

February 9, 2024

Request for Qualifications (RFQ): **Aviation Planning, Engineering and Design Services 2024**

The Rail and Aviation Bureau of the Policy, Planning and Intermodal Development Division (PPAID) of the Vermont Agency of Transportation, hereinafter referred to as VTrans, is seeking Requests for Qualifications (RFQ) to provide Aviation Planning, Engineering and Design Services. Projects in support of Vermont's ten (10) state-owned airports and the State's Public Airport System include performing a variety of project administration, design, engineering, planning, airport inspection, construction support services, environmental permitting, right-of-way (ROW), and aviation easement services. The types of services required will be in accordance with the *Vermont Agency of Transportation Project Development Process*, the *State of Vermont Department of Buildings & General Services Design Guidelines* (for building projects), or as directed by the VTrans Project Manager (PM).

This RFQ represents the first phase in which the Contractor Selection Committee (CSC) will complete a review of the RFQs received based on the evaluation criteria within this RFQ. Based on the review, the Selection Committee will develop a Qualified Aviation Engineering List (QAEL). All Contractors who submitted a qualification package will be notified. The list will be uploaded to VTrans' website and will be located here: [Contracts for Services | Agency of Transportation \(vermont.gov\)](#). The QAEL will be active for one (1) year. Each year there will be another RFQ solicited. To be able to provide proposals on Aviation Planning, Engineering and Design Services for VTrans the Contractor must be on the QAEL which requires resubmittal of your qualifications each year. Qualified Contractors (QC) will have an opportunity to provide proposals for every Aviation project for VTrans through an open and competitive solicitation process which will result in a legally binding Agreement between the awarded QC and VTrans. This phase and accompanying phases are listed in/described further in Attachment B of this RFQ.

All questions related to this RFQ shall be forwarded to **Doreen Carminati, AOT Contract Administration Section, Services Unit**, by e-mail at doreen.carminati@vermont.gov. All such questions and requests shall be received **no later than 2:00 p.m. on Friday, February 23, 2024**. VTrans will not be bound by any oral communications. All questions or requests for clarification received will be documented and answered after this date. ***Communication with other VTrans personnel regarding this RFQ is prohibited and may result in the rejection of your RFQ.***

Multi-Entity Organization(s):

VTrans will only accept one qualification submittal for a multi-entity organization. Entities must have separate administration and financials. Potential submitters are responding with the qualifications of your organization. All qualified personnel at organizations on the Qualified Researcher List are qualified to work on Research projects.

Addendums(s) / Modifications:

In the event that it becomes necessary to revise, modify, clarify, or otherwise alter this RFQ, including VTrans' responses to questions and requests for clarification, such addendum(s)/modification(s) shall be posted to the VTrans Contract Administration website.

IT IS THE ORGANIZATION'S RESPONSIBILITY TO OBTAIN ANY RFQ MODIFICATIONS ISSUED.

RFQ Modifications will be posted on the VTrans Contract Administration website at: [Contracts for Services | Agency of Transportation \(vermont.gov\)](#)

Reservation of Rights:

All RFQ's become the property of VTrans upon submission. The cost of preparing and submitting an RFQ is the sole expense of the Organization. Unselected RFQ's shall be securely disposed of at VTrans' discretion. VTrans reserves the right to reject any and all RFQ's received as a result of this solicitation, to negotiate with any qualified source, to waive any formality and any technicalities or to cancel this RFQ in part or in its entirety if it is in the best interest of VTrans. This solicitation of an RFQ in no way obligates VTrans to award a contract.

Exceptions to Terms and Conditions:

The Organization must state in the RFQ any exceptions taken to the terms and conditions in this RFQ. For each exception the Organization 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 RFQ as unresponsive. Failure to note exceptions when responding to the RFQ will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFQ but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State.

Confidentiality:

All RFQs received will become part of the 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 RFQ documents include material that is considered by the Organization to be proprietary and confidential under 1 V.S.A. § 315 et seq., the Organization shall submit a cover letter that clearly identifies each page or section of the RFQ that it believes is proprietary and confidential. The Organization 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 Organization if the identified material were to be released. **Additionally, the Organization 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.

Request for Qualifications Instructions – General:

The quality of RFQs and adherence to solicitation response requirements and/or restrictions are considered reflective of the manner in which the Organization 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 Organization did not conform to all terms as set forth in the RFQ and attachments may make the offer non-responsive and may result in the elimination of the Organization from further consideration for being on the QAEL.

RFQs or unsolicited revisions submitted after the specified due date and time will not be accepted and will be securely disposed of.

Required Electronic Submittal Information:

Qualification Submittals will be received electronically via an FTP site. In order to upload your submittal, you must obtain a user account. This account will be provided when Contract Administration receives your request via e-mail. Please submit your request for a user account by e-mailing the single point of contact listed above. Your subject should state “**FTP Account Proposal Submit Request for Aviation Planning, Engineering and Design Services 2024**”. You will then receive guidance on uploading your submittal and a user account will be provided by separate e-mail(s). Please submit your request as soon as possible and no later than four (4) business days before the RFQ due date to ensure there is ample time to set up the user account(s).

When submitting your Qualification(s) please use the following naming convention:

Qualifications_ABConsulting_AviationEngineeringServices2024

Submit your qualifications to the Office of Contract Administration, Agency of Transportation, via the provided FTP site, **prior to 2:00 P.M.**, on **Friday, March 8, 2024**.

RFQ Substantive Content:

Please provide the following elements:

- A. Cover Letter.** All Organizations or their authorized representative shall prepare and sign a cover letter. The cover letter should clearly identify the organization’s technical coordinator contact and email and the organization’s financial contact and email. **The section shall not exceed a maximum of two (2) pages.**
- B. Technical Capability/Approach.** In this section the proposer must explain the proposer’s understanding of VTrans’ intent, objectives, and how the proposer proposes to achieve those objectives. The proposer must discuss the proposer’s experience, capabilities and plan for providing the described services, including any proposed approach to project management, strategies, tools and safeguards for ensuring performance of all required services, and any additional factors for VTrans’ consideration. **The section shall not exceed a maximum of eight (8) pages.**

- C. **Business and Management Structure.** Provide a description of the bidding organization's size, background, and structure, and a list by name and title of management personnel. Indicate which management personnel will be responsible for the delivery of services under the contract and a description of how the organization's resources will be applied. This section should provide clear information as to the lines of communication and how the Business ensures Quality Control & Quality Assurance. Include information as to how Local, Regional and National Offices will coordinate to provide successful services. **The section shall not exceed a maximum of two (2) pages.**
- D. **Organizational Chart.** Provide a one-page organizational chart of the Proposer's team that notes the name and title of key individuals that are proposed to manage or perform tasks. This chart shall clearly indicate the lines of communication for problem resolution. The use of an 11x17 page is permitted, however ensure that the document has been scanned or saved appropriately so all information is included. You may utilize a separate text box to contain the phone number and e-mail of each person listed on the chart, but the text box must be located on the same page as the organizational chart. In the case of international or national firms, please provide an organizational chart of the local office that will be responsible for the delivery of services under the contract. **The section shall not exceed a maximum of one (1) page.**
- E. **Key Personnel.** Identify the name and title of all personnel who will be assigned to provide professional services under this contract. Indicate any certifications or special licensing the individual holds that is pertinent. Include up to two-page resumes for each individual. **There is no page limit, beyond the 2 page per resume limitation.**

NOTE: The key personnel identified in the submittal are considered by VTrans to be essential to the work being performed under the contract. Prior to diverting any of the specified individuals into other programs, the Contractor shall notify VTrans in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made without VTrans' written consent.

F. **Subcontracts.**

Identify **all** subcontracts proposed, and provide the following information:

- Company name of each sub-contractor, or individual name in the case of independent Contractors
- Names of each sub-contractor principals and/or corporate officers
- Resumes of each sub-contractor's key personnel who will be assigned to provide professional services under the contract, including certifications or special licensing for each; and
- The types of work to be performed by each sub-contractor

There is no page limit associated with this section.

NOTE: Fully executed sub-agreements must be in place for each sub-contractor prior to the sub-contractor performing any work under contracts resulting from any future RFPs solicited through the QAEL. Any changes to or the addition of new sub-contractors are subject to the same notification and approval procedures applicable to key personnel described above. Contractor must request changes or additions in writing to the Contract Manager. The request shall include justification for the change or addition, all required items such as resumes of the sub-contractor, a description of their services, any certifications or special licensing the individual holds that is pertinent. All sub-contractors that the QC anticipates utilizing under any contract should be included with the initial submittal. Changes to sub-contractors and the addition of new sub-contractors should be the exception and be on a limited basis.

G. **Past Performance.** Provide at six (6) projects that detail past performance. The projects must be completed in the past five years or currently in process which are of similar size, scope, complexity and contract type or otherwise relevant to the work described in this RFQ.

Proposer shall use the provided Past Performance and Reference Form.

The contact person must be able to speak knowledgably about the proposer's performance in both technical and business aspects. The contacts provided may be directly communicated with at VTrans discretion.

The qualifications submittal shall not include any quoted or summarized comments or recommendations from any in-state or out-of-state evaluations, records or reports of any kind.

VTrans reserves the right to discuss the Proposer's past performance with any VTrans employee who has had experience with the Proposer.

The section shall not exceed a maximum of six (6) pages, utilizing the forms provided.

Evaluation of Request for Qualifications:

The selection panel is 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.

The CSC will review submittals based upon the following factors and related sub-factors.

1. Technical Capability/Approach

The submittal clearly indicates how the proposer will deliver timely, high-quality, compliant and cost-effective services to meet VTrans' needs. Specifically, the submittal demonstrates:

- Demonstrate experience and ability with the various types of engineering services that are outlined in the SOW that may be requested by VTrans.
- Demonstrated innovation on projects and assignments similar to those types listed in the SOW.
- Ability to meet projects on time and within budget.
- Demonstrated experience and ability to execute projects for regional Part 139-certified commercial and general aviation airports.

2. Business and Management Structure

- The submittal clearly demonstrates a sound organizational structure and management approach which indicate positive business ethics, clear lines of communication between the proposer's team and VTrans, active and continuing participation of senior executives, a focus on quality assurance and partnering.
- The submittal clearly demonstrates that the QC has the resources and managerial capability to provide the required services in a timely, cost-effective manner.

3. Key Personnel

- Proposer's proposed key personnel are sufficient in number, experience, and skill level, to provide high-quality professional services in a timely and cost-effective manner.
- Demonstrates commitment of key personnel to tasks/assignments.

4. Past Performance

The past performance evaluation will examine how the proposer's past and present performance indicates the likelihood of successful completion of work under this contract. In conducting the past performance assessment VTrans may use data obtained by references provided and any other source.

Review Method:

Reviews will focus on the strengths and weaknesses as demonstrated by the Organization's response to the RFQ.

The QC upon notification of being placed on the QAEL will apply for registration with the Vermont Secretary of State's Office (SoS) to do business in the State of Vermont, if not already so registered and if applicable. 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: [Corporations Division \(vermont.gov\)](https://www.vermont.gov/business/regist). The QC will not be eligible for a legally binding agreement until the Organization is registered with the Secretary of State's office.

To be eligible to receive federal funds, the QC must have a Unique Employer Identification Number (UEI) with the System for Award Management (SAM) at [SAM.gov | Home](https://sam.gov). This is the official U.S. Government system for registering to do business with the federal government. Obtaining a UEI at SAM.gov is 100% free. If the QC needs assistance in preparing the submittal or registering with SAM.gov, the QC may contact one of the Procurement Technical Assistance Center Procurement Counselors at: [Meet the Team | Agency of Commerce and Community Development \(vermont.gov\)](https://www.vermont.gov/business/regist).

It is a condition of submitting under this RFQ that, by submitting a RFQ, the Organization accepts and agrees unconditionally that if the Organization in any way contacts, or attempts to contact, a member of the CSC or Rail and Aviation Bureau employees involved in the selection process for this RFQ, either during or following the RFQ process, with the aim of communicating about the selection process or outcome, then that Organization

will be completely barred from being on this solicited QAEL. The only valid point of contact for questions about the process or outcome is from Contract Administration and is specifically listed on the first page of the RFQ.

