thereof will be tied to the achievement of performance outcomes and/or measures;
- (d) What documentation (bills, invoices, or other proof of work) the Contractor must provide when invoicing the State; and
- (e) When and how much the Contractor will be paid, and what deductions, if any, will be made from payments.


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:

	Components of Payment Terms
16.3.1 Pricing	<p>What is the price based on and does it relate to Attachment A?</p> <ul style="list-style-type: none"> (a) Units of work measures, such as hourly rates, hourly rates by specified position(s) or equipment; (b) Specific and measurable deliverables, tasks, or benchmarks; (c) Progress payments based on days/weeks/months; (d) Achievement of outcomes and/or performance measures toward the final result, as outlined in Statement of Work- Attachment A; (e) Quality standards; (f) Formal acceptance process for deliverables; (g) Additional items included in the price, such as fuel




	Components of Payment Terms
	<p>surcharges, environmental fees, etc;</p> <p>(h) Retainage provisions.</p>
16.3.2 Invoice Submission, Approval and Acceptance	<p>What is the invoice and payment process?</p> <ol style="list-style-type: none"> a. Detailed invoices are required, per 32 V.S.A. §463. A detailed invoice must include the following details: <ol style="list-style-type: none"> i. The name and address of the Contractor (letterhead or signed by Contractor); ii. Specific language itemizing the deliverables, units of measure, steps achieved, or progress made; iii. Dates of service or specific dates worked; iv. The Contract number and the name of the project; v. Delivery tickets (proof of purchases), receipts or other documents to be attachments to substantiate the invoice; b. Other invoice review and approval considerations may include: <ol style="list-style-type: none"> i. To whom and where the Contractor remits the invoice for pre-payment review and approval; ii. The invoicing schedule, preferably on a monthly basis; iii. How will you know when the work being billed is acceptable – who decides? iv. Who is(are) authorized approvers for the invoice? v. Address the process for invoices not approved due to unacceptable work; missing a deadline; incomplete work; etc. vi. Address the process for handling and resolving payment disputes; vii. Address any funding contingencies upon which this contract is based that could affect payment to the Supplier (i.e., Federal Grant Awards, Legislative Appropriation, etc.).
16.3.3 Contractor Payments	<p>What can the Contractor expect?</p> <ol style="list-style-type: none"> (a) Standard State payment policy is Net 30 days, from date of error free invoice receipt; (b) The preferred method of payment is by ACH (<u>A</u>utomated <u>C</u>learing <u>H</u>ouse is a secure payment transfer system that connects all U.S. financial institutions. The <i>ACH</i> network acts as the central clearing facility for all Electronic Fund



	Components of Payment Terms
	<p>Transfer (EFT) transactions that occur nationwide.);</p> <p>(c) To provide a current IRS Form W-9, signed within the last 6 months;</p> <p>(d) Retainage provisions.</p>
16.3.4 Payment Questions	<p>Whom should the contractor communicate with if they have a question about their payment or method of payment (check, ACH Transfer, etc.)?</p> <div>  <p>Resource: In addition, the State Treasurer’s Office maintains a Supplier Portal on which Suppliers may access any payment made electronically, by ACH or wire: http://www.vermonttreasurer.gov/content/accounting/vendor-login.</p> </div>


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

Many Contracts can be fully described using the Standard Contract and 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.

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

	Example Additional Term & Conditions
16.4.1 Owner's protective liability insurance	<p>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.</p> <p> Note: 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.</p>
16.4.2 Compliance with other laws	<p>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.</p> <p> Note: 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.</p>
16.4.3 Contractors' liens	<p>Contractor will discharge any and all Contractors' or mechanics' liens imposed on property of the State through the actions of subcontractors.</p> <p> Note: 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</p>

	Example Additional Term & Conditions
	(see 12 V.S.A. § 5601(a)), it is nevertheless best practice to require the Contractor to correct the matter and thereby avoid litigation.
16.4.4 Cost of materials	Contractor will not buy materials and resell to the State at a profit.
16.4.5 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.
16.4.6 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.
16.4.7 Performance bond	<p>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.</p> <div>  <p>Note: 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."</p> </div>
16.4.8 Prior approval/review of releases	<p>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.</p> <div>  <p>Note: 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</p> </div>

