



Vermont Agency of Transportation

219 North Main Street, Barre, VT 05641
<https://vtrans.vermont.gov/contact-us>

REQUEST FOR PROPOSAL

**Construction Manager/General Contractor (CM/GC)
Springfield IM 091-1(83)**

I-91 Bridge Improvements

RFP Schedule	Deadlines
Issue Date	05/01/2024
Deadline to Submit Request to Attend Site Visit	05/10/2024 at 3:00pm Eastern Standard Time (EST)
VTrans Notification of Site Visit Schedules	05/15/2024
Pre-Proposal Site Visits	05/28/2024 – 05/30/2024
Deadline to Submit Questions	06/04/2024 at 3:00pm EST
VTrans Responds to Questions	06/10/2024
Proposals Due	07/12/2024 at 3:00pm EST
Preliminary Screening Complete	07/19/2024
Notification to Proposers of the Short-List	07/30/2024
Interviews	09/16/2024 – 09/20/2024
Final Evaluations Complete	10/02/2024
Anticipated Award Date	11/01/2024

PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND ADDENDA ASSOCIATED WITH THIS RFP WILL BE POSTED AT: <https://vtrans.vermont.gov/contract-admin/bids-requests/cmgc>

Please note all exhibits associated to this project can be found following the link:
[https://outside.vermont.gov/agency/VTRANS/external/docs/contractadmin/Construction%20Contracting/CMGC/Springfield%20IM091-1\(83\)_Exhibits.pdf](https://outside.vermont.gov/agency/VTRANS/external/docs/contractadmin/Construction%20Contracting/CMGC/Springfield%20IM091-1(83)_Exhibits.pdf)

The State will make no attempt to contact interested parties with updated information. It is the responsibility of each bidder to periodically check the above webpage for any and all notifications, release and addendums associated with this RFP.

STATE POINT OF CONTACT (POC): **Angie Farrington**
E-MAIL: Angie.Farrington@vermont.gov

VTrans Mission and Vision

Through excellent customer service, provide for the safe and efficient movement of people and goods in a socially, economically, and environmentally sustainable manner. A safe, reliable, and environmentally sustainable multimodal transportation system that grows the economy, is affordable to use and operate, and serves vulnerable populations.

TABLE OF CONTENT

DEFINITIONS	4
INTRODUCTION:	6
1.0 PROJECT INFORMATION AND PROCESS OVERVIEW	7
1.1 PROJECT INTRODUCTION	7
1.2 PROPOSED WORK	7
1.3 PROJECT SCHEDULE	7
1.4 PROJECT GOALS.....	7
1.5 CONDITION OF EXISTING STRUCTURES.....	8
1.6 CM/GC INTRODUCTION	9
1.7 PROCUREMENT OVERVIEW	9
1.8 PRE-PROPOSAL SITE VISIT	10
1.9 RFP QUESTIONS AND ADDENDUMS.....	11
2.0 GENERAL PROCEDURES AND REQUIREMENTS	11
2.1 PREQUALIFICATION REQUIREMENTS	11
2.2 CM/GC PRE-SUBMITTAL RESPONSIBILITIES AND REPRESENTATIONS.....	12
2.3 REQUIRED AVAILABILITY OF KEY PERSONNEL	12
2.4 ELECTRONIC SUBMITTAL INFORMATION	13
2.5 PROPOSAL DUE DATE, TIME, AND LOCATION	14
2.6 TECHNICAL PROPOSAL FORMAT AND CONTENT	14
2.7 PROPOSER’S COST PROPOSAL	15
2.8 INTERVIEWS.....	15
3.0 CONTENTS OF PROPOSALS	16
3.1 LETTER OF SUBMITTAL (PASS/FAIL).....	16
3.2 ORGANIZATION AND KEY PERSONNEL EXPERTISE (20 PTS)	16
3.3 PAST PERFORMANCE AND EXPERIENCE (30 PTS)	17
3.4 PROJECT APPROACH (30 PTS)	18
3.5 CM/GC PROCESS APPROACH (20 PTS).....	18
3.6 PRE-CONSTRUCTION SERVICES COST PROPOSAL (PASS/FAIL)	19
3.7 BREAKDOWN OF RATES (PASS/FAIL).....	20
3.8 FINANCIAL DOCUMENTATION (PASS/FAIL).....	20
4.0 EVALUATION PROCESS	21
4.1 EVALUATION OF PROPOSALS	21
4.2 EVALUATION OF INTERVIEWS.....	21
4.3 FINAL SCORING	22
5.0 SCOPE OF WORK – PRE-CONSTRUCTION PHASE SERVICES	22
5.1 DESIGN COLLABORATION.....	22
5.2 PRE-CONSTRUCTION PHASE KICKOFF MEETING	23
5.3 30% - 60% PLANS PHASE	23
5.4 60% - 90% PLANS, SPECIFICATIONS, AND ESTIMATE PHASE	25
5.5 90% - 100% PLANS, SPECIFICATIONS, AND ESTIMATE PHASE	27
5.6 COST ESTIMATING.....	28
5.7 PROJECT RISK.....	29
5.8 PROJECT COMPUTER SOFTWARE REQUIREMENTS.....	29
6.0 CONSTRUCTION BID PROCESS	30

- 7.0 RIGHTS AND OBLIGATIONS OF VTRANS..... 31**
 - 7.1 RESERVATION OF RIGHTS.....31
 - 7.2 EXCEPTIONS TO TERMS AND CONDITIONS31
 - 7.3 NO ASSUMPTION OF LIABILITY.....31
 - 7.4 PROPOSAL PAYMENT31

- 8.0 PROTESTS..... 31**
 - 8.1 GENERAL.....31
 - 8.2 WRITTEN PROTESTS ONLY32
 - 8.3 PROTEST CONTENTS32
 - 8.4 PROTEST REGARDING RFP.....32
 - 8.5 PROTEST PRIOR TO AWARD32
 - 8.6 PROTEST REGARDING AWARD32
 - 8.7 DETERMINATION OF PROTEST.....33

- 9.0 ADDITIONAL CONTRACT REQUIREMENTS 33**
 - 9.1 VERMONT ACCESS TO PUBLIC RECORDS ACT33
 - 9.2 CONFLICT OF INTEREST.....34
 - 9.3 CIVIL RIGHTS AND LABOR COMPLIANCE35
 - 9.4 VERMONT PROFESSIONAL LICENSE/REGISTRATION35
 - 9.5 FEDERAL REQUIREMENTS36

- 10 REFERENCE ONLY..... 36**

- 11 ATTACHMENTS..... 36**

- 12 EXHIBITS..... 36**

DEFINITIONS

Wherever in this RFP the following terms, or acronyms in place of them, are used, the intent and meaning shall be interpreted as noted below. The Proposer shall refer to the latest edition of the Vermont Agency of Transportation, Standard Specifications for Construction for additional terms and acronyms used within this RFP.

Construction Manager/General Contractor (CM/GC) Project Manager: The CM/GC Contractor's employee or agent responsible for the overall management and supervision of CM/GC Contractor's Pre-Construction Services and Construction for the Project.

CM/GC Contractor (CM/GC or Contractor): A firm which is responsible for Pre-Construction and/or Construction Services through a Pre-Construction Services Contract and/or a Construction Contract.

Construction Contract: The written agreement between the Agency and the Contractor setting forth the obligations of the parties relative to the performance of the work.

The Contract includes the Contract agreement, Contract Bonds, Project permits, Project Special Provisions, Contract Plans, General Special Provisions, Standard Drawings, Supplemental Specifications, the Standard Specifications for Construction, and any Supplemental Agreements or supporting documents that are required to complete the work in an acceptable manner.

Design Team: VTrans' engineering design team, which may include consultants under contract with VTrans.

Independent Cost Estimator (ICE): A firm or individual that is not associated with the project, Design Team, or the CM/GC who performs an independent estimate (Independent Cost Estimate) of the likely cost of construction.

Pre-Construction Contract: The written agreement between the State and the CM/GC Contractor setting forth the obligations of the parties relative to the performance of the work. These obligations include but are not limited to those conditions of the design, innovation, constructability, scheduling, risk assessment, and the furnishing of materials, labor, and equipment, the quality of the materials used, and the basis of payment.

Pre-Construction Services: Professional services, including but not limited to recommendations for scheduling, construction sequencing, cost information, constructability, risk identification, innovation, and other information related to the Project.

Project Manager (PM): VTrans' designee for managing all phases of contract procurement, project development and administering the CM/GC Pre-Construction Services Contract. This individual is responsible for managing the procurement development, proposal evaluation, contract award, project scope, project schedule, and project budget.

Project Team: All project team members to include VTrans representatives, any consultant design team retained by VTrans, and the CM/GC Contractor.

Proposal: Submittal received from a Proposer in response to a Request for Proposal (RFP) to perform the work and furnish the required services; valid only when properly signed and guaranteed.

Proposer: Entity who submits a Proposal in response to the RFP.

Proposer's Authorized Representative: The CM/GC Contractor designated contact to be the sole representative of the Contractor with the VTrans' POC.

Request for Proposal (RFP): All documents, whether attached or incorporated by reference, utilized for soliciting a CM/GC proposal.

RFP Addendum: A supplement to the original Request for Proposal covering additions, deletions, corrections, changes or clarifications in the qualification or procurement conditions that may be issued prior to the date of Proposal.

Short-List: The qualifying list of Proposers as determined by preliminary RFP evaluation to advance to the Interview phase of the selection process. Only Short-Listed Proposers will be invited to attend Interviews in response to the RFP.

Targeted Maximum Price (TMP): Total itemized dollar amount negotiated between the CM/GC and VTrans for performing construction services, excluding the CM/GC's payment for Pre-Construction Services. The TMP includes, but is not limited to, all direct and indirect Contractor costs associated with the construction, contracting, self-performance and management of the project, including the preparation of the construction schedules, shop drawings, construction labor, material costs, equipment costs, traffic control, quality control, quality assurance, survey, punch-list items, overhead costs, and general condition costs. VTrans may elect to have the CM/GC provide several interim TMP's for specific early work packages of the Project. The TMP cost excludes the fees that are paid under the Pre-Construction Services. The TMP is not subject to price escalation or de-escalation due to inflation.

Technical Evaluation Committee (Committee or TEC): The Committee appointed by the Chief Engineer to review, evaluate, and score the CM/GC Contractor Proposals. The Committee members will be limited to VTrans staff, and Advisory members such as Federal Highway Administration (FHWA) representatives unless otherwise approved by the Secretary. Please note that Advisory members are non-voting members of the committee and will not score the proposals.

Value Engineering (VE): A systematic process of review and analysis that is conducted to provide recommendations for implementing the needed functions safely, reliably, efficiently, and at the lowest overall cost; improving the value and quality of the project; and reducing the time to complete the project.

INTRODUCTION:

The Vermont Agency of Transportation is requesting Request for Proposals (RFP) for entities (Proposer) interested in submitting Proposals to become a Construction Manager/General Contractor (CM/GC) who will engage with VTrans Design Team. Such Pre-Construction Services will include but are not limited to providing recommendations for scheduling, construction sequencing, cost information, constructability, risk identification, innovation, and other information related to the Project.

The focus is on a partnership that will minimize risk, improve safety of the traveling public, improve the construction schedule, and implement new innovations in project delivery. The expectation is that the expertise of the CM/GC Contractor will result in delivery of a quality project in less time and at a lower cost than an equivalent design-bid-build process.

Please note that no payments will be made for any Proposer's time, materials, or other associated costs for preparing and responding to this RFP.

Point of Contact (POC): VTrans' sole Point of Contact (POC) for procurement of the CM/GC Contractor shall be as noted below. VTrans' POC is the only individual authorized to discuss this RFP and will only communicate with the Proposer's Authorized Representative. All communications with VTrans about the Project or this RFP shall be in writing via email, as required by applicable provisions of this RFP. In order to be considered an official communication, the subject line of any email communication shall start with the Project Number: "Springfield IM091-1(83) CM/GC". VTrans disclaims the accuracy of information derived from any source other than VTrans' POC, and the use of any such information is at the sole risk of the Proposer. Communication with other VTrans personnel regarding this RFP is prohibited and may result in the rejection of the Proposal.