Enclosures:

- Attachment A: Scope of Work (SOW) dated January 16, 2024 & Contractor Invoice Guidelines & Invoice Templates
- Attachment B: Workflow Process and Phases & Project Proposal Request Template
- Attachment C: Standard State Provisions for Contracts and Grants dated December 4, 2023
- Attachment D: N/A – Left Intentionally Blank
- Attachment E: FAA Special Provisions
- Attachment F: 2020 General Terms and Conditions for Contracts and Services
- Attachment G: 2018 Federal Terms and Conditions Services (Non-Construction)
- Attachment H: N/A – Left Intentionally Blank
- Attachment I: AOT Civil Rights DBE Policy Contract Requirements CR110
- Attachment J: Title VI Assurances – DOT Standard Title VI Assurances and Non-Discrimination Provisions (DOT 1050.2A) – Assurance Appendix A and Assurance Appendix E
- Attachment K: N/A – Left Intentionally Blank
- Attachment L: N/A – Left Intentionally Blank
- Attachment M: N/A – Left Intentionally Blank
- Attachment N: N/A – Left Intentionally Blank
- Attachment O: N/A – Left Intentionally Blank
- Attachment P: N/A – Left Intentionally Blank
- Attachment Q: Past Performance and Reference Forms
- Attachment R: Contractor and Sub-Contractor Information Form
- Attachment S: N/A – Left Intentionally Blank

ATTACHMENT A

SCOPE OF WORK

Aviation Planning, Engineering and Design Services 2024 January 16, 2024

I. GENERAL

The Vermont Agency of Transportation (VTrans) is seeking qualified architect & engineering Contractor services in support of Vermont's 10 state-owned airports and the State's Public Airport System. The selected Contractors, hereinafter referred to as the Contractor, shall be responsible for performing a variety of project administration, design, engineering, planning, airport inspection, construction support services, environmental permitting, right-of-way (ROW), and aviation easement services. The types of services required will be in accordance with the *Vermont Agency of Transportation Project Development Process*, the *State of Vermont Department of Buildings & General Services Design Guidelines* (for building projects), or as directed by the VTrans Project Manager (VPM).

VTrans is seeking Contractors that deliver projects early or on time, are resourceful and flexible, and aspire to advance the Agency's Aviation Program. VTrans is searching for Contractors that demonstrate leadership in the Aviation Sector, innovation in project delivery, and be a partner in the Agency's success.

II. VTRANS PLAN DEVELOPMENT PROCESS

Provided below is a general description of the VTrans project development process. For more information, please refer to the VTrans Publications and Maps webpage (<https://vtrans.vermont.gov/docs>) for the *Project Development Process Manual*. For building projects, please refer to the *Department of Buildings & General Services Design Guidelines* (https://bgs.vermont.gov/dnc/design_guidelines).

- a. **Project Definition** – The intent of the project development phase is to define the need for Airport Improvement, scope the project to document site constraints, address local concerns and maintenance of traffic, determine the best alternative, and generate conceptual plans. The initiation of ROW and Aviation Easement process is during the project definition phase. The CONTRACTOR shall review scoping and other project documentation, assess draft conceptual plans and provide questions or comments, work with the VPM to develop a project schedule, assist in estimating Professional Engineering costs, and attend a pre-development meeting, as well as conduct a site visit. The CONTRACTOR may support other scoping efforts.

- b. **Project Design** – The CONTRACTOR shall provide design services. All designs must be in accordance with the applicable and current Federal Aviation Administration (FAA) Advisory Circulars, or applicable funding source (ie: Northern Borders Regional Commission). The typical project design phases consist of the following sequence: Conceptual Plans, Preliminary Plans, Final Plans, and Contract Plans at bid stage. Each plan submittal step may require the submission of a Revised Plan set based on the number and complexity of comments received during the plan review process. Any requirement of a Revised Plan submittal is the discretion of the VPM. Construction quantities and associated cost estimates shall be prepared throughout the design process at each plan submittal. All project design files submitted to VTrans at the VPM’s direction through the Agency’s SharePoint Site, the VTrans FTP site, or other means directed by the VPM. The CONTRACTOR shall also be responsible for drafting project procurement documents (ie: special specifications, FAA General Contract Provisions, etc.) during the development of Preliminary Plans, Final Plans and Contract Plans.
- c. In accordance with guidance published by the Agency, the CONTRACTOR will provide to the VPM a detailed construction cost estimate with the submittal of conceptual plans, preliminary plans, final plans, and contract plans.

VTrans, other State agencies, FAA representatives (when applicable), other stakeholders, and other subject matter experts will review each plan submittal. Review periods range from two to four weeks as outlined on the project schedule. All review comments the Agency receives are reviewed, discussed, addressed, and documented. The CONTRACTOR shall document review comment resolutions on VTrans review sets in PDF format to ensure comments are addressed and closed out. The Agency will use resolution meetings to resolve any major review comments, if necessary.

All project development and design will be in accordance with the requirements of the latest approved editions of the items included in the section titled, “Design Standards, Criteria & Guidelines.”

There are several concurrent activities within plan design. Below is a brief description:

- i. **Subsurface Investigations and Geotechnical Analysis** – A geotechnical investigation is required for any project that may involve the design of structural foundations, stability analysis, or slopes or retaining walls. During the Project Definition Phase, a geotechnical investigation request is submitted by the VPM. At times, the CONTRACTOR will review or complete and submit a geotechnical investigation request. The CONTRACTOR will perform these tasks with oversight from the VPM. The CONTRACTOR shall also complete and submit a Geotechnical Services Request Form for foundation recommendations and provide supporting documentation including design parameters and preliminary loads.

- ii. **Utility Relocation Routes** – The CONTRACTOR will perform utility coordination. The CONTRACTOR by providing technical information as needed will support this effort. The CONTRACTOR in the Preliminary plan set will incorporate proposed utility relocation routes. At times the CONTRACTOR will provide utility relocation services including identifying existing utilities, coordinating with utility owners, and design of new services.
 - iii. **Hydraulics Analysis** – The CONTRACTOR will provide hydraulics design services. The CONTRACTOR shall coordinate with VTrans to assist with the development of a Final Hydraulics Report. The CONTRACTOR shall provide design files, up and downstream low chord elevations, and any other necessary information required for final hydraulics design. At times, the CONTRACTOR will perform preliminary and/or final hydraulics.
 - iv. **Permits** – There are a variety of permits and/or approvals required from several resource agencies during the development of project plans. During the design phase, permitting agencies require coordination prior to issuing a permit or signing off on the project. The CONTRACTOR shall prepare a plan showing the impact areas for VTrans use in permitting and approval by the Federal, State and Local regulators as needed. The CONTRACTOR will generally prepare Permit applications and submit to VTrans as required. The nature of these permits could be environmental or building related. The CONTRACTOR shall provide technical project information as needed.
 - v. **Right-of-Way (ROW)** – For projects with impacts outside of the existing State Airport ROW, VTrans will provide ROW and Avigation Easement services. The standard ROW process includes a 502 Hearing, Necessity (if required), Appraisal, Review, Surveys, Negotiation, and Condemnation (if necessary), Deed Preparation and Filing for Airports. The CONTRACTOR shall provide draft ROW information for VTrans use as needed.
 - vi. **Project Development Coordination** – Throughout the project development process, the CONTRACTOR may participate in coordination meetings for any of the above referenced activities. In addition, the CONTRACTOR will participate in constructability review meetings, and ensure necessary changes are made to the project plans.
- d. **Project Contracting** – VTrans generally uses the design-bid-build procurement method. However, Indefinite Delivery Indefinite Quantity (IDIQ) and Job Order contracts (JOC) are established to execute construction, repair, and maintenance work activities at State-owned airports. Additionally, individual Requests for Proposals (RFPs) may be solicited for unique projects (e.g., Airport Fuel System installations). During the procurement phase, the CONTRACTOR may perform a bid analysis and recommendation of bid acceptance. Typically, the bid analysis process is four steps:

1. Competition analysis
 2. Major cost deviation analysis
 3. Unit price deviation analysis
 4. Documentation of results and recommendations.
- e. **Construction** – The CONTRACTOR shall provide construction support services including, but not limited to, participating in the preconstruction conference, resident project representative (RPR), project inspection, change order review and cost evaluations/analysis, provide responses to requests-for-information, plan clarifications, fabrication/construction drawing review, and approval, Davis-Bacon and related acts compliance review, and final inspection.
- f. **Planning** – The CONTRACTOR shall provide airport planning services including, but not limited to, Airport Master Plans (and updates), Environmental Assessments, Airspace Obstruction Analysis, Land Use Compliance & Acquisition, Noise Studies, and Airport Improvement Program-eligible equipment lifecycle assessments.
- g. **Specialty Services** – At the request of VTrans, the CONTRACTOR shall provide additional resources as needed to perform specialty services on a single or multiple projects. This may include, but is not limited to, Grant Preparation & Closeout, Project Management, Project Administration, Environmental Specialist, ROW Specialist, Avigation Easement Specialist, Utility Specialist, Contracting Specialist, or other miscellaneous resources.

The services requested for a particular project will vary according to the needs of VTrans. Requested services could be a special study, project definition/scoping, preliminary, final, or complete design.

It is the policy of VTrans to use English units.

III. **SPECIFIC SCOPE OF WORK**

- a. VTrans may direct the CONTRACTOR to perform services on a project-by-project or program basis. The services requested of the CONTRACTOR will relate primarily to the development of airport improvement projects. Services for individual projects may range from a discrete task to all phases of a project. All engineering services performed shall be in accordance with the Project Development Process and/or as directed by the VPM and may include, but are not necessarily limited to, those services listed in this Scope of Work. Requests for services may be on a variety of projects, which may include, but are not necessarily limited to, the following types of projects. Aviation System Planning
- b. Airport Master Planning
 - i. Airport Layout Plans
 - ii. Sign & Marking Plans
 - iii. Property Maps
 - iv. Economic Analysis
 - v. Aircraft Forecasting
 - vi. Public/Community Input and Engagement

- vii. Capital Improvement Plans
- viii. Obstruction Analysis (ADIP, RAM Tool Submissions)
- ix. Airports Geospatial Information Systems
- x. Airport Equipment Lifecycle Assessments
- xi. Pavement Condition Index (PCI), Pavement Classification Number (PCN)
- c. Environmental Documents
 - i. Categorical Exclusion
 - ii. Environmental Assessment
 - iii. Federal, State, and Local Permitting
 - iv. Archeological Investigation
 - v. Wetlands Delineation
 - vi. Wildlife Hazard Assessment and Mitigation & Management Plans
 - vii. Spill Prevention, Control, and Countermeasures Plans
- d. Right-of-way and Avigation Easements
 - i. Title Search, Survey, right-of-way plans, legal documents
 - ii. Hearing Preparation, Property Owner Collaboration Assistance
 - iii. Exhibit A Updates
- e. Airport Infrastructure Construction/Repair/Maintenance (Airfield Pavements, Security Fencing and Gates, Stormwater Structures, Fuel Systems)
 - i. Inspection
 - ii. Inventory
 - iii. Geotechnical Investigation
 - iv. Construction Phasing and Safety Plan
 - v. Construction Design Documents
 - vi. Construction Administration
 - vii. Vegetation Management Plans
- f. Navigational Aids & Airfield Lighting
 - i. Inspection
 - ii. Inventory
 - iii. Construction Phasing and Safety Plan
 - iv. Design Documents
 - v. FAA Coordination
 - vi. Automated Weather Observing System (AWOS) & Automated Surface Observing System (ASOS)
- g. Airport Building Architectural Services (Terminals, Equipment & Supply Storage, Hangars, Aircraft Rescue & Firefighting [ARFF] Facilities, and supporting utilities)
 - i. Site Assessment and Design
 - ii. Utilities Investigation
 - iii. Floor Plan Development
 - iv. Building Code Compliance
 - v. Mechanical, Electrical, and Plumbing
 - vi. Structural Engineering
 - vii. Construction Design Documents
 - viii. Construction Phasing and Safety Plan
 - ix. Construction Administration
- h. Construction Inspection
 - i. Progress Reports to FAA or other federal agencies

- ii. Resident Engineering / Resident Project Representative activities
 - iii. Construction Management Program (AC 150/5370-12 or current version)
 - iv. Post Construction Quality Assurance/Acceptance Testing (e.g. Profilograph)
 - v. Construction as-built coordination and collaboration
 - vi. Davis-Bacon Wage Rate and other labor compliance interviews
 - vii. Clerk of the Works (Building Projects)
 - viii. Obstruction Analysis (18B Survey)
 - Post construction as-built submission through the Airport Data and Information Portal (ADIP), including Runway Airspace Management (RAM tool) updates.
- i. Additional to tasks listed above, requested services may include ancillary tasks related to the design of transportation facilities that include but are not limited to:
- 1. Site development plans
 - 2. Drainage Improvements and Grading
 - 3. Special Studies
 - 4. Independent Fee Estimates
 - 5. Project Management
 - 6. Airport Improvement Program and other Grant Applications Development, Preparation, Administration, and Closeout

The CONTRACTOR may be directed to provide services in two areas: Engineering Services and Project Administration. Requests for services in these areas may include but are not limited to:

- A. Engineering Services** - Requested engineering services will generally follow the traditional design-bid-build project development method. The CONTRACTOR may be directed to perform activities outlined in Section II VTrans Development Process.

