



State of Vermont
Contract Administration
One National Life Drive
Montpelier VT 05633-5001
<http://vtrans.vermont.gov/>

Agency of Transportation
Finance & Administration
[phone] 802-828-2641
[fax] 802-828-5545

November 22, 2019

Request for Proposals (RFP): **Job Order Contracts #JC002**

Ladies and Gentlemen,

The Vermont Agency of Transportation (VTrans) releases this Request for Proposals (RFP) for Job Order Contracts (JOCs) to provide equipment, personnel (operators, laborers), and necessary materials for small transportation-related maintenance and repair requirements. All VTrans Bureaus may place orders against JOCs.

Each JOC awarded will specify:

- The equipment each contractor will make available;
- The hourly rates for the specified equipment and associated operators; and
- The geographical area (indicated by VTrans maintenance district) in which the bidder is willing to operate under a JOC.

This RFP will result in the award of multiple JOCs which will create a pool of contractors that VTrans may place Job Orders against, in the best interest of the State.

Contractors awarded a JOC may choose to make their equipment and services available to other State agencies, Vermont State Colleges, and political subdivisions of the State such as towns and schools (hereinafter "governmental entities") under the same terms and conditions provided in the JOC with VTrans. Contracts with other governmental entities will be separate in all ways from the VTrans JOCs, with the contracting governmental entity being entirely responsible for all aspects of contract administration, including payment, with no recourse to VTrans.

Questions. All questions related to this RFP shall be forwarded to Stacy Andre, **Administrative Services Manager, Contracts Administration, in writing** by e-mail at Stacy.Andre@vermont.gov. All such questions and requests shall be received **no later than December 30, 2019**. VTrans will not be bound by any oral communications. All questions or requests for clarification received will be documented and answered after this date.

Communications. *Communication with VTrans personnel other than the listed contracts specialist regarding this procurement is prohibited and may result in the rejection of your proposal.* It is a condition of bidding under this RFP that by submitting a bid, bidder accepts and agrees unconditionally that if bidder in any way contacts, a VTrans evaluator involved in the selection process for this contract, either during or following the RFP process, regarding the selection process or outcome of the selection process, then that bidder will be completely barred from being awarded a contract by VTrans for 365 days from the date of that bidder contacted the VTrans evaluator. The only valid point of contact for questions about the selection process or outcome is the Contract Administration employee named as the Point of Contact in this RFP.

Pre-Bid Informational Meeting: A non-mandatory, informational bidders meeting will be held on **December 12, 2019 at 10:00 a.m.**, at the Agency of Transportation, Dill Building, 2178 Airport Road, Suite A, Berlin, Vermont. Attendance at this meeting is not mandatory in order to submit a bid.

Required Shipping Information:

Clearly indicate the following on the outside of the sealed envelope or packages containing the technical proposals:

Name and address of the Bidder

Due date and time (January 23, 2020 prior to 2:00 p.m.)

Title: "Job Order Contract"

Submit your proposals to the Office of Contract Administration, Agency of Transportation, Barre City Place, 219 North Main Street, Barre, VT 05641, **prior to 2:00 p.m. on Thursday, January 23, 2020.**

Proposals or unsolicited revisions submitted after the specified due date and time will not be accepted and will be returned to the Contractor.

Delivery Methods:

- U.S. MAIL: Bidders are cautioned that it is their responsibility to originate the mailing of proposals in sufficient time to ensure proposals are received by VTrans Contract Administration prior to the due date and time.
- EXPRESS DELIVERY: If proposals are being sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery packages will not be considered received by the State until the express delivery package has been received by VTrans Contract Administration. *The postal (zip) code for express deliveries is 05601.*
- HAND DELIVERY: Hand-carried proposals shall be delivered to a representative of VTrans Contract Administration prior to the due date and time to the Barre City Place, 219 North Main Street, Barre, VT 05641.
- ELECTRONIC: Electronic proposals **will not** be accepted.
- FAX BIDS: Faxed proposals **will not** be accepted.

Modifications. In the event that it becomes necessary to revise, modify, clarify, or otherwise alter this RFP, including VTrans' responses to questions and requests for clarification, such modification shall be posted to the VTrans Contract Administration Advertised Projects website at:

<https://vtrans.vermont.gov/contract-admin/bids-requests/job-order-contracting>

IT IS THE BIDDER'S RESPONSIBILITY TO OBTAIN ANY RFP MODIFICATIONS ISSUED.

They will be posted on the VTrans Contract Administration website at: <https://vtrans.vermont.gov/contract-admin/bids-requests/job-order-contracting>.

Reservation of Rights. All proposals become the property of VTrans upon submission. The cost of preparing, submitting and presenting a proposal is the sole expense of the proposing Contractor. Unselected proposals may be destroyed or returned to the bidder at VTrans' discretion. VTrans reserves the right to reject any and all proposals received as a result of this solicitation, to negotiate with any qualified source, to waive any formality and any technicalities or to cancel this RFP in part or in its entirety if it is in the best interests of VTrans. This solicitation of proposals in no way obligates VTrans to award a contract.

Exceptions to Terms and Conditions. The bidder must state in the business proposal any exceptions taken to the terms and conditions in this RFP. For each exception the bidder shall identify the term or condition, state the reason for the exception, and provide any other information concerning the exception. Such exceptions, deviations or conditional assumptions may, however, result in rejection of the proposal as unresponsive.

Multiple Award Anticipated. VTrans intends to award more than one (1) JOC.

Contract Term. VTrans will enter into JOCs, with an initial term of two (2) years with the option of extending for two (2) additional one (1) year periods.

Maximum Limiting Amount. Maximum limiting amounts will vary based upon the type of equipment and district(s) of work awarded, and anticipated VTrans need. The maximum limiting amount for JOCs does not guarantee that an awardee will receive any work under the JOC or the payment of any portion of the maximum limiting amount.

Job Orders. As a need arises, VTrans will place Job Orders for equipment, and any required materials and personnel with individual contractors whose JOCs include the required equipment and district.

- The requesting VTrans organization will utilize a standard **Job Order Form** (see Attachment K) for all tasks assigned under JOCs.
- Job Orders will be submitted and received electronically (using email) therefore all contractors must have the capability to electronically send and receive the Job Order Form (see Attachment K).
- Job Orders will be assigned to the contractor that represents the best value to the State, considering such factors as, but are not limited to; price, quality, past performance, and availability.

Job Order Assignment Procedure.

- VTrans may decide, in its sole discretion, to place Job Orders with contractors based upon hourly rates **or** request lump sum pricing.
 - Hourly Rates Only: If a Job Order is based on hourly rates only, and does not include lump sum pricing, VTrans will review JOCs, identify contractors with the equipment type sought, and select the contractor that represents the best value to the State for that Job Order.
 - Lump Sum Pricing or Materials. If a Job Order requires lump sum pricing, VTrans will request at least three (3) quotes from JOC holders prior to placing the order with the contractor that represents the best value to the State.

Job Order Limitation. Individual Job Orders will not exceed \$50,000.00.

Emergencies. In emergency situations VTrans may deviate from the above described procedures to place Job Orders against JOCs.

On-Ramp Procedures. VTrans reserves the right to add contractors to the JOC pool during the original and optional JOC periods. The evaluation and selection of awardees for any on-ramp will be the same as the evaluation and award criteria used for the initial JOC awards. Any new awardees will compete going forward with any existing or remaining contractors for all Job Orders. The period of performance for new awardees will not exceed the term of the original JOC, including options exercised.

Off-Ramp Procedures. In addition to any other means or methods of termination provided for in this contract, VTrans reserves the right to terminate JOCs at any time when it determines that a Contractor has failed to deliver adequate performance or demonstrated inadequate availability. No JOC will be terminated via these off-ramp procedures prior to an opportunity for the contractor to respond to a proposed termination.

Changes to Prices or Equipment Lists. As approved by VTrans, Contractors may add or delete equipment from the equipment lists that are part of the JOC contract, as an Administrative Adjustment. Such changes will only be effective when submitted to Contract Administration on the Administrative Adjustment Form, and the contractor has been notified of acceptance and the effective date. Contract prices may be adjusted only as part of amendments exercising the first option year in accordance with an approved request for revised pricing.

Subcontracting. JOCs are to be utilized primarily for small maintenance and repair tasks, therefore subcontracting entire Job Orders will not be permitted, except in unusual circumstances as permitted by VTrans in the Job Order.

Confidentiality. All Proposals received will become part of the contract file and will become a matter of public record, and may be disclosed to the public in accordance with the Vermont Public Records Act, 1 V.S.A. § 315 et seq. If the proposal documents include material that is considered by the bidder to be proprietary and confidential under 1 V.S.A. § 315 et seq., the bidder shall submit a cover letter that clearly identifies each page or section of the proposal that it believes is proprietary and confidential. The bidder shall also provide in their cover letter a written explanation *for each marked section* explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Additionally, the bidder must include a redacted copy of its response for portions that are considered proprietary and confidential. 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 be marked confidential, and the State reserves the right to disqualify responses so marked.

Proposal Instructions – General

- The quality of proposals and adherence to solicitation response requirements and/or restrictions are considered reflective of the manner in which the bidder could be expected to conduct business and will be given due consideration throughout the evaluation process.
- Failure to provide all required information, or indications that the bidder will not conform to all terms as set forth in the RFP and attachments may make the offer non-responsive and may result in the elimination of the bidder from further consideration for award.
- The selection panel may be comprised of VTrans employees from varying Departments and Bureaus and in some cases external Stakeholders. The panel members may or may not be familiar with your company. With that in mind, it is important to provide detailed information regarding the evaluation criteria listed below.
- Note: If a bidder requires assistance in preparing their proposal, they may contact the Procurement Technical Assistance Center (PTAC). PTAC specializes in helping small businesses navigate the documentation associated with State and Federal procurement. Their website is: <http://accd.vermont.gov/economic-development/programs/ptac>. Please contact them for assistance.

Proposal Format and Content

Submit One (1) envelope or package containing 1 CD, DVD or thumb drive holding an electronic copy of the proposal and five (5) stapled and/or bound printed copies of the proposal.