Angie Farrington, Contracts Specialist IV

Vermont Agency of Transportation
Contract Administration
219 North Main Street
Barre, VT 05641
Email: Angie.Farrington@vermont.gov
Phone: 802-279-2829

1.0 PROJECT INFORMATION AND PROCESS OVERVIEW

1.1 Project Introduction

Located on I-91 between mile markers 40.89 and 41.83 in the Town of Springfield, Vermont, this Project includes the modification, replacement and/or removal of 11 total bridges and/or box culverts. Included in this work is the re-alignment of the Exit 7 northbound interchange ramps from a clover to a diamond configuration. The Project will incorporate the use of median crossovers along I-91 to maintain a minimum of one lane of traffic in both directions throughout the corridor. The Project plans have been advanced through an approximate 30 - 60% design completion. The current conceptual Engineer’s Estimate places this project into Category I per the listing on the VTrans website. It is important to note that the project estimate has the potential to reach Category J.

<http://vtrans.vermont.gov/sites/aot/files/contractadmin/documents/CatFundCodes.pdf>

1.2 Proposed Work

- a. Re-align the Northbound Exit 7 on and off ramps to a diamond configuration.
- b. Full bridge replacement of Bridges 28 N&S.
- c. Disinvestment of Bridges 27 N&S.
- d. Superstructure replacement and substructure repairs of Bridges 26 N&S.
- e. Deck replacement and substructure repairs of Bridges 25 N&S.
- f. Re-align Spencer Brook including extensions of Culvert 28-1N beneath I-91, and removal of Culverts 28-1C and 28-1D beneath the northbound off ramp.
- g. Re-alignment of the Toonerville Rail Trail to follow Route 5.

1.3 Project Schedule

The anticipated targeted project schedule is as follows. Please note that the below dates are approximate and subject to minor adjustment as the pre-construction efforts evolve.

Project Milestones	Due Date
60% Plans Complete	January 2025
Permitting and Right of Way	February 2025- February 2026
90% Plans, Specifications and Estimate Complete	April 2026
100% Plans, Specifications and Estimate Complete	September 2026
Construction Estimate Development and Reconciliation	December 2026
Commencement of Construction	May 2027

1.4 Project Goals

- a. Minimize disruption to traffic throughout the corridor on both I-91 and Route 5
- b. Maintain a minimum of one lane of traffic in both directions along I-91 throughout the duration of construction.
- c. Avoid all temporary and permanent impacts outside of the existing public right of way.
- d. Minimize site and resource impacts.
- e. Maximize onsite earthwork balancing and minimize temporary stockpiling.
- f. Maintaining the design schedule
- g. Limiting construction to three seasons or fewer

1.5 Condition of Existing Structures

Existing Bridge No. 25S, 25N (I-91 over Route 5 (Missing Link Road)):

Roadway Classification	Principal Arterial (Interstate, NHS)
Year of Construction	1965
Bridge Type	3 Span Rolled Beam, each
Bridge Length	211' Bridge 25S and 231' Bridge 25N
Width of Bridge	30' Curb to Curb (34'-10" Out to Out)
Ownership	State of Vermont
National Bridge Inspection Standards (NBIS) Deck Rating:	6 Satisfactory (May 2022)
NBIS Substructure Rating:	6 Satisfactory (May 2022)
NBIS Superstructure Rating	6 Satisfactory (May 2022)

Existing Bridge No. 26N, 26S (I-91 over the Black River):

Roadway Classification	Principal Arterial (Interstate, NHS)
Year of Construction	1965
Bridge Type	3 Span Rolled Beam, each
Bridge Length	316'
Width of Bridge	30' Curb to Curb (34'-10" Out to Out)
Ownership	State of Vermont
NBIS Deck Rating:	5 Fair (August 2023)
NBIS Substructure Rating:	5 Fair (August 2023)
NBIS Superstructure Rating	6 Satisfactory (August 2023)

Existing Bridge No. 27N, 27S (I-91 over the Toonerville Rail-Trail):

Roadway Classification	Principal Arterial (Interstate, NHS)
Year of Construction	1965
Bridge Type	Single Span Rolled Beam, each
Bridge Length	74' each
Width of Bridge	42' Curb to Curb (46'-10" Out to Out) Bridge 27S 38' Curb to Curb (42'-10" Out to Out) Bridge 27N
Ownership	State of Vermont
NBIS Deck Rating:	6 Satisfactory (May 2022)
NBIS Substructure Rating:	7 Good (May 2022)
NBIS Superstructure Rating	7 Good (May 2022)

Existing Bridge No. 28N, 28S (I-91 over the Route 5 (Charlestown Road)):

Roadway Classification	Principal Arterial (Interstate, NHS)
Year of Construction	1965
Bridge Type	4 Span Rolled Beam, each
Bridge Length	207' Bridge 28S and 202' Bridge 28N

Width of Bridge	30' Curb to Curb (34'-10" Out to Out) Bridge 28S 42' Curb to Curb (46'-10" Out to Out) Bridge 28N
Ownership	State of Vermont
NBIS Deck Rating:	5 Fair
NBIS Substructure Rating:	6 Satisfactory Br 28S and 5 Fair Br 28N (May 2022)
NBIS Superstructure Rating	6 Satisfactory Br 28S and 5 Fair Br 28N (May 2022)

1.6 CM/GC Introduction

1.6.1 - CM/GC, also known as Construction Manager/General Contractor (CM/GC) is a contracting method that involves the Contractor in the design process. The selected Contractor on this Project will partner with the Design Team. The focus is on a partnership that will minimize risk, improve safety of the traveling public, improve the construction schedule, and implement new innovations in project delivery. The expectation is that the expertise of the CM/GC Contractor will result in delivery of a quality project in less time and at a lower cost than an equivalent design-bid-build process, as well as significantly reducing project change orders through development of risk registry and risk-based pay items.

1.6.2 - Pre-Construction Services provided by the CM/GC Contractor are likely to include, but are not limited to, the tasks outlined in Section 5.0 of this RFP. The CM/GC Contractor will provide input regarding scheduling, pricing, phasing, constructability, and other feedback that will assist the Design Team with development of a project that achieves the Project Purpose and Project Goals noted in this RFP.

1.6.3 - At the completion of the Pre-Construction Services phase, the CM/GC Contractor will provide a Targeted Maximum Price (TMP) for construction of the Project based on the defined scope and schedule. If this price is acceptable to the Agency, the CM/GC Contractor will be awarded the Construction Contract.

1.6.4 - The CM/GC process is a federally approved method of construction and more details regarding this process can be found on the Federal Highway Administration (FHWA) website: <http://www.fhwa.dot.gov/construction/cqit/cm.cfm>

1.6.5 - Note that the process description on the FHWA website is a general overview. This RFP represents the requirements for this project.

1.7 Procurement Overview

1.7.1 - VTrans will use a multi-step process for the selection of a CM/GC Contractor on this project. Proposal submission represents the first step in which a Technical Evaluation Committee (TEC) will complete a screening process of the Proposals received and recommend qualifying firms for Short-List consideration and an invitation to Interview. VTrans will issue formal Short-List notification to all Proposers and assign an Interview date for each Short-Listed Proposer according to the schedule provided on the first page of this RFP. Only the Short-Listed Proposers will receive an invitation to Interview. VTrans intends to Short-List the three (3) highest-ranked Proposers based upon the evaluation process established in this RFP; however, VTrans, at its sole discretion, may increase or decrease the number of Short-Listed Proposers.

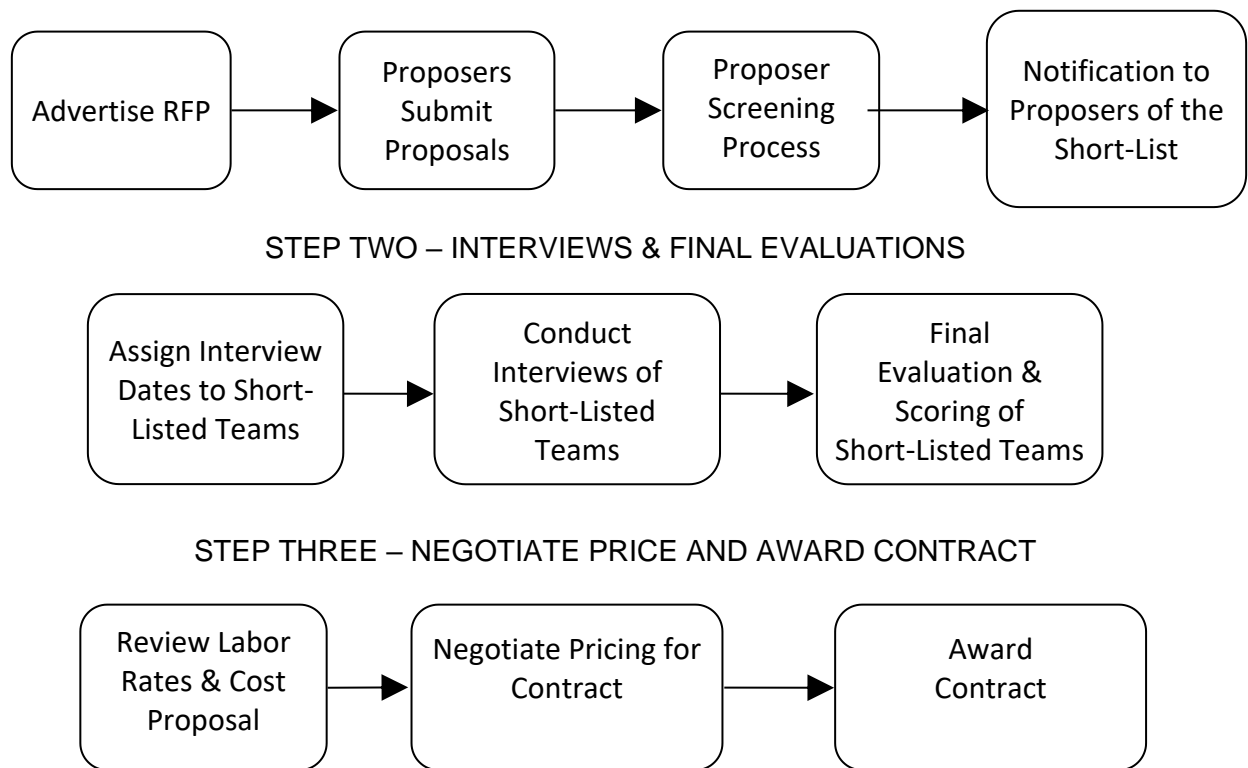
1.7.2 - The second step of the CM/GC Contractor selection process will entail a presentation and Interview of each Short-Listed Proposer. Each Short-Listed Proposer will be evaluated by the same criteria with respect to their Proposals and Interviews as outlined in later sections of this RFP. The TEC will provide a written recommendation to the Chief Engineer of the top-ranked Proposer for

award of a CM/GC Pre-Construction Services Contract by the Agency. The CM/GC Pre-Construction Services Contract will not be awarded until the parties have agreed to all contractual requirements and successful negotiation of pricing criteria has concluded. Pricing criteria will consist of information contained in the Key Personnel Labor Rates Form and the Pre-Construction Services Cost Proposal submitted by the Proposer.

If CM/GC Pre-Construction Services Contract negotiation with the highest ranked CM/GC Contractor is unsuccessful, then negotiation with the top-ranked firm will be concluded and negotiation with the second-ranked firm will be initiated. If a satisfactory Pre-Construction Services Contract is not negotiated with the second ranked firm, this procedure will be continued with the remaining Short-Listed Proposers. If all Contract negotiations are unsuccessful with all of the Short-Listed Proposers, VTrans may readvertise the RFP using another procurement method at the discretion of VTrans. Short-Listed Proposers will not be allowed to respond to a readvertisement using the CM/GC method of contracting.

PROCUREMENT PROCESS
STEP ONE – REQUEST FOR PROPOSALS & SCREENING PROCESS

Figure 1: CM/GC Procurement Process Flowchart



1.8 Pre-Proposal Site Visit

1.8.1 - VTrans will offer the opportunity for Proposers to attend a NON-MANDATORY Pre-Proposal site visit on the dates set forth on the first page of this RFP. Proposers will meet at the central location provided below and transportation to and from the site will be provided by the Agency. This will be the only opportunity for formal traffic control and access to the project site during the CM/GC

Pre-Construction Services Contract procurement period. Proposers are required to provide the VTrans POC with written notification of their intent to attend the Pre-Proposal Site Visit, along with the names of each attendee, by the deadline set forth on the first page of this RFP. Proposers will be assigned a time on one of the days at the Agency's discretion and notified accordingly on the date indicated in on the first page of this RFP. If necessary, an additional site visit day or time may be added due to the volume of interested attendees or the potential for inclement weather. Any changes in site visit dates or times will be communicated to Proposers in an RFP Change. No more than five (5) representatives from each Proposer (inclusive of any other member of Proposer's team) will be allowed to participate in the Pre-Proposal site visit and all members must be identified in the team's Notification of Site Visit Attendance by the deadline set forth on the first page of this RFP.