Project Administration - the CONTRACTOR may be directed to perform project administration services related to the development of aviation projects. The Rail & Aviation Bureau Director may assign a specific project or multiple projects to the CONTRACTOR. The CONTRACTOR will be responsible for all project administrator functions, including but not limited to developing project schedules, oversight of all project-related activities outlined in Section II VTrans Development Process, ensuring projects are developed in accordance with the project schedule and budget, and managing an independent design. CONTRACTOR shall account for number of hours worked to the applicable work order(s) and VTrans Expense Account(s). The CONTRACTOR Project Administrator cannot manage any projects developed by the Contractor's firm performing design services. The CONTRACTOR shall NOT be responsible for selecting the Contractor performing design services and developing Preliminary Engineering budgets on behalf of the Agency. The CONTRACTOR Project Administrator shall report to the VTrans headquarters located in Barre, Vermont a minimum of one day a month for collaboration with the VTrans Rail & Aviation Bureau Project Delivery Team.

If a CONTRACTOR is requested to perform Project Administration tasks which potentially exposes them to a design Contractor's proprietary or sensitive information, both the Project Administration CONTRACTOR and the Design CONTRACTOR may be required to sign confidentiality waivers.

VTrans may use several methods for determining and distributing work assignments to contract CONTRACTORS including but not limited to requesting technical proposals from more than one firm for comparison; requesting a proposal from a single Contractor; or requesting proposals addressing more than one project.

VTrans may use any criteria in its best interest including, but not limited to, the following when selecting a CONTRACTOR to perform a specific assignment:

- Past performance on similar work tasks
- Qualification and experience of the proposed team
- Availability of staff with appropriate technical disciplines
- Project approach
- Knowledge of project area
- Ability to meet VTrans schedules & budgets

The VPM will transmit a project specific scope of work to the Contractor with a request for proposal and schedule. The Contractor shall prepare the requested proposal in accordance with the "Work Flow Process" and "RFP Project Proposal Request" provided in Attachment B. The VPM will review the Contractor's submittals selecting the most qualified. Once selection has been made, a cost proposal will be requested from the selected Contractor. VTrans will indicate the proposed payment structure when requesting an estimate. The VPM shall then enter into negotiations with the Contractor if necessary. If a satisfactory scope and/or cost cannot be determined for a specific project, VTrans retains the right to negotiate with the next highest scoring Contractor who provided a proposal.

The cost of preparing, submitting, and presenting a proposal is the sole expense of the proposing CONTRACTOR.

When all elements of the proposed work have been approved, Contract Administration will issue project specific contract to the Contractor. This contract will specify the effective date, method of payment Fixed Fee (FF) or Cost Plus Fixed Fee (CPFF), contract amount, and other pertinent information.

IV. ADMINISTRATIVE CONSULTANT SERVICES

- a. Coordination and Communication
 - i. It is imperative that pertinent coordination between the CONTRACTOR and the VPM be maintained at all times to ensure compliance with the VTrans requirements for the specific tasks and assignments.
 - ii. All project communication shall be through the VPM unless otherwise specifically directed by the VPM.

- iii. VTrans may require the CONTRACTOR to establish and maintain communications with other VTrans personnel, municipal representatives, regional planning organizations, and resource agencies.
- iv. The CONTRACTOR shall post all applicable project information to the VTrans Consultant SharePoint Site, unless otherwise directed by the VPM. This includes but is not limited to existing project data; plans, special provisions, and estimates; VTrans review comments; presentations; and construction documents.

b. Progress Reports

- i. The Contractor shall provide VPM with a Monthly Project Status Report that identifies project activities during the reporting period. The progress report shall outline the status of critical activities of the project or task assignment, overall percent complete in relation to effort, budget, and schedule, and direction received from VTrans, and any outstanding issues. The progress report shall also indicate anticipated activities for the upcoming reporting period. The Contractor shall also include progress reports from subContractors. Monthly Project Status Reports shall be prepared in accordance with the “Consultant Invoice Guidelines” provided in Attachment A.
- ii. If the CONTRACTOR fails to meet a project milestone or is behind schedule, the progress report shall include this information, revised target dates for completion, as well as proposed solutions to recover the schedule. The CONTRACTOR shall also identify any other outstanding issues requiring resolution and the entity responsible for the achieving resolution.
- iii. VTrans may require that the CONTRACTOR provide copies of this monthly report to all affected municipal and regional planning organizations.
- iv. The VPM may request a progress report at any time or on a more frequent basis.

c. Consultant Project Administration

The CONTRACTOR shall provide a CONTRACTOR Project Administrator for each work assignment. The CONTRACTOR Project Administrator will be responsible for maintaining the project on schedule, within budget, and within the approved scope of work. Meeting project milestones is essential.

An initial project schedule shall be submitted for approval for each assignment. The submittal shall contain important milestone dates by assigned task. As the work assignment progresses the schedule shall be kept current. The CONTRACTOR Project Administrator shall also supply schedule and budget updates as requested by the VPM. The schedule must allow for necessary review periods.

The CONTRACTOR Project Administrator shall be responsive to the VPM. This may include, but is not limited to, email correspondence, phone correspondence, conference calls or attendance at coordination meetings. The CONTRACTOR Project Administrator shall ensure that the VPM is knowledgeable about progress, risks to the project schedule, anticipated project delays and proposed resolutions to maintain the project schedule. The CONTRACTOR Project Administrator shall provide recommended solutions to unanticipated challenges encountered during design and take direction from the VPM. The CONSULTANT Project Administrator shall ensure that quality control and quality assurance protocol is followed throughout the project development process. In the event that continuous problems are encountered during design or development that cannot be resolved between the VPM and CONTRACTOR Project Administrator, VTrans may request a different CONTRACTOR Project Administrator or reassign the project to a different CONTRACTOR under contract for these services.

The CONTRACTOR Project Administrator shall be responsible for reviewing subCONTRACTOR deliverables to ensure quality and completeness. The CONTRACTOR Project Administrator shall be responsible for the timely delivery of subCONTRACTOR deliverables.

d. Monthly Invoice Submittals

Monthly Invoice Submittals

The CONTRACTOR shall provide VTrans Contract Administrators Office with an electronic copy of a Monthly Invoice in accordance with the “Consultant Invoice Guidelines” provided in Attachment A.

Monthly Invoice Summary

The CONTRACTOR shall provide VTrans Contract Administrators Office with an electronic copy of a Monthly Invoice Summary. The summary shall depict job hours per labor classification for each authorized task. The summary is required to list the total authorized hours per tasks, total task hours worked for the monthly invoice, total task hours invoiced to-date, and remaining hours for the authorized task. Include contract number, Invoice number, and project work order/authorization number, Expenditure Account (EA) along with supporting documentation

e. **Conflicts of Interest**

The Contractor is responsible for disclosing and reporting all potential and actual conflicts of interest, including the appearance of a potential or actual conflict of interest promptly to the VTrans Rail & Aviation Bureau Director. Where possible, such conflicts should be disclosed prior to the Contractor’s performance of work under the contract. A conflict of interest is a pecuniary interest or the appearance thereof, in the award or performance of a contract, or such an interest, known to the employee, by a member of his/her current or former family or household, or a business associate. See Bulletin 3.5, State of Vermont, Agency of Administration, Contracting Procedures.

Federal regulations also define conflict of interest as “a situation in which [the CONTRACTOR] has a financial interest, personal activity or relationship that could impair the [Contractor’s] ability to act impartially and in the best interest of the Government when performing under the contract.” See 48 CFR 3.1101. Financial Interests, for example, include stock ownership, a prospective employment interest or a gift from a design consultant.

Further, under 48 CFR 3.1101, the CONTRACTOR may not:

- Plan acquisitions
- Determine which supplies or services should be acquired by the State
- Approve any contract documents, including documents that define contractual requirements, incentive plans and evaluation criteria
- Evaluate contract proposals
- Award government contracts
- Administer government contracts, including ordering changes or providing technical direction with respect to contract performance or item quantities, evaluating Contractor performance, and accepting or rejecting Contractor products or services
- Terminate contracts
- Determine whether contract costs are reasonable, allocable and allowable

V. **INFORMATION TYPICALLY PROVIDED BY VTRANS**

VTrans will make available to the CONTRACTOR any existing information relating to the project. The following is a list of those materials which may be provided to the CONTRACTOR by VTrans, if required or available, as part of a specific work assignment.

- a. Existing Right-of-Way, Avigation Easement and Enplanement Valuation Plans
- b. Survey Control Points
- c. Electronic CADD files in MicroStation and In Roads format
- d. Standard Details
- e. Copies of Applicable Supplemental Specifications
- f. Environmental Resource Information
- g. Archeological and Historic Information
- h. Topographic Survey
- i. Preliminary Subsurface Information
- j. Pavement Design
- k. Right-of-Way Information

- l. Public Hearing/Meeting Notification and Display Plan
- m. Utility Information
- n. Construction Item List and Bid History
- o. Prequalified Construction Contractor Listing
- p. Previous Airport Project Plans as applicable

VI. DESIGN STANDARDS, CRITERIA & GUIDELINES

The CONTRACTOR shall comply with all applicable state and federal design standards, specifications, and policies; to include (but not limited to) the latest approved editions of the following:

- a. VTrans Project Development Manual
- b. VTrans 2024 Standard Specifications for Construction (current version)
- c. VTrans Engineering Instructions & Standard Drawings
- d. Department of Buildings & General Services Design Guidelines
- e. Federal Aviation Administration Advisory Circulars

VII. CADD FILE REQUIREMENTS

The CONTRACTOR shall comply with the current VTrans CADD Standards found at <https://vtrans.vermont.gov/cadd> . All CADD manuals and resources are available on the Vermont Agency of Transportation CADD Help web site.

CADD files shall be submitted to VTrans at key design phases; especially Final Design & Contract Plans. At the discretion of the VPM anytime during the authorized project, the VPM may request and receive electronic CADD files to review for quality assurance and to support resource groups. At a minimum, CONTRACTOR must submit all electronic files at the completion of a project.

VIII. DESIGN DOCUMENTATION

A. Electronic Submission Requirements

The CONTRACTOR shall post all applicable project information to the VTrans Consultant SharePoint Site, unless otherwise directed by the VPM.

B. Interim Submission

At the discretion of the VPM anytime during the authorized project, the VPM may request and shall receive a digital copy of any requested task assignment of the project's design calculations with associated sketches, quantity calculations breakdown, and construction cost estimate.

C. Design and Quantity Calculations

The following shall be provided to the VPM as digital copy (preferably PDF):

1. Project's final design calculations with associated sketches
2. Quantity calculations
3. Construction cost estimate prepared with the Estimating module of iPD Web
4. A document containing a list of all CADD files with their appropriate CADD name
5. The VTrans quantity sheet builder shall be used for project quantity sheets (through iPD)
6. Design and inspection designation and qualifications must be met

D. Quality Certification

It is imperative that the CONTRACTOR provide a high-quality product using a systematic quality control process. A Quality Control Plan will be required prior to commencing work. At the conclusion of the design phase of a project the CONTRACTOR Project Administrator shall issue a certification of quality that documents the quality control efforts that were utilized to ensure a safe, buildable, and biddable design.

IX. PLAN & DOCUMENT DEVELOPMENT

a. Plan Sheet & Document Submissions

Project plan sheets shall be formatted for 11 inches by 17 inches paper (half size), unless otherwise specified by the VPM. All elements contained within the sheets will be to scale. A full-size border of 24" x 36" will be required.