The proposal shall not exceed twenty (20) single sided pages or ten (10) double sided pages. All pages that count toward the page limit shall be numbered consecutively. The pages shall be formatted as 8½” x 11” sheets. Font shall be size 12.

The proposal pages shall include information as required below:

Proposal Substantive Content

1. Rate Table / Bid Sheet.

- Use the attached **Rate Table / Bid Sheet** (Attachment I) and **Equipment Type List** (Attachment J) to separately identify and list equipment, labor rates, and designate districts. **NOTE:**

Equipment. When listing equipment on the Rate Table / Bid Sheet (Attachment I), all equipment must list the make, model and size for each item, and listing separately each attachment available for trucks, excavators, etc. (*Each Excavator, Paver etc. must be separate to allow for proper size selection. For example: 160 Excavator, 160 Excavator with Long Boom, 160 Excavator with Mulcher Head.*) Include mowers or plows if you provide these services, and include make, model and size. If you are providing Railroad Services, please identify railroad specific equipment including make, model, size and if equipped with Hi-Rail. Flaggers – Please break out flaggers by Traffic Flaggers, Railroad Flaggers etc. (*if flaggers are not broken out, then the same rate will apply for all flagging types*). Flaggers are required for most services; Contractor must list Flaggers on the Rate Table / Bid Sheet (Attachment I).

- **Labor.** Labor must be listed separate from equipment, not combined. On the Rate Table / Bid Sheet (Attachment I), the total column will automatically calculate the combined hourly rate. This is for comparison purposes only. Do not include labor with items such as message boards, generators and other items that do not require continual labor/operator services.
- **Mobilization.** Do not include a standard hourly mobilization rate, this will be determined at the Job Order level; however, Contractors must provide pricing for any trucks and trailers that will be utilized for mobilization as part of their equipment list and rates. Listed rates will be utilized by VTrans when reimbursing contractors for mobilization costs. The maximum reimbursement for mobilization will be for the time required to move equipment from the Contractor's location where equipment is usually housed, to the job site, and back.
- **Equipment not on the Equipment List.** If the bidder wishes to provide equipment not listed on Attachment J – Equipment Type List, describe the equipment using the category of “Other.”
- **District.** Identify all Districts the bidder will provide equipment and/or service(s). District 6 is considered headquarters and should be included. If no specific Districts are designated, your contract will be considered statewide. Please note: Job Order Tasks are assigned case by case or lump sum. Contractor is NOT obligated to accept job order task.

2. Technical Capability and Experience. Provide a **written description** of why the bidder believes it has the capability and experience to meet the needs of VTrans in supplying the equipment and labor indicated in the Bid Sheet, in a timely and high-quality manner. This should not exceed two (2) pages, and should describe, for example:

- Years of experience
- Work types/projects successfully completed
- Special licenses or certifications possessed, if any
- The experience level of their personnel
- The company's safety record, certifications and trainings

3. Attachment F - Worker Classification Compliance Requirements (Self Reporting and Subcontractor Reporting). The form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.

4. Attachment G - Climate Change Considerations in State Procurements Certification

Evaluation of Proposals

VTrans will award JOCs in the best interest of the State. In making best interest determinations, the selection panel will evaluate proposals based upon the following factors.

1. **Technical Capability and Experience.** The proposal indicates the bidder has the personnel and/or equipment to deliver timely, high-quality, contract performance.
2. **Past Performance.** The proposal indicates successful performance of similar work types in the past (not necessarily with VTrans).

NOTE: VTrans may consider any information in its possession regarding past performance on VTrans contracts. VTrans reserves the right to discuss the Contractor's past performance with any VTrans employee who has had experience with the Contractor. Debarred and/or suspended firms will not be considered.

3. **Price.**
4. **Executive Order 05-16: Climate Change Considerations in State Procurements Preference.** Businesses who demonstrate business practices that promote clean energy and address climate change as identified in the Certification will be given preference.

Evaluation Method

- A selection committee will review all complete and compliant proposals and rate factors 1-3 above as **pass, fail, or neutral**. Failure on any of these factors may disqualify the proposal. VTrans may attempt to negotiate lower prices where unreasonably high prices alone cause a fail rating.
- With respect to factor 4, *all other considerations being equal*, preference will be given to bidders who have practices that promote clean energy and address climate change, as identified in the applicable Certificate of Compliance.
- Assigned ratings represent the consensus developed by the selection committee.

- When determining JOC awards in the best interest of the State, VTrans, in its sole discretion, will consider which and how many JOCs will be needed to meet the state's needs in terms of necessary equipment availability and geographical coverage.

Other Requirements:

- **Registration with the Secretary of State.** The Bidder awarded a contract shall, upon notification of award, apply for registration with the Vermont Secretary of State's Office to do business in the State of Vermont, if not already so registered. The registration form may be obtained from the Vermont Secretary of State, 128 State Street, Montpelier VT 05609-1101. The telephone number is 800-439- 8683. Registration can be completed online at www.vtsosonline.com/online . VTrans will not process the contract until the contractor is registered with the Secretary of State's office.
- **Required Insurance.** The Bidder shall submit to VTrans a certificate of insurance showing that minimum coverages required by Attachment C are in effect. The certificate must be submitted to the office of Contract Administration prior to execution of the agreement. ***No work may be performed for any VTrans contract and/or Notice to Proceed, including mobilization, without compliant insurance being on file at AOT Contract Administration.*** It is the responsibility of the contractor to maintain current certificates of insurance on file with the State through the term of the contract.
 - **Railroad Protective Liability (where applicable).** When the Task Order requires work on, over, or under the right-of-way of any railroad, the Contractor shall provide and file with the Agency, with respect to the operation that it or its subcontractor perform under the State of Vermont Agency of Transportation contract, Railroad Protective Liability Insurance for and on behalf of the railroad as named insured, with the State, the Railroad, and Municipalities, when applicable, named as additional insured, providing coverage limits of:
 - (1) Not less than \$2,000,000.00 for all damages arising out of any one accident or occurrence, in connection with bodily injury or death and/or injury to or destruction of property; and
 - (2) Subject to that limit per accident, a total (or aggregate) limit of \$6,000,000.00 for all injuries to persons or property during the policy period.
- **Worker's Compensation:** With respect to all operations performed, the contractor shall carry worker's compensation insurance in accordance with the laws of the State of Vermont. ***NOTE: In the case of out-of-state Bidders, the Bidder's workers' compensation insurance carrier must be licensed to write workers' compensation for all work that will be conducted within Vermont and so noted on the Certificate of Insurance.***
- **Contract Execution.** The Contractor shall sign the contract documents and return them to the Agency's Office of Contract Administration within fifteen (15) calendar days from the date of the award notification. No contract shall be considered effective until it has been fully signed by all of the parties. Failure to sign and return all contract documents, including insurance certificates in accordance with instructions within fifteen (15) days may result in retraction of the award.
- **Worker Classification Compliance Requirements.** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.
 - **Self-Reporting:** For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance

relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

○ Subcontractor Reporting: For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54). This requirement does not apply to subcontractors providing supplies only and no labor to the
Revised May 29, 2018 overall contract or project. This list **MUST** be updated and provided to the State as additional subcontractors are hired.

- **Prevailing Wages.** Davis-Bacon wage requirements will be applicable to any Job Order in which laborers are engaged as part of a construction project exceeding \$2,000.00, which receives Federal aid and is located within the right of way of a roadway that is functionally classified as a Federal highway. Additionally, 29 V.S.A. §161(2)(b)(c)(d) requires Vermont prevailing wage rates for work on certain projects funded in whole or in part through the State's Capital Construction Act. **Individual Job Orders will indicate which prevailing wage rates, if any, apply.**
- **Payment Bonds.** The Contractor selected to perform some Job Orders may be required to furnish bonds, accordance with 19 V.S.A. § 10 (9). The Bond given by the Contractor shall be a Labor and Materials Bond in the sum equal to one-hundred per centum (100%) of the total task order price of the work. **Individual Work Orders will indicate bonding requirements, if any apply.**
- **Contract Terms.** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.

Enclosures:

- Attachment A- Scope of Work (SOW)
- Attachment B- Payment Provisions.
- Attachment C- Standard State Provisions for Contracts and Grants dated December 15, 2017
- Attachment D- Other Provisions
- Attachment E- VTrans General Terms and Conditions for Contracts for Services- 2018
- Attachment F- Worker Classification Compliance Requirements (Self Reporting and Subcontractor Reporting)
- Attachment G - Climate Change Certification
- Attachment H- Vermont Maintenance District Map
- Attachment I- Rate Table / Bid Sheet
- Attachment J- Equipment Type List
- Attachment K- Job Order Form
- Include Title VI Assurances, Appendices A & E

Attachment A

Job Order Contract Scope of Work November 22, 2019

Contractor has been selected for this Job Order Contract for the equipment, personnel and district(s), and rates specified in the table below:

(Contract Rate Sheet Inserted at Award by VTrans - Insert Table)

Job Orders. As a need arises, VTrans will place Job Orders for equipment, and any required materials and personnel with individual contractors whose JOCs include the required equipment and district.

- The requesting VTrans organization will utilize a standard **Job Order Form** (see Attachment K) for all tasks assigned under JOCs.
- Job Orders will be submitted and received electronically (using email) therefore all contractors must have the capability to electronically send and receive the Job Order Form (see Attachment K).
- Job Orders will be assigned to the contractor that represents the best value to the State, considering such factors as, but are not limited to; price, quality, past performance, and availability.

Job Order Assignment Procedure.

- VTrans may decide, in its sole discretion, to place Job Orders with contractors based upon hourly rates **or** request lump sum pricing.
 - Hourly Rates Only: If a Job Order is based on hourly rates only, and does not include lump sum pricing, VTrans will review JOCs, identify contractors with the equipment type sought, and select the contractor that represents the best value to the State for that Job Order.
 - Lump Sum Pricing or Materials. If a Job Order requires lump sum pricing, VTrans will request at least three (3) quotes from JOC holders prior to placing the order with the contractor that represents the best value to the State.