1.8.2 - The purpose of the site visit is to allow each Proposer access to the project area with proper traffic control provided by the Agency. VTrans will facilitate the visits with an Agency representative and attendees will be provided with a site tour as one group with designated time limits for various project components. *There will not be a Project presentation or an opportunity to ask Agency staff questions on the Project.* Any questions that arise during the site visit may be sent, by the Proposers, to the POC. It is anticipated that each site visit will last no more than four (4) hours to observe the entirety of the project. The VTrans POC will not be in attendance during these site visits.

1.8.3 - Proposers shall meet on their assigned date and time at the following location:

VTrans Region 2 Satellite Maintenance Garage
12 Missing Link Road
Springfield, Vermont 05156

1.9 RFP Questions and Addendums

1.9.1 - Each Proposer shall review the RFP Documents and provide questions or concerns to the VTrans POC. Such questions shall be submitted to VTrans' POC within the time specified on the first page of this RFP. VTrans will review all questions received and, if it deems appropriate, in its sole discretion, may answer questions and modify the RFP through an addendum. Responses to questions will be provided to all Proposers and posted to the website outlined on the first page of this RFP.

1.9.2 - In the event that it becomes necessary to revise, modify, clarify, or otherwise alter this RFP, including VTrans' responses to questions and requests for clarification, such addenda shall be posted to the VTrans Springfield IM 091-1(83) I-91 Bridge Improvements CM/GC web page. Proposers should consult daily with this web page for any notices or addendums related to this project.

2.0 GENERAL PROCEDURES AND REQUIREMENTS

This Section describes the requirements that all Proposers must satisfy in submitting Proposals. Failure of any Proposer to submit their Proposal in accordance with this RFP may result in rejection of its Proposal.

2.1 Prequalification Requirements

2.1.1. **Annual Prequalification:** The CM/GC Contractor for each Proposer is required to achieve Annual Prequalification with VTrans prior to submission of a Proposal. The CM/GC Contractor shall be prequalified for Bridge Construction and shall provide proof of Annual Prequalification with submission of the Proposal. For those who wish to achieve Annual Prequalification, please submit

the log in request form using the [link](#) and complete the Annual Prequalification Questionnaire located in the iCX Web System. Please note if the if Proposer already has access to the iCX Web System and is annually prequalified in the Bridge Construction category please do not submit a log in request form.

2.2 CM/GC Pre-Submittal Responsibilities and Representations

2.2.1 - Each Proposer shall be solely responsible for examining the RFP Documents and all conditions which may affect its Proposal or the performance of the work on the Project, including but not limited to:

- a. Examining and carefully studying the RFP Documents, including any RFP Changes and other information or data identified in the RFP Documents.
- b. Becoming informed as to all federal, state, and local laws and regulations that may affect the cost, progress, or performance of its work on the Project.
- c. Determining that the RFP Documents clearly describe the terms and conditions of the work to be performed for the Project.

2.2.2 - Each Proposer is responsible for promptly giving VTrans' POC written notice of:

- a. All conflicts, errors, ambiguities, or discrepancies that the Proposer discovers in this RFP and related RFP documents such as Exhibits.
- b. Aspects of the RFP Documents that the Proposer does not understand.

2.2.3 - Any failure to do so shall be at the Proposer's sole risk, and no relief for error or omission will be provided by VTrans.

2.2.4 - By submitting a Proposal, the Proposer represents and warrants that, following review of the RFP and associated documents, the Proposer has either resolved or not identified any conflicts, errors, ambiguities, or discrepancies and has no questions concerning the requirements of the RFP and the Project.

2.3 Required Availability of Key Personnel

2.3.1 - The Proposer shall not change Key Personnel identified in the Proposal without the prior written consent of VTrans. The CM/GC Contractor should be aware that VTrans has relied upon the Proposer's identification of such persons in determining which Proposers are Short-Listed and also the selection of the successful CM/GC Contractor.

2.3.2 - The Key Personnel and other individuals identified pursuant to the Request for Proposals, or as subsequently approved by the Agency, shall remain on the CM/GC Contractor's team for the duration of the procurement process and, if the Proposer is awarded a Contract, the duration of the Contract.

2.3.3 - If, during the procurement process, the Proposer or CM/GC Contractor determines that extraordinary circumstances require a change to any Key Personnel identified in the Proposal, the Proposer or CM/GC Contractor shall provide a thorough explanation of those extraordinary circumstances and an explanation of all actions taken by the Proposer or CM/GC Contractor to address such circumstances, in writing, to the VTrans POC. If VTrans determines that the reasons provided do not represent extraordinary circumstances, VTrans may elect to reject the Proposal. Should VTrans concur that extraordinary circumstances exist, the Proposer or CM/GC Contractor must submit a proposed substitute whose credentials are deemed to be equivalent in the sole discretion of VTrans. It is the responsibility of the Proposer or CM/GC Contractor to demonstrate

that the qualifications of the substituted Key Person are equal to or better than that of the originally proposed Key Person by providing a comparison of the person's qualifications. Should VTrans determine that such a proposed substitute is not equivalent; VTrans may elect to reject the personnel change.

2.3.4 - If Key Personnel are proposed to be changed prior to the award of a Construction Contract, the Key Personnel replacement must be approved by VTrans before award of the Contract.

2.3.5 - If Key Personnel are proposed to be changed following the award of a Construction Contract, the CM/GC Contractor shall notify the VTrans Project Manager in writing of the proposed changes and shall include supporting information as outlined above. The CM/GC Contractor must notify VTrans of any change in Key Personnel within 24 hours of the CM/GC Contractor's actual notice of the change or the potential change. **Failure to give notification of Key Personnel changes may be considered a breach of contract.** If Key Personnel are proposed to be changed following the award of the Construction Contract, payments may stop until acceptable Key Personnel replacements are approved by VTrans, which has the sole discretion to determine whether such replacements are acceptable.

2.3.6 - Examples of possible extraordinary circumstances include death of a team member, bankruptcy, inability to perform, organizational conflict of interest, employee departure, or other such significant cause. Any written request for a change shall include the following minimum information:

- a. The nature of the desired change,
- b. The reason for the desired change,
- c. A statement of how the desired change will meet the required qualifications for the position/responsibility; and
- d. Similar qualifications information for the replacement person as required by this RFP.

2.3.7 - Key Personnel modifications must be equally, or more, qualified as the individual listed in the accepted Proposal. No such modification shall be made without prior VTrans approval.

2.4 Electronic Submittal Information

2.4.1 - Proposals will only be received electronically via an FTP site. A User Login and Account Access to the FTP site is required to submit the Proposal.

2.4.2 - To ensure enough time to set up the User Login and Account Access, bidders are encouraged to request access as soon as possible and no later than four (4) business days before the Proposal due date.

2.4.3 - Please submit the request for a user account by e-mailing the POC listed on the first page of this RFP. The subject should state "FTP Account Proposal Submission Request for Springfield IM 091-1(83) CM/GC". You will then receive guidance on uploading the proposal and a user account will be provided by separate e-mail(s).

2.4.4 - The following naming convention shall be used for submitting proposal(s):

ProposalType_CompanyName_RFP Title

Please see the following for examples:

- **TechnicalProposal_ABCCompany_SpringfieldIM0911(83).pdf**

- **FinancialInformation_ABCompany_SpringfieldIM0911(83).pdf**

2.5 Proposal Due Date, Time, and Location

2.5.1 - All Proposals must be received via the FTP site by the due date set forth on the first page of this RFP.

2.5.2 - Submissions via fax, email, US mail, hand delivery, or any other form other than the FTP submission process outlined in Section 2.4 will not be accepted. Proposers are responsible for effective delivery by the deadline on the first page of this RFP. Late submissions will be rejected without opening, consideration, or evaluation, and will be returned unopened to the sender and access to the FTP site will be removed. VTrans accepts no responsibility for misdirected or lost Proposals.

2.6 Technical Proposal Format and Content

The Proposal shall be prepared in accordance with the following criteria and as described in Section 3.0 of this document:

- a. The Proposal shall be no more than twenty (20) single sided pages with all pages sequentially numbered. All pages shall include page number references in the lower right-hand corner. It is acceptable for the page number to be within the page margins.
- b. The Proposal shall be separated by section sheets with Sections corresponding to the order set forth as follows. Section sheets shall only identify the Section Title and shall not contain project-specific information, or they will be counted against the page limit.

Section 1 Letter of Submittal
Section 2 Organization and Key Personnel Expertise
Section 3 Past Performance and Experience
Section 4 Project Approach
Section 5 CM/GC Process Approach

- c. Required Certifications/Documents: Please note that items 1-5 below DO NOT count toward the twenty (20) page limit but in order for a proposal to be considered complete the following documents shall be complete and submitted as part of the Technical Proposal. Such forms can be found in section 11. Attachments.
 1. **Completed Certification of Contractor / Consultant.**
 2. **Vermont Certificate of Compliance Form CA-271:** For a bid/proposal 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.
 3. **Contractor's EEO Certification - Form CA-109:** The certification is required by the Equal Employment Opportunity regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)) and must be submitted by Contractors and proposed sub-contractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause.
 4. **Executive Order 02-22 Vendor Certification:** On March 3, 2022, Governor Phil Scott issued Executive Order No. 02-22, which in part requires a review of all contracts for Russian-sourced goods and goods produced by Russian entities. The Executive Order can be found here: <https://governor.vermont.gov/content/executive-order-02-22-solidarity-Ukrainian-people>.
 5. **Contractor and Sub-Contractor Information Form.**
- d. The additional following information will not be counted against the referenced page.
 1. Section sheets (as long as no project specific information is included)

2. Blank pages that have been identified with the text “This Page Left Intentionally Blank” and have not been assigned a page number.
- e. All formatting, except for the front cover of the Proposal and Section sheets must meet the following requirements:
1. Font shall be Times New Roman, 12-point, a minimum of single line spacing, and minimum margins of $\frac{3}{4}$ ”.
 2. Except for Charts, Schedules, Exhibits, and other illustrative and graphical information, all information shall be prepared on 8.5” x 11” white paper.
 3. Charts, Schedules, Exhibits, and other illustrative and graphical information may be on 11” x 17” paper.

2.7 Proposer’s Cost Proposal

The following shall be submitted electronically via an FTP site as a single compiled pdf, separate from the technical proposal: Please refer to Sections 3.6 through 3.8 for more details regarding in particular what shall be included in the cost proposal.

- a. Pre-Construction Services Cost Proposal
- b. Breakdown of Rates
- c. Financial Documentation
- d. AASHTO Internal Control Questionnaire (ICQ): [Pre-Award Audit Questionnaire \(vermont.gov\)](http://www.vermont.gov/pre-award-audit-questionnaire)

Please note that these files will also be uploaded directly to AOT Audit Section as these documents are considered confidential. You will receive a separate user account through AOT Audit when these documents are required, and a user account is requested as outlined in section 2.4 Required Electronic Submittal Information.

When submitting a proposal(s) please use the following naming convention:
ProposalType_CompanyName_RFP Title.

Please see below for examples:

- a. Pre-Construction Services Cost Proposal_ABCompany _ Springfield IM 091-1(83) CMGC.
- b. Breakdown of Rates_ABCompany_Springfield IM 091-1(83) CMGC.
- c. FinancialInformation_ABCompany_ Springfield IM 091-1(83) CMGC.

2.8 Interviews

2.8.1 - Short-Listed Proposers will participate in an in-person mandatory Interview with VTrans on the dates set forth on the first page of this RFP, lasting no longer than one and one half (1.5) hours. The exact location of the interviews will be determined at a later date, but is anticipated to be within the Barre, VT region.

2.8.2 - Each Interview will be private, in that only one Proposer’s Team will meet with VTrans at a time. The purpose of the Interview is to give each Proposer, in a confidential setting, an opportunity to present their qualifications and approach to the Project. The Interviews are also intended to enable VTrans to ask questions of the Proposer regarding their qualifications presented and their approach to the Project. Format of the Interview will generally be as follows:

- a. Formal Presentation by CM/GC Contractor – 30 minutes.
- b. Question & Answer Period – 60 minutes.