Planning documents shall be formatted at 8.5 inches by 11 inches unless otherwise specified by the VPM.

b. Standard Drawings & Design Details

Standard drawings and standard design details are available from the VTrans CADD website. If requested by the CONTRACTOR, VTrans may provide pertinent data using digital formats; otherwise, the details will be in hard copy format. VTrans projects will only use digital data. Files transferred to the CONTRACTOR cannot be sold or transferred without prior written approval from VTrans.

c. Review Process

The CONTRACTOR shall submit plans & documents to the VPM for review and comment when applicable, for Conceptual, Preliminary, Preliminary Right-of-Way, Final Right-of-Way, Semi-Final Plans, Final Plans, and any other project specific milestones. The VPM will distribute to the appropriate parties for review. The date of printing of documents and plan sheets shall be stamped or otherwise shown on the pages and sheets. Unless requested otherwise, the CONTRACTOR shall submit documents and plans in PDF file format in one file that contains the entire submission for internal review by VTrans. VTrans reviewers will utilize electronic means to

comment on the PDF submission.

The review comments will first be sent to the VPM then forwarded to the CONTRACTOR as required. The CONTRACTOR shall prepare a written response to all the review comments received that documents how the comments were resolved. The VPM may organize a meeting at the end of the review period to discuss the review comments so that issues and conflicts are resolved. In preparation for this meeting, the CONTRACTOR shall prepare a handout summarizing all review comments received which the CONTRACTOR shall present for discussion at the meeting. The CONTRACTOR shall document the decisions and resolutions resulting from this meeting and summarize in writing any action required by VTrans, Town, etc., to allow the design to proceed.

At the conclusion of the review period, the CONTRACTOR shall modify the documents or plans, as necessary, to incorporate the review comments and decisions/resolutions from the review meeting and submit a digital copy of the revised documents or plans to the VPM for review. If these documents or plans are found acceptable, VTrans will send the CONTRACTOR, written authorization to proceed with development of the next phase of the project. Deliverables that do not comply with the requirements outlined in this scope of work, including standards, will be returned for correction at no expense to VTrans.

CONSULTANT INVOICE GUIDELINES

This guideline document suggests an outline for consultant's invoice. The objectives of the document are:

- To achieve uniformity in invoices
- To ensure that the invoice include all essential information
- To emphasize the need for presenting the distribution of staff effort and cost
- To emphasize the need to show the personnel working on any task and the work performed
- To enable tracking of progress against billing for each task
- To make progress tracking and reporting an integral part of invoicing

The invoice guidelines apply to all consultant services including the services provided for alternative contracting methods.

As described below, VTrans expects a Project Status Report with each invoice. If requested by the VTrans Project Manager, the Project Status Report shall include a project schedule with percentage progress for each task.

In order to achieve this goal, draft templates for invoice, project status report and progress schedule from the consultants are encouraged for review and comments by the VTrans Project Manager prior to the first invoice. See Attachment A for example Typical Invoice expectations.

Project Status Report

- Date of the Report and the period it applies to
- Status of each task
 - Narrative of work accomplished during this period
 - Narrative of work planned for next period
 - Problems affecting the projects
 - Items that require VTrans resolution

Schedule/Progress (If requested by VTrans Project Manager)

- The progress on each task and subtasks shall be graphically shown on the schedule submitted with the proposal
- The schedule shall be updated to reflect actual contract award date and other durations provided by VTrans such as VTrans review durations
- Any changes to schedule shall be approved by the VTrans project manager
- VTrans project manager will review progress against schedule as part of the invoices approval
- The schedule/progress chart shall show the initials of the preparer and checker/reviewer

Invoice Tables

- The invoice shall reflect the phases and tasks identified in the proposal
- The invoice shall have tables similar to what was included in the proposal. This may include separate tables for:
 - Invoice Summary
 - Summary of Direct Labor
 - Summary of Direct Expenses
 - Labor Hour Breakdown
 - Personnel Classification (If required)
- The invoice shall show breakdown of all labor by tasks, overhead, profit and reimbursable direct expenses
- Invoice from subconsultant /subcontractor tasks shall follow the same guidelines as consultants, although it may be in a separate document
- All invoice tables shall show the initials of the preparer and checker/reviewer

Frequently Asked Questions:

1. The originally proposed staff in the retainer contract proposal is currently not available to work on the project. Does VTrans have any objection, if we change staff as long as we stay within the proposed budget?

If the person working on the project is included in the original proposal personnel classification or the new person and his rate had already been approved by VTrans, it is acceptable for the consultants to change staff. However, no adjustments to the budget will be allowed. Changes to proposed staff identified in the Task Order Request (initial project assignment) need to be approved by the VTrans Project Manager. The invoice should show the actual person working on the project for VTrans to track and ensure that expected quality of the services is maintained.

2. Do we need to include personnel classification table with each invoice?

No. However, personnel classification table need to be updated, if there is any change in personnel or hourly rate. Also such change should be approved by VTrans. Also, it is acceptable for the personnel classification table to include additional personnel that are not used in the original retainer contract proposal.

3. Does VTrans have a preference for the scheduling software?

Yes, VTrans prefers Microsoft Project.

4. In the schedule, how minute the tasks should be broken down to?

The tasks shall be sufficiently broken down to subtasks such that progress of the critical activities can be monitored. Consultants are encouraged to discuss with VTrans Project Manager and seek consensus on tasks and subtasks for the schedule. If VTrans Project Manager is concerned about the progress of any tasks, he may direct the consultant to breakdown those tasks to subtasks in order to monitor them closely.

Attachment A: Typical Invoice

May 6, 2023

Project Manager
c/o
Contract Administrator
Contract Administration Section, VTrans
State of Vermont
Vermont Agency of Transportation
219 North Main Street
Barre, VT 05641

RE: Essex BF 1234(5)
Bridge No. XYZ, Over No Name Brook
Authorization Consultant Name Contract No, PSXXXX
EA# _____ SUBJOB(s)# _____
Invoice No.XX

Dear Project Manager:

Please find attached one original and one copy of our invoice for the services rendered during the period from *April 1, 2023 to April 30, 2023* in the amount of -----. Also attached is the project status report including task by task progress for the same period.

I certify that during the period covered by the payroll, all personnel listed were gainfully employed in service to the Vermont Agency of Transportation, and their classification, rates of pay, hours worked and amount earned is a true and accurate report.

Sincerely,

A-Z Engineering Company, Inc.

Consultant, P.E.

Enclosures:

Project Status Report

Date: 05-06-23

Duration: 04-01-23 to 04-30-23

<u>Task 1:</u>	Revised project schedule and reported progress to VTrans
<u>Task 2, 3, 4 and 5:</u>	Completed
<u>Task 6:</u>	Provided corrected quantity sheet and title sheet Highway design under QC review Hydraulic calculations in progress
<u>Task 7:</u>	Attended meeting with ANR to clarify comments
<u>Task 8-13:</u>	Not started

Deliverables

Following is the status of deliverables:

- Draft preliminary plans were uploaded to SharePoint site on 04-15-23
- Following submittals were updated for VTrans Review on 04-29-23

Problems affecting the Project

- Geotechnical Investigation delayed due to severe cold weather. We expect the investigation to commence on May 8, 2023.

Items Requiring VTrans Resolution

- Draft preliminary plan comments have not been received
- Following submittals were updated for VTrans review on 04-30-23

Schedule/Progress (If required by VTrans Project Manager)

Updated schedule with progress is attached.

Invoice Tables

A-Z Engineering Company, Inc.
 Essex BF 1234(5) -- Bridge XX on VT Route XX
 Contract No. PSXXXX
 Period: From April 1, 2023 to April 30, 2023

Prepared:

Checked:

Table 1: INVOICE SUMMARY⁽¹⁾

PHASE A: PROJECT SCOPING (subjob 001)

	Contract Amount	Total Billed to Date	Previous Invoice	Current Invoice
Direct Labor	\$2,125.76	\$2,055.34	\$0.00	\$0.00
Overhead (145.55%)	\$3,094.04	\$2,991.54	\$0.00	\$0.00
Fixed Fee	\$498.30	\$498.30	\$0.00	\$0.00
Direct Expenses	<u>\$1,212.00</u>	<u>\$1,142.40</u>	<u>\$0.00</u>	<u>\$0.00</u>
SUBTOTAL	\$6,930.10	\$6,687.58	\$0.00	\$0.00

PHASE B: PROJECT DESIGN (subjob 100)

	Contract Amount	Total Billed to Date	Previous Invoice	Current Invoice
Direct Labor	\$5,525.00	\$3,660.00	\$1,000.00	\$2,660.00
Overhead (145.55%)	\$8,041.64	\$5,327.13	\$1,455.50	\$3,871.63
Fixed Fee	\$1,085.33	\$718.97	\$196.44	\$522.53
Direct Expenses	<u>\$2,979.00</u>	<u>\$2,772.00</u>	<u>\$100.00</u>	<u>\$202.85</u>
SUBTOTAL	\$17,630.97	\$12,478.10	\$2,751.94	\$7,257.01

SUBCONSULTANTS

A.B.C. Survey	\$1,400.00	\$100.00	\$100.00	\$1,200.00
X.Y.Z. Geotech Services	<u>\$1,100.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$1,000.00</u>
SUBTOTAL	\$2,500.00	\$100.00	\$100.00	\$2,200.00

PHASE C: CONSTRUCTION (subjob 300)

	Contract Amount	Total Billed to Date	Previous Invoice	Current Invoice
Direct Labor	\$1,145.00	\$0.00	\$0.00	\$0.00
Overhead (145.55%)	\$1,666.55	\$0.00	\$0.00	\$0.00
Fixed Fee	\$224.92	\$0.00	\$0.00	\$0.00
Direct Expenses	<u>\$1,462.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
SUBTOTAL	\$4,498.47	\$0.00	\$0.00	\$0.00

CURRENT INVOICE TOTALS	\$31,559.54	\$19,265.68	\$2,851.94	\$9,457.01
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AMOUNT DUE THIS INVOICE: \$9,457.01

(1) This is an example table. The consultant may choose a different format provided all the information on this table is included.

ATTACHMENT B

Workflow Process and Phases

Phase I - Solicit Statement of Qualifications and Selection of a Qualified Aviation Engineering List (QAEL)

- RFQ is advertised. The QAEL will be active for one (1) year. After each year there will be another RFQ solicited. To be able to conduct Aviation Engineering Services for VTrans your Organization must be on the QAEL, which requires resubmittal of your qualifications every year.
- Organizations submit Statement of Qualifications (SOQ).
- The CSC will review in accordance with the criteria listed in the RFQ and develop the QAEL.
- All submitters are notified and the QAEL will be posted to the VTrans website.

Phase II – VTrans Project Managers (VPM) will determine project specific needs and conduct a Request for Proposals (RFP) to all Qualified Contractors (QC)

- VPM will develop an RFP Package of the services requested (Design, Planning, Independent Fee Estimate[IFE], etc), to include specific project information and details necessary for the QCs to provide a technical proposal.
- All QCs on the QAEL will be given an opportunity to propose for any project estimated at or over \$100,000.00. Level 3 Selection
- Projects estimated at less than \$100,000.00 will require at least 3 QC's to provide proposals. This is considered an Alternate Selection Procedure and will follow the guidelines in AC150/5100 Section 2.10.2. Level 2 Selection
- Projects estimated at \$10,000.00 or less may use the Non-competitive Procedure as outlined in AC150/5100 Section 2.10.3. Level 1 Selection
- The RFP Request Package will be sent via e-mail to the QCs and contain the following information:
 - Requester (VPM)
 - Project Name and Number
 - Payment Provisions (Hourly, Firm Fixed Price (FFP) or Cost + Fixed Fee)
 - Due Date for Questions
 - Proposal Due Date
 - Selection Notification Date
 - Project Information
 - Project Background/History (if applicable)
 - Project Goals/Expected Outcomes (Scopes of Work)
 - Target Audience/Stakeholders (if applicable)
 - Timeline
 - Performance Measures / Reporting Requirements
 - Selection Criteria

Phase III – Preparation and Submittal of the RFP Response

- QCs will prepare their response by completing the following information:
 - Commitment & Experience of Key Team Members
 - Project Approach / Innovative Ideas
 - Past Performance of similar projects
- QCs will submit their response via e-mail as indicated in the RFP Package
- QCs shall confirm with AOT Audit Section that they have current financial and indirect cost rate information on file. This information is required prior to contract drafting, if selected to perform the service. You can confirm your information with Audit at the following group email: AOT.Audit@vermont.gov

