



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

REQUEST FOR PROPOSALS
AUDIT SERVICES FOR
THE COUNTY SHERIFFS' DEPARTMENTS
FISCAL YEARS 2018 AND 2019
WITH OPTION TO EXTEND FOR FISCAL YEARS
2020 AND 2021

Issued December 15, 2017

Office of the Vermont State Auditor
132 State Street
Montpelier, VT 05633-5101
802-828-2281
www.auditor.vermont.gov

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1.0 INTRODUCTION AND GENERAL INFORMATION

1.1 PURPOSE

The State of Vermont, acting through the State Auditor's Office (SAO), is soliciting proposals from independent public accounting firms to audit the financial statements of all fourteen (14) of Vermont's County Sheriffs' Departments (the Departments) for fiscal years 2018 and 2019. At the option of the SAO, this contract may be extended for one additional two-year term, for fiscal years 2020-2021. All fourteen (14) Departments will be audited over the two-year period, eight for FY 2018 and six for FY19. To be considered for a contract to audit Vermont's Sheriffs' Departments, you must respond to this solicitation in writing by 4:00 P.M. January 11, 2018.

1.2 INFORMATIONAL CONTACT

Questions concerning this request should be directed to:

Susan Mesner
Deputy State Auditor
Office of the State Auditor
132 State Street
Montpelier, VT 05633-5101
(802) 828-2281
Susan.Mesner@vermont.gov

1.3 PROPOSAL CALENDAR

Subject to revision by the SAO, the following schedule of events will be observed for this solicitation:

<u>Event</u>	<u>Date</u>
• Release of RFP by the Vermont State Auditor	December 15, 2017
• Submission of Written Questions	December 21, 2017
• Q&A posted on SAO website	January 2, 2018
• Proposals Due – 4:00 p.m. Office of the State Auditor, 132 State Street, Montpelier, VT 05633-5101	January 11, 2018
• Proposal Opening – 10:00 a.m. Office of the State Auditor	January 12, 2018
• Evaluation of Proposals on or Before	January 22, 2018
• Notification to Bidder of Contract Award By	January 23, 2018
• Contract Negotiations Period Begins	January 24, 2018
• Contract Executed on or Before	March 30, 2018

1.4 BACKGROUND INFORMATION

In accordance with 24 V.S.A. § 290b (e), county Sheriffs' Departments must biennially provide the State Auditor and Assistant Judges with an audit of their financial systems, controls, and procedures, according to a schedule determined by the Auditor. All Vermont Sheriffs' Departments operate on a fiscal year ending on June 30.

Financial statements for the fiscal period ending June 30, 2018 will be audited for the sheriffs' departments of Addison, Caledonia, Essex, Franklin, Grand Isle, Lamoille, Orleans, and Rutland counties.

Financial statements for the fiscal period ending June 30, 2019 will be audited for the sheriffs' departments of Bennington, Chittenden, Orange, Washington, Windham, and Windsor counties.

Whenever an incumbent Sheriff leaves office, an audit is required (transition audit) of the accounts for a sheriff's department, as required by 24 V.S.A. § 290b (c). Transition audits are not included in the Scope of Work, and will be handled by an amendment to the contract should the need arise.

Each sheriff's department is responsible for providing to the Auditor of Accounts a financial report reflecting the financial transactions and condition of the department for the alternate fiscal year when an audit, as specified in this contract, is not performed. This work is not included in the scope of work, and all costs for these reports are borne by the sheriffs' departments.

2.0 SCOPE OF WORK

The Contractor's primary responsibility will be to conduct an audit as of June 30 for each of the identified sheriffs' departments in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States and the U.S. Government Accountability Office (GAO).

The Contractor is responsible for auditing the departments' financial statements to determine whether they present fairly, in all material respects, the financial position of the department as of June 30, and the respective changes in financial position and cash flows for the year that ended June 30, in accordance with accounting principles generally accepted in the United States.

The Contractor is required to provide an audit report on internal control over financial reporting and compliance and other matters based on the audit of financial statements for each department. A letter of findings and recommendations is also expected, if applicable. All findings should include criteria, condition, cause and effect.

Should an incumbent sheriff leave office, the Contractor will conduct a transition audit

and provide the required audit reports. In the event of such an occurrence, the SAO will amend the contract to cover the cost of any audit required under 24 V.S.A. § 290b (c).

Any separate request by a sheriff's department for services or assistance, or the performance of services other than the audit of a department's financial statements as described in this contract, will not be considered part of or chargeable against this contract.

