

# Notable Updates to State's Contracting Process

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# **Notable Updates to State's Contracting Process**

## **Program Description**

This session will provide an overview of notable changes to Administrative Bulletin 3.5 and related forms, e.g. Attachment C, and other templates.

## **Learning Objectives**

At the end of this session, you will be able to:

- Describe notable changes to Administrative Bulletin 3.5
- Identify updates to contracting forms, e.g. Attachment C, new Insurance Specification, etc.

# Reference: Forms and Where to Find Them

- Bulletin 3.5 page <http://aoa.vermont.gov/bulletins/3point5>
  - Links to AA14
  - Agency waiver request template
- BGS Forms page
  - <http://bgs.vermont.gov/purchasing-contracting/forms>
  - Links to current procurement and contracting forms and documents
  - Templates for RFP, Contract, and Amendment
  - Attachment C, etc.
  - Federal Terms Supplement
  - AGO certification checklist/form and FAQs

# Bulletin 3.5 reformatted

- Improved navigation
- Easier to reference
- Minor re-organization of information

# Bulletin 3.5 approval thresholds increased

**Sole source waiver** from 10k to 25k

**Simplified Bid** from 100k to 250k

**Sec Admin contract approval** from 500k to 2m

Note: sole source no longer independent  
basis for Sec Admin contract approval

# Bulletin 3.5 Chief Marketing Officer approval

- Threshold remains 25k, with the following clarity:
- Provide notice (copy of contract) to CMO for all contracts that include marketing services, regardless of dollar amount
- CMO approval triggered by cost of marketing services component of the contract (which may not be same as max amount).

# Bulletin 3.5 now permits contract duration of up to five years

- Increased from four to five years
- Agency has discretion to do any length of contract up to five years (inclusive of base period and renewals) without need for waiver request. See 10.1.3.2(c).
- Think about duration of contract up front in process – i.e., when developing the RFP
- Five years not required, especially if shorter term contract makes sense, for example:
  - Project/service is for a shorter, defined period, as opposed to an ongoing need
  - Competition should be conducted more frequently because longer term pricing is not available or not ideal for the State, despite ongoing need
- Longer than five years not prohibited, will just require waiver with justification
  - If longer than five years makes business sense, then Agency should seek approval
  - Obtain approval for longer term contract, when required, prior to publishing the RFP

# Bulletin 3.5 new assumption for monetary approval thresholds

**For ongoing needs, monetary approval thresholds assume a five-year contractual relationship** unless it can be demonstrated to Sec Admin that the contracted-for need is of a shorter, defined duration. See 8.2.

This does not require Agency to seek a five-year contract (if more frequent competition is warranted)

If Agency knows they need the services again and again (ongoing) as opposed to a defined project period, consider monetary thresholds on a five-year basis.



# Bulletin 3.5 updated contract restrictions

**The following General Contract Restrictions are updated (see 10.1.1)**

**Subpart (e) updated...**contracts shall not restrict the ability of the Contractor to hire State employees, nor restrict the ability of the State to hire Contractor employees;

**Subpart (k) newly added...**contracts shall not include products that contain hydrofluorocarbons as prohibited in 10 V.S.A. § 586

# Bulletin 3.5 updated non-monetary approvals

**Non-procurement Agreements to Receive or Access Confidential information** no longer require Sec Admin approval but continue to require AGO and ADS-CIO approvals.

## **Modifications to Attachment C**

- i. ADS CISO approval required (ad hoc - no PAT review) for modifications to new clause 12 re use and protection of state data.
- ii. Bulletin clarifies that approvals from Risk Management, State Auditor, and CISO, when required, must be obtained before seeking AGO approval of the modifications.
- iii. Form AA14 revised to capture these approvals.

# Bulletin 3.5 updated amendment approvals

## **Amendment approvals (see 14.2)**

- i. ADS-CIO approval required if the original contract required CIO approval, or if a change to the scope of work or other contract terms would require CIO approval under any of the circumstances listed at Section 11.2.5
- ii. AGO approval required if either (a) an amendment increases contract value to 25k+ or (b) Sec Admin approval is required for the amendment
- iii. Sec Admin approval triggered when
  1. Cumulative increase of 50% or 500k (25% or 100k if sole sourced)
  2. Cumulative increase to a sole sourced contract would cause need for sole source waiver approval beyond just appointing authority (i.e., per 9.5.3, amendment increases the contract from below 25k to 25k+)
  3. No approval required for “Renewal” as defined in 14.2.4(b)

# Bulletin 3.5 updated who must approve a sole source request and when (see 9.5.3)

- a. Under 25k – appointing authority
- b. 25k to 99,999 – Finance & Management Commissioner
- c. 100k+ - Secretary of Administration
- d. IT activities regardless of value – ADS Chief Technology Officer