Phase IV – Review and Scoring of Proposals, Notification of Selection

- VPM and RFP selection committee (if applicable) will score and comment on each proposal received.
- VPM will document scores and comments.
- VPM will notify all QCs who provided a response of the selection and intent to award.
- VPM will request IFE services from a different QC.
- VPM will submit a Contract Request Package to Contract Administration (CA) for IFE services related to the project – CA Services Section to develop the contract for the IFE, if applicable.
- VPM to coordinate scoping meeting (if necessary) with the FAA, and request a Cost Proposal from the selected QC & IFE consultants for use at the meeting.
- VPM will review Cost Proposals and conduct any negotiations or clarifications needed – if necessary.
- Following FAA grant award, VPM will then submit a Contract Request Package to CA – Services Section to develop the contract for Design, Engineering, Planning, Project Management, Construction Management, as applicable.
 - The Contract Request Package will contain the following:
 - Contract Information Sheet
 - Signed CA-52A
 - Scope of Work (WORD format)
 - Payment Provisions (WORD format)
 - Solicitation E-mail containing all information from the RFP Request
 - All proposals received
 - Final accepted and approved Cost Proposal

Phase V – Legally Binding Agreement

- CA will provide VTrans Audit Section (AS) with the submitted cost proposal.
- AS will verify all information (financials, indirect cost rate calculation and cost proposal) and provide authorization to proceed to CA.
- CA will draft and circulate the associated contract for review and signatures.
- CA will provide a fully signed copy to the QC and the VPM.
- Agreements generated from the competitive RFP solicitation process will include the attachments listed below. All work will be completed in accordance with these attachments and all applicable local, state and federal regulations:
 - Attachment A: Project Specific Scope of Work (SOW)
 - Attachment B: Payment Provisions and Contractor Invoice Guidelines & Invoice Templates
 - Attachment C: Standard State Provisions for Contracts and Grants dated December 15, 2017
 - Attachment D: N/A – Left Intentionally Blank
 - Attachment E: FAA Special Provisions
 - Attachment F: 2020 General Terms and Conditions for Contracts and Services
 - Attachment G: 2018 Federal Terms and Conditions Services (Non-Construction)
 - Attachment H: Certification for Federal Aid Projects (DOT Form 272-040 EF)
 - Attachment I: AOT Civil Rights DBE Policy Contract Requirements CR110
 - Attachment J: Title VI Assurances – DOT Standard Title VI Assurances and Non-Discrimination Provisions (DOT 1050.2A) – Assurance Appendix A and Assurance Appendix E
 - Attachment K: Certification of Contractor
 - Attachment L: Certification Regarding Lobbying
 - Attachment M: Debarment and Non-Collusion Certification CA-91
 - Attachment N: Contractor’s EEO Certification CA-109E
 - Attachment O: Worker Classification Self and Subcontractor Reporting

State of Vermont
Rail & Aviation Bureau
219 North Main St
Barre, VT 05641

Agency of Transportation

<http://vtrans.vermont.gov>

TO: Qualified Aviation Engineering List

Clough, Harbour & Associates LLP

PMcDonnell@chacompanies.com
DGozalkowski@chacompanies.com

Hoyle Tanner & Associates, Inc.

rfurey@hoyletanner.com
jmongillo@hoyletanner.com

Jacobs Engineering Group, Inc.

John.Hehir@jacobs.com
John.Wilson5@jacobs.com

McFarland-Johnson, Inc.

bbennett@mjinc.com
bsmith@mjinc.com

Passero Associates

mkgenthner@passero.com
lcheung@passero.com

Stantec Consulting Services, Inc.

greg.goyette@stantec.com
randy.christensen@stantec.com
pete.enzien@stantec.com

FROM:

DATE:

SUBJECT: Request for Proposal for **Aviation Engineering Services**

PROJECT:

PRICING:

DUE DATE FOR QUESTIONS:

Submit your written questions to the above listed Project Manager via email by the due date for questions. Questions will **NOT** be answered verbally. Answers will be provided in writing to **all** firms.

PROPOSAL DUE DATE:

SELECTION NOTIFICATION DATE:

Greetings,

Please review the following project information provided and complete the information requested below for consideration of your proposal.

Selection will be

Qualification Based (Federal & State Funds) or Best Value (100% State Funds OR Federal & State Funds that are NOT D&E in nature)

Qualified Contractors shall not enter into joint ventures with another Qualified Contractor in response to a RFP, nor shall it be permissible for a Qualified Contractor to include another Qualified Contractor as a subcontractor. Subcontractors must be approved prior to including them in the RFP.

PROJECT INFORMATION:

Project Location:

Project Background/History:

Project Goals/Expected Outcomes:

[Empty box for Project Goals/Expected Outcomes]

Target Audience/Stakeholders:

[Empty box for Target Audience/Stakeholders]

Timeline:

Performance Measures / Report Requirements:

Performance Measures and Reporting Requirements are as provided in the following link or as indicated below:

Additional Measures and Requirements (if applicable)

Monetary Threshold Estimate:

\$10,000 or less

\$10,001 to \$99,999

\$100,000 or more

All QCs on the QAEL will be given an opportunity to propose for any project estimated at or over \$100,000.00.

Projects estimated at less than \$100,000.00 will require at least 3 QC's to provide proposals. This is considered an Alternate Selection Procedure and will follow the guidelines in AC150/5100 Section 2.10.2 .

Projects estimated at \$10,000.00 or less may use the Non-competitive Procedure as outlined in AC150/5100 Section 2.10.3.

The Contractor should not rely on the monetary thresholds to dictate their cost proposal. If at any time the PM/CM feels that the monetary threshold information is being mis-used, they can stop providing such information during the RFP Request Process. This decision is at the sole discretion of the PM/CM.

Selection Criteria:

The Selection Criteria is of equal weight unless identified otherwise below.

Weight	Equal Weight for all	Single	Double	Triple
Key Personnel, Team Members (Commitment & Experience)				
Project Approach (Innovations, Efficiencies)				
Past Performance (Company and Team Members)				
Price/Cost (Best Value Solicitations ONLY)		<i>N/A</i>		

PLEASE RETURN THE FOLLOWING PAGES BY:

This section is to be completed by the Contractor. No cover letters or images are allowed.

Information provided will be used in determining

Qualification Based (the use of Federal & State Funds) or Best Value (100% State Funds OR Federal & State Funds for services that are **NOT** D&E in nature)

COMMITMENT & EXPERIENCE OF KEY TEAM MEMBERS: Clearly indicate the Contractor Project Manager, Technical Lead(s), Key Technical Support Staff, and up to two Sub-Contractors/Specialty Services vital to the success of the project and indicate their pertinent experience for this project. For Key Team Members and Sub-Contractors that are not already approved under the Qualified List, the Contractor must submit the required information to the Contract Manager for approval before including in any submitted RFP. By defining the Key Personnel in the box below, the Contractor is identifying that these staff have capacity to meet the project schedule and are committed through the project duration unless written authorization for a substitution is provided by VTrans. Please keep within space provided.

Key Team Members and Sub-Contractors that will be working on this SPECIFIC Project. Can they achieve the timeline and the reporting requirements, etc. Information should be specific to this particular project, such as education, certifications and past project experience. Who is going to work on the project, can the VTrans schedule be met? The team listed will be dedicated and perform the services proposed. This is a commitment and will see it through.

PROJECT APPROACH: This section is not intended to provide a full proposal, it is a space for you to provide any special considerations or innovative solutions. This should be a general approach, identifying any items that stand out or perhaps are not needed, special considerations or efficiencies identified. *Please keep within space provided.*

This section is for describing Contractor's project approach. This should be specific to this particular project and NOT represent a full proposal. Contractor's do not include images in this response.

PAST PERFORMANCE: Provide a brief description of similar project(s) wherein the assigned key personnel and/or subcontractors provided services. The project(s) should be similar in size and complexity to the project listed above. In addition, a reference name, phone number and e-mail must be provided. *Please keep within space provided.*

The past performance should be for the Key Personnel and Subs that will be working on this SPECIFIC Project. Information should be specific to this particular project.

THE ABOVE SECTIONS MUST BE RETURNED BY DUE DATE, WHICH IS:

**If this RFP is a Qualifications Based Selection, do not submit the following pricing pages until requested.
If this RFP is a Best Value Selection, provide Cost Estimate/ Pricing Pages with the above information**

PRICE/COST: This RFP will be a:

If a Firm Fixed Price is selected above, please enter the price below:

FIRM FIXED PRICE: _____
(This price includes all expenses)

Return this RFP and Cost Estimate (if Best Value Selection) via e-mail by the due date to the Requester noted below. If Qualification Based Selection, you will be notified if and when to provide the Cost Estimate.

If you have questions or require further clarification, please contact me via-email prior to the due date of the question period.

Thank you

VTrans Project Manager

**ATTACH YOUR PRICE/COST PROPOSAL ACCORDING TO
THE FOLLOWING EXAMPLES**

***THE FOLLOWING INFORMATION IS PROVIDED FOR
GUIDANCE AND ARE EXAMPLES ONLY***

Do Not Submit this Page or the Following Pages with Your Response

FIRM FIXED PRICE EXAMPLE:

Proposal must provide a breakdown of hours by classification and by task. This information will assist in the determination of reasonableness and for negotiation purposes. The estimated hours on the table provided may be negotiated by the VTrans Contract Manager prior to formal award. Adjustments to hours may result in a revised firm fixed price. Please see the following example:

Task	Classification	Number of Personnel within Classification	Number of Hours Per Classification	Total Hours by Classification
Background Research	Principal Investigator II	1	1	1
	Project Director II	1	6	6
	Director of Information Technology	1	1	1
			Total Hours by Task	8
Field Work	Principal Investigator II	1	4	4
	Field Director II	1	30	30
	Assistant Field Director II	1	30	30
	Archaeological Technician III	4	28	112
			Total Hours by Task	176
		Total Hours for Project	184	

COST PLUS FIXED FEE OR HOURLY CLASSIFICATION RATE EXAMPLE:

Please provide a project total which breaks out the estimated hours for each Labor Classification that you anticipate utilizing for this project. These hours should directly relate to your technical approach described/proposed above. You should submit your cost proposal using a separate sheet. Hours and expenses shall also be broken down for tasks. The estimated hours on the cost proposal provided may be negotiated by the VTrans Contract Manager or Project Manager prior to formal award. Adjustments to hours may result in a revised Project Total. Please see the following example:

TASK	DESCRIPTION	EFFORT (Hours)	TOTAL FEE
1	Resident Engineer	136	\$ 18,144.00
2	Construction Inspection	324	\$ 60,376.00
3	Arc Flash Analysis	56	\$ 6,969.90
Total Construction Inspection and Administration			\$ 78,520.00

Task 1 Resident Engineer								
Sub Task	Description	Project Principal	Project Manager (RE)	Sr. Engineer	Project Engineer	Sr. Electrical Engineer	Electrical Designer	Subtotals
1.1	Attend Pre-construction Conference		10					10
1.2	Distribute Shop Drawings (4 @ .5 hrs ea)				2			2
1.3	Review Contractor SWPPP, Reports and Compliance Documents (6 Reports @ 1 Hr ea)		6					6
1.4	Coordination with VTrans, Design Consultant and the FAA		28					28
1.5	Attend Bi-weekly Meetings (includes agenda preparation and meeting minutes), (limited to 3)		36					36
1.6	Review of Contractor Payment Requests (assume 2 @ 1 hr ea)		2					2
1.7	Review of Contractor's DBE and workforce utilization forms (assume 2 submissions @ 2 hours each submission)				4			4
1.8	Review Contractors Certified Payrolls				4			4
1.9	Assist with Construction Change Orders (limited to 1)		4		4			8
1.10	Advice to and Consultation With Resident Inspector		12					12
1.11	Schedule, and Attend Final Inspection		12					12
1.12	Prepare Punch List		4					4
1.13	Follow up Punch List Coordination		4					4
1.14	Assist with As-Built plans		4					4
Total Hours		0	122	0	14	0	0	136
Hourly Rate		\$ 96.50	\$ 55.00	\$ 55.00	\$ 40.00	\$ 76.00	\$ 40.00	
Direct labor Cost		\$ -	\$ 6,710.00	\$ -	\$ 560.00	\$ -	\$ -	\$ 7,270.00