2.8.3 - At least five (5) working days before each Interview, the Proposer shall confirm to the VTrans POC in writing a list of the individuals that will be attending the Interview and their function on the

Project. All Key Personnel as defined in Section 3.2 shall attend the Interview. No electronic recording of any kind will be allowed during the Interview. While the discussions in these Interviews are intended to be in a confidential setting, nothing shall preclude VTrans from exercising any rights that it may have under this RFP and the requirements of the Vermont Access to Public Records Act (1 V.S.A. §§ 315 - 320) (Act) as outlined in Section 9.0.

3.0 CONTENTS OF PROPOSALS

If the Proposer is notified that any of the required information in this Section is missing or inaccurate, the Proposer shall submit the requested information to VTrans within five (5) working days of such notification. If a Proposer fails to meet the requirements of this Section, then that Proposal may be deemed non-responsive and removed from further consideration.

3.1 Letter of Submittal (Pass/Fail)

The Proposer shall submit with the Proposal up to a two-page Letter of Submittal indicating the Proposer's desire to be considered for the Project. This Letter shall include:

- a. Names and Roles of all Key Personnel.
- b. Identification of the Proposer's Authorized Representative with address, phone number, fax number, and E-mail address where all communications from VTrans will be addressed. This individual must be maintained throughout the procurement process.
- c. A statement declaring that, to the best of the Proposer's knowledge and belief, that all information contained in the Proposal is true and accurate.
- d. Proof of applicable Annual Prequalification.
- e. An affirmative declaration and acknowledgement that the Proposer is prohibited from receiving any advice or discussing any aspect related to the Project or the procurement of the Project with any person or entity with an organizational conflict of interest, as described in Section 9.2.

The declaration and acknowledgement shall also include agreement that if an organizational conflict of interest exists or is discovered at any time, the Proposer shall make an immediate and full written disclosure to VTrans that includes a description of the action the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict exists, VTrans may, at its sole discretion, terminate the Project or CM/GC process at any point.

3.2 Organization and Key Personnel Expertise (20 pts)

3.2.1 - Provide an organizational chart showing the structure of the Proposer's organization. The chart must show the functional structure of the organization and must identify Key Personnel by name and position. At a minimum, identify the following five project roles to be provided by the Key Personnel:

- a. CM/GC Project Manager
- b. Work zone Traffic Engineer
- c. Cost Estimator
- d. Scheduler
- e. Project Superintendent

3.2.2 - These five roles and corresponding Key Personnel identified on the organizational chart will be considered the CM/GC Project Team for the purpose of the remaining requirements of this RFP.

3.2.3 - Provide a description of the composition of the CM/GC Contractor. If the CM/GC Contractor is a partnership or joint venture, indicate specific responsibilities of each member and firm.

3.2.4 - Provide job descriptions, responsibilities, and authority for each working title. The Work zone Traffic Engineer and any other proposed project role requiring professional engineer services shall meet the requirements of Section 9.4. Individuals may be proposed to cover multiple Key Personnel project roles with the following exceptions:

- a. CM/GC Project Manager will not serve any additional roles.
- b. No team member will serve more than two project roles.

3.2.5 - For each of the Key Personnel, provide a narrative response to the following:

- a. Describe why the named individual was selected to fill this role for this Project.
- b. Describe the areas of expertise this individual will provide to the Project Team in both the Pre-Construction and Construction Phase of the Project.
- c. Years of experience in the role that they will fill for this Project.
- d. Project experience with projects of this magnitude.
- e. Describe the individual's experience interacting and collaborating with engineering firms, designers, and/or owners on the development and construction of highway and bridge replacement or rehabilitation projects.
- f. Provide resumes for each of the Key Personnel. Resumes shall include the individual's education, work history, length of tenure with the Proposer, and relevant experience with similar projects within the last five (5) years. Resumes shall be limited to two (2) pages per person.
- g. As part of the resume, provide three (3) references for each Key Personnel, with at least one reference coming from a state transportation agency. References shall include current telephone numbers and email addresses.

3.3 Past Performance and Experience (30 pts)

3.3.1 - Provide a narrative response for the Proposer's firm responding to all of the following (if the Proposer is a partnership or a joint venture, provide responses for each partner or member):

3.3.2 - The firm shall have completed two interstate interchange reconstruction, interstate interchange bridge replacement, and/or major interstate bridge overpass projects within the last 10 years. These projects shall include bridge replacement or major rehabilitation work at the respective interchange.

- a. Describe resources and commitment to supporting and ensuring the success of this Project.
- b. Describe experience in construction and management of construction on Highway and projects with similar size, complexity, and challenges as this Project.
- c. Include in the description similarities in scope, schedule, delivery methods, value and the firm's organizational structure utilized on the project(s).
- d. Provide a description of the project(s) highlighting experience with staging interstate roadway and ramp construction.
- e. Provide a description of the project(s) highlighting experience with crossovers and concurrent construction of multiple bridges within a corridor.
- f. Describe experience with alternate project delivery methods, such as Design-Build, CM/GC, CM at Risk, etc.
- g. Describe experience with complex traffic management.
- h. Select up to five (5) and no less than three (3) complete or substantially complete relevant projects to highlight past performance and experience. The relevant projects shall be documented on the Past Performance & Reference Forms attached to this RFP. Each project sheet shall provide, at a minimum, the following:

1. The project/contract name.
2. Location of the project.
3. Description of services provided.
4. Overall construction cost of the project, as applicable, including initial contract value and change orders, including reasons for change orders.
5. Description of project successes and shortcomings.
6. Organizational structure of service delivery under the contract (include the owner's organization as it interfaced with the respondent's contract).
7. Key assigned in-house staff (name and title).
8. Subcontracts (service) used in the performance of the contract.
9. Schedule history (was the project completed on time?).
10. Reference(s).

3.4 Project Approach (30 pts)

Provide a narrative describing the Proposer's planned approach to this Project. Describe each of the following:

- a. Proposer's understanding of the Project.
- b. Discussion of Proposer's approach in providing successful design collaboration and construction services based on prior experience and how it applies to meeting the Project goals. Include specific examples of the firm's processes (estimates, progress reports, schedules, constructability reviews, resource impact minimization, traffic management plans, value engineering studies, forms, cost savings, plan reviews, general conditions budgets, organizational structures, quality control, completion photos, contract structure, etc.).
- c. Construction approach and sequence that optimizes value to the Project with a realistic view of known constraints. Discuss factors that could influence schedule such as outside constraints, traffic management, winter work and maintenance, accelerated schedules, nighttime work, seasonal work, materials, equipment, local resources, and labor availability.
- d. Discuss the approach to converting the northbound ramps from clovers to diamonds, including impacts to traffic.
- e. Discuss the approach to project phasing, access, storage, and earthwork balancing and resulting project site impacts.
- f. Discuss the approach to the fabrication, delivery, and erection of the bridge components.
- g. Describe additional unique resources and capabilities that the Proposer will bring to the Project and how these unique resources and capabilities will be beneficial in achieving the Project goals.
- h. Describe any Project challenges that are anticipated by the firm and how the firm plans to mitigate the risk of these challenges. Discuss the approach to safety during the design and construction phases that will keep both the traveling public and workers safe, including winter maintenance.
- i. Provide a subcontractor or supplier plan that describes the process for identifying elements of work for subcontracting.
- j. Discuss the CM/GC Contractor's approach to developing and maintaining a construction schedule. Specifically addressing the following:
 1. How the CM/GC Contractor will collaborate with the Project Team to integrate and optimize the construction and design schedule.
 2. How the CM/GC Contractor will review, monitor, and make recommended adjustments to the Project design schedule to ensure completion of the Project within the target completion date.

3.5 CM/GC Process Approach (20 pts)

3.5.1 - Describe the process the CM/GC Contractor will use to support the Project Team in eliminating or reducing risk during the Pre-Construction and Construction Phases of the Project. Specifically address the following criteria:

- a. How the firm will identify, price, and mitigate risk.
- b. How the firm will communicate schedule and cost risk to the Project Team.
- c. How the firm will address constructability challenges.

3.5.2 - Pre-Construction Phase Services are expected to be provided in a collaborative team environment. Describe how the CM/GC Contractor will be engaged as a member of the Project Team to:

- a. Collaborate with VTrans and FHWA.
- b. Reduce errors and omissions.
- c. Improve overall quality.
- d. Advise the Project Team on construction impacts of various design alternatives.
- e. Review in-progress design documents and collaborate with the design team with respect to completeness, clarity and constructability.
- f. Advise the Project Team on feasibility, alternative materials/methods, and long lead material and equipment procurements.
- g. Advise on maintainability, service life, and material selection.
- h. Partner on the development of the Project schedule to ensure the goals of the Project are met. The CM/GC Contractor should also include templates or examples of project controls tracking used on similar past projects, and provide comment on the scope identified within Section 5 of this RFP including any suggested changes.

3.5.3 - Describe the estimating process the CM/GC Contractor will use to determine and communicate the cost of each work item and the cost of any associated risk. Specifically describe:

- a. How the firm will assist VTrans to proactively manage the Project cost.
- b. How the firm's cost model will integrate with the VTrans bid items list and Specifications.
- c. How the firm will communicate assumptions, risk, and innovations to VTrans and the independent cost estimator.
- d. An example of the CM/GC Contractor's approach to estimating an item of work with a cost-based analysis that includes labor, equipment, and materials.

3.6 Pre-Construction Services Cost Proposal (Pass/Fail)

3.6.1 - The Proposer shall provide a Cost Proposal intended for use with the Pre-Construction Services Contract. The Cost Proposal shall provide the cost anticipated to complete the Pre-Construction Services work outlined in Section 5. The Cost Proposal shall be broken down to show the estimated number of hours and personnel rates anticipated to complete the Pre-Construction Services work. Only the Cost Proposal of the successful CM/GC will be opened and reviewed. VTrans reserves the right to negotiate the Cost Proposal prior to awarding the Pre-Construction Services Contract.

3.6.2 - Any resulting contract will be based on the approved Cost Proposal. For the purposes of determining the rates to be included in the Contract, Proposer's must provide hourly rates per classification, for providing the necessary services as specified in Section 5. If there are multiple individuals in a classification, please calculate one rate per classification. The rates submitted shall be fully burdened rates. The classifications should be consistent with the information provided in the technical proposal. For sub-Contractors named in the proposal, include classification rates for all sub-Contractor personnel, for review and reasonableness. All sub-Contractors will be billed at cost.

3.6.3 - VTrans will use the submitted cost proposal and rates to evaluate cost reasonableness and realism in the award of the Contract after the qualifications-based selection of the contractor for Contracts is completed.

3.7 Breakdown of Rates (Pass/Fail)

The breakdown of rates shall include:

1. Provide the current direct hourly rates for the key personnel who may be utilized under this agreement grouped by classification titles. The list of individuals should be consistent with the information provided in the technical proposal.
2. Provide a breakdown of all rates by classification title including, direct rate, overhead rate, profit, and fully burdened rates for the key personnel identified in the cost proposal.

Example:

Classification	Direct Rate	Overhead Rate 150%	Profit	Fully Burdened Rates	Overtime Premium	Overtime Total
Biologist	\$40.00	\$60.00	\$8.00	\$108.00	n/a	\$108.00
Botanist	\$27.00	\$40.50	\$5.40	\$ 72.90	\$13.50	\$ 86.40
Other Specify	\$20.00	\$30.00	\$4.00	\$ 54.00	\$10.00	\$ 64.00

This is only an example. Please use this format to present breakdown of rates information.

1. VTrans considers profit as a negotiable item and caps the profit at 10%. Please notify all sub-Contractor(s) of the 10% cap.
2. If there are multiple individuals in a class of labor, please calculate one rate per classification. Include an explanation and justification for the calculation method utilized in calculating that rate.
3. The total (fully burdened) rate provided in this section shall match the total (fully burdened) rate per class of labor as submitted in the Pre-Construction Services Cost Proposal.
4. Overtime Premium is for direct labor rates only. There is no mark up on overhead rate or profit as these items do not incur additional costs. The Overtime premium is for the ½ increase in the direct labor rate. If an employee is not paid an increase rate for overtime hours, then the overtime premium would not be applicable.