	Example Additional Term & Conditions
	may be appropriate.
16.4.9 Progress reports	<p>The Contractor shall submit progress reports to the State according to the following schedule. <i>[insert schedule]</i> 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.</p> <div>  <p>Note: 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.</p> </div>
16.4.10 Work product ownership	<p>Upon full payment by the State, all products of the Contractor's work, including outlines, reports, charts, sketches, drawings, artwork, 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.</p>

16.5 Appendix V: Acronyms Used in This Bulletin

Acronyms	Meaning
AA-14	State of Vermont Contract Summary and Certification form
AAG	Assistant Attorney General
ADS	Agency of Digital Services (formerly Department of Innovation and Information)
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
COI	Certificate of Insurance
DHR	Department of Human Resources
EBB	Electronic Bulletin Board
F&M	Department of Finance and Management
FERPA	Family Education Rights and Privacy Act
FFATA	Federal Funds Accountability and Transparency Act
HIPAA	Health Insurance Portability and Accountability Act
IaaS	Infrastructure as a Service
IRS	Federal Internal Revenue Service
IT	Information Technology
LLC	Limited Liability Company

Acronyms	Meaning
MOA/MOU	Memorandum of Agreement; Memorandum of Understanding
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
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

16.6 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	Supervisor ¹ (Appointing Authority)	AGO	DFM	SOA	CTO	CIO (PAT)	CMO	Comm DHR
Competitive Process, Waivers & Approvals		1. Original Contracts Awarded - by Competitive Process											
	\$1 to \$24,999.99 – Short-Form Contract and Short-Form Attachment C may be used under the limited circumstance defined in Section 10.1.2.2.		✓	✓	✓								
	\$25,000 up to \$250,000		✓	✓	✓	✓							
	Greater than \$250,000 up to and including \$2,000,000		✓		✓	✓							
	Greater than \$2,000,000		✓		✓	✓	✓	✓					
	Zero-Dollar Contracts		✓		✓	✓	✓	✓					
	Equipment Leases				✓		✓	✓					✓
		2. Sole Source Requests											
	Sole Source Request \$24,999 or less		Direct Award, non-competitive process		✓								
	Sole Source Request \$25,000 or greater		Direct Award, non-competitive process		✓		✓						
Sole Source Request \$100,000 or greater		Direct Award, non-competitive process		✓		✓	✓						
If applicable, IT Sole Source needs CTO approval prior to SOA		Direct Award, non-competitive process		✓				✓					
	3. Original Contract Waiver Requests – Contracting Plans												
One Time Waiver Requests Other than Sole Source		✓	✓	✓	✓		✓	✓					
	Contracting Waiver Plan (*input from this office required if Plan impacts a requirement for the office)				✓	*	✓	✓	*	*	*	*	*
Special Contract Type Added Approvals		4. Contract Types Requiring Additional Approvals (in addition to Prior Approvals listed above #1, 2 and 3)											
	All IT & Cybersecurity RFXs, including Simplified Bids and Requests for Information									✓			
	IT & Cybersecurity Contracts regardless of dollar value									✓			
	Contracts involving electronic processing, storing or transmission of Confidential Information									✓			
	Marketing Contracts										✓		
	Privatization Contracts						✓		✓			✓	
	State of VT Employees & Retiree Contracts											✓	
	Contracts including a Change Order Process						✓		✓				
	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 substitute for reading, understanding, and complying with this Bulletin. The requirements of the Bulletin govern over this Quick Reference Guide.**
- Additional Agency or Departmental conditions, not included in this Bulletin, may apply.
 - ¹ Supervisor – a.k.a. the Appointing Authority: any secretary, commissioner, executive director, elected officer, or other exempt head of a department or agency.
 - ² Monetary Thresholds are cumulative - if the original contract amount plus all amendments reaches a new threshold; the requirements for the higher threshold apply.
- The State Director of Risk Management must approve of modifications to the insurance provisions in Attachment C.
- The State Auditor of Accounts must approve of modifications to the audit provisions in Attachment C.
- The State Chief Information Security Officer must approve of modifications to the provisions in Attachment C regarding the use and protection of state information.
- Agencies should seek approval from the state officials listed above before requesting AGO approval of any Attachment C modifications.