		TOTAL DIRECT LABOR COST \$	7,270.00
	\$ -		
	\$ -	OVERHEAD @ 114.22 \$	8,303.79
	\$ -		
TOTAL SUBCONSULTANTS	\$ -	TOTAL LABOR COST \$	15,573.79
		FIXED FEE \$	1,557.38
Transportation (5 trips x 335 miles x \$.545/mile)	\$ 912.88	SUBCONSULTANTS \$	-
Per diem	\$ -		
Printing/Postage/Miscellaneous	\$ 100.00	EXPENSES \$	1,012.88
TOTAL EXPENSES	\$ 1,012.88	TOTAL \$	18,144.05

Task 2 Construction Inspection					
Sub Task	Description		Resident Inspector Regular Time	Resident Inspector Over Time	Subtotals
2.1	Resident Inspector - 6 weeks @ 50 hrs/wk		240	60	300
2.2	Resident Engineering - Pre-construction		8		8
2.3	Resident Engineering - Post-construction		16		16
2.4	EPSC Inspections & Environmental Monitoring	*Subconsultant			
Total Hours			264	60	324
Hourly Rate			\$ 40.00	\$ 40.00	
Direct labor Cost			\$ 10,560.00	\$ 2,400.00	\$ 12,960.00

SUBCONSULTANTS			TOTAL DIRECT LABOR COST	\$ 12,960.00
1	Material Testing Firm - not required	\$ -	OVERHEAD @ 114.22%	\$ 14,802.91
2	EPSC Inspections and Environmental Monitor (EIV)	\$ 25,000.00	TOTAL LABOR COST	\$ 27,762.91
TOTAL SUBCONSULTANTS			FIXED FEE	\$ 2,776.29
EXPENSES			SUBCONSULTANTS	\$ 20,850.00
	Transportation	\$ 20,850.00	EXPENSES	\$ 8,986.70
	Per diem	\$ 2,745.00	TOTAL	\$ 60,375.90
	Printing/Postage/Miscellaneous	\$ 6,041.70		
		\$ 200.00		
TOTAL EXPENSES		\$ 8,986.70		

Task 3 Arch Flash Analysis								
Sub Task	Description	Project Principal	Project Manager (RE)	Sr. Engineer	Project Engineer	Sr. Electrical Engineer	Electrical Designer	Subtotals
3.1	Review Shop Drawings and As-builts						4	4
3.2	Prepare Report					8	32	40
3.3	Install Equipment Labels						12	12
Total Hours		0	0	0	0	8	48	56
Hourly Rate		\$ 96.50	\$ 55.00	\$ 55.00	\$ 40.00	\$ 76.00	\$ 40.00	
Direct labor Cost		\$ -	\$ -	\$ -	\$ -	\$ 608.00	\$ 1,920.00	\$ 2,528.00

			TOTAL DIRECT LABOR COST	\$ 2,528.00
		\$ -	OVERHEAD @ 114.22	\$ 2,887.48
		\$ -	TOTAL LABOR COST	\$ 5,415.48
		\$ -	FIXED FEE	\$ 541.55
TOTAL SUBCONSULTANTS		\$ -	SUBCONSULTANTS	\$ -
	Transportation (1 trip x 335 miles x \$.545/mile)	\$ 912.88	EXPENSES	\$ 1,012.88
	Per diem	\$ -	TOTAL	\$ 6,969.90
	Labels/Miscellaneous	\$ 100.00		
TOTAL EXPENSES		\$ 1,012.88		

Task 2 - Construction Inspection EXPENSES

<u>Resident Inspector Engineering</u>	<u>Cost / Month</u>	<u>No. of Months</u>	
• Travel - Vehicle and related miscellaneous costs - Estimate			
Rental Vehicle (Small SUV)	\$ 1,500.00	1.50	\$ 2,250.00
<u>Miles / Month MPG</u>	<u>Cost/Gallon</u>		
Fuel for Rental Vehicle 2200 20	\$ 3.00	1.50	<u>\$ 495.00</u>
			<u>\$ 2,745.00</u>
 b. Subsistence, Food, Lodging, etc. (Federal Rates)			
	<u>Cost / Day</u>	<u>No. of Days</u>	
RI #1, Lodging (GSA Rate)	\$ 120.00	42	\$ 5,040.00
RI #1, Meals (Vtrans Rate)	\$ 23.85	42	\$ 1,001.70
			\$ 6,041.70
 c. Miscellaneous out-of-pocket expenses (printing, postage, supplies, etc.)			
			\$ 200.00
			<hr/> <hr/>
	Total Resident Inspector Expenses:		\$ 8,986.70

Outside Services -

Materials Testing Firm	\$ -
Environmental Monitor*	\$20,850.00
*Assumes 5 weeks of work	
<hr/> <hr/>	
Total Outside Services:	\$20,850.00

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS**REVISED DECEMBER 4, 2023**

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. Where an authorized individual is either required to click-through or otherwise accept, or made subject to, any electronic terms and conditions to use or access any product or service provided hereunder, such terms and conditions are not binding and shall have no force or effect. Further, any terms and conditions of Party’s invoice, acknowledgment, confirmation, or similar document, shall not apply, and any such terms and conditions on any such document are objected to without need of further notice or objection.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont without resort to conflict of laws principles. 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 regarding 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:

- A.** 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.
- B.** 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.
- C.** 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.
- D.** 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: During the term of this Agreement, Party, at its expense, shall maintain in full force and effect the insurance coverages set forth in the Vermont State Insurance Specification in effect at the time of incorporation of this Attachment C into this Agreement. The terms of the Vermont State Insurance Specification are hereby incorporated by reference into this Attachment C as if fully set forth herein. A copy of the Vermont State Insurance Specification is available at: <https://aoa.vermont.gov/Risk-Claims-COI>.

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: Any liability to the State under the Vermont False Claims Act (32 V.S.A. § 630 et seq.) 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. Use and Protection of State Information:

- A. As between the State and Party, “State Data” includes all data received, obtained, or generated by the Party in connection with performance under this Agreement. Party acknowledges that certain State Data to which the Party may have access may contain information that is deemed confidential by the State, or which is otherwise confidential by law, rule, or practice, or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. (“Confidential State Data”).
- B. With respect to State Data, Party shall:
 - i. take reasonable precautions for its protection;
 - ii. not rent, sell, publish, share, or otherwise appropriate it; and
 - iii. upon termination of this Agreement for any reason, Party shall dispose of or retain State Data if and to the extent required by this Agreement, law, or regulation, or otherwise requested in writing by the State.
- C. With respect to Confidential State Data, Party shall:
 - i. strictly maintain its confidentiality;
 - ii. not collect, access, use, or disclose it except as necessary to provide services to the State under this Agreement;
 - iii. provide at a minimum the same care to avoid disclosure or unauthorized use as it provides to protect its own similar confidential and proprietary information;
 - iv. implement and maintain administrative, technical, and physical safeguards and controls to protect against any anticipated threats or hazards or unauthorized access or use;
 - v. promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for Confidential State Data so that the State may seek an appropriate protective order; and
 - vi. upon termination of this Agreement for any reason, and except as necessary to comply with subsection B.3 above in this section, return or destroy all Confidential State Data remaining in its possession or control.
- D. If Party is provided or accesses, creates, collects, processes, receives, stores, or transmits Confidential State Data in any electronic form or media, Party shall utilize:
 - i. industry-standard firewall protection;
 - ii. multi-factor authentication controls;
 - iii. encryption of electronic Confidential State Data while in transit and at rest;
 - iv. measures to ensure that the State Data shall not be altered without the prior written consent of the State;
 - v. measures to protect against destruction, loss, or damage of State Data due to potential environmental hazards, such as fire and water damage;

- vi. training to implement the information security measures; and
 - vii. monitoring of the security of any portions of the Party's systems that are used in the provision of the services against intrusion.
- E. No Confidential 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 United States, except with the express written permission of the State.
- F. Party shall notify the State within twenty-four hours after becoming aware of any unauthorized destruction, loss, alteration, disclosure of, or access to, any State Data.
- G. State of Vermont Cybersecurity Standard Update: Party confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with State of Vermont Cybersecurity Standard Update in effect at the time of incorporation of this Attachment C into this Agreement. The State of Vermont Cybersecurity Standard Update prohibits the use of certain branded products in State information systems or any vendor system, and a copy is available at: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>
- H. In addition to the requirements of this Section 12, Party shall comply with any additional requirements regarding the protection of data that may be included in this Agreement or required by law or regulation.

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 this 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, and shall include this provision in all subcontracts for work performed in Vermont. 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. Offset: The State may offset any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any offset of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in 32 V.S.A. § 3113.

16. Taxes Due to the State: 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.

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, Party is not under an obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order. 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), as amended by Section 17 of Act No. 142 (2010) and by

Section 6 of Act No. 50 (2011).

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 (“Confidentiality and Protection of State Information”); Section 14 (“Fair Employment Practices and Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

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. Regulation of Hydrofluorocarbons: Party confirms that all products provided to or for the use of the State under this Agreement shall not contain hydrofluorocarbons, as prohibited under 10 V.S.A. § 586.

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

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

24. Vermont Public Records Act: Party acknowledges and agrees that this Agreement, any and all information obtained by the State from the Party in connection with this Agreement, and any obligations of the State to maintain the confidentiality of information 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 lockouts) (“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 use the State’s logo or otherwise 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 this Agreement at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement 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 Agreement immediately, and the State shall have no obligation to pay Party 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 Federal Audit Clearinghouse within nine months. If a single audit is not required, only the Subrecipient Annual Report is required. 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.

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 \$1,000, 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)



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 PRIMARY-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 was adopted since the execution 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, which the Contractor must obtain and maintain throughout the life of the contract.

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 total project costs over \$250,000, all contractors and subcontractors must have, when applicable:

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,

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

and a daily census of the jobsite. This information, including confirmation that contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the job site, and the same 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 the above discussed documentation seven (7) years, per section JJ of this document.
- 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 and 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.
 - ii. Environmental and pollution insurance 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 Contracts:

- i. Where Contractor's work under the contract provides in whole or part design/engineering professional services for one or more specific projects, then before commencing work and throughout the term of this contract, contractor must provide Professional Liability insurance for all relevant services performed

under this Agreement, with minimum coverage of no less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) policy aggregate.

- ii. The required Professional Liability 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 or 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 and Records 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).

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 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 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.

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 activity” as defined in statute at 3 V.S.A. §3301(b)(2), 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: 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, which 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 Projects:

a. Prime Contractor:

Where a contract is for design/engineering professional services for a specific 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 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 project, the prime contractor will include the same design-specific provisions as defined in Section B(2)(a) above 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, during the course of the work, 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. §§ 4001-4009, 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) days 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 effected 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 incomplete or eliminated contract items.
- e. Termination of the Contract, or portions 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. The extent specified in the Notice of Termination, cease work under the Contract on the date specified.
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the Contract that are not terminated.
- c. Terminate and cancel any orders or subcontracts related to the services, except as may be necessary for completion of such portions of the work under the Contract that 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 actions 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 that 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 sixty (60) days of the effective termination date. Should the Contractor fail to submit a claim within the sixty (60) day period, VTrans may, at its sole discretion, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

4. Negotiation

Negotiations 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 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 to 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 ("instruments of professional

service") shall become the property of the State as they are prepared or developed during performance of the work under 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. The Contractor shall not be liable for any reuse, misuse, or alteration of these "instruments of professional service" by 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 referrals;
 - 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, including 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 to 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. Maintaining and obtaining 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:
 - i. Financial interests of the employee, of close family members, or of other members of the covered employee's household;
 - ii. Other employment or financial relationships of the employee (including seeking or negotiating for prospective employment or business); and
 - iii. Gifts, including travel.
 - b. 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. An 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 (“OCOI”) 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;
2. Is or may be 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; 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 or 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 or proposers will be notified that existing or future contractual obligations relative to the proposed procurement may present an OCOI that 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 OCOI, and report such OCOIs to the VTrans Project Manager.
2. The Contractor shall identify and avoid, neutralize, or mitigate any subcontractor OCOI prior to award of the contract to the satisfaction of the VTrans Project Manager. If the subcontractor's OCOI 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 the contract award, the Contractor agrees that VTrans may require the Contractor to eliminate the subcontractor from its team.