3.8 Financial Documentation (Pass/Fail)

3.8.1 - A completed Form AASHTO Internal Control Questionnaire (ICQ) for engineering or design related service (for the prime Contractor), along with required financial statements and indirect cost schedules, shall be provided. The current AASHTO ICQ form can be found on the Vtrans Audit page at <https://vtrans.vermont.gov/finance-admin/audit>.

3.8.2 - The financial information for the Proposer shall be for the most recently completed fiscal year.

3.8.3 - If the Proposer has a completed AASHTO ICQ and current financials are on file already with the VTrans Audit Section, the Proposer does not need to resubmit for this RFP. Any Proposer wishing to verify their financial information should contact the VTrans Audit Section. In accordance with 23 USC § 172 information supplied in compliance with the above financial requirements will be considered confidential.

4.0 EVALUATION PROCESS

All Proposals received will be reviewed according to the responsiveness requirements listed in Section 4.0. The TEC members will receive copies of all responsive Proposals. Each member will review the Proposals independently based on the specified evaluation criteria as per Section 3.0. TEC members will be given time for independent review of the Proposals and completion of evaluation process to support the development of a Short-List of proposers to be interviewed.

4.1 Evaluation of Proposals

Responsiveness Evaluation

4.1.1 - The POC will determine whether Proposals are responsive. Within ten (10) working days of the date of submittal of Proposals, the POC will send by email with confirmed receipt, a written "Notice of Proposal Responsiveness" to all Proposers that submitted a Proposal.

4.1.2 - The Notice shall state, as applicable, that:

- a. As of the date of the Notice, the Proposal is responsive; or
- b. The Proposal fails to comply with the Proposal Responsiveness Requirements set forth in the Project Requirements that must be cured within five (5) working days; or
- c. The Proposal contains Non-curable Proposal Defects as provided below and is rejected as non-responsive.

4.1.3 - Proposals considered responsive pursuant to this Section may still be rejected as non-responsive later if the Proposers fail to satisfy such additional responsiveness requirements as are specified elsewhere in this RFP. The Agency's determination of responsiveness in no way relieves the Proposer from meeting all Pre-Construction Services Contract and Construction Contract requirements listed as part of this RFP.

Non-Curable Proposal Defects

4.1.4 - The POC will reject Proposals as non-responsive, and non-curable, if any one of the following occurs:

- a. The Agency has substantial evidence of collusion by the Proposers, in accordance with FHWA guidelines.
- b. The Proposer adds any provision reserving the right to accept or reject an Award or a Contract.
- c. The Proposer fails to cure the Proposal Responsiveness Requirements.

Curable Proposal Defects

4.1.5 - Proposers must cure, to the satisfaction of the Agency, all Curable Proposal Defects identified in each Notice of Proposal Responsiveness within five (5) working days of the date of receipt of such Notice.

Proposal Scoring

4.1.6 - Each evaluation criterion has an assigned maximum number of points that demonstrates its relative importance. The total Proposal score to each Proposer will be the sum of the scores that each TEC member assigns to that Proposer, divided by the number of TEC members, rounded to the nearest one hundredth of a point.

4.2 Evaluation of Interviews

The interviews will be scored in accordance with the point allocations noted in Sections 3.2 through 3.5. Each TEC member will independently prepare a total interview score. The total Interview score to each

Proposer will be the sum of the scores that each TEC member assigns to that Proposer, divided by the number of TEC members, rounded to the nearest one hundredth of a point.

4.3 Final Scoring

Following the interview scoring, the TEC will meet to discuss the final scores. The final score for each Proposer will be a weighted average of 70% of the Proposal score and 30% of the Interview score. In the event of a tie score, the TEC committee will discuss the strengths and weaknesses in each evaluation criteria as outlined in Section 3.0 for each Proposer. Using a standard scoring sheet, the TEC will develop a consensus score for each evaluation criteria for each Short-Listed Proposer based on both the Short-Lister's Proposal and the Interview. The scores for each category as per Section 3.0 will be added together to become the Final Score.

5.0 SCOPE OF WORK – PRE-CONSTRUCTION PHASE SERVICES

The following Section provides an overview of anticipated services to be provided by the CM/GC Contractor during the Pre-Construction Phase and is presented in an anticipated sequence of events. The specific content of each meeting, sequence of events, and specific review and collaboration is subject to change as the project progresses and coordination among the Project Team evolves.

5.1 Design Collaboration

5.1.1 - The services provided by the CM/GC Contractor are intended to be provided in a collaborative Project Team environment. All members of the Project Team are expected to be engaged continuously throughout the Project Development Process. The CM/GC Contractor shall provide the staff necessary to work collaboratively with VTrans to answer questions and provide recommendations. The services provided include but are not limited to:

- a. Collaborating with Design Team to develop the Project design.
- b. Identifying and mitigating risk through analysis and assessment.
- c. Preparing Project construction schedules.
- d. Developing detailed construction cost estimates.
- e. Developing detailed traffic phasing Plan on I-91 and Route 5.
- f. Innovating efficiencies that can improve schedule, reduce project cost, improve safety, and/or decrease long-term maintenance needs.
- g. Identifying minimization efforts to potentially reduce environmental impacts.
- h. Performing constructability review services.
- i. Identifying advance work packages to assure satisfactory completion of project.
- j. Other tasks requested by VTrans.

5.1.2 - The Work performed by the CM/GC Contractor will comply with Federal, State, and local laws, rules and codes. The CM/GC Contractor shall collaborate, advise, assist, estimate, schedule, and provide recommendations on the construction aspects of the Project. This task includes input into the approach to the Project permitting process and design development packages. The CM/GC Contractor shall provide review of plans, specifications, reports, and other information for the purposes of optimizing schedule, cost, and design options chosen by VTrans. The CM/GC contractor will provide a constructability review and analysis of project details and will bring forward concerns and recommendations related to constructability in order to improve the design and reduce constructability challenges during the construction phase.

5.1.3 - The CM/GC Contractor is expected to participate with the Design Team in Value Engineering (VE) discussions and workshops throughout the Pre-Construction phase of this Project. These VE discussions will focus on Project Goals and the collaborative services listed in this section.

5.1.4 - Cost saving concepts developed through VE discussions may or may not be incorporated into the construction bid documents, at the discretion of VTrans. However, any cost savings presented by, or resulting from participation by, the CM/GC Contractor will not be paid out as a result of the VE Value engineering is an inherent process and benefit of the CM/GC contracting method and is expected to occur throughout the Pre-Construction Phase. Since the CM/GC Contractor is involved in the design development, Value Engineering Proposals (VEP's) are not accepted from the CM/GC Contractor during the construction phase. Standard Specification 105.30 will be revised as part of the construction contract documents to state that value engineering proposals will not be accepted during construction.

5.2 Pre-Construction Phase Kickoff Meeting

The CM/GC Contractor shall meet with the Project Team and ICE, within 30 Calendar Days following the notice to proceed for Pre-Construction Phase Services, to discuss project goals, schedules, anticipated sequence of construction, the CM/GC process, and project risk. This meeting is anticipated to last 8 hours and will be held in-person at VTrans' offices in or near Barre, VT.

5.3 30% - 60% Plans Phase

5.3.1 - Collaboration during this phase of the project will focus on but not limited to the following:

- a. Construction Phasing:
 1. Northbound vs Southbound construction order.
 2. Order of bridge work to be completed.
 3. Project earthwork balancing and soil management/disposition.
- b. Maintenance of Traffic:
 1. Benefits of different crossover layouts.
 2. General traffic control concerns.
 3. Winter maintenance.
- c. Constructability:
 1. On-site staging areas and required access.
 2. Spencer Brook realignment and culvert removal.
 3. Drainage network upgrades.
 4. Bridge 26 removal and construction methods to limit construction access.
 5. Bridge 26 river embankments stone fill construction.
 6. Removal and fill operations of Bridge 27, specifically bin wall concerns.
- d. Site Impacts:
 1. Minimizing impacts to natural resources.
 2. Avoiding right of way impacts private parcels.

5.3.2 - To support this collaboration, the following services are anticipated during this phase of work.

CM/GC Services and Deliverables

5.3.3 - The CM/GC Contractor shall review and provide comment on the following items:

- a. Design Schedule Review. The design schedule sequence, milestones, and durations shall be reviewed. The contractor shall provide review comments to VTrans for consideration; however, the comments may or may not be incorporated at VTrans discretion.
- b. Draft Plans Review. The CM/GC Contractor will perform a detailed constructability review of the entire set of Plans provided with the RFP, focusing on the areas noted previously within this section. The CM/GC Contractor shall provide comments and value engineering concepts

to improve constructability and/or reduce project costs, while also meeting project goals. Specific focus should be on the collaboration items identified for this phase of work. The results of this review shall be provided to VTrans within 30 days following the Pre-Construction Phase Kickoff Meeting.

- c. Construction Approach Memorandum. Following the Pre-Construction Phase Kickoff Meeting, the CM/GC Contractor shall, in a memorandum to the Design Team, outline a detailed approach to construction, identify critical milestones, and recommend revisions to the current phases of construction. The memorandum will be due within 30 Calendar Days of the kickoff meeting. The memo shall discuss methods or steps to achieve the Proposed Work and Project Goals identified in Sections 1.2 and 1.4. Specifically, the memo should discuss:
 1. Traffic Management and Phasing.
 2. Environmental permits or restrictions.
 3. Construction Phasing and Earthwork Balancing.
 4. Value Engineering Recommendations.
 5. On site construction staging opportunities.
 6. Identify perceived risks and opportunities.
- d. Traffic Management Plan. The CM/GC shall participate in the development of traffic control plans, Traffic Management Plan, and the Traffic Management Plan checklist. Refer to the VTrans website for details: <https://vtrans.vermont.gov/highway/work-zone-safety>.

Estimate

5.3.4 - At the 60% Plans milestone, the CM/GC Contractor shall prepare estimated quantity calculations and a cost estimate in accordance with Section 5.6 of this RFP. Quantity calculations shall be prepared, and submitted to VTrans, within two (2) weeks following the 60% Plans milestone. The Construction estimate shall be prepared and submitted to VTrans within two (2) weeks following the quantity reconciliation meeting.

Construction Schedule

5.3.5 - At the 60% Plans milestone, the CM/GC Contractor shall prepare and submit an initial construction schedule in accordance with Standard Specification 633.

Meetings

5.3.6 - The CM/GC Contractor shall prepare for and participate in the following meetings during this phase. Unless otherwise noted, these meetings will be virtual via Microsoft Teams and last approximately 2 hours.

- a. Construction Phasing and Maintenance of Traffic Meeting. Meeting with the Design Team to discuss construction phasing and maintenance of traffic operations comments, resulting from the review of the Draft Plans. This meeting is anticipated to last 4 hours and will be held in-person in or near Barre, VT. At a minimum, the CM/GC Contractor's Project Manager, Work Zone Traffic Engineer, and Superintendent shall attend this meeting.
- b. Construction Staging/Access Meeting. Meeting with the Design Team to discuss construction access points, laydown areas, and onsite impacts as it relates to environmental permits, right of way, and utility relocation. This meeting is anticipated to last 4 hours and will be held in-person in or near Barre, VT. At a minimum, the CM/GC Contractor's Project Manager, Scheduler, Work Zone Traffic Engineer, and Superintendent shall attend this meeting.

- c. Risk Review Meeting. Refer to section 5.7. At a minimum, the CM/GC Contractor's Project Manager, Scheduler, Work Zone Traffic Engineer, and Superintendent shall attend this meeting.
- d. Quantity Reconciliation Meeting. Refer to section 5.6. At a minimum, the CM/GC Contractor's Project Manager, Cost Estimator, Work Zone Traffic Engineer, and Superintendent shall attend this meeting.
- e. Construction Estimate Reconciliation Meeting. Refer to section 5.6. At a minimum, the CM/GC Contractor's Project Manager, Cost Estimator, Work Zone Traffic Engineer, and Superintendent shall attend this meeting.
- f. Ad Hoc Meetings. Up to five (5) additional meetings to be scheduled as necessary to discuss interim progress, unresolved discrepancies, or other topics. The required CM/GC staff member participation will be discussed as meeting topics are identified.

5.3.7 - The Design Team will be responsible for the preparation of agendas and meeting minutes for each meeting.

5.4 60% - 90% Plans, Specifications, and Estimate Phase

5.4.1 - Collaboration during this phase of the project will focus on new materials developed during the 60% - 90% development phase, including:

- a. Any final refinements to discussions held during the previous phase of work (see section 5.3)
- b. Structural details, construction methods, and sequencing of the bridges.
- c. Better defining the construction schedule, including identification of subcontractors, material sourcing, and fabrication lead times. Note these items will only be submitted to help substantiate project costs and schedule, but not for formal approval during the construction phase.