Job Order Limitation. Individual Job Orders will not exceed \$50,000.00.

Emergencies. In emergency situations VTrans may deviate from the above described procedures to place Job Orders against JOCs.

On-Ramp Procedures. VTrans reserves the right to add contractors to the JOC pool during the original and optional JOC periods. The evaluation and selection of awardees for any on-ramp will be the same as the evaluation and award criteria used for the initial JOC awards. Any new awardees will compete going forward with any existing or remaining contractors for all Job Orders. The period of performance for new awardees will not exceed the term of the original JOC, including options exercised.

Off-Ramp Procedures. In addition to any other means or methods of termination provided for in this contract, VTrans reserves the right to terminate JOCs at any time when it determines that a Contractor has failed to deliver adequate performance or demonstrated inadequate availability. No JOC will be terminated via these off-ramp procedures prior to an opportunity for the contractor to respond to a proposed termination.

Changes to Prices or Equipment Lists. As approved by VTrans, Contractors may add or delete equipment from the equipment lists that are part of the JOC contract, as an Administrative Adjustment. Such changes will only be effective when submitted to Contract Administration on the Administrative Adjustment form, and the contractor has been notified of acceptance and the effective date. Contract prices may be adjusted only as part of amendments exercising option years in accordance with an approved request for revised pricing.

Subcontracting. JOCs are to be utilized primarily for small maintenance and repair tasks, therefore subcontracting entire Job Orders shall not be permitted, except in unusual circumstances with prior approval which must be clearly stated in the Job Order.

FOR ALL ACTIVITIES:

Traffic Control shall either be the responsibility of the Contractor or of VTrans depending on the nature and/or duration of the work effort. VTrans will advise the Contractor as part of the Job Order regarding the responsibility for providing Traffic Control. Part 6 (Temporary Traffic Control) of the 2009 Edition of the Manual on Uniform Traffic Control Devices (MUTCD) (mutcd.fhwa.dot.gov/kno_2009r1r2.htm) establishes the traffic control standards and guidelines for street and highway maintenance operations. Traffic Control for bridge and culvert repair operations, shall comply with Chapter 6H of the MUTCD whenever possible. The following figures and associated notes from the MUTCD, in conjunction with

VTrans Standard Sheets T-1, T-10, T-11, T-12, T-13, T-15 and T-17, found at <http://vtrans.vermont.gov/cadd/downloads> and will generally govern the various traffic control needs for bridge and culvert repair: Figure 6H-1 (Work Beyond the Shoulder), Figure 6H-6 (Shoulder Work with Minor Encroachment), Figure 6H-10 (Lane Closure on Two-Lane Road Using Flaggers), and Figure 6H- 33 (Stationary Lane Closure on Divided Highway).

The Contractor shall be responsible for providing all signs, barricades, or other necessary traffic control devices. All traffic control signs shall be fabricated with ASTM Type VI and type VII sheeting (high intensity encapsulated lens) as a minimum and shall be consistently in good to excellent condition.

Unless protected by guardrail or other positive barriers, signs shall be erected on yielding or breakaway supports that meet the requirements of NCHRP Report 350 or of MASH. (Payment for Traffic Control equipment shall be subsidiary to Support Equipment.)

See: http://safety.fhwa.dot.gov/roadway_dept/policy_guide/road_hardware/nchrp_350/.

Railroad Flagging (where applicable). When the SOW requires work on, over, or under the right-of-way of an active railroad, the Contractor or its subcontractor shall submit a Railroad Worker Clearance request form at least 10 days prior to work being performed. This form is reviewed by our Rail Property Management Unit and then forwarded to the appropriate railroad for approval. Then, the railroad will schedule a flagger. The form can be found at: <https://maps.vtrans.vermont.gov/rail/flagging/form/>

Attachment B Payment Provisions

Payment Basis. As determined by VTrans, Job Orders will be placed as a firm fixed lump sum price or on an hourly rate schedule basis, in accordance with the rates set forth in Attachment A.

Expenses. No expenses will be paid outside of hourly rates or agreed upon lump sum pricing.

Mobilization. Contractors must provide pricing for any trucks and trailers that will be utilized for mobilization as part of their equipment list and rates. Listed rates will be utilized by VTrans when reimbursing contractors for mobilization costs. The maximum reimbursement for mobilization will be for the time required to move equipment from the Contractor's location where equipment is usually housed, to the job site, and back.

Materials. No more than a 10% mark-up will be permitted on materials. VTrans will require invoices to confirm compliance.

Subcontractors. No more than a 5% mark-up will be permitted on subcontracted equipment or services. VTrans will require invoices to confirm compliance.

Overtime. Overtime (greater than 40 hours in a work week) will be reimbursed at 1.5 times the direct labor awarded hourly rate and will be permitted only with **advance written** approval by the VTrans Authorized Representative. Overtime rates will apply only to personnel, not to equipment.

Holiday and Weekend Work. Work on holidays and weekends will only be permitted with the advance permission of the VTrans Authorized Representative and will be reimbursed at 1.5 times the awarded hourly rate. Holiday and weekend rates will apply to personnel only, not to equipment.

Holidays Include:

- New Year's Day January 1st
- Martin Luther King Jr. Day Third Monday in January
- Presidents' Day Third Monday in February
- Town Meeting Day First Tuesday in March
- Memorial Day Last Monday in May
- Independence Day July 4th
- Bennington Battle Day August 16th
- Labor Day First Monday in September
- Columbus Day Second Monday in October
- Veterans Day November 11th
- Thanksgiving Day Fourth Thursday in November
- Day After Thanksgiving Day
- Christmas Day December 25th

Invoicing. Invoices shall be submitted not more than monthly as indicated on the individual Job Order. All Original Invoices will include the following: *If any of the below information is not included on an Invoice, Payment may be delayed.*

1. Company Name and Address
2. Invoice Number
3. Dates for Work Performed
4. Contract Title and Number
5. For lump sum pricing, a breakdown of the lump sum price into materials, labor and equipment
6. Invoices for all materials
7. Job Order Form

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

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

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

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

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

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

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

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

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

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

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

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

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

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

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

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

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

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

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

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

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

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

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

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

16. Taxes Due to the State:

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

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

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

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

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

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

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

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); 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”).

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

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

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

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

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

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

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

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

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. Termination for Cause: Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.

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

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

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

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

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required. For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.
- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

OTHER PROVISIONS

1. The Contractor will receive work orders and effective dates from VTrans Authorized Representative via email.
2. Typical working hours will range between 7:00 AM and 5:00 PM, Monday through Friday, but occasions may arise which will require work to be performed before or after these hours, on weekends, or holidays. The typical working hours may vary by the operational needs of the location where work is being performed and will be established at the beginning of each Job.
3. The Contractor is required to notify VTrans Authorized Representative of any maintenance related issues discovered while performing work.
4. All unclaimed property found in or about the work area by the Contractor shall be turned in immediately to the Authorized Representative, specifying the location where the article was found.
5. Contractor shall secure and pay for any permits and inspections required by the authorities having jurisdiction, or for warranty purposes. Any inspections shall be made by the appropriate State or local authority having jurisdiction, or manufacturer from which the warranty is issued.
6. Subcontractors, if required, will need to be approved in writing by the VTrans Authorized Representative prior to performing work as part of the contract, in conjunction with Attachment C.
7. It is the contractor's responsibility to contact Dig-Safe prior to beginning any excavation.
8. Contractor agrees to furnish all supervision, labor, transportation, materials, tools and equipment necessary to complete the service. Contractor's equipment shall be of the size and type appropriate for completing the various types of work described in the JJob Order for each project. Equipment considered by the VTrans Authorized Representative to be improper or inadequate for this purpose shall be removed from the site and replaced with satisfactory equipment.
9. All work performed under this contract shall be completed in accordance with local, state, and national codes and standards, and other recognized industry standards associated with the work.
10. The Contractor guarantees, even though not specifically described in Job Orders or otherwise, that materials shall be of the best possible quality, that work shall be done in a professional manner, and that all aspects of the project will be delivered in good working order, complete and perfect in every respect, and that all systems and materials necessary as contemplated by the Job Order and shall be included in the rates provided.
11. All supplies, equipment and machines will be kept free of traffic lanes or other areas that may be hazardous. All dirt and debris resulting from the work under this contract shall be disposed of at the end of each day or at the completion of work.

12. The Contractor shall, at no additional cost to the State, repair furnishings, equipment, facilities or other property of the State damaged by the Contractor. Determination of the need for and extent of, any repair work is at the sole discretion of the VTrans Authorized Representative.

13. The Contractor agrees to furnish to the State in writing the names of the subcontractors (including those who are to furnish materials or equipment fabricated to a special design) for each of the principal portions of the Work. The Contractor shall make no substitution for any Subcontractor, person or entity previously selected without written approval by the State.

14. By written agreement, the Contractor shall require each Subcontractor, to the extent of the Job to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the State. The Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this document and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to their Sub-subcontractors.

15. The Contractor shall supervise and direct the Job, using their best skill and attention. The Contractor shall be solely responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. All aspects of the Job shall be subject to the inspection and approval of the State.

16. The Contractor shall at all time supervise their employee and be responsible to the State for the acts and omissions of their employees, Subcontractors and their agents and employees, and other persons performing any of the Job under a contract with the Contractor.

17. The Contractor shall not be relieved from their obligations to perform the Job in accordance with the Contract Documents.

18. All work shall be done in such a manner as not to interfere with the State's operating functions. Contractor and his or her employees shall familiarize themselves and comply with all rules and regulations applicable to the location and projects at the location.

19. The Contractor shall provide and pay for all labor, materials, and equipment necessary for the proper execution and completion of the Job, whether temporary or permanent and whether or not incorporated or to be incorporated in the Job. Contractor guarantees that materials shall be of the best quality, that work shall be completed in a neat and workmanlike manner. In the event of installation, that equipment will be installed in a first class manner, and that all aspects of the project will be delivered in good working order complete and perfect in every respect and that all systems and materials necessary to make the project a complete operating utility.