K. CONFLICT OF INTEREST REMEDIES

VTrans may terminate this contract, in whole or in part, or decline to make an 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 hired to perform or supervise work related to the contract.
2. Upon VTrans' request, the Contractor shall supply resumes for staff proposed to work on assignment or under primary contracts for VTrans' review and acceptance or rejection. VTrans retains the right to interview the proposed staff.
3. If 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 I.3 a-h 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 must 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 a State 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 the 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 the 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 its responsibility to perform 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. Apart from 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 or other issues that warrant changes, 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 a death 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) 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, or defend its services provided under the contract.

2. The Contractor shall serve as a liaison if the State deems it 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, or 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 State, 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 or contract. Whenever possible, any such adjustments shall be administered under the appropriate fee schedule or payment provisions 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 the 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 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 State's Secretary of Transportation or other official delegated such authority.
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 with the contract 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 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 to 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. “Professional negligence” resulting in errors and omissions in the work product of the contractor or subcontractors must be corrected by the contractor at no cost to the State, when it is determined that the error or omission was a direct cause of the contractor’s work. The contractor may be liable for the State’s costs and other damages resulting from errors or deficiencies in designs furnished under its contract.
2. When VTrans becomes aware of an error or omission on the part of the contractor or subcontractors, VTrans will inform the contractor and provide an opportunity for discussion and correction, if applicable. Discussions will not relieve the contractor from complying with any VTrans-ordered corrections.
3. VTrans’ review, approval, or acceptance of or payment for the services required under this contract shall not 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.
4. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

U. DISPUTE RESOLUTION.

1. Design Professionals: In cases where VTrans believes damages are owed by a contractor, VTrans will attempt to negotiate a resolution with the contractor. If requested in writing by either party, negotiations may take the form of structured non-binding mediation with the assistance of a mediator on a “without prejudice” basis. The mediator shall be appointed by agreement of the parties, and the fees split equally between the parties. Negotiations or mediation will not bar either party from pursuing any other available remedies except as mutually agreed to in a written mediation agreement.

2. Construction Services Professionals: 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. 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. § 5.

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 or retainage provision are advisable in a particular contract, VTrans will include such provisions 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 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 dates 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 statement of work, 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 PRIMARY-TYPE CONTRACTS

Specific tasks or projects under primary (ie. retainer or Indefinite Delivery/Indefinite Quantity ["IDIQ"]) type 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 primary 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 Contractor shall consult with the State's Utility Section and initiate contacts or discussions with the affected owners 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 a need to enter upon private property to accomplish the work under the contract, the Contractor shall inform property owners and 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 owners 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 and its representatives 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 agencies.

EE. WRITTEN DELIVERABLES/REPORTS

All communications and deliverables presented under terms of the contract shall be 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 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.

GG. REVIEWS AND APPROVALS.

All work prepared by the Contractor, subcontractors, 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 agencies 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.

II. AUDIT REQUIREMENTS

1. Design and Engineering Contracts of Five Hundred Thousand Dollars (\$500,000.00) and over:
 - a. Annually, the Contractor shall furnish the State 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. **Design and Engineering 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 State 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,

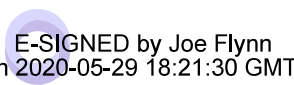
- b. Is a resident co-partner or resident member of a co-partnership or association,
 - c. Is a non-resident individual doing business in Vermont in his or her individual capacity,
 - d. Is doing business in Vermont under any name other than the Contractor's own personal name.
2. This registration must 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, seal, or letterhead. 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



Federal Terms and Conditions Services (Non-Construction)

VERMONT AGENCY OF TRANSPORTATION

CONTENTS

A. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION	2
B. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING.....	6
C. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY, NONDISCRIMINATION AND RELATED CONTRACT REQUIREMENTS	7
D. NONDISCRIMINATION AND RELATED CONTRACT REQUIREMENTS	12
E. NONSEGREGATED FACILITIES	17
F. SUBLETTING OR ASSIGNING THE CONTRACT	17
G. SAFETY: ACCIDENT PREVENTION.....	18
H. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS	19
I. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.....	20
J. ENERGY CONSERVATION.....	20
K. USE OR RE-CYCLED or RECOVERED MATERIALS	20

A. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>).
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - ii. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement,

theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
- iv. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- v. Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal; and
- vi. Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions"

refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--
Lower Tier Participants:

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:
 - i. is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - ii. is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal; and
 - iii. is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

B. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant; the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

C. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY, NONDISCRIMINATION AND RELATED CONTRACT REQUIREMENTS

Disadvantaged Business Enterprise (DBE) Policy. It shall be the policy of the Vermont Agency of Transportation (VTrans) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBEs) to participate in the performance of all contracts and subcontracts financed with Federal funds as specified by the regulations of the United States Department of Transportation (USDOT), Federal Highway Administration and as set forth below.

1. Policy. It is the policy of USDOT that DBEs as defined in 49 Code of Federal Regulation (CFR) Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 and 23 CFR, Chapter 1, Part 230, Subpart b apply to this contract.
2. DBE Obligation. The State and its Contractors agree to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. Each subcontract the prime contractor signs with a subcontractor must include this assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as VTrans deems appropriate.
3. Sanctions for Noncompliance. The Contractor is hereby advised that failure of the Contractor, or any Subcontractor performing work under this contract, to carry out the requirements set forth in paragraphs 1 and 2 above shall constitute a breach of contract and after the notification of the Vermont Agency of Transportation, Secretary of Transportation, may result in termination of this contract by the State or such remedy as the State deems necessary.
4. Inclusion in Subcontracts. The Contractor shall insert in each of its subcontracts this Disadvantaged Business Enterprise (DBE) Policy and also a clause requiring its subcontractors to include this same Policy in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of the Policy in any further subcontract that may in turn be made. This Policy shall not be incorporated by reference.

Disadvantaged Business Enterprise (DBE) Program Goals. The Vermont Agency of Transportation (VTrans) is required to set an overall DBE goal for participation in all transportation related Federal-aid projects. The goal is determined following guidelines set

forth in 49 CFR 26.45, and based on the availability of ready, willing and able DBEs who submitted bids and quotes for transportation related projects, compared as a percentage of all available contractors who submitted bids and quotes for transportation related projects during the same time period. The DBE goal may be adjusted to take into account other factors impacting DBE utilization, in an effort to narrowly tailor the overall DBE goal. The detailed goal setting methodology and current overall DBE goal may be viewed on the VTrans website at: <http://vtranscivilrights.vermont.gov/doing-business/dbe-center/program-goals>.

VTrans currently utilizes a race/gender neutral policy to fulfill its overall DBE goals, and relies on the voluntary participation of contractors to utilize certified DBEs on every project sufficient to obtain the Agency's overall DBE goal. In order for this practice to continue, contractors must be proactive and solicit bids and quotes from certified DBEs for use when submitting their own bids, and employ certified DBEs when participating on transportation related projects. Otherwise, VTrans may have to implement specified contract goals on projects to ensure the overall DBE goals are met. VTrans may include specific DBE contract goals in certain cases to ensure DBE participation, if failure to obtain the project DBE goal would negatively impact the Agency's overall DBE goal because of the size of the contract.

Disadvantaged Business Enterprise (DBE) Definition. A DBE is defined as a business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purposes of this definition:

- a. "Socially and economically disadvantaged person" means an individual who is a citizen or lawful permanent resident of the United States and who is a Woman, Black, Hispanic, Portuguese, Native American, Asian American, or a member of another group, or an individual found to be disadvantaged by the Small Business Administration pursuant to Section 3 of the Small Business Act.
- b. "Owned and controlled" means a business which is:
 - i. A sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
 - ii. A partnership, joint venture or limited liability company in which at least 51% of the beneficial ownership interests legitimately is held by a disadvantaged person(s).
 - iii. A corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with percentage of ownership. Disadvantaged participation in a joint venture must also be based on the sharing of real earnings, as above. If the disadvantaged group ownership interests are real, substantial and continuing and not created solely to meet the requirements of the program, a firm is considered a bona fide DBE.

Certified DBE Directory. The current Vermont Unified Disadvantaged Business Enterprise (DBE) Directory is available online at:

<http://vtranscivilrights.vermont.gov/doing-business/dbe-center/directory>. This directory contains all currently certified DBEs available for work in Vermont, and is updated continuously. Only firms listed in this directory are eligible for DBE credit on Vermont Federal-aid projects. If you have questions about DBE certification, or do not have access to the Internet, please call the DBE Program Manager at (802) 828-5858 for assistance.

Counting DBE Participation Towards Project Goals. In order for payments made to DBE contractors to be counted toward DBE goals, the DBE contractors must perform a commercially useful function (CUF). The DBE must be responsible for execution of the work of the contract and must carry out its responsibilities by actually performing, managing, and supervising the work involved, consistent with standard industry practices.

This means that:

- The DBE must also be responsible for ordering its own materials and supplies, determining quantity and quality, negotiating price, installing (where applicable) and paying for the material itself;
- The DBE must perform work commensurate with the amount of its contract;
- The DBE's contribution cannot be that of an extra participant or a conduit through which funds are passed in order to obtain the appearance of DBE participation;
- The DBE must exercise responsibility for at least fifty percent of the total cost of its contract with its own workforce;
- None of the DBE's work can be subcontracted back to the prime contractor, nor can the DBE employ the prime's or other subcontractor's supervisors currently working on the project;
- The DBE's labor force must be separate and apart from that of the prime contractor or other subcontractors on the project. Transferring crews between primes, subcontractors, and DBE contractors is not acceptable;
- The DBE owner must hold necessary professional or craft license(s) or certification(s) for the type of work he/she performs on the project;
- The DBE may rent or lease, at competitive rates, equipment needed on the project from customary leasing sources or from other subcontractors on the project. Allowable credit for payments made to DBEs for work performed. A contractor may take credit for payments made to a certified DBE that satisfies CUF requirements at the following rate:

- A DBE Prime Contractor: Count 100% of the value of the work performed by own forces, equipment and materials towards the DBE goals.
- An approved DBE subcontractor: Count 100% of the value of work performed by the DBE's own forces, equipment and materials, excluding the following:
 - The cost of materials/supplies purchased from a non-DBE Prime Contractor.
 - The value of work provided by non-DBE lower tier subcontractors, including non-DBE trucking to deliver asphalt to a DBE contractor.
- A DBE owner-operator of construction equipment: Count 100% of expenditures committed.
- A DBE manufacturer: Count 100% of expenditures committed. The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
- A regular DBE dealer/supplier: Count 60% of expenditures committed. A regular dealer/supplier is defined as a firm that owns, operates, or maintains a store, warehouse or other establishment, in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A person may be a dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business, if the person both owns and operates distribution equipment for the products, by the means of a long-term agreement, and not by a contract by contract basis.
- A DBE broker: Count for DBE credit only the fees or commissions charged for assistance in the procurement, and, fees and transportation charges for the delivery of materials or supplies required at the job site, but not the cost of materials procured. A broker is defined as any person(s) or firm who arranges or expedites transactions for materials or supplies, and does not take physical possession of the materials or supplies at their place of business for resale.
- A DBE renter of construction equipment to a contractor: Count 20% of expenditures committed, with or without operator.
- A bona fide DBE service provider: Count 100% of reasonable fees or commissions. Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract. Eligible services also include agencies providing bonding and insurance specifically required for the performance of the contract.

- A trucking, hauling or delivery operation: Count 100% of expenditures committed when trucks are owned, operated, licensed and insured by the DBE and used on the contract and, if applicable, includes the cost of the materials and supplies. 100% of expenditures committed when the DBE leases trucks from another DBE firm including an owner-operator. 100% of reasonable fees, or commissions, the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.
- Any combination of the above.

Removal of Approved DBE From Transportation Related Project. Contractors may not terminate for convenience, any approved DBE subcontractor and perform the work with their own forces, without prior written consent from the VTrans DBE Program Manager or VTrans Chief of Civil Rights.

Federal-aid projects which specify a DBE contract goal. The provisions of the Vermont Agency of Transportation Supplemental Specification – Disadvantaged Business Enterprise (DBE) Utilization (CA 160) shall apply to all VTrans Federal-aid projects which specify a DBE contract goal.

Compliance with Prompt Payment Statute. In accordance with Vermont’s Prompt Payment Act and VTrans Standard Specifications for Construction, Section 107.01(g), the Contractor shall 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.