The final audit report will be provided to the respective Sheriff's Department and copies provided electronically in a searchable PDF format to the SAO and the Assistant Judges. Audit reports shall be public records and will be posted by the Auditor on the SAO website.

The Contractor shall supply to the SAO upon request all records, workpapers, and reports associated with the audits. Engagement letters between the audit firm and sheriffs' departments shall include this provision.

The bidder must provide information on any planned use of subcontractors.

3.0 DEADLINES FOR DELIVERABLES AND PROJECT COMPLETION

All work requirements must be completed and the final audit reports issued on or before December 31 of each year, unless an exception is granted in writing by the SAO.

4.0 CONTRACT, BILLING AND PAYMENT PROVISIONS

4.1 CONTRACT

The contract to be awarded for this two-year engagement will be on a firm, fixed-price basis, inclusive of all personnel costs, to be performed during fiscal years 2018 and 2019. The contract will be for the regular biennial audits of all fourteen (14) Vermont County Sheriffs' Departments.

At the option of the SAO, this contract may be extended for one additional two-year term, for fiscal years 2020 and 2021.

The bid contract price will not be accepted until approved by the Secretary of the Agency of Administration, the State Auditor, the Assistant Judges, and the County Sheriffs. The SAO reserves the right of final approval for all contract amendments.

Subject to the provisions of the Standard Contract for Personal Services, if other work is to be added to this contract, e.g., a transition audit, the cost of any potential adjustment will be subject to negotiations between the Auditor's Office and Contractor. All modifications and amendments to this contract and payment provisions are subject to approval by the Secretary of Administration and the availability of funds.

4.2 BILLING AND PAYMENT

Upon delivery of the final audit reports to the County Sheriff, the SAO, and the Assistant Judges, the contractor shall submit a separate invoice for each audit to the SAO.

The SAO will pay the contractor for each invoice after review of each audit report. Compilations and other audit-related services, as requested by a sheriff's department, shall be paid solely by the sheriff's department in question.

5.0 PROPOSAL REQUIREMENTS

5.1 ORGANIZATION OF PROPOSALS

To simplify the review process and facilitate a fair comparison of bid proposals, bidders are required to organize their proposals according to the following format, in the same sequence and with the same titles.

5.1.1 TITLE PAGE

Proposal Title

Name, local address, phone number, email address for contact person, and date of the response.

5.1.2 LETTER OF TRANSMITTAL

The transmittal letter should be on the proposing firm's letterhead and should be no more than three pages in length. It shall include:

- A statement signed by the individual authorized to bind the firm contractually.
- A brief statement of the contractor's understanding of the work to be performed.
- A positive commitment to perform the services according to the scope of work within the designated time periods.
- Identification of the person who will supervise the audits and the firm's license number, the names of all persons expected to be assigned to this engagement, including their titles, professional designations (i.e., AICPA, VTCPA, etc.), CPA license numbers, and expiration dates.
- A statement as to (1) the maximum cost for the audit of the financial statements of each county sheriff's department, (2) the total cost of all audits per fiscal year, and (3) the total cost of all audits over the two-year period.
- A statement that the engagement staff meets the continuing education requirements necessary to conduct Yellow Book audits.
- A statement that this bid does not involve collusion with any other party.

- A statement of independence that your firm and the staff members assigned to the proposed audit are free from personal or external impairments, real or perceived. Any potential impairments to independence must be disclosed.
- An additional statement of the cost to audit fiscal years 2020 and 2021 should the SAO and contractor agree to extend this contract. The statement should include (1) the maximum cost for the audit of the financial statements of each county sheriff's department, (2) the total cost of all audits per fiscal year, and (3) the total cost of all audits over the two-year extension period.

5.1.3 PROFILE AND EXPERIENCE OF CONTRACTOR

Describe the firm's specific experience in performing financial audits for government entities within the past five years, including the experience of specific staff expected to be assigned to this audit.

Provide a copy of the firm's most recent peer review.

Describe any disciplinary actions by the Vermont (or any other) Board of Public Accountancy.

6.0 EVALUATION OF PROPOSALS

6.1 EVALUATION CRITERIA

Evaluation of the proposals will give primary consideration to the following factors:

6.1.1 TECHNICAL CRITERIA:

- Appropriate technical qualification to perform GAGAS audits
- Relevant experience for the work to be performed
- Ability and commitment to complete the audits by December 31

6.1.2 COST FACTORS

The overall cost in acquiring the services outlined in this proposal will be an important factor in the evaluation process, as will qualifications, experience, and timeliness. Special emphasis will be placed on the quality and thoroughness of past work performed for the SAO or a similar government entity by any potential contractor. The State prefers, but is not required, to select the lowest cost bidder.