5.4.2 - To support this collaboration, the following services are anticipated but not limited to during this phase of work.

CM/GC Services and Deliverables

5.4.3 - The CM/GC Contractor shall review and provide comment on the following items:

- a. Risks and Opportunities Memorandum. The CM/GC Contractor shall provide to the Project Team a Pre-Construction Phase Evaluation Memorandum within 21 Calendar Days following the receipt of the 60% Plans. The memo should discuss recommendations and identification of risks and opportunities concerning the design schedule, construction schedule, constructability, and other required information based on design development and changes to the Project known at the time, including:
 - 1. Project base construction schedule.
 - 2. CM/GC Contractor's constructability recommendations including construction phasing and traffic control.
 - 3. Opportunities for increased efficiency and/or innovation.
 - 4. Material recommendations and risks warranted by inflation or supply shortages.
 - 5. Bridge design review including a comparison of the risks and benefits of the bridge components and types of construction.
 - 6. Issues regarding planning, management, or execution of the Project.

- b. Design Schedule Review. The remaining design schedule sequence, milestones, and durations shall be reviewed. The contractor shall provide review comments to VTrans for consideration; however, the comments may or may not be incorporated at VTrans discretion. This review should include consideration of the anticipated construction bid date and the influence on mobilization, regulatory work windows, and long fabrication lead times.
- c. 60% Plans Review. The CM/GC Contractor will perform a detailed constructability review of the 60% Plans. The CM/GC Contractor shall provide comments and value engineering concepts to improve constructability while also meeting project goals. Specific focus should be on the collaboration items identified for this phase of work. This review shall be completed within 30-days following the 60% Plans milestone.
- d. Material Sourcing Plan. The CM/GC Contractor shall provide a material sourcing plan, based off the 60% Plans submission, outlining the potential fabricators and suppliers required for the construction of major items and specialty items for the bridges. The material sourcing plan shall identify any materials or items requiring long lead time, such as materials in short supply, with inflationary risks, or posing impact to the critical path of the construction schedule. VTrans, at its sole discretion, may consider early release work packages should they provide a benefit to the project.
- e. Subcontracting Plan. The CM/GC Contractor, in consultation with the Project Team will submit a Subcontracting Plan. The Plan should include a summary of the Project including both Pre-Construction and Construction Phase Services and include information on subcontracting opportunities for DBE firms in keeping with the Project goals. The Subcontracting Plan must show how the established goals will be met or exceeded by the end of the Project. Regular reporting must be provided to the Agency to track the results.
- f. Third-Party Agreements. The CM/GC Contractor shall review and provide comments on third party agreements, such as utility agreements and municipal agreements, as it relates to commitments that influence project constructability, cost, and schedule.
- g. Project Permits. The CM/GC Contractor shall review and provide comments on environmental and construction permit applications and resulting environmental commitments, as it relates to commitments that influence project constructability, cost, and schedule.

Estimate

5.4.4- At the 90% Plans milestone, the CM/GC Contractor shall prepare estimated quantity calculations and a cost estimate in accordance with Section 5.6 of this RFP. Quantity calculations shall be prepared, and submitted to VTrans, within two (2) weeks following the 90% Plans milestone. The Construction estimate shall be prepared and submitted to VTrans within two (2) weeks following the quantity reconciliation meeting.

Construction Schedule

5.4.5 - At the 90% Plans milestone, the CM/GC Contractor shall update and submit their construction schedule in accordance with Standard Specification 633.

Meetings

5.4.6 - The CM/GC Contractor shall prepare for and participate in the following meetings during this phase. Unless otherwise noted, these meetings will be virtual via Microsoft Teams and last approximately 2 hours.

- a. 60% Plans Review Meeting. Meeting with the Design Team to discuss comments produced by the CM/GC Contractor's review of the 60% Plans. This meeting is anticipated to last 4 hours and will be held in-person in or near Barre, VT. At a minimum, the CM/GC Contractor's Project Manager, Scheduler, Work Zone Traffic Engineer, and Superintendent shall attend this meeting.
- b. Bridge Construction Meeting. Meeting with the Design Team to discuss approach to bridge construction, including temporary access, crane locations, and general sequencing. This meeting is anticipated to last 4 hours and will be held in-person in or near Barre, VT. At a minimum, the CM/GC Contractor's Project Manager and Superintendent shall attend this meeting.
- c. Public Presentation. The CM/GC Contractor will present a project construction overview with the Project Manager and Design team. The CM/GC Contractor will contribute graphics explaining construction phasing and provide a summarized construction schedule for presentation. At a minimum, the CM/GC Contractor's Project Manager and Superintendent shall attend this meeting.
- d. Risk Review Meeting. Refer to section 5.7. At a minimum, the CM/GC Contractor's Project Manager, Cost Estimator, Scheduler, and Superintendent shall attend this meeting.
- e. Quantity Reconciliation Meeting. Refer to section 5.6. At a minimum, the CM/GC Contractor's Project Manager, Cost Estimator, and Superintendent shall attend this meeting.
- f. Construction Estimate Reconciliation Meeting. Refer to section 5.6. At a minimum, the CM/GC Contractor's Project Manager, Cost Estimator, and Superintendent shall attend this meeting.
- g. Ad Hoc Meetings. Up to five (5) additional meetings to be scheduled as necessary to discuss interim progress, unresolved discrepancies, or other topics. The required CM/GC staff member participation will be discussed as meeting topics are identified.

5.4.7 - The Design Team will be responsible for the preparation of agendas and meeting minutes for each meeting.

5.5 90% - 100% Plans, Specifications, and Estimate Phase

5.5.1 - Collaboration during this phase of the project will focus on:

- a. Any final refinements to discussions held during the previous phase of work.
- b. Structural details improvements.
- c. Potential deviations from Standard Specifications of Special Provisions.

5.5.2 - To support this collaboration, the following services are anticipated during this phase of work.

CM/GC Services and Deliverables

5.5.3 - The CM/GC Contractor shall review and provide comment on the following items:

- a. Risks and Opportunities Memorandum. The CM/GC Contractor shall provide an update to the risk memo prepared during the last phase of the project.
- b. 90% Plans and Specifications Review. The CM/GC Contractor will perform a detailed review of the 90% Plans and Specifications. The CM/GC Contractor shall provide comments and value engineering concepts to improve constructability while also meeting project goals. Specific focus should be on the collaboration items identified for this phase of work. This review shall be completed within 30 days following the 90% Plans milestone. At a minimum, the CM/GC Contractor's Project Manager, Scheduler, and Superintendent shall attend this meeting.
- c. Material Sourcing Plan. The CM/GC Contractor shall provide an updated material sourcing plan.
- d. Subcontracting Plan. The CM/GC Contractor shall provide an updated subcontracting plan.

Estimate

5.5.4 - At the 100% Plans milestone, the CM/GC Contractor shall prepare estimated quantity calculations and a cost estimate in accordance with Section 5.6 and Section 6 of this RFP.

Meetings

5.5.5 - The CM/GC Contractor shall prepare for and participate in the following meetings during this phase. Unless otherwise noted, these meetings will be virtual via Microsoft Teams and last approximately 2 hours.

- a. 90% Plans and Specifications Review Meeting. Meeting with the Design Team to discuss comments produced by the CM/GC Contractor's review of the 90% Plans. This meeting is anticipated to last 4 hours and will be held in-person in or near Barre, VT. At a minimum, the CM/GC Contractor's Project Manager, Cost Estimator, Scheduler, and Superintendent shall attend this meeting.
- b. Risk Review Meeting. Refer to section 5.7. At a minimum, the CM/GC Contractor's Project Manager, Cost Estimator, Scheduler, and Superintendent shall attend this meeting.
- c. Ad Hoc Meetings. Up to two (2) additional meetings to be scheduled as necessary to discuss interim progress, unresolved discrepancies, or other topics. The required CM/GC staff member participation will be discussed as meeting topics are identified.

5.5.6 - The Design Team will be responsible for the preparation of agendas and meeting minutes for each meeting.

5.6 Cost Estimating

5.6.1 - All cost estimates shall be open book estimates using breakdowns of time, equipment, labor, materials, and overhead. The CM/GC Contractor shall submit quantity calculations and unit cost justification for all bid items. The CM/GC Contractor shall provide the source of construction production rates used to determine the unit costs for the bid items. Estimates will be completed at each major design milestone including, at a minimum, the milestones noted in section 5.3 and 5.4.

5.6.2 - The general workflow for this process shall be as follows:

- a. VTrans will develop the pay item list and provide it to the CM/GC Contractor.

- b. The Design Team and CM/GC Contractor shall independently prepare quantity estimates.
- c. Upon completion of the quantity estimates, the CM/GC Contractor shall submit quantity totals and supporting calculations to the Design team for comparison and reconciliation, as well as identification of any items the CM/GC Contractor believes were omitted from the VTrans-developed pay item list. The threshold for reconciliation will be discussed at each major milestone and will be dependent upon the level of project development.
- d. Following the quantity reconciliation meeting, the Design Team, ICE, and CM/GC Contractor will prepare cost estimates for construction.

5.6.3 - For each estimate, the CM/GC Contractor shall also summarize and submit their estimate in accordance with a bid item list provided by the Agency, anticipated to consist primarily of standard specification items. This summarized estimate will be used to facilitate reconciliation of any variances with the engineer's estimates.

5.6.4 - The level of detail of the estimates at each milestone will depend on the complexity of the Work, design completion, and VTrans design team's determination of final estimate format. The Project construction cost estimate shall be independently prepared by the CM/GC Contractor and shall reflect prices that are current, specific to the location of the Project, and related to the complexity of the Project.

5.6.5 - Following each estimate, the CM/GC Contractor shall participate in meetings with the Design Team and ICE to understand and resolve differences between the estimates. At a minimum, the CM/GC Contractor's Project Manager, Cost Estimator, and Superintendent shall be at these meetings. These estimate reconciliation meetings are also noted in Sections 5.3 and 5.4.

5.7 Project Risk

5.7.1 - Risk is an uncertain event, condition, or need that can have a positive or negative effect on Project Goals, cost, and/or schedule. The CM/GC Contractor shall openly identify, discuss, and document risk with VTrans in an effort to collaboratively address and mitigate project risk. Risk assessment will be a continual effort throughout the Pre-Construction phase.

5.7.2 - Risk identification and management will be a topic at the Pre-Construction Phase Kickoff Meeting. Up to three Risk Management Meetings will be held throughout the Pre-Construction phase to discuss risk mitigation strategies, document newly identified risks, and assign risk responsibility. VTrans will implement and collaboratively maintain, with the CM/GC Contractor, a risk matrix to track all identified project risks. The matrix will identify the risk, effect on the project, risk level, who should be assigned the risk (VTrans, contractor, or shared), probability of occurrence, potential mitigation techniques, and the quantitative impacts to the project.

5.7.3 – VTrans may also implement the use of a risk pool to better document risk ownership, cost and schedule implications, and limitations. The overall intent of the risk pool is to identify, quantify, document, and remove risk associated contingency from the construction bids (Targeted Maximum Price or TMP). Items identified in the risk pool may be added to the TMP as "Not a Bid Item" (or "N.A.B.I.") or into Force Accounts that will be paid to the Contractor only in the event the identified risk occurs. If the risks do not occur or do not occur to the full extent, the Agency retains the corresponding funds. The use of risk pools will be discussed at the first Risk Management Meeting.

5.8 Project Computer Software Requirements

5.8.1 - The Contractor is made aware that this project will utilize Bentley OpenRoads Designer to develop all CAD files and Plan Set sheets. The version will be consistent with that listed on the VTrans website (<https://vtrans.vermont.gov/cadd>) and may require updates to newer versions during

the duration of the project. Note that the Agency does not expect the CM/GC Contractor to work directly within this software, but rather acknowledging the potential need to export/import file formats for compatibility among different software's.

5.8.2 - The CM/GC Contractor's Project Records management program shall include participation in a VTrans' electronic, secure, internet accessible document sharing platform to be used by the Project Team for the submittal, retrieval, and storage of Project Records and deliverables. The CM/GC Contractor will participate in the online document sharing platform throughout the life of the Project.