# Notable updates to contracting forms

- a. Attachment C revised 7 Dec 2023 (maintained as pdf only)
- b. AA14 (esp. note updates to sections re required approvals and signature blocks)
- c. New template for waiver requests (sole source and other)
- d. Standard Contract template (incorporates Attachment C by reference)
- e. RFP templates
- f. New Insurance Specification (incorporated by reference into Attachment C)

# Insurance Specification

Attachment C reference –

**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/RiskClaims-COI>.

# New insurance specifications – GL

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

- a. Premises - Operations
- b. Products and Completed Operations
- c. Personal Injury Liability
- d. Contractual Liability
- e. The policy shall be on an occurrence form and limits shall not be less than:
  - i. \$1,000,000 Each Occurrence
  - ii. \$2,000,000 General Aggregate
  - iii. \$1,000,000 Products/Completed Operations Aggregate
  - iv. \$1,000,000 Personal & Advertising Injury
- f. If the performance of the Agreement involves construction, then:
  - i. a “per project” aggregate endorsement is required; and
  - ii. completed operations coverage must be carried for three years post project completion.

# New insurance specifications – auto and excess

- ***Automotive Liability:*** If motor vehicles will be or are used in connection with the Agreement, 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. For Contracts involving construction or when performance under the Contract would require a commercial or other specialized driver's license, limits shall not be less than \$1,000,000. When performance includes interstate commerce or transport of hazardous products or materials regulated by the Federal Motor Carrier Administration and set forth in 49 C.F.R. § 387.9, the coverage shall include the MCS-90 endorsement.
- ***Umbrella or Excess Liability:*** For Contracts involving construction, or when performance under the Contract would require a commercial or other specialized driver's license, the Party shall carry umbrella or excess liability insurance covering over the underlying general and automotive liability policies. Coverage shall be on an occurrence form and limits shall not be less than \$1,000,000 per occurrence, \$1,000,000 general aggregate, unless higher limits are required by the State of Vermont. This requirement need not be met if the Party's applicable underlying coverages meet or exceed \$2,000,000.



# New insurance specifications – WC

## *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. The State 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.
- For work involving construction, workers compensation coverage shall include a waiver of subrogation in favor of the State of Vermont.

# New insurance specifications – professional liability

## *Professional Liability Insurance:*

- Whenever the performance of the Agreement is to involve any of: (a) licensed professional services, such as, but not limited to, attorneys, medical providers, financial professionals like accountants or actuaries, architects, engineers, management consultants, and providers of services requiring occupational licenses; (b) technology professional services; or (c) when otherwise required by the Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under the Agreement, with minimum coverage of \$1,000,000 per claim, or such higher minimum so provided.
- Party shall maintain such professional liability insurance for a period of two years following completion of services under the Agreement.

# New insurance specifications – cyber liability

## *Cyber Liability and Breach Response Insurance Coverage:*

- When the Party's performance involves hosting confidential State data, or services in or on State information technology systems where confidential State data may reside, the Party shall have and maintain cyber liability and breach response insurance coverage at no less than \$1,000,000 per claim, \$2,000,000 aggregate. Such policy shall expressly provide, but not be limited to, coverage for losses arising from the following:
  - a. unauthorized use of or access to: computer systems (including mobile devices), servers, client's data, or software;
  - b. defense of any regulatory action involving a breach of privacy;
  - c. failure to protect the confidential or proprietary information (personal and commercial information) and intellectual property from unauthorized disclosure or unauthorized access;
  - d. failure to adequately protect physical security of servers and systems including from cyber terrorism;
  - e. the costs for: notification (whether or not required by statute), credit file or identity monitoring, identity restoration, public relations, or legal experts;
  - f. third-party liability;
  - g. cyber extortion and cyber terrorism; and
  - h. no exclusion for actual or alleged breaches of professional services agreements associated with the above.

# Insurance Specification

- Modifications to Insurance Specification
  - Waivers of requirements (requires prior approval from Risk Management)
  - Increased coverage amounts (Risk Management input advisable, especially if questions)
- Revision control
  - If/when Insurance Specification is revised, historical versions will be maintained on Risk Management's webpage, in same space where current Insurance Specification is maintained

# Updates to RFP Templates

- Three notable areas of revision:
  - Requirement for public bid opening
    - Removed
    - Bulletin 3.5 no longer requires (section 9.3.8)
  - Solicitation of confidential information
    - Updated to provide optional language with guidance/instruction
    - If applicable, users will need to specify sections of the bid where confidential information will be allowed
  - Consideration of exceptions to contract terms
    - Updated to provide optional language with guidance/instruction

# Updates to RFP Templates (continued)

- Two RFP templates.
  - One for IT projects.
  - Other for general services.
- Same updates made to both templates
- Templates are maintained on BGS forms page online at:  
<https://bgs.vermont.gov/purchasing-contracting/forms>