20. The Contractor shall, at all times enforce strict discipline and good order among their employees and shall not employ on the Job any unfit person or anyone not skilled in the task assigned to him.
21. The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Job or in the work of the State or any separate contractor, all Shop Drawings, Product Data, Manuals and Samples required by the Job.
22. By approving and submitting any Shop Drawings, Product Data, Manuals and Samples, the Contractor represents that they have determined and verified all materials, measurements, and criteria related thereto, or will do so, and that they have checked and coordinated the information contained within such submittals with the requirements of the Job.
23. The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish. At the completion of the Job he shall remove all his waste materials and rubbish from and about the Project site as well as all his tools, construction equipment, machinery and surplus materials and shall leave the premises in a clean and satisfactory condition.
24. If the Contractor fails to clean up at the completion of the Job, the State may do so, and the cost thereof shall be charged to the Contractor.
25. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Job to be inspected, tested or approved, the Contractor shall give the VTrans Authorized Representative timely notice of its readiness, so the VTrans Authorized Representative may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities.
26. If the VTrans Authorized Representative determines that any Job requires special inspection, testing, or approval he or she will, upon written authorization from the State, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice to the VTrans Authorized Representative. If such special inspection or testing reveals a failure of the Job to comply with the requirements of the Job, the Contractor shall bear all costs thereof, including compensation for the additional services made necessary by such failure; otherwise the State shall bear such costs, and an appropriate Change Order shall be issued.
27. Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by them to the VTrans Authorized Representative.
28. If the VTrans Authorized Representative is to observe inspections, tests or approvals required by the Job Order, he or she will do so promptly.
29. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Job.

30. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- all employees on the Job and all other persons who may be affected thereby;
- all the Job and all materials and equipment to be incorporated therein, whether in storage on or off-the site, under the care; custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors.

31. The Contractor shall erect and maintain, as required by existing conditions and progress of the Job, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

32. The Contractor shall promptly remedy all damage or loss (consistent with Contractor's obligations described in Attachment C) to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except damage or loss attributable to the acts or omissions of the State or anyone directly or indirectly employed by them, or by anyone for whose acts for them may be liable, and not attributable to the fault or negligence of the Contractor.

33. In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as necessary.

34. The Contractor shall be responsible for correcting all Job which the State has found to be defective or which fails to conform to the Contract Documents whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the State's Engineers' and the State's additional services made necessary thereby.

35. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the time period of one year after the date of completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Job, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Job.



General Terms and Conditions for Contracts for Services

VERMONT AGENCY OF TRANSPORTATION

CONTENTS

A. INSURANCE	3
B. INDEMNIFICATION	6
C. GENERAL COMPLIANCE WITH LAWS; RESPONSIBILITY FOR VIOLATION.....	8
D. COMPLIANCE WITH DESIGN SPECIFICATIONS, STANDARDS, MANUALS, GUIDELINES, DIRECTIVES, AND POLICIES.	8
E. SEVERABILITY.....	9
F. PROMPT PAYMENT.....	9
G. TERMINATION	9
H. PROPRIETARY RIGHTS	11
I. PERSONAL CONFLICTS OF INTEREST.....	12
J. ORGANIZATIONAL CONFLICTS OF INTEREST (OCOI)	16
K. CONFLICT OF INTEREST REMEDIES.....	17
L. CONTRACTOR PERSONNEL.....	18
M. APPROVAL REQUIREMENT FOR HIRING CERTAIN VTRANS EMPLOYEES	18
N. ASSIGNMENTS, TRANSFERS AND SUBLETTING	19
O. PERFORMANCE AND COMPLETION OF WORK.....	19
P. CONTINUING OBLIGATIONS	19
Q. APPEARANCES.....	19
R. CHANGES AND AMENDMENTS.	20
S. EXTENSION OF TIME.....	20
T. CONTRACTOR ERRORS AND OMISSIONS	21
U. DISPUTE RESOLUTION.....	21
V. RETAINAGE AND LIQUIDATED DAMAGES	22
W. NO ADVANTAGE FROM ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS.....	22

X. HOSTILE ACTS	22
Y. RESPONSIBILITY FOR SUPERVISION	22
Z. WORK SCHEDULE AND PROGRESS REPORTS.....	22
AA. WORK ASSIGNED UNDER RETAINER-TYPE CONTRACTS	23
BB. UTILITIES	23
CC. PUBLIC RELATIONS.....	23
DD. INSPECTION OF WORK.....	23
EE. WRITTEN DELIVERABLES/REPORTS.....	24
FF. ELECTRONIC DATA MEDIA.....	24
GG. REVIEWS AND APPROVALS.....	24
HH. PAYMENT PROCEDURES.....	24
II. AUDIT REQUIREMENTS.....	24
JJ. RECORDS RETENTION	25
KK. REGISTRATION WITH SECRETARY OF STATE.....	25
LL. SITE VISIT.....	26
MM. MARKETING	26

The following terms and conditions are incorporated into the contract in addition to those contained in Attachment C, the Vermont Standard Provisions for Contracts and Grants, except where noted that the terms herein are substitutions for those contained in the Vermont Standard Provisions for Contracts and Grants.

A. INSURANCE

1. Basic Insurance Requirements for All Contracts for Services:

a. Prime Contractor:

For any work, a prime contractor must at minimum have and maintain throughout the life of the contract insurance coverage in types and amounts meeting or exceeding the State's standard insurance requirements specified in the State's Attachment C in effect at inception of the contract.

When a contract is amended, if a new Attachment C has been adopted during the interval since the inception of the original contract, then the new Attachment C insurance requirements will apply as of and after amendment.

Certain types and settings of work require additional types and amounts of insurance coverage, beyond Attachment C requirements, as specified at Sections 2.e and 3 below.

b. Subcontractors:

Subcontractors are required to have insurance coverage in types and amounts meeting or exceeding the prime contractor's insurance obligations to the State, including any additional types and amounts of insurance coverage for certain types and settings of work as specified at Sections 2.e and 3 below.

As to subcontractors, a prime contractor is obligated, for each of its subcontractors, to verify and maintain evidence of verification that each subcontractor carries all VTrans-required insurances. Subcontractors must do the same for their sub-subcontractors.

2. Workers Compensation Verification Compliance (*applies to both prime and subcontractors*):

a. In accordance with Act 54 of 2009,¹ and as subsequently amended, for projects over \$250,000, all contractors and subcontractors must have:

A payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information, including confirmation that

¹ See: Act 54 of 2009, § 32; Act 142 of 2010, § 17; Act 50 of 2011, § 6, as available at: <https://legislature.vermont.gov/>

contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the job site, and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the [Department of Financial Regulation], upon request, and shall be available to the public.

- b. Contractors and subcontractors must preserve and retain their documentation regarding the above for the period applicable to retention of documents connected with the contract.
- c. VTrans has the right to audit contractors' and subcontractors' compliance with the above; however, contractors and subcontractors should be in good standing at all times with this monitoring obligation, regardless of whether or how often VTrans conducts such audits.
- d. VTrans reserves the right to require contractors and subcontractors to submit periodic attestations of compliance with these workers compensation verification requirements.
- e. Contract-specific risk/ insurance:
 - i. Where the subject matter of the contract gives rise to specific insurance obligations under the Federal Motor Carrier Safety Act ("FMCSA") <https://www.fmcsa.dot.gov> , which applies to both certain transport of passengers and certain materials of environmental concern, contractors and subcontractors must comply with the FMCSA insurance requirements, which may vary by the details of the services provided under the contract.
 - ii. Environmental/ pollution coverage may also be required when the State, in its sole discretion, determines it to be required under the scope and subject matter of a contract.
 - iii. VTrans reserves the right to require other additional types or amounts of insurance for specific contracts when, in VTrans' sole discretion, it is prudent to do so in relation to the details of a particular contract.

3. Additional Types and Amounts of Insurance for Certain Subjects and Settings of Contracts for Services:

One or more types and amounts of the insurance coverages specified below will apply when the subject or setting of work falls within the scope(s) specified and described below:

- a. For Design/ Engineering Professional Services for a Specific Construction Contract:
 - i. Where contractor's work under the contract will in whole or part be providing design/ engineering professional services for one or more specific construction projects, then before commencing work and throughout the term of this

contract, contractor must provide Professional Liability and Errors and Omissions (E&O) insurance for all relevant services performed under this Agreement, with minimum coverage of not less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) policy aggregate.

- ii. The required Professional Liability and E&O insurance coverage must be maintained continuously for five (5) years after the Final Acceptance of any construction that may be developed as a result of such design work, even if the construction is performed under a separate contract/project.
- iii. Separate from task or project-specific requirements to maintain coverage, if contractor for any reason ceases operations, the contractor shall be responsible to obtain and maintain professional liability coverage that extends for not less than five (5) years after such cessation of operations.

4. Valuable Papers and Records Insurance:

Where contractor's work under the contract will in whole or part consist of providing the State with designs, plans, drawings, analyses, studies, reports, data, or other professional work product, contractor shall carry valuable papers insurance in a form and amount sufficient to ensure the restoration or replacement of any plans, drawings, field notes, or other information or data relating to the work, whether supplied by the State or developed by the contractor, subcontractor, worker or agent, in the event of loss, impairment or destruction. Such coverage shall remain in force until the final work product as well as all related materials have been delivered by the contractor to, and accepted by, the State. Valuable Papers and Records Insurance shall provide coverage on an "individual occurrence" basis with limits in the amount of at least one hundred thousand dollars - \$100,000.00.