6.0 CONSTRUCTION BID PROCESS

6.0.1 - When the Agency and CM/GC Contractor mutually determine that the Project has been designed to a sufficient level of detail to allow the CM/GC Contractor to accurately bid the Project, the following procedure will be used:

- a. The VTrans design team, along with CM/GC Contractor, will finalize a contractual set of plans and specifications identifying work to be accomplished.
- b. The CM/GC Contractor will prepare a Targeted Maximum Price (TMP) to perform the work shown, in accordance with Section 5.6.
- c. Concurrently, the Agency or their representative will conduct an Independent Cost Estimate (ICE) for the work, separate from the engineer's estimate.
- d. The CM/GC Contractor will submit their TMP to the Agency.
- e. The Agency will perform a bid analysis to determine the acceptability of the bid based on the information provided by the CM/GC Contractor and in comparing the bid to VTrans bid averages, similar projects, the independent cost estimate, and the engineer's estimate. The Agency representatives reviewing these costs may include:
 1. The VTrans Project Manager.
 2. Members of the Design Team.
 3. The Resident Engineer.
 4. The Independent Cost Estimator.
 5. FHWA.
 6. Other Agency Staff or Consultants.

6.0.2 - If the TMP is acceptable, the Agency will move forward with the approval process for the Construction Contract with the CM/GC Contractor. The commencement of the Construction Phase shall not excuse the CM/GC Contractor from completion of the Pre-Construction Phase Services if such services have not been completed at commencement of the Construction Phase.

6.0.3 - If the TMP is not acceptable, the Agency will enter into a negotiation process that identifies price differences between the CM/GC Contractor and the ICE. The attempt to negotiate the first TMP will be conducted at an in-person meeting with the Agency, CM/GC Contractor, and ICE. Included in this process is an opportunity for the CM/GC Contractor to present and explain assumptions, methods, subcontracting plans, or risk factors associated with the price differences for Agency consideration.

6.0.4 - Following the negotiation discussion, the Project will be rebid by the CM/GC Contractor. The CM/GC Contractor will have the opportunity to provide a TMP up to three times. Subsequent

negotiation attempts will be conducted via virtual meetings using Microsoft Teams. After the third and final attempt at negotiating the TMP, or if the CM/GC Contractor fails to submit a revised TMP within 30 calendar days following the negotiation discussion, the Agency has the option to terminate negotiations with the CM/GC Contractor and procure the Construction Contract by public bidding. If the Project is publicly bid, the CM/GC lead firm will not be allowed to participate and becomes an ineligible Bidder. Subcontractors of the CM/GC Contractor would be allowed to participate in the public bid process; however, the CM/GC Contractor is prohibited from becoming a subcontractor.

6.0.5 - With the acceptance of the CM/GC Contractor's TMP, the Project will proceed in a manner similar to a traditional design-bid-build project as per the requirements of the executed Construction Contract. Prior to authorizing a subcontract, the CM/GC Contractor shall submit a copy of each subcontract for the Agency to review that all pertinent provisions and requirements of the prime contract are included, per the Standard Specifications for Construction.

7.0 RIGHTS AND OBLIGATIONS OF VTRANS

7.1 Reservation of Rights

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

7.2 Exceptions to Terms and Conditions

The proposer must state in the business proposal any exceptions taken to the terms and conditions in this RFP. For each exception the proposer shall identify the term or condition, state the reason for the exception, and provide any other information concerning the exception. Such exceptions, deviations or conditional assumptions may, however, result in rejection of the proposal as unresponsive. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFP 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.

7.3 No Assumption of Liability

By submitting a Proposal, a potential CM/GC Contractor specifically waives the right to bring any action or proceeding against VTrans for the reimbursement of all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All such costs shall be borne solely by each Proposer and its team members.

7.4 Proposal Payment

No payments will be made for any Proposer's time, materials, or other associated costs for preparing and responding to this RFP.

8.0 PROTESTS

8.1 General

This Section sets forth the exclusive protest remedies available with respect to the RFP and the procurement process. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive. These provisions are included in the RFP expressly in consideration of such waiver and agreement by the Proposers.

8.2 Written Protests Only

8.2.1 - All protests must be in writing and must be submitted to VTrans Point of Contact listed on the first page of this RFP

8.2.2 - Any protest not set forth in writing within the time limits specified in these procedures is null and void and shall not be considered. Protests regarding the RFP or the procurement process shall be filed only after the Proposer has informally discussed the nature and basis of the protest with the VTrans POC in an effort to remove the grounds for protest.

8.2.3 - The Agency may, in its sole discretion, discuss the protest with the Proposer and/or accept written submissions before issuing a decision. No formal hearing will be held to address the protest.

8.3 Protest Contents

8.3.1 - At a minimum, all protests must include the following:

- a. The name, telephone number, and address of the Proposer.
- b. The specific legal and/or factual errors that the Proposer alleges were made by the Agency in determining that the Proposer was unsuccessful.
- c. The specific relief sought.
- d. A request to submit additional written evidence and arguments, (if desired); and
- e. A designation of counsel or any other party that will be representing the parties in the protest (if any).

8.3.2 - The Agency has the sole discretion to decide whether to postpone the Procurement Process as a result of the filing of a protest by a Proposer.

8.4 Protest Regarding RFP

8.4.1 - Protests regarding the RFP or the procurement process shall be filed not later than ten (10) working days after the Protestor knows or should have known of the facts giving rise to the protest, but in no event later than the Proposal Due Date, unless the Proposer did not know and should not have known of the facts giving rise to the protest prior to the Proposal Due Date.

8.4.2 - The failure of a Proposer to file a protest to the RFP or the procurement process within the applicable period shall constitute an unconditional waiver of the right to protest the terms of the RFP or the procurement process and shall preclude consideration of that ground in any protest of qualification of a Proposer unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests.

8.5 Protest Prior to Award

When a protest or any subsequent appeal has been timely filed prior to award, the Agency will decide whether or not to post the Notice of Intent to Award the Contract until after the resolution of the protest or appeal unless otherwise provided for by law.

8.6 Protest Regarding Award

8.6.1 - Protests must be filed no later than five (5) working days following the issuance of the Notice of Intent to Award the Contract.

8.6.2 - Failure to file a protest within the applicable period shall constitute an unconditional waiver of the right to file a protest.

8.7 Determination of Protest

8.7.1 - Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except the Secretary of Transportation or their designee in his/her sole discretion, may decide to permit a hearing or argument if the Secretary determines that such hearing or argument is necessary for the protection of the public interest. The Secretary of Transportation or their designee shall issue a written decision regarding the protest within ten (10) working days after VTrans receives the detailed statement of protest. Such decision will be distributed per the method determined by VTrans.

8.7.2 - If the Secretary of Transportation or their designee concludes that the Proposer submitting the protest has established a basis for protest, the Secretary of Transportation or their designee will determine what remedial steps, if any, are necessary or appropriate to address the issues raised in the protest. Such steps may include, without limitation, withdrawing or revising the decisions, delay of the RFP, issuing a new RFP or taking other appropriate actions.

8.7.3 - A decision made by the Secretary, or their designee shall be final.

9.0 ADDITIONAL CONTRACT REQUIREMENTS

9.1 Vermont Access to Public Records Act

9.1.1 - All Proposals submitted to VTrans become the property of VTrans and are subject to the disclosure requirements of the Vermont Access to Public Records Act (1 V.S.A. § 315 - 320) ("Act") including any and all related costs that may be charged and collected relevant to a request under the Act. Proposers are advised to familiarize themselves with the Act. Proposers may also be subject to [Freedom of Information Act \(FOIA\)](#). Federal agencies are required to disclose any information requested under the FOIA unless it falls under one of nine exemptions which protect interests such as personal privacy, national security, and law enforcement. In no event shall the State, the Secretary, or VTrans be liable to a Proposer for the disclosure of all or a portion of a Proposal submitted to VTrans.

If the proposal documents include material that is considered by the proposer to be proprietary and confidential under 1 V.S.A. § 315 et seq., the proposer shall submit a cover letter that clearly identifies each page or section of the proposal that it believes is proprietary and confidential. The proposer 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 proposer if the identified material were to be released.

Additionally, the proposer 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.

9.1.2 - If a responding Proposer has special concerns about information which it desires to make available to VTrans but which the Proposer intends to claim is exempt under the Act, the Proposer should specifically and conspicuously designate such information in its Proposal and provide in writing the basis for the purported exemption. Any such request should be directed to the VTrans POC. The written request shall:

- a. Invoke such exemption upon the submission of the materials for which protection is sought.

- b. Identify the specific data or other materials for which the protection is sought.
- c. State the reasons why the protection is necessary.

9.1.3 - Blanket designations that do not identify the specific information shall not be acceptable and VTrans may therefore determine not to review the material and to simply treat the entire Proposal as public information. Nothing contained in this provision shall modify or amend requirements and obligations imposed on VTrans by applicable law, including but not limited to the Act in particular, and the applicable law(s) shall control in the event of a conflict between the procedures described above and any applicable law(s).

9.1.4 - In the event VTrans receives a request for public disclosure of all or any portion of a Proposal identified as confidential in conformance with this Section, VTrans will make its own determination as to whether or not it considers the requested materials to fall within an exemption to the Act. In the event VTrans determines that such materials do not fall within an exemption under the Act, it will make reasonable efforts to provide the Proposer advance notice of its intent to disclose such materials. Under no circumstances will VTrans incur any liability whatsoever for failing to provide such advance notice or for disclosing information designated confidential in any proposal.

9.2 Conflict of Interest

9.2.1 Conflicts of interest and a real or perceived competitive advantage are described in state and federal law, and, for example, may include, but are not limited to the following situations:

- a. An organization or individual hired by VTrans to provide assistance in development of instructions to Proposers or evaluation criteria for the Project.
- b. An organization or individual with a present or former Contract with VTrans to prepare planning, environmental, engineering, or technical work product for the Project, and has a potential competitive advantage because such work product is not available to all potential Proposers in a timely manner prior to the procurement process.

9.2.2 - Each Proposer shall require its proposed team members to identify potential conflicts of interest or a real or perceived competitive advantage relative to this procurement as well as the CM/GC Construction Contract. Proposers are notified that prior or existing contractual obligations between a company and a federal or state agency relative to the Project or VTrans' CM/GC program may present a conflict of interest or a competitive advantage. If at any time during the selection process or prior to award of the Construction Contract a potential conflict of interest or competitive advantage is identified, the Proposer or CM/GC Contractor shall submit in writing via email the pertinent information to Vtrans to the Point of Contact listed on the first page of this RFP within 24 hours of identification.

9.2.3 - VTrans, in its sole discretion, will make a determination relative to potential organizational conflicts of interest or a real or perceived competitive advantage, and its ability to mitigate such a conflict. An organization or team member determined to have a conflict of interest or competitive advantage relative to this CM/GC program that cannot be mitigated, shall not be allowed to participate in a CM/GC entity for the Project. Failure to abide by VTrans' determination in this matter may result in a Proposal being declared non-responsive or the CM/GC Contractor being ineligible for award of the Construction Contract.

9.2.4 - VTrans reserves the right, in its sole discretion, to make determinations relative to potential conflicts of interest on a project specific basis.

9.2.5 - VTrans may, in its sole discretion, determine that a conflict of interest or a real or perceived competitive advantage may be mitigated by disclosing all or a portion of the work product produced by the organization or individual subject to review under this Section. If documents have been designated as proprietary by Vermont law, the Proposer or CM/GC Contractor will be given the opportunity to waive this protection from disclosure. If a party elects not to disclose, they may be determined to have a conflict of interest or competitive advantage.

9.3 Civil Rights and Labor Compliance

9.3.1 - The Proposer shall comply with the applicable provisions of Title IV of the Civil Rights Act of 1964 as amended, and Executive Order 11246 as amended by Executive Order 11375. The Proposer shall also comply with the rules, regulations and relevant orders of the Secretary of Labor, Nondiscrimination regulation 49 CFR Part 21 through Appendix C. Accordingly, all subcontracts shall include reference to the above.

9.3.2 - DBE Obligation: The State and its Proposer(s) 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. The State and its Proposers shall not discriminate on the basis of race, color, sex, national origin, physical disability or veteran status in the award and performance of USDOT assisted contracts.

9.3.3 - 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 in transportation related projects.

9.4 Vermont Professional License/Registration

9.4.1 - Persons practicing professional engineering services in the State of Vermont must possess a current and in good standing proper registration in accordance with 26 V.S.A. Chapter 20. Current Vermont registration number(s) and expiration date(s) for the individual(s) who would perform the specified engineering services required must be included on the Key Personnel Resume Forms.

