

STATE OF VERMONT



REQUEST FOR PROPOSALS FOR A STANDARD OFFER FACILITATOR

STATE OF VERMONT REQUEST FOR PROPOSALS

STANDARD OFFER FACILITATOR

RFP RELEASED ON November 14, 2022

Questions due by January 27, 2023

PROPOSAL DUE DATE: January 31, 2023, 2:00 pm

This RFP is issued by:

**The State of Vermont
Public Utility Commission**

**Proposals must be delivered by email to:
Karen Hutchinson, Business Manager
Vermont Public Utility Commission
Puc.businessmanager@vermont.gov**

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I. INTRODUCTION

A. Purpose of this Request for Proposal

The State of Vermont Public Utility Commission (“PUC”) or “Commission”) is releasing this Request for Proposals (“RFP”) to solicit responses from parties interested in providing services as the Standard Offer Facilitator.

The vendor’s primary responsibility will be to perform the duties of the Standard Offer Facilitator pursuant to 30 V.S.A. § 8005a. The specific duties of the Standard Offer Facilitator are further described in Commission Rules, Section 8005a of Title 30, and the Commission’s Orders.

B. Organizational Structure

The **Vermont Public Utility Commission** is a quasi-judicial body responsible for supervising the rates, quality of service, and overall financial management of Vermont utilities. The Commission also seeks to promote state utility policies that best serve the long-term interest of Vermont utility ratepayers with the goal of the provision of high-quality public utility service in Vermont at the lowest present-value life-cycle cost, including environmental and economic costs.

The **Vermont Department of Public Service** (“Department” or “DPS”) is responsible for performing the State of Vermont’s energy planning and public advocacy. It is an executive branch agency independent of the Commission and participates as the public advocate in proceedings before the Commission

C. Project History/Background

Pursuant to 30 V.S.A. § 8005a, the Commission has held annual competitive solicitations to award standard-offer contracts to renewable energy plants of up to 2.2 MW in capacity. The final regular solicitation was held in 2022. The Standard Offer Facilitator is responsible for the administration of the standard-offer program as described in 30 V.S.A. § 8005a, and as implemented through Commission Orders.

D. Vendor Requirements

The following requirements are mandatory and are provided to assist vendors in their decisions to respond to this RFP.

1. The contract resulting from this RFP will adhere to the State of Vermont’s Customary State Contract Provisions provided in **Appendix A**, except that, due to the Standard Offer Facilitator’s financial responsibilities, the Commission is requiring the selected vendor to provide employee dishonesty insurance in addition to the other types of insurance specified in Bulletin 3.5. This employee dishonesty insurance must not exclude

- principals. Upon the completion of contract execution with the Commission, the vendor must acquire this insurance coverage in the amount of at least **\$1,000,000.00** and must provide a copy of the insurance certificate to the State.
2. The vendor may engage in other business activities so long as those activities do not create a conflict of interest. However, any other business activities of the vendor, or its principal employees, must be disclosed in writing to the Commission. The vendors must give the Commission a reasonable opportunity to determine whether any existing or new activity would or might create a conflict of interest. If the Commission reasonably objects to the new line of business, the vendors shall refrain from entering that line of business.
 3. Vendors must commit to a contract with the State of Vermont for a period of two years.
 4. Vendors must have a thorough understanding of the expected duties.
 5. Vendors must have experience performing general accounting duties including tracking receivables and payables, and auditing and reconciling accounts.
 6. Vendors must have strong skills in cash management, fund accounting and reconciliation processes.
 7. Vendors must have expert knowledge of: power contract administration; engineering, operation and commercial financing of power plants; operating rules and procedures of ISO-New England, Inc. (“ISO-NE”) that apply to generators; and methods of financing the restructuring of power purchase contracts.
 8. Vendors must have expertise with Windows operating systems and the capability to store financial records pertaining to Standard Offer Facilitator activity using Windows-based accounting software. A secure backup system is also required.
 9. The selected vendor must provide its own equipment, software, office space, and materials for this project.

II. STANDARD OFFER FACILITATOR DUTIES

The Standard Offer Facilitator will be responsible for the duties outlined below.

A. Clearing House and Information Tasks

The Standard Offer Facilitator will act a clearing house for information about the standard-offer

program. Responsibilities include:

1. Developing and maintaining a standard-offer website that includes a list of projects developed or under development. The web site will also contain other general information such as the requirements to qualify as a standard-offer project, links to Vermont regulators, and information on the services offered by the Standard Offer Facilitator;
2. Providing information on the standard-offer program to the Commission as requested to assist the Commission in preparing reports to the Legislature, and to keep the Commission informed of standard-offer program developments to the extent consistent with the Commission's quasi-judicial role.