5. Railroad Protective Liability:

- a. When any portion of contractor's or a subcontractor's work under the contract involves work on, over or under the right-of-way of any railroad, the contractor shall provide and file with the Agency, with respect to the operations that it or its subcontractor perform under the contract, Railroad Protective Liability Insurance for and on behalf of the railroad as named insured, with the State and its officers and employees specified as additional insured.
- b. If Railroad Protective Liability insurance is required, the contractor shall obtain and submit the minimum coverage indicated above to the State prior to the commencement of rail-related work and/or activities, and shall maintain coverage until contractor notifies the State and the railroad that contractor has completed and ceased work on, over or under the railroad right-of-way, and both State and railroad have concurred that contractor may terminate the railroad protective liability. Railroad coverage limits must meet or exceed:

- i. Not less than two million dollars (\$2,000,000) for all damages arising out of any one accident or occurrence, in connection with bodily injury or death and/or injury to or destruction of property; and
- ii. Subject to that limit per accident, a total (or aggregate) limit of six million dollars (\$6,000,000) for all injuries to persons or property during the policy period.
- iii. The Contractor shall file the original and one (1) copy of the Railroad Protective Liability policy with the State, who will provide the original to the appropriate railroad.

6. Information Technology Contracts:

- a. For contracts determined by the State to fall within the category of 'information technology' as defined in statute at 3 V.S.A. §2222(a)(10), additional types and amounts of insurance will typically be required, and may change over time, either as to general standards or with regard to the subject matter or potential risk exposure in a specific IT transaction.
- b. As of the issuance of these General Terms and Conditions, the required IT insurance types include, at minimum: Technology Professional Liability insurance with third-party coverage, and, if contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage; the Breach coverage shall include the State of Vermont and its officers and employees as additional insureds.
- c. Information technology contracts will also generally require their own set of additional specific terms and conditions, derived from the then-applicable templates issued by the Agency of Digital Services and the Office of Purchasing and Contracting within the Department of Buildings and General Services.

B. INDEMNIFICATION

1. Basic Indemnification Requirements (any contract for services):

a. Prime Contractor:

Except as specifically provided below, a prime contractor must act in an independent capacity and defend and indemnify the State in accordance with the State's then-current Attachment C

b. Subcontractors:

Except as specifically provided below, the prime contractor must include requirements as to independence, defense, and indemnity, matching Attachment C and identical to those in the prime contractor's contract with State, in the prime contractor's contracts with subcontractors. Subcontractors must do the same for their sub-subcontractors.

2. For Design/ Engineering Professional Services for a Specific Construction Project:

a. Prime Contractor:

Where a contract is for design/engineering professional services for a specific construction project, or, when a contract contains a mixed scope of work that in part consists of tasks of such professional design services for a specific construction project or projects, then as to, and only as to, those specific professional design services, the provisions of Standard Attachment C on the subjects of “Defense and Indemnity” (numbered item 7 in the December 2017 version of Attachment C, and any equivalent provisions, however numbered, in any subsequently-issued Attachment C) are stricken in their entirety and replaced in full by the following:

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in providing “non-professional services” under this Agreement. As used herein, “non-professional services” means services provided under this Agreement other than professional services relating to the design and/or engineering of all or part of the project. The State shall notify the Party in the event of any such claim or suit covered by this Subsection, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit arising out of “non-professional services” provided under this Agreement.

Notwithstanding anything to the contrary set forth in Subsection C above, the Party shall not be obligated to defend the State and its officers and employees against claims or suits arising from the Party’s provision of engineering design services or architectural design services. However, the Party’s obligation to defend the State and its officers and employees against all claims or suits arising out of “non-professional services” provided under this Agreement as provided in Subsection C above and the Party’s other obligations under Attachment C shall remain in effect.

The Party agrees to indemnify and hold the State, its officers and employees, harmless from and against monetary damages to third parties, together with reasonable costs, expenses and attorney’s fees incurred and paid by the State in defending claims by third parties (collectively “Damages”) but only in the event and to the extent such Damages are incurred and paid by the State as the proximate cause of negligent acts, errors or omissions (“Professional Negligence”) by the Party, its employees, agents, consultants and subcontractors, in providing the professional services required under this Agreement.

As used herein, “Professional Negligence” or “negligent acts, errors or omissions” means a failure by the Party to exercise that degree of skill and care ordinarily possessed by a reasonably prudent design professional practicing in the same or similar locality providing such services under like or similar conditions and circumstances.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party arising from the provision of “non-professional services” (as defined herein) under this Agreement.

The Party shall not be obligated to indemnify the State for any Damages incurred by the State attributable to the State’s own negligent acts, errors or omissions or the negligent acts, errors or omissions of its officers, agents or employees, or the acts, errors, omissions or breach of Agreement by persons or entities other than the Party, its employees, agents, consultants and subcontractors.

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

b. Subcontractors:

As to subcontractors working under a prime contractor and where the subcontractors are providing such professional design services for a specific construction project, the prime contractor will include the same design-specific provisions from Attachment D in the prime contractor’s own contracts with subcontractors. Subcontractors must do the same for their sub-subcontractors.

C. GENERAL COMPLIANCE WITH LAWS; RESPONSIBILITY FOR VIOLATION

1. The contractor shall observe and comply with all applicable federal, state, and municipal laws, bylaws, ordinances, and regulations in any manner affecting the conduct of the work and the action or operation of those engaged in the work, including all such orders or decrees as exist at present and those which may be enacted, adopted, or issued later by bodies or tribunals having any jurisdiction or authority over the work; and the contractor shall defend, indemnify and save harmless the State, any affected railroad(s), and any affected municipality(ies), and all their officers, agents, and employees against any claim or liability arising from or based on the violation of any such law, bylaws ordinances, regulations, order, or decree, whether by the contractor in person, its employee(s), or by the contractor’s subcontractor(s) or agent(s), or employee(s) or agents thereof.
2. If the contractor discovers any provision(s) in the contract contrary to or inconsistent with any law, ordinance, regulation, order, or decree, the contractor shall immediately report it to the Project Manager in writing.

D. COMPLIANCE WITH DESIGN SPECIFICATIONS, STANDARDS, MANUALS, GUIDELINES, DIRECTIVES, AND POLICIES

The contractor shall comply with all applicable statutes, regulations, ordinances, specifications, manuals, standards, guidelines, policies, directives and any other requirements related to the contract.

In case of any conflict with the items referenced above, the contractor is responsible to ascertain and follow the direction provided by the State.

E. SEVERABILITY

Provisions of the contract shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both parties. If for any reason a provision in the contract is unenforceable or invalid, VTrans, in its sole discretion may sever that provision from the contract, and the remaining provisions shall have the same force and effect as if the severed provisions had never been a part of the contract.

F. PROMPT PAYMENT

1. The contractor, by accepting and signing the contract, agrees to fully comply with the provisions of 9 V.S.A. Chapter 102, also referred to as Act No. 74 of 1991 or the Prompt Payment Act, as amended. Compliance with this clause also satisfied the requirements of 46 CFR § 26.29 applicable to Federally funded contracts.
2. In accordance with 9 V.S.A. Section 4003, notwithstanding any contrary contract provision, payments shall be made within seven days from receipt of a corresponding final or progress payment by the State to the contractor, or seven days after receipt of a subcontractor's invoice, whichever is later. Failure to comply constitutes violation of this contract.
3. On all federal-aid and state funded contracts, the contractor, during the life of the contract and on a monthly basis, shall submit electronically, a listing of payments to subcontractors on the form specified by the State and made available at: <http://apps.vtrans.vermont.gov/consultants/>. Electronic reports shall be filed with VTrans Office of Civil Rights by an authorized representative and received in the VTrans Office of Civil Rights on or before the tenth working day after month end. Contractors without access to the internet shall obtain and submit manual reports to the VTrans Office of Civil Rights. Manual reports shall be signed by an authorized representative, sent to the VTrans Office of Civil Rights, and postmarked on or before the tenth working day after month end. There shall be no direct compensation allowed the contractor for this work, but the cost thereof shall be included in the general cost of the work.
4. Violations shall be reported to the VTrans Office of Civil Rights for review. Failure to resolve disputes in a timely manner will result in a complaint made to the VTrans Chief of Contract Administration. In the Agency's judgment, appropriate penalties may be invoked for failure to comply with this specification. Penalties may include debarment or suspension of the ability to submit proposals.
5. This section shall be included in the prime contractor's contract made with all of its subcontractors.

G. TERMINATION

In addition to the Termination provisions contained in Attachment C, the following terms are included in this contract:

Termination for Convenience

1. General

- a. The Agency may, with thirty (30) day written notice to the Contractor, terminate the Contract or any portion thereof when such termination would be in the best interest of the Agency. Upon notification the contractor may be directed to immediately stop all work and incur no further costs under the contract.
- b. Any such termination shall be affected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
- c. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
- d. No compensation will be allowed for items eliminated from the Contract.
- e. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed

2. Contractor Obligations

After receipt of the Notice of Termination and except as otherwise directed by VTrans, the Contractor shall immediately proceed to:

- a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
- b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.

- d. Transfer to VTrans all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to VTrans.
- e. Take other action as may be necessary or as directed by VTrans for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which VTrans has or may acquire any interest.
- f. Make available to VTrans all cost and other records relevant to a determination of an equitable settlement.

3. Claim by Contractor

After receipt of the Notice of Termination from VTrans, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-day period, VTrans, may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

4. Negotiation

Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and VTrans. Settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.

H. PROPRIETARY RIGHTS

1. If a patentable discovery or invention results from work performed under the contract, all rights accruing from such discovery or invention shall be the sole property of the Contractor, but the State and the United States Government shall have an irrevocable, nonexclusive, non-transferable, and royalty free license to each invention in the manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as a part of the work under the contract.
2. Publications: All data, valuable papers, photographs and any other documents produced under the terms of the contract shall become the property of the State of Vermont. The contractor agrees to allow access to all data, valuable papers, photographs, and other documents at all times. The contractor shall not copyright any material originating under the contract without prior written approval of the State.
3. Ownership of the Work: All studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, photographs, and

other material prepared or collected by the contractors, hereafter referred to as "instruments of professional service," shall become the property of the State as they are prepared and/or developed during performance of the work of the contract. If a contractor uses a proprietary system or method to perform the work, only the product will become the property of the State.