9.4.2 - Any Proposer whose team includes an Engineer who does not have applicable Vermont registration(s) MUST acknowledge non-compliance with this requirement and confirm in writing that, if selected for the Project, will expedite acquisition of Vermont registration(s) prior to Notice of Intent to Award. The letter of acknowledgement must be included as part of this proposal submittal and be attached to the Key Personnel Resume Forms.

9.4.3 - The State Office of Professional Regulation can be contacted as follows:

Vermont Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402
Telephone: (802) 828-1505
Website: <https://sos.vermont.gov/opr/about-opr/>

9.4.4 - All drawings, computations, and engineering services performed for the Project shall be prepared by or under the direct supervision of a professional engineer registered by the State of Vermont and shall bear his/her signature and seal in accordance with the Vermont statutes and regulations governing the professional licensing or regulation of engineers and shall signify to the best of his/her knowledge that the drawings, computations and engineering services shall meet the

applicable provisions of the codes and acceptable engineering practices and all applicable laws and ordinances.

9.5 Federal Requirements

Any contract between VTrans and the CM/GC Contractor will conform to the requirements of 23 CFR 635 subpart E found at the following link: <https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-E/>

10 REFERENCE ONLY

1. [Required Contract Provisions- Federal Aid Construction Contracts \(FHWA 1273- Revised 10.23.2023\)](#). Please note this is included as a reference only. The shortlisted bidders will then have the opportunity to submit proposals during the Request for Proposal (RFP) phase, utilizing the Design Bid Build procurement method. The awarded contractor will be required to comply with all provisions outlined in FHWA 1273. Such a provision only pertains to construction contracts. Its important to note that subcontractors shall also comply with such provisions.

11 ATTACHMENTS

- Attachment B: Payment Provisions
- Attachment C: Standard State Provisions for Contracts and Grants dated December 4, 2023
- Attachment D: N/A – Left Intentionally Blank
- Attachment E: N/A – Left Intentionally Blank
- 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 / Consultant
- Attachment L: Vermont Certificate of Compliance Form CA-271
- Attachment M: Contractor's EEO Certification (Form CA-109)
- Attachment N: Executive Order 02-22 Vendor Certification
- Attachment O: Contractor and Sub-Contractor Information Form

12 EXHIBITS

Please note that Exhibit 1, 2 and 3 outlined below can be found following the link:

[https://outside.vermont.gov/agency/VTRANS/external/docs/contractadmin/Construction%20Contracting/CMGC/Springfield%20IM091-1\(83\)_Exhibits.pdf](https://outside.vermont.gov/agency/VTRANS/external/docs/contractadmin/Construction%20Contracting/CMGC/Springfield%20IM091-1(83)_Exhibits.pdf)

1. Exhibit 1: Project Location Map: [Link](#)
2. Exhibit 2: Project Construction Phasing Concepts: [Link](#)
3. Exhibit 3: Project Plans: [Link](#)

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 the contract. Award of a contract does not guarantee payment of any or all the maximum amount

1. Prior to commencement of work and release of any payments, subrecipient shall submit to the State:
 - 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.

A. GENERAL PAYMENT INFORMATION:

1. Contractor will be paid an inclusive hourly classification rate for activities performed and specified in Attachment A of the executed contract.
2. The hourly classification rates listed below will be in effect for the entire original term of the contract (X years). The rates are subject to revision during the first optional one (1) year extension period and will be in effect for both optional one (1) year extensions.
 - i. *An hourly classification rate table will be included in the executed contract.*
3. Addition of classifications are permitted without an amendment. The new classifications and the rates associated must be submitted to the Contract Manager. The Contract Manager will then submit any approved additions to Contract Administration for inclusion into the contract. The Contract Manager may negotiate the classification rates prior to approval. Addition of the new classifications will be captured formally within the contract with the next amendment. This does not apply to rate changes; this is for any new classifications not previously included in the contract.

B. INVOICING AND PAYMENT SCHEDULE

Coversheet:

1. Contractor shall submit a Coversheet with each invoice submission that shall include but not limited to the following:
 - i. Contractor Letterhead
 - ii. VTrans Contract Number
 - iii. Invoicing period
 - iv. Narrative of work completed during the invoicing period that must include the project milestone that was worked on during the period and the percentage in which was completed.
 - v. Attestation
 - vi. Printed Name and Title of each authorized Signatory
 - vii. Electronic Signature and Date
2. If Contractor timesheets, daily work logs, inspection reports, expense sheets or any other documentation require signature for verification and attestation purposes, VTrans will require electronic signatures that include the date of signing. To have the most efficient process when it comes to invoices containing timesheets, verifiable authenticated electronic signatures of the Contractor's Authorized Personnel can be provided on an invoice coversheet instead of each individual document as long as the coversheet includes the following attestation:

"Under the pains and penalties of perjury, the information contained in the documents attached to this invoice are correct and true to the best of my knowledge and belief for the periods indicated".

3. If the Company policy is to sign each individual document and not a coversheet, VTrans ask that each individual signature be a verifiable authenticated electronic signature with date of signature. VTrans understand that this can be a time-consuming process, therefore if individual signatures are on each document but are not electronic, a cover sheet will be required. VTrans only requires the Authorized Contractor's Personnel who are attesting to the accuracy of all the documents and associated invoice to have an electronic signature and date on the coversheet. Individual timesheets and expense reports can have the hard signature of the employee, but the overall attestation must be electronic. Inspection Reports or other reports that require a signature, must include the above attestation and electronic signatures of the authorized Inspector or person preparing the report.

Invoicing:

1. Contractor shall submit monthly detailed invoices itemizing all work performed during the invoicing period, that shall include but not limited to the following. Please note all invoices shall have a unique invoice number and follow a consistent numbering process. Invoices submitted without a unique invoice number will be returned.
 - i. Invoice Number.
 - ii. Dates of Service.
 - iii. Hours of Work Performed.
 - iv. Rate of Pay.
 - v. Total Billed to Date.
 - vi. Total previously Billed.
 - vii. Invoice total.
 - viii. Any other information and/or documentation requested by the State that is appropriate and sufficient to substantiate the amount invoiced for payment by the State.
2. Please note that when invoicing for subcontractor services, a list will be attached in the contract that includes all approved subcontractors under this agreement for verification during invoice review and approval. This list will include any subcontractors named in the proposal and any additional subcontractors that have been added with the proper written approvals.
3. Should any information within the invoice submittal be missing or incorrect, processing may be delayed until a corrected invoice is provided and accepted by VTrans. VTrans Audit may select invoices to review for completeness, accuracy and compliance with contract terms. to meet the minimum requirements as outlined in Attachment A may result in payment being withheld.
4. No invoice time period may span more than one fiscal year. The State fiscal year begins July 1.

C. REMITTANCE ADDRESS

1. Remit Address of Contactor:
 - i. *Contractors remit address will appear here.*
2. The Contractor is responsible for providing the most current remit to information to the Agency of Transportation. If any information changes, please contact Business Support Services at the following e-mail to provide revised information.
AOT.BusinessSupportServices@vermont.gov .

D. INVOICES SHOULD BE SENT ELECTRONICALLY WITH SIGNATURE TO:

Email: aot.contractadministrators@vermont.gov
Atten: Adam Goudreau, Project Manager

If the Contract Manager changes, you will be notified in writing to submit to.

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,

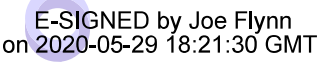
- b. Is a resident co-partner or resident member of a co-partnership or association,
 - c. Is a non-resident individual doing business in Vermont in his or her individual capacity,
 - d. Is doing business in Vermont under any name other than the Contractor's own personal name.
2. This registration must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

Certification for Federal-Aid Contracts

The prospective participant certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) 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.

(2) 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.

This certification is material representation of the 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 Section 1352, Title 31, U.S. Code. 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 failure.

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

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.*

State Contract No.
Federal-Aid Project:

CERTIFICATION OF CONTRACTOR / CONSULTANT

I hereby certify that I am the _____ and duly authorized representative of the firm of _____, whose address is _____, and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or the consideration of any kind for, or in connection with, procuring or carrying out the contract; except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the State Agency of Transportation and the U. S. Department of Transportation, Federal Highway Administration, in connection with this contract involving participation of Federal-Aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Signature

Date

Attachment L

**STATE OF VERMONT
AGENCY OF TRANSPORTATION
CERTIFICATE OF COMPLIANCE**

For a bid/proposal 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: The undersigned certifies under the penalties of perjury under the laws of the State of Vermont and the United States that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid/proposal.

B. DEBARMENT: The undersigned certifies under the penalties of perjury under the laws of the State of Vermont and the United States that it:

1. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency; and
2. Has not within a three-year period preceding this bid/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; and
3. Is 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 2 above; and
4. Has 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.
5. **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 bid/proposal, including whom it applies and dates of action. Exceptions will not necessarily result in denial of award but will be considered in determining bidder eligibility and/or responsibility. Providing false information may result in criminal prosecution or administration sanctions.**

C. BYRD ANTI-LOBBYING: The undersigned hereby certifies, by signing and submitting this bid/proposal, to the best of his or her knowledge and belief, that:

1. 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.

2. 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.
3. 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 as required 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.
4. The undersigned also agrees by submitting its bid/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.

E. 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 the undersigned when the total project costs exceed \$250,000.00.

Bidder is required to self-report the following information relating to past violations, convictions, suspensions, and any other information related to past performance and likely compliance with proper coding and classification of employees. The Agency of Transportation is requiring information on any incidents that occurred in the previous 12 months. Attach additional pages as necessary. **If not applicable, please enter 'Not Applicable' or 'N/A' below.**

Summary of Detailed Information	Date of Notification	Outcome

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

Subcontractor Reporting.

A. **Contracts for Services.** The undersigned hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this solicitation, the undersigned 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), the undersigned will provide any update of such list to the State as additional subcontractors are hired. The undersigned 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.

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

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

This information must be updated as necessary and provided to the State as additional subcontractors are hired. If none, please enter 'Not Applicable' or 'N/A' below.

Sub-Contractor	Insured By	Sub-Contractor's Sub	Insured By

The undersigned 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), and as amended will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

As a duly authorized representative of the bidder, I hereby certify that the information above is true and correct.

Date: _____

Duly Authorized Signature: _____

Name and Title of Person Signing: _____
(Duly Authorized Signer)

Company Name: _____

Company Address: _____

E-Mail Address: _____

Attachment M
STATE OF VERMONT
AGENCY OF TRANSPORTATION

CONTRACTOR'S EEO CERTIFICATION FORM

Certification with regard to the Performance of Previous Contracts of Subcontracts subject to the Equal Opportunity Clause and the filing of Required Reports.

The bidder _____, proposed subcontractor _____, hereby certifies that he/she has _____, has not _____ participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246 as amended, and that he/she has _____, has not _____, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Company	By	Title
---------	----	-------

NOTE: The above certification is required by the Equal Employment Opportunity regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5 (Generally only contracts or subcontracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration, or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Attachment N

State of Vermont

Executive Order 02-22 Vendor Certification

Contractor:

RFP Name OR Contract Number:

Contract Subject Matter/Description:

On March 3, 2022, Governor Phil Scott issued Executive Order No. 02-22, which in part requires a review of all contracts for Russian-sourced goods and goods produced by Russian entities. The Executive Order can be found here: <https://governor.vermont.gov/content/executive-order-02-22-solidarity-ukrainian-people>

The State is required to secure your response to this certification request. You should (1) either check Box A below, or check Box B and complete the associated table accordingly, and (2) sign below certifying that the form is accurate on behalf of your organization with respect to whether Russian-sourced goods and goods produced by Russian entities are being provided to the State of Vermont under the Contract.

- A. Contractor hereby certifies that in connection with the RFP or Contract, none of the applicable goods or services are Russian-sourced goods and/or produced by Russian entities.

- B. If the non-use box is not checked in Section A above, Contractor hereby indicates that certain products provided under this RFP and resulting contract with the Sate of Vermont are Russian-sourced goods and/or produced by Russian entities, as described in the table below.

In addition, identify where indicated in the table, which goods are Russian-sourced and/or produced by Russian entities. An additional column is provided for any note or comment that you may have.

Equipment, Product or Service Provided	Contractor Note of Comment

Attachment O

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	