6.2 SCORING OF PROPOSALS

The scoring of proposals will be based upon the assignment of points to the various evaluation criteria defined above within the following ranges:

<u>Technical criteria</u>	<u>Points</u>
1. Appropriate technical qualification	0-25
2. Relevant experience	0-25
3. Ability & commitment to meeting the deadline	0-25
Total Technical Points	0-75
<u>Cost criteria</u>	
1. Cost	0-25
Maximum Points	100

7.0 GENERAL REQUIREMENTS AND CONDITIONS

7.1 LIMITATION

This request for proposals does not commit the SAO to award a contract, to pay any costs incurred in the preparation of a proposal to this request, or to procure or contract for materials or supplies.

The SAO reserves the right to make purchases outside the awarded contract where it is deemed in the State's best interest.

The SAO reserves the right to waive technicalities in submissions and to obtain clarification or additional information.

The SAO reserves the right to reject any or all proposals, in whole, or in part, received as a result of this request.

7.2 CONTRACT AWARD

The SAO may award a contract, based on offers received, without additional submissions from the proposer. However, the SAO reserves the right to request additional data, oral discussions, or a presentation in support of written proposals.

Any contract awarded as a result of this request will contain the special and general provisions made as a part of this request for proposals, and will also include the successful bidder's proposal. The proposal will become the property of the SAO and will not be returned.

These proposals are subject to Vermont's public access laws. The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under 1 V.S.A. Chapter 5, the bidder shall clearly designate the material as such in the transmittal letter, explaining why such material should be considered confidential. The bidder must identify each page or section of the response that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the bidder if the identified material were to be released, and submit a redacted copy. Under no circumstances can the entire response or price information be marked confidential. Responses so marked may not be considered.

7.3 CONTRACT CANCELLATION

The SAO reserves the right to cancel any contract at any time with 60 days' notice to the contractor, paying only for work performed to date of notice of cancellation unless other work is approved in advance by the SAO.

7.4 RETENTION OF AND ACCESS TO WORKPAPERS

Bidders agree that all workpapers prepared in connection with this project will be retained for a period of three (3) years from the date of the audit report, unless notified in writing to extend the retention period, and that these workpapers will be made available for examination, if requested by duly authorized representatives of the state, county, or federal governments.

7.5 OTHER REQUIREMENTS AND CONDITIONS

7.4.1 All bidders must be equal opportunity employers.

7.4.2 All bids must be signed by an officer having authority to bind the firm contractually.

7.4.3 All bidders must complete, sign, and return with their proposal, the Certificate of Compliance and the two Worker Classification Compliance Requirement forms.

7.4.4 The State Auditor's Office will accept electronic submissions of offers for this procurement. If the bidder elects to submit its proposal electronically, please email the proposals to Susan.Mesner@vermont.gov. In addition, three copies of the technical proposal and the cost proposal must be mailed to:

Office of the State Auditor
132 State Street
Montpelier, VT 05633-5101

7.4.5 All bids must remain firm for a period of ninety (90) days from the postmarked or emailed date of mailing.

7.4.6 Specifications in this RFP are the minimum acceptable to the SAO, and any responses that fail to meet all specifications may be rejected as non-compliant.

7.4.7 Bidder agrees to abide by the provisions of Attachment C of Administrative Bulletin 3.5 (attached) and must return a completed Certificate of Compliance (attached).

CERTIFICATE OF COMPLIANCE

For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.

- A. **NON-COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.

- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.

- C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?

 ____ Yes ____ No

- D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

Self-Reporting. Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

Subcontractor Reporting. Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will 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), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

Bidder Name: _____ Contact Name: _____

Address: _____ Fax Number: _____

Telephone: _____

E-Mail: _____

By: _____ Name: _____

Signature of Bidder (or Representative)

(Type or Print)

RFP/PROJECT:
DATE:

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT

**Self Reporting
Form 1 of 1**

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

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00, requires bidders comply with the following provisions and requirements.

Bidder is required to self-report the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification for worker's compensation. The state is requiring information on any violations that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT: Bidder hereby certifies that the company/individual is in compliance with the requirements as detailed in Act 54, Section 32 of the Acts of 2009.