4. The contractor shall surrender to the State upon demand or submit for inspection at any time any instruments of professional service that have been collected, undertaken or completed by the contractor pursuant to the contract. Upon completion of the work, these instruments of professional service will be appropriately endorsed by the contractor and turned over to the State.
5. Data and publication rights to any instruments of professional services produced under the contract are reserved to the State and shall not be copyrighted by the contractor at any time without written approval of the State. No publication or publicity of the work, in part or in total, shall be made without the consent of the State, except that contractors may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.
6. Rights and Remedies Additional: The rights and remedies of the State under this Section are in addition to any other rights and remedies that the State may possess by law or under this contract.
7. Decisions Final and Binding: Decisions of the State on matters discussed in this Section shall be final and binding.

I. PERSONAL CONFLICTS OF INTEREST

Contractor employees performing services for the VTrans shall not have, directly or indirectly, a personal conflict of interest with respect to any contract with VTrans, and must immediately disclose to VTrans any personal conflicts of interest arising at any time from the bidding process to final contract close-out.

Definitions

As used in this clause:

1. Contractor Employees means employees and subcontractors of a VTrans contractor.
2. Personal Conflict of Interest means a situation in which a contractor employee has a financial interest, personal activity, or relationship that could impair the individual's ability to act impartially and in the best interest of the Government when performing under the contract.
 - a. Sources of personal conflicts of interest include but are not limited to:

- i. Financial interests of the contractor employee, of close family members, or of other members of the contractor employee's household;
 - ii. Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
 - iii. Gifts, including travel.
- b. Examples. Financial interests referred to above may arise from:
 - i. Compensation, including wages, salaries, commissions, professional fees, or fees; for business referral:
 - ii. Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
 - iii. Services provided in exchange for honorariums or travel expense reimbursements;
 - iv. Research funding or other forms of research support;
 - v. Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
 - vi. Real estate investments;
 - vii. Patents, copyrights, and other intellectual property interests; or
 - viii. Business ownership and investment interests.
3. Acquisition Function means supporting or providing advice or recommendations to the following activities of a State agency:
 - a. Planning acquisitions;
 - b. Determining what supplies or services are to be acquired by the Government, including developing statements of work;
 - c. Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
 - d. Evaluating contract proposals;
 - e. Awarding Government contracts;

- f. Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services):
 - g. Terminating contracts: and
 - h. Determining whether contract costs are reasonable, allocable, and allowable.
4. Non-public information means any State or third-party information that:
- a. Is deemed by VTrans to be proprietary or confidential, or is exempt from disclosure under the Vermont Public Records Act, 1 V.S.A. § 315, et al, or otherwise protected from disclosure by statute, Executive order, or regulation; or
 - b. Has not been disseminated to the general public and the State has not yet determined whether the information can or will be made available to the public.

Requirements

The Contractor shall:

1. Have procedures in place to screen employees for potential personal conflicts of interest;
2. Prevent personal conflicts of interest, including not assigning or allowing an employee to perform any task under the contract for which the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency; and
3. Prohibit use of non-public information accessed through performance of a Government contract for personal gain.
4. Inform employees of their obligation:
 - a. To disclose and prevent personal conflicts of interest;
 - b. Not to use non-public information accessed through performance of a Government contract for personal gain;
 - c. To avoid even the appearance of personal conflicts of interest;
5. Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;
6. Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause;

7. Report VTrans any personal conflict-of-interest violation by an employee as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the Contractor in response to the violation.
8. Provide follow-up reports of corrective actions taken, as necessary. Personal conflict-of-interest violations include:
 - a. Failure by an employee to disclose a personal conflict of interest;
 - b. Use by an employee of non-public information accessed through performance of a Government contract for personal gain; and
 - c. Failure of an employee to comply with the terms of a non-disclosure agreement.
9. In the case of contractors' employees *who perform acquisition functions* for VTrans, screening procedures must include:
 - a. Obtaining and maintaining from each employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows
 - b. Financial interests of the employee, of close family members, or of other members of the covered employee's household
 - c. Other employment or financial relationships of the employee (including seeking or negotiating for prospective employment or business).
 - d. Gifts, including travel; and
 - e. Requiring each employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the employee is performing.

Mitigation or Waiver

1. In exceptional circumstances, if the Contractor cannot satisfactorily prevent a personal conflict of interest as required above, the Contractor may submit a request through the applicable Division Director for:
 - a. Agreement to a plan to mitigate the personal conflict of interest; or
 - b. A waiver of the requirement.
2. The Contractor shall include in the request any proposed mitigation of the personal conflict of interest.

3. The Contractor shall:

- a. Comply, and require compliance by the employee, with any conditions imposed by the Government as necessary to mitigate the personal conflict of interest; or
- b. Remove the Contractor employee or subcontractor employee from performance of the contract or terminate the applicable subcontract.

Disclosure

A mandatory duty is established for the contractor to disclose procurement, fraud, and overpayments, or risk debarment or suspension. The contractor must report fraud, conflicts of interest, bribery, and illegal gratuities in connection with the award or performance of a state contract.

Code of Business Ethics

Contractors are encouraged to have a written code of business ethics and conduct. In addition, the contractor should have an ongoing ethics and compliance training program for principals and employees, as well as a system of internal controls to detect fraud and improper conduct.

J. ORGANIZATIONAL CONFLICTS OF INTEREST (OCOI)

Definition

Organizational conflict of interest means that because of other activities or relationships with other persons or entities, a contractor *as a business entity*:

1. Is unable or potentially unable to render impartial assistance or advice to VTrans; or
2. Is or might be otherwise impaired in its objectivity in performing the contract work (Example: A firm has a contract to inspect work by firms that are its business affiliates);
or
3. Has an unfair competitive advantage. (Example: a firm participates in systems engineering and technical direction; preparing specifications or work statements; participates in development and design work; and/or gains access to the information of other companies in performing advisory and assistance services for the government drafting a scope of work for a project, then bids on the project itself.)

Disclosure

The contractor shall make an immediate and full disclosure, in writing, to the VTrans Project Manager of any potential or actual OCOI or the existence of any facts that may cause a reasonably prudent person to question the contractor's impartiality because of the appearance or existence of bias or an unfair competitive advantage. Such disclosure shall include a description of the actions

the contractor has taken or proposes to take in order to avoid, neutralize, or mitigate any resulting conflict of interest.

Contractors in Management Support Roles

OCOIs often arise when contractors or subcontractors are employed in management support roles, such as oversight and inspection of the work of other contractors, and the development of designs, requirements, or statements of work or procurement documents such as requests for proposal. Such contracts bear particularly close monitoring to avoid OCOIs. A contractor serving in a management support role may be precluded from providing additional services on projects, activities, or contracts under its oversight due to potential conflicts of interest.

OCOI Screening

Prior to submitting a proposal, each submitter/ proposer will conduct an internal review of its current affiliations and will require its team members to identify potential, real, or perceived OCOIs relative to the anticipated procurement. Potential submitters/proposers will be notified that existing and/or future contractual obligations relative to the proposed procurement may present an OCOI and these may require avoidance, neutralization, or mitigation.

Disqualification

Prior to the award of a contract, VTrans may determine that an OCOI exists which would warrant disqualifying the bidder for award of the contract. Vtrans will discuss the matter with the contractor to determine whether the OCOI can be mitigated to VTrans satisfaction by negotiating terms and conditions of the contract to that effect.

Subcontracts

1. The contractor shall require from its subcontractors full disclosure of any actual, apparent or potential organizational conflicts of interest, and report such to the VTrans Project Manager.
2. The contractor shall identify and avoid, neutralize, or mitigate any subcontractor organizational conflict prior to award of the contract to the satisfaction of the VTrans Project Manager. If the subcontractor's organizational conflict cannot be avoided, neutralized, or mitigated, the contractor must obtain the written approval from the appropriate VTrans Division Director prior to entering into the subcontract.
3. If the contractor becomes aware of a subcontractor's potential or actual OCOI after contract award, the contractor agrees that the Contractor may be required to eliminate the subcontractor from its team, at the contractor's own risk.

K. CONFLICT OF INTEREST REMEDIES

VTrans may terminate this contract, in whole or in part, or decline to make award to a contractor

if, in VTrans sole discretion, it is deemed necessary to avoid, neutralize or mitigate an actual or apparent personal or OCOI. No contract for the construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates, except with the approval of the Secretary of Transportation or authorized representative.

1. If a contractor fails to disclose facts pertaining to the existence of a potential or actual personal or OCOI or misrepresents relevant information to VTrans, VTrans may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract.
2. The contractor will have the right to appeal a finding of an actual or potential OCOI to the appropriate Division Director, whose decision will be final, subject to further review only as provided for by state law, regulation or procedure.

L. CONTRACTOR PERSONNEL

1. The contractor shall employ only qualified personnel to supervise and perform the work. VTrans shall have the right to approve or disapprove personnel assigned to carry out or administer activities related to the contract.
2. Upon VTrans request the contractor shall supply resumes for staff proposed to work on assignment and/or under retainer contracts for VTrans review and acceptance or rejection. VTrans retains the right to interview the proposed staff.
3. If a contractor has submitted a list of key personnel to VTrans as part of a proposal, the contractor must notify and seek approval if any changes to the proposed personnel occur during the performance period of the contract.
4. VTrans reserves the right to require removal of any person employed by a contractor from work related to the contract as deemed necessary to protect the interests of the State. The decision of VTrans shall be final and not subject to challenge or appeal beyond the appropriate Division Director.

M. APPROVAL REQUIREMENT FOR HIRING CERTAIN VTRANS EMPLOYEES

1. Contractors are required to obtain VTrans approval prior to making offers of employment to VTrans employees who are engaged in acquisition functions as defined in paragraph 9 above, or an individual who was engaged in acquisition functions for VTrans within one year of the end of employment with VTrans. Request for approval should be submitted to the appropriate Division Director.
2. Discussions with current VTrans employees engaged in acquisition functions regarding *potential* employment with a contractor creates a conflict of interest for the employee and is prohibited absent an approved mitigation plan or waiver.

3. Contractors are encouraged to maintain an open dialogue with VTrans regarding such matters, and work toward mutually acceptable avoidance and resolution of any issues.