Subcontractor Payments. In accordance with VTrans Standard Specifications for Construction, Section 107.01(h), 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://vtranscivilrights.vermont.gov/doing-business/contractors-center/compliance>. Electronic reports shall be filed with the Agency Office of Civil Rights by an authorized representative and received in the Agency 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 Agency Office of Civil Rights. Manual reports shall be signed by an authorized representative, sent to the Agency 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. In accordance with 9 V.S.A. Section 4003, notwithstanding any contrary agreement, payments made to subcontractors after seven days from receipt of a corresponding progress payment by the State to the Contractor, or seven days after receipt of a subcontractor’s invoice, whichever is later, violate this agreement. Violations shall be reported to the Agency Office of Civil Rights for review. Failure to resolve disputes in a timely manner may result in a complaint made to the Agency Pre-qualification Committee. In this Committee’s judgment, appropriate penalties may be involved for failure to comply with this specification. Penalties may include suspension, reduction or revocation of the Contractor’s pre-qualification rating. This clause shall be included in the prime Contractor’s Contract made with all if its subcontractors.

D. NONDISCRIMINATION AND RELATED CONTRACT REQUIREMENTS

The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60- 1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 USC 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
 - b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the- job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
 - a. The contractor will, unless precluded by a valid bargaining agreement, conduct

systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
 - c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
 - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
 - b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
 - d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment

vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
 - a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
 - b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
10. Assurance Required by 49 CFR 26.13(b):
 - a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
 - b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

- a. The records kept by the contractor shall document the following:
 - i. The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
- b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

E. NONSEGREGATED FACILITIES

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

F. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
 - a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a

subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- i. the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
 - ii. the prime contractor remains responsible for the quality of the work of the leased employees;
 - iii. the prime contractor retains all power to accept or exclude individual employees from work on the project; and
 - iv. the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
- b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
 3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
 4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
 5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

G. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

H. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project.

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to

be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented; Shall be fined under this title or imprisoned not more than 5 years or both."

I. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

J. ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

K. USED OR RE-CYCLED OR RECOVERED MATERIALS

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY CONTRACT REQUIREMENTS

Disadvantaged Business Enterprise (DBE) Policy. It shall be the policy of the Vermont Agency of Transportation (VTrans) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBEs) to participate in the performance of all contracts and subcontracts financed with Federal funds as specified by the regulations of the United States Department of Transportation (USDOT) and as set forth below.

1. **Policy.** It is the policy of USDOT that DBEs as defined in 49 Code of Federal Regulation (CFR) Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 and 23 CFR, Chapter 1, Part 230, Subpart b apply to this contract.
2. **DBE Obligation.** The State and its Contractors agree to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. **Each subcontract the prime contractor signs with a subcontractor must include this assurance:** *The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as VTrans deems appropriate.*
3. **Sanctions for Noncompliance.** The Contractor is hereby advised that failure of the Contractor, or any Subcontractor performing work under this contract, to carry out the requirements set forth in paragraphs 1 and 2 above shall constitute a breach of contract and after the notification of the Vermont Agency of Transportation, Secretary of Transportation, may result in termination of this contract by the State or such remedy as the State deems necessary.
4. **Inclusion in Subcontracts.** The Contractor shall insert in each of its subcontracts this Disadvantaged Business Enterprise (DBE) Policy and also a clause requiring its subcontractors to include this same Policy in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of the Policy in any further subcontract that may in turn be made. This Policy shall not be incorporated by reference.

Disadvantaged Business Enterprise (DBE) Program Goals. The Vermont Agency of Transportation (VTrans) is required to set an overall DBE goal for participation in all transportation related Federal-aid projects. The goal is determined following guidelines set forth in 49 CFR 26.45, and based on the availability of ready, willing and able DBEs who submitted bids and quotes for transportation related projects, compared as a percentage of all available contractors who submitted bids and quotes for transportation related projects during the same time period. The DBE goal may be adjusted to take into account other factors impacting DBE utilization, in an effort to narrowly tailor the overall DBE goal. The detailed goal setting methodology and current overall DBE goal may be viewed on the VTrans website at: <http://vtrans.vermont.gov/civil-rights/doing-business/dbe-center/program-goals>

The VTrans overall DBE goal is currently achieved by a combination of contract specific goals and a race/gender neutral policy. Contractors should be proactive and solicit bids and quotes from certified DBEs for use when submitting their own bids and employ certified DBEs when participating on transportation related projects.

Disadvantaged Business Enterprise (DBE) Definition. A DBE is defined as a business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purposes of this definition:

- (1) "Socially and economically disadvantaged person" means an individual who is a citizen or lawful permanent resident of the United States and who is a Woman, Black, Hispanic, Portuguese, Native American, Asian American, or a member of another group, or an individual found to be disadvantaged by the Small Business Administration pursuant to Section 3 of the Small Business Act.
- (2) "Owned and controlled" means a business which is:
 - a. A sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
 - b. A partnership, joint venture or limited liability company in which at least 51% of the beneficial ownership interests legitimately is held by a disadvantaged person(s).
 - c. A corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with percentage of ownership. Disadvantaged participation in a joint venture must also be based on the sharing of real earnings, as above. If the disadvantaged group ownership interests are real, substantial and continuing and not created solely to meet the requirements of the program, a firm is considered a bona fide DBE.

Certified DBE Directory. The current Vermont Unified Disadvantaged Business Enterprise (DBE) Directory is available online at: <http://vtrans.vermont.gov/civil-rights/doing-business/dbe-center/directory>. This directory contains all currently certified DBEs available for work in Vermont and is updated continuously. Only firms listed in this directory are eligible for DBE credit on Vermont Federal-aid projects. If you have questions about DBE certification, or do not have access to the Internet, please call the [AOT DBE Program Manager](#) for assistance.

Counting DBE Participation Towards Project Goals. For payments made to DBE contractors to be counted toward DBE goals, the DBE contractors must perform a commercially useful function (CUF). The DBE must be responsible for execution of the work of the contract and must carry out its responsibilities by performing, managing, and supervising the work involved, consistent with standard industry practices.

This means that:

- The DBE must also be responsible for ordering its own materials and supplies, determining quantity and quality, negotiating price, installing (where applicable) and paying for the material itself;
- The DBE must perform work commensurate with the amount of its contract;
- The DBE's contribution cannot be that of an extra participant or a conduit through which funds are passed in order to obtain the appearance of DBE participation;
- The DBE must exercise responsibility for at least fifty percent of the total cost of its contract with its own workforce;
- None of the DBE's work can be subcontracted back to the prime contractor, nor can the DBE employ the prime's or other subcontractor's supervisors currently working on the project;
- The DBE's labor force must be separate and apart from that of the prime contractor or other subcontractors on the project. Transferring crews between primes, subcontractors, and DBE contractors is not acceptable;
- The DBE owner must hold necessary professional or craft license(s) or certification(s) for the type of work he/she performs on the project;
- The DBE may rent or lease, at competitive rates, equipment needed on the project from customary leasing sources or from other subcontractors on the project.

Allowable credit for payments made to DBEs for work performed. A contractor may take credit for payments made to a certified DBE that satisfies CUF requirements at the following rate:

- A DBE Prime Contractor: Count 100% of the value of the work performed by own forces, equipment and materials towards the DBE goals.
- An approved DBE subcontractor: Count 100% of the value of work performed by the DBE's own forces, equipment and materials, excluding the following:
 - The cost of materials/supplies purchased from a non-DBE Prime Contractor.
 - The value of work provided by non-DBE lower tier subcontractors, including non-DBE trucking to deliver asphalt to a DBE contractor.
- A DBE owner-operator of construction equipment: Count 100% of expenditures committed.
- A DBE manufacturer: Count 100% of expenditures committed. The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
- A regular DBE dealer/supplier: Count 60% of expenditures committed. A regular dealer/supplier is defined as a firm that owns, operates, or maintains a store, warehouse or other establishment, in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A person may

be a dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business, if the person both owns and operates distribution equipment for the products, by the means of a long term agreement, and not by a contract by contract basis.

- A DBE broker: Count for DBE credit only the fees or commissions charged for assistance in the procurement, and, fees and transportation charges for the delivery of materials or supplies required at the job site, but not the cost of materials procured. A broker is defined as any person(s) or firm who arranges or expedites transactions for materials or supplies, and does not take physical possession of the materials or supplies at their place of business for resale.
- A DBE renter of construction equipment to a contractor: Count 20% of expenditures committed, with or without operator.
- A bona fide DBE service provider: Count 100% of reasonable fees or commissions. Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract. Eligible services also include agencies providing bonding and insurance specifically required for the performance of the contract.
- A trucking, hauling or delivery operation: Count 100% of expenditures committed when trucks are owned, operated, licensed and insured by the DBE and used on the contract and, if applicable, includes the cost of the materials and supplies. 100% of expenditures committed when the DBE leases trucks from another DBE firm including an owner-operator. 100% of reasonable fees, or commissions, the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.
- Any combination of the above.

Removal of Approved DBE From Transportation Related Project. Contractors may not terminate for convenience, any approved DBE subcontractor and perform the work with their own forces, without prior written consent from the [AOT DBE Program Manager or the AOT Civil Rights Director](#)

Federal-aid projects which specify a DBE contract goal. The provisions of the Vermont Agency of Transportation Supplemental Specification – Disadvantaged Business Enterprise (DBE) Utilization (CR 160) shall apply to all VTrans Federal-aid projects which specify a DBE contract goal.

Compliance With Prompt Payment Statute. In accordance with Vermont’s Prompt Payment Act and VTrans Standard Specifications for Construction, Section 107.01(g), the Contractor shall 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.

Subcontractor Payments. In accordance with VTrans Standard Specifications for Construction, Section 107.01(h), 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/promptpay/>. Electronic reports shall be filed with the Agency Office of Civil Rights by an authorized representative and received in the Agency 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 Agency Office of Civil Rights. Manual reports shall be signed by an authorized representative, sent to the Agency 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. In accordance with 9 V.S.A. Section 4003, notwithstanding any contrary agreement, payments made to subcontractors after seven days from receipt of a corresponding progress payment by the State to the Contractor, or seven days after receipt of a subcontractor's invoice, whichever is later, violate this agreement. Violations shall be reported to the Agency Office of Civil Rights for review. Failure to resolve disputes in a timely manner may result in a complaint made to the Agency Pre-qualification Committee. In this Committee's judgment, appropriate penalties may be involved for failure to comply with this specification. Penalties may include suspension, reduction or revocation of the Contractor's pre-qualification rating. This clause shall be included in the prime Contractor's Contract made with all if its subcontractors.

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.

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.*

PAST PERFORMANCE & REFERENCE FORM

Contractor:

Provide a summary of six (6) recent projects you provided services for that are in line with the Scope of Work for this RFP. Include any special circumstances that required creative approaches or dispute resolution. Each project must include a reference with contact information.

PROJECT 1

Company Name:

Contact Name:

E-mail:

Phone:

PAST PERFORMANCE & REFERENCE FORM

Contractor:

Provide a summary of six (6) recent projects you provided services for that are in line with the Scope of Work for this RFP. Include any special circumstances that required creative approaches or dispute resolution. Each project must include a reference with contact information.

PROJECT 2

Company Name:

Contact Name:

Phone:

E-mail:

PAST PERFORMANCE & REFERENCE FORM

Contractor:

Provide a summary of six (6) recent projects you provided services for that are in line with the Scope of Work for this RFP. Include any special circumstances that required creative approaches or dispute resolution. Each project must include a reference with contact information.

PROJECT 3

Company Name:

Contact Name:

E-mail:

Phone:

PAST PERFORMANCE & REFERENCE FORM

Contractor:

Provide a summary of six (6) recent projects you provided services for that are in line with the Scope of Work for this RFP. Include any special circumstances that required creative approaches or dispute resolution. Each project must include a reference with contact information.

PROJECT 4

Company Name:

Contact Name:

E-mail:

Phone:

PAST PERFORMANCE & REFERENCE FORM

Contractor:

Provide a summary of six (6) recent projects you provided services for that are in line with the Scope of Work for this RFP. Include any special circumstances that required creative approaches or dispute resolution. Each project must include a reference with contact information.

PROJECT 5

Company Name:

Contact Name:

Phone:

E-mail:

PAST PERFORMANCE & REFERENCE FORM

Contractor:

Provide a summary of six (6) recent projects you provided services for that are in line with the Scope of Work for this RFP. Include any special circumstances that required creative approaches or dispute resolution. Each project must include a reference with contact information.

PROJECT 6

Company Name:

Contact Name:

Phone:

E-mail:

Contractor and Sub-Contractors Information
Use additional pages as necessary

Name of Your Company	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	

Submitted By (Your Company):	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	