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Signature (Bid Not Valid Unless Signed)*

(Type or Print)

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

RFP/PROJECT:
DATE:

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT

Subcontractor Reporting Form

This form must be completed in its entirety and submitted prior to contract execution and updated as necessary and provided to the State as additional subcontractors are hired.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00 requires bidders to comply with the following provisions and requirements.

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

Subcontractor	Insured By		Subcontractor's Sub	Insured By

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

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

Send Completed Form to: Office of Purchasing & Contracting
109 State Street
Montpelier, VT 05609-3001
Attention: Contract Administration

STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, [REDACTED] (hereinafter called “State”), and [REDACTED], with a principal place of business in [REDACTED], (hereinafter called “Contractor”). Contractor’s form of business organization is [REDACTED]. It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of [REDACTED]. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$ [REDACTED].00.

4. **Contract Term.** The period of Contractor’s performance shall begin on [REDACTED], 20 [REDACTED] and end on [REDACTED], 20 [REDACTED].

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Attachments.** This contract consists of [REDACTED] pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 07/01/2016)

Attachment D - Other Provisions (if any)

Additional attachments may be lettered as necessary

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D (if applicable)
- (3) Attachment C (Standard State Provisions for Contracts and Grants)
- (4) Attachment A
- (5) Attachment B

List other attachments, if any, in order of precedence

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

By the Contractor:

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT A – STATEMENT OF WORK

The Contractor shall:

DELETE THESE INSTRUCTIONS All State contracts must describe the work to be performed in clear, concise and complete statements. Attachment A of the Standard State Contract should be used to detail the work to be performed or products to be delivered by the contractor. A well written description will include the schedule for performance, identification of project deliverables, deliverable milestones, and standards by which the contractor’s performance will be measured. This description of the work may also be referred to as the Statement of Work, Specifications of Work, or Subject Matter. Please refer to Appendix II for further guidance. The deliverables and milestones should be used to inform the payment terms in Attachment B. Attaching RFPs and RFP responses to contracts is not permitted. RFP responses can be long and complicated and may include both unnecessary information and introduce internally inconsistent terms within the contract.

The level of required contract compliance monitoring, if applicable, should be based on the assessment of the risk for delay or failure to deliver the services. In assessing the risk, agencies should consider factors such as: amount of funds involved; contract duration; contract complexity; history of the Contractor with State government; amount of subcontracting involved; and other relevant issues. Whether or not liquidated damages, service credits and/or retainage are part of the contract, the document should include a section that describes specifically how the Agency will monitor the contract for compliance. Types of compliance monitoring processes and steps may include: (i) periodic contractor reports; (ii) invoice reviews; (iii) on-site visits; (iv) scheduled meetings; (v) audits; (vi) independent performance reviews; (vii) surveys of users/clients; and (viii) post-contract audit or review. This section may also describe a process for identification, discussion, and resolution of disputes between the Contractor and the State, both during the contract duration and after expiration.

NOTE: Additional guidance for drafting Attachment A is provided in Bulletin 3.5, Appendix II

ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address: [REDACTED]
6. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows: [REDACTED]

DELETE THESE INSTRUCTIONS The above language up through section 5 is standard and should be included in all services contracts. Section 6 is merely a prompt for completion of the particular payment terms necessary to the contract, such as the schedule and/or rates of pay. Sample language is provided below, if helpful, but there is no required format.

TIME/MATERIALS: If payment will be based upon time and materials, specify the frequency of invoicing and the rate of payment. For example:

Contractor shall be paid \$50.00 per hour for work performed under this Contract, and shall submit invoices to the State not more frequently than monthly.

FIXED PRICE/DELIVERABLES: If payments are fixed price, specify an invoice schedule that corresponds to completion of the deliverables or phases of work described in Attachment A. For example:

Contractor shall submit invoices to the State in accordance with the following schedule:

<u>Deliverable</u>	<u>Invoice Amount</u>
Phase 1 completed by May 1, 2015	\$5,000.00
Phase 2 completed by July 1, 2015	\$5,000.00
Submit Final Report by August 31, 2015	\$8,000.00

NOTE: Additional guidance for drafting Attachment B is provided in Bulletin 3.5, Section IX.A.5 and Appendix III

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

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

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

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

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

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

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

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

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall

notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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

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

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

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

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

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

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

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

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

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

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

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

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

12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

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

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

- B. Internal Controls:** In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. “Records” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans

with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

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

16. Taxes Due to the State:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure").

Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

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

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

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

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

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

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

32. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or

transferred by any means outside continental United States, except with the express written permission of the State.

(End of Standard Provisions)