N. ASSIGNMENTS, TRANSFERS AND SUBLETTING

1. The contractor shall not assign, sublet, or transfer any interest in the work covered by the contract without prior written consent of the State and appropriate federal agencies, if applicable. Further, if any subcontractor participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the State.
2. The approval or consent to assign, sublet or assign any portion of the work shall in no way relieve the contractor of responsibility for the performance of that portion of the work so affected. Except as otherwise provided in these specifications, the form of the subcontractor's contract shall be as developed by the contractor.
3. Any authorized subcontracts shall contain all the same provisions specified for and attached to the original contract with the State.

O. PERFORMANCE AND COMPLETION OF WORK

1. The contractor shall perform the services specified in accordance with the terms of the contract and shall complete the contracted services by the completion dates specified in the contract.
2. With the exception of ongoing obligations (*e.g.*, insurance, ownership of the work, and appearances) upon completion of all services covered under the contract and payment of the agreed upon fee, the contract with its mutual obligations shall be terminated.
3. If, at any time during or after performance of the contract, the contractor discovers any design errors, change(s) in standards, work product, or other issues that warrant change(s), the contractor shall notify the Project Manager immediately. This paragraph also applies to those projects that are under construction or have been constructed.

P. CONTINUING OBLIGATIONS

The contractor agrees that if, because of death(s) or other occurrences, it becomes impossible to effectively perform its services in compliance with the contract, neither the contractor nor its surviving principals shall be relieved of their obligations to complete the services under the contract. However, the State may terminate the contract if it considers a death, incapacity, or other removal of any principal(s) and/or key project personnel to be a loss of such magnitude that it would affect the contractor's ability to satisfactorily comply with the contract.

Q. APPEARANCES

1. Hearings and Conferences. The contractor shall provide professional services required by

the State that are necessary for furtherance of any work covered under the contract. Professional services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain and defend its services provided under the contract.

2. The contractor shall perform any liaison that the State deems necessary for the furtherance of the work and participate with the State, at any reasonable time, in conferences, concerning interpretation and evaluation of all services provided under the contract.
3. The contractor further agrees to participate in meetings with the State, applicable Federal Agencies, and any other interested or affected participants for the purpose of review or resolution of any conflicts pertaining to the contract. The contractor shall be equitably paid for such services, and for any reasonable expenses incurred in relation thereto, in accordance with the contract.
4. Appearance as Witness. When required by the Agency, the contractor, or an appropriate representative, shall prepare for and appear in, on behalf of the State, any litigation or other legal proceeding concerning any relevant project or related contract. The contractor shall be equitably paid for such services, and for any reasonable expenses incurred in relation thereto, in accordance with the contract.

R. CHANGES AND AMENDMENTS

1. VTrans may, upon written notice, require changes, additions or deletions to the work/contract. Whenever possible, any such adjustments shall be administered under the appropriate fee established in the contract based on the adjusted quantity of work.
2. The State may, upon written notice, and without invalidating the contract, require changes resulting from revision or abandonment of work already satisfactorily performed by the contractor or changes in the statement of work section of the contract.
3. If the value of such changes, additions or deletions is not otherwise reflected in payments to the contractor pursuant to the contract, or if such changes require additional time and/or expense to perform the work, the contract may be amended accordingly.
4. Changes to the scope, duration or value of the contract will require amendment of the contract, approved by the Agency's Secretary of Transportation, or an authorized official delegated this responsibility
5. The contractor agrees to maintain complete and accurate records, in a form satisfactory to VTrans, for any extra work or additional services in accordance and the contractor shall perform such work or services only after an amendment has been fully executed or a written notice to proceed is issued by VTrans.

S. EXTENSION OF TIME

1. The contractor may, with justification, request in writing an extension of the allotted time for completion of the work. A request for extension will be evaluated, and if VTrans determines that the justification is valid, an extension of time for completion of the work may be granted. A request for extension of time must be made before the contractor is in default.
2. The decision of VTrans relative to granting an extension of time shall be final and binding, and may result in damages owed the state by the contractor.
3. Neither party hereto shall be held responsible for delay in performing the work encompassed herein when such delay is due to unforeseeable causes such as, but not limited to, acts of God or a public enemy, fire, strikes, floods, or legal acts of public authorities.

T. CONTRACTOR ERRORS AND OMISSIONS

1. The contractor shall provide professional services expeditiously and consistent with standard professional skill and care, the orderly progress of the work, and all standards and provisions of the contract. Errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the state.
2. A contractor may be liable for VTrans' costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a contract is required because of an error or deficiency in the services provided under the contract, VTrans shall consider the extent to which the contractor may be reasonably liable, and enforce the liability and issue a demand for payment of the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the state's interest.
3. The VTrans Contract Manager shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm, and the contractor shall be and remain liable to the state in accordance with applicable law for all damages to the Government caused by the contractor's erroneous performance of any of the services furnished under this contract.
4. Neither VTrans' review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract
5. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law.
6. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

U. DISPUTE RESOLUTION

The parties shall attempt to resolve any disputes that may arise under the contract by informal

negotiation, with the approval of the appropriate Division Director. If the dispute is not resolved, the Director shall issue a decision which the contractor may appeal in writing to the Transportation Board, through the Director, within 30 calendar days of the Director's decision, but not thereafter. The notice of appeal shall completely outline the nature and extent of the issue(s) appealed and shall include copies of any and all supporting documentation. The decision of the Transportation Board may be appealed to Vermont Superior Court by either party as provided in 19 V.S.A. § 5c.

V. RETAINAGE AND LIQUIDATED DAMAGES

1. Pursuant to the provisions of Agency of Administration Bulletin 3.5 – Contracting Procedures, VTrans has considered whether services contracts should contain provisions that provide for liquidated damages and/or retainage. As a general principle, based on experience and policy, VTrans has generally chosen not to include liquidated damages and retainage in its services contracts.
2. Should VTrans believe that liquidated damages and/or retainage provision is/are advisable in a particular contract, the VTrans will include such a provision(s) in the contract.

W. NO ADVANTAGE FROM ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS.

Neither the contractor nor the State shall take advantage or be afforded any benefit as the result of apparent error(s) or omission(s) in the contract documents. If either party discovers error(s) or omission(s), it shall immediately notify the other.

X. HOSTILE ACTS

Except as provided below, or otherwise agreed to in writing by a duly authorized representative of the State, the contractor agrees that during the term of this contract, and also after termination of this contract, it will not represent or render assistance to anyone in any matter, proceeding, or lawsuit against or otherwise adverse to the interests of the State of Vermont or any of its agencies or instrumentalities in a matter, proceeding, or lawsuit related to any aspects of any work or projects to which this contract relates. Contractor also agrees to include written provision in any of contractor's subcontracts with others relating to this contract, providing that such subcontractors also recognize and agree to be bound by this duty of loyalty to the State regarding any aspects of any work or projects to which this contract relates.

Y. RESPONSIBILITY FOR SUPERVISION

The contractor shall be responsible for supervision of contractor employees and subcontractors for all work performed under the contract and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the contract.

Z. WORK SCHEDULE AND PROGRESS REPORTS

As required by VTrans, prior to initiating any work, the contractor shall work with VTrans' Project

Manager to develop a work schedule showing how the contractor will complete the various phases of work to meet the completion date and any interim submission date(s) in the contract. VTrans will use this work schedule to monitor the contractor.

The contractor during the life of the contract shall make monthly progress reports, or as otherwise determined by the Project Manager, or set forth in the SOW, indicating the work achieved through the date of the report. The contractor shall link the monthly progress reports to the schedule. The report shall indicate any matters that have, or are anticipated to, adversely affected progress of the work. VTrans may require the contractor to prepare a revised work schedule in the event that a specific progress achievement falls behind the scheduled progress by more than thirty (30) days. The revised work schedule shall be due as of the date specified by VTrans.

AA. WORK ASSIGNED UNDER RETAINER-TYPE CONTRACTS

Specific tasks or projects Retainer or Primary Indefinite Delivery/Indefinite Quantity (IDIQ) contracts will be awarded and managed as provided in the scope of work section of the contract. Contractors should not begin work on any task or project under a retainer or Primary IDIQ contract until they have received authorization as described in the scope of work.

BB. UTILITIES

Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by proposed construction, the design contractor shall consult with the Agency's Utility Section and initiate contacts and/or discussions with the affected owner(s) regarding requirements necessary for revision of facilities, both above and below ground. All revisions must be completely and accurately exhibited on detail sheets or plans. The contractor shall inform the State, in writing, of all contacts with utility facility owners, and the results thereof. Further details should be provided in the scope of work section of the contract.

CC. PUBLIC RELATIONS

Whenever it is necessary to perform work in the field (e.g., with respect to reconnaissance, testing, construction inspection and surveying) the contractor shall endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the contractor shall conduct themselves with propriety. If there is need to enter upon private property to accomplish the work under the contract, the contractor shall inform property owners and/or tenants in a timely manner and in accordance with relevant statutes. All work will be done with minimum damage to the land and disturbance to the owner thereof. Upon request of the contractor, the State shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the contractor is acting on behalf of the State.

DD. INSPECTION OF WORK

1. The State and applicable federal agencies shall, at all times, have access to the contractor's work for the purposes of inspection, accounting and auditing, and the contractor shall provide appropriate and necessary access to accomplish inspections, accounting, and

auditing.

2. The contractor shall permit the State, or representative(s) of the State, the opportunity at any time to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the contractor pursuant to the contract.
3. A conference, visit to a site, or inspection of the work may be held at the request of the contractor, State, and appropriate federal agency(ies).

EE. WRITTEN DELIVERABLES/REPORTS

All communications and deliverables presented under terms of the contract shall in a form and format identified in the statement of work section of the contract, including, but not limited to CADD Requirements, Data Specifications, and Geographic Information System Requirements.

FF. ELECTRONIC DATA MEDIA.

VTrans Web Page and File Transfer Protocol (FTP) Site Disclaimer. The files located on the VTrans web page and FTP site are subject to change. The contractor is responsible for maintaining contact with VTrans to determine if any changes affect the work being produced by the contractor. Although VTrans makes every effort to ensure the accuracy of its work, it cannot guarantee that transferred files are error free. VTrans is not responsible in any way for costs or other consequences, whether direct or indirect, that may occur to the contractor or any subsequent users of the information due to errors that may or may not be detected.