B. Administration of the Standard-Offer Program

The Standard Offer Facilitator shall administer the standard-offer program pursuant to 30 V.S.A. § 8005a. Responsibilities include:

1. Providing information to prospective developers and maintaining information about the standard-offer program on a website;
2. Providing information to the public regarding the progress of the standard-offer program. Information will include such things as, the number of projects, the technologies employed, the granularity of the technologies employed, the locations of the projects, etc;
3. Issuing an RFP for standard-offer projects, when directed to do so by the Commission;
4. Reviewing bids for completeness and receiving and holding funds associated with the applications;
5. Executing a standard-offer contract with each project that is entitled to a contract under the standard-offer program. The standard-offer contract shall be in a form approved by the Commission and shall include prices consistent with Commission Orders;
6. Monitoring the progress of standard-offer projects applying under the standard-offer program including compliance with "milestone" dates in the standard-offer contract, and notifying the Commission if a project fails to meet a "milestone" date;
7. Working with projects, distribution utilities, and Vermont Transco to optimize the value to Vermont of projects as they relate to the regional power market. As part of this function, the Standard Offer Facilitator shall assist projects in obtaining "load reducer" designation with ISO-NE when appropriate;
8. Unless precluded by law or Commission order, obtaining title to future Renewable Energy

Credits (“RECs”) from each of the standard-offer projects applying under the standard-offer program and registering each project with the NEPOOL-GIS and with other New England states with active Renewable Portfolio Standard programs;

9. To the extent necessary, arranging for the wheeling of power within Vermont for each standard-offer project generating power pursuant to a contract under the standard-offer program. The wheeling arrangements shall be consistent with requirements set out in Commission Orders;
11. If authorized by the Commission, participating in Commission proceedings related to the possible issuance of a Certificate of Public Good under 30 V.S.A. § 248 for standard-offer projects that have signed a standard-offer contract. In addition, the Standard Offer Facilitator will assist the Commission in proceedings where such participation furthers the accomplishment of other duties under its contract with the Commission; and
12. Other duties related to the implementation and administration of the standard-offer program as assigned by the Commission.

C. Administration of Operational Standard-Offer Projects

The Standard Offer Facilitator will administer the operational standard-offer projects.

Responsibilities include:

1. Ensuring that each standard-offer project is properly metered and has arranged for and installed the proper equipment so that the meter can be remotely interrogated, and monitoring the standard-offer project meters and polling the metering equipment at a frequency sufficient to meet the reporting requirements of the Vermont utilities, VELCO and ISO-NE;
2. Preparing and sending monthly bills to the Vermont utilities documenting the distribution of electricity purchased through the standard-offer program and any associated costs based on the pro-rata share of each of the Vermont utilities;
3. Making monthly payments to the standard-offer projects for power produced in accordance with the standard-offer contracts and any pertinent Commission Orders;
4. Periodically, qualifying the RECs produced by the standard-offer projects with NEPOOL-GIS and with other New England states with active Renewable Portfolio Standard programs, and transferring the RECs to the Vermont utilities in accordance with the prorata share of each of the Vermont utilities. The Standard Offer Facilitator will also allocate capacity and other products to the degree necessary;
5. On a daily basis, preparing reports on estimated project outputs and distributing them to the Vermont utilities;

6. Carrying out other routine administrative duties assigned by contract or order of the Commission, or as required by the standard-offer contracts;
7. Taking appropriate actions concerning projects that at any time are not in compliance with their standard-offer contracts or that may be in jeopardy of financial or other failure. In such circumstances, the Standard Offer Facilitator will attempt to resolve non-compliance using means as the Standard Offer Facilitator deems appropriate in its reasonable discretion. If necessary, the Standard Offer Facilitator may petition the Commission to open a contested case to resolve differences with standard-offer projects or utilities, or differences between standard-offer projects and utilities;
8. Notifying the Commission and the Department of any known significant potential problems and violations or probable violations by a standard-offer project of the terms of an order or approved standard-offer contract. Notification will occur in accordance with the Commission's procedural rules and the notice and due process rights of the parties under any approved standard-offer contract; and
9. Maintaining records of all standard-offer program activity, including at least the following for each standard-offer project: (a) payments made and received; and (b) hourly and monthly KWh production; and (c) RECs produced.

D. Standard-Offer Program Reports

The Standard Offer Facilitator will be responsible for the following reports:

1. Annually (by November 15 of each year), or as directed by the Commission, provide information to the Commission specific to the standard-offer program to update the Commission and assist the Commission in preparing reports to the legislature.
2. Regularly report on expenditures under this contract. Initially, reports shall be submitted monthly. After experience with standard-offer program administration, the Commission intends to authorize the reports to be submitted quarterly. Expenses shall be broken out based upon the same categories and subcategories set forth in the contract with the Commission.

E. Additional Responsibilities

The Standard Offer Facilitator will operate with functional independence for substantial periods of time and will receive little or no routine supervision by the Commission or its staff. However, at the discretion of the Commission, the Standard Offer Facilitator will be subject to the management of, and direction by, the Public Utility Commission or its staff. In addition, proceedings conducted by the Commission may modify the responsibilities, necessary activities, and workload of the Standard Offer Facilitator. The Standard Offer Facilitator may also be required to appear as a party before the Commission in certain circumstances.

F. Accounting and Maintenance of Records

The Standard Offer Facilitator will use accounting (including internal control) and financial reporting systems that conform with generally accepted accounting principles (“GAAP”), as defined by the Governmental Accounting Standards Commission and the Financial Accounting Standards Commission. The Standard Offer Facilitator will maintain adequate records and an accounting of all its financial activities, including without limitation the purchase and sale of electricity, its administrative expenses, and funds or investments under its supervision. The Standard Offer Facilitator will maintain records of energy purchases and energy sales to utilities. The Standard Offer Facilitator will maintain records related to its supervision of QF’s