GG. REVIEWS AND APPROVALS.

All work prepared by the contractor, subcontractor(s), and representatives thereof pursuant to the contract shall be subject to review and approval by VTrans. Approval for any work shall be documented in writing. Approvals shall not relieve a contractor of its professional obligation to correct any defects or errors in the work at the contractor's expense.

The pertinent federal entity may independently review and comment on the contract deliverables. The contractor, through VTrans, shall respond to all official comments regardless of their source. The contractor shall supply VTrans with written copies of all correspondence relating to reviews. All comments must be satisfactorily resolved before the affected work is advanced.

HH. PAYMENT PROCEDURES

Payment procedures will be set forth in Attachment B or in the statement of work section of the contract.

II. AUDIT REQUIREMENTS

1. Contracts of Five Hundred Thousand Dollars (\$500,000.00) and over:

- a. The contractor shall furnish the Agency with independently- prepared, properly supported indirect cost rates for all the time periods covered under the contract. These rates must be developed in accordance with the cost principles in 48 CFR Part 31. Unless otherwise specified in the contract, the contractor's overhead rate shall be based on actual, audited overhead costs.

2. Contracts Under Five Hundred Thousand Dollars (\$500,000.00)

- a. The contractor may submit internally generated indirect cost computations and the related schedules.
- b. Additional information may be requested from a new contractor executing a contract under \$500,000.00 or in some cases from contractors with existing or previous contracts with the Agency if any of the following conditions or areas of concern exist:
 - i. There is insufficient knowledge of the consultant's accounting system.
 - ii. There is previous unfavorable experience regarding the reliability of the consultant's accounting system
 - iii. The contract involves procurement of new equipment or supplies for which cost experience is lacking.
 - iv. There have been issues with adherence to Federal and State regulations and policies.
 - v. Capacity – ensuring ongoing delivery

JJ. RECORDS RETENTION:

The contractor shall maintain all records related to the contract for a period of seven (7) years unless required to keep them longer as indicated Federal provisions or in the scope of work section of the contract.

KK. REGISTRATION WITH SECRETARY OF STATE

1. The contractor shall be registered with the Vermont Secretary of State to do business in the State of Vermont if the contractor:
 - a. Is a domestic or foreign corporation.
 - b. Is a resident co-partner or resident member of a co-partnership or association.
 - c. Is (are) a non-resident individual(s) doing business in Vermont in his/her (their) individual capacity(ies).
 - d. Is doing business in Vermont under any name other than the Contractor's own personal

name.

2. This registration must be complete prior to contract execution and maintained throughout the life of the contract.

LL. SITE VISIT

Where relevant to the work to be performed under the contract, contractors must inspect physical locations of construction when required in the Statement of Work and will not be compensated for any differing site conditions that could have been discovered during the inspection.

MM. MARKETING

The Contractor is prohibited from representing in marketing or promotional materials that VTrans is a co-sponsor in any project, or otherwise representing any sort of collaboration, or partnership with VTrans; making claims of general endorsement by VTrans; and from using the VTrans logo. In accordance with Attachment C, Standard State Provisions for Contracts and Grants, the Contractor has VTrans permission to refer to the fact that the Contractor has, or previously had, contracts with VTrans in marketing or promotional materials, as long as purely factual statements are made, and no general endorsement is asserted. Additionally, the Contractor may provide factual information regarding work under VTrans projects to other potential employers or identify designated VTrans employees or officials who could be consulted by as a reference about such prior work for VTrans. Designated VTrans employees may provide factual information regarding a Contractor's work under VTrans contracts to third parties requesting references. Contractor's providing false information regarding work under VTrans contract will be subject to administrative, civil and criminal penalties.

Approved By: _____


Secretary of Transportation

Date

02/15/2018

ATTACHMENT F

RFP/PROJECT NAME & NUMBER:
DATE:

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT

**Self Reporting
Form 1 of 2**

This form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.

The Vermont Agency of Transportation, in accordance with Section 32 of Act 54 (2009), as amended by Section 17 of Act 142 (2010) and further amended by Section 6 of Act 50 (2011), and for total projects costs exceeding \$250,000.00, requires bidders comply with the following provisions and requirements.

Bidder is required to self report the following 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. The Agency of Transportation is requiring information on any incidents that occurred in the previous 12 months. Attach additional pages as necessary. If not applicable, so state.

Summary of Detailed Information	Date of Notification	Outcome

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT: Bidder hereby certifies that the company/individual is in compliance with the requirements as detailed in Section 32 of Act 54(2009), as amended by Section 17 of Act 142 (2010) and further amended by Section 6 of Act 50 (2011).

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Signature (Request/Report Not Valid Unless Signed) *

(Type or Print)

*Form must be signed by individual authorized to sign on the bidder's behalf.

DO NOT WRITE IN THIS SPACE – AGENCY USE ONLY	
VDOL CHECKED RE: ACT 54 2009, AND AMENDMENTS	<input type="checkbox"/>

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT

**Subcontractor Reporting Form
Form 2 of 2**

This form must be completed in its entirety by the Contractor and included in all requests to sublet or assign work as outlined in Section 108.01 of the Standard Specifications for Construction. This form must be updated as necessary and provided to the State as additional subcontractors are hired.

The Agency of Transportation in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00 requires the contractor to comply with the following provisions and requirements:

The Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

Additionally, the Contractor shall collect and retain evidence of subcontractors' workers' compensation insurance, such as the ACORD insurance coverage summary sheet. Agency of Transportation will periodically verify the Contractors' compliance.

Subcontractor	Insured By		Subcontractor's Sub	Insured By

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

Send Completed Form to: Vermont Agency of Transportation
Contract Administration

One National Life Drive Montpelier,
VT 05633-5001

Executive Order 05 – 16:
Climate Change Considerations in State Procurements Certification

Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):

1. Bidder owns, leases or utilizes, for business purposes, space that has received:

Energy Star® Certification

LEED®, Green Globes®, or Living Buildings ChallengeSM Certification

Other Internationally Recognized Building Certification:

2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:

3. Please Check all that apply:

Bidder can claim on-site renewable power or anaerobic-digester power (“cow-power”). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.

Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.

Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.

3. Please Check all that apply (continued):

Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this?

Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..

Bidder offers employees an option for a fossil fuel divestment retirement account.

Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:



4. Please list any additional practices that promote clean energy and take action to address climate change:

Attachment J Equipment Type List

1. Air Compressor
2. Air Track Drill
3. Asphalt Plant
4. Backhoe/excavators
5. Blowers
6. Brush chipper
7. Chain Saw
8. Cold Planer
9. Compactor
10. Concrete Mixer
11. Concrete Pump
12. Concrete Saw
13. Crack-filler Pot
14. Crane
15. Ditchers
16. Dozer
17. Excavator
18. Flagger
19. Flagger- railroad
20. Forklift
21. Generators
22. Grader
23. Guardrail Post Driver
24. Heaters
25. Hole ram
26. Jack
27. Jack Hammer
28. Laborer
29. Landscape rake
30. Loader
31. Man Lift
32. Message Boards
33. Mini
34. Mixer, concrete
35. Mower
36. Mulcher
37. Other
38. Pavement Grinder
39. Pavement Heater
40. Pavement Marking
41. Pavement Saw
42. Pavers
43. Pile Driver Hammer
44. Pile Driver Leads
45. Post Digger
46. Power Generator
47. Power Washer
48. Pump
49. Rail dump Truck
50. Rail excavator
51. Rail truck (pick up)
52. Roller
53. Safety Equipment
54. Sandblaster
55. Scaffold/Lift
56. Screening/Crusher
57. Seeder
58. Shoulder machine
59. Skid Steer
60. Skidder
61. Snow Plow (pick up)
62. Snow melter
63. Stump Chipper/ Grinder
64. Sweeper
65. Tack Distributers
66. Tamper
67. Toilets
68. Torches
69. Track
70. Tractor
71. Traffic control Devices
72. Trailer
73. Trench Box
74. Trencher
75. Truck, Attenuator/ Crash
76. Truck, Auger, Pounder
77. Truck, Distribution
78. Truck, Dump
79. Truck, Miscellaneous
80. Truck, Pick-up
81. Truck, Snooper/ Bucket
82. Truck, Vacuum
83. Truck, Water
84. Welder
85. Wheeled
86. Wood Chipper
87. Wood Splitter

JOB ORDER FORM

Part I

Date:

Requesting Organization:

POC phone and email:

Requirement Description/Instructions:

Job Order bid deadline:
(lump sum pricing)

OR

Contractor selected:
(rate schedule only)

Address to send invoices to:

Part II
Job Order Bid

(To be completed by the contractor)

This form must be submitted electronically, by the deadline, to the Point of Contract listed above. Any defects or omissions may result in rejection of the bid.

Contractor Name

CERTIFICATION OF PROPOSAL: I, or we, hereby certify that I am, or we are, the only person or persons interested in this bid proposal as principal or principals; that the bid is made without collusion with any person, firm or corporation; that I, or we have examined the bid proposal, plans, specifications, applicable legal requirements, scope of work, and the site of the work, and that I or we propose to furnish all necessary machinery, equipment, tools, labor and other means of completing the required work including all materials specified, in the manner and time period prescribed in the Job Order Form Part I, the JOC Contract, and attachments for the sum(s) set forth below.

Fixed Lump Sum Price

Contractor signature (must be authorized agent)

Date

Part III
Job Order Award

is hereby awarded this Job Order for the above
referenced project based upon the above listed bid.

Effective date:

Title VI Assurance Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement

as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI Assurance Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin), as implemented by 49 C.F.R. § 21.1 *et seq.* and 49 C.F.R. § 303;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (102 Stat. 28.), (“...*which restore[d] the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.*”);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Justice regulations at 28 C.F.R. parts 35 and 36, and Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*), as implemented by 49 C.F.R. § 25.1 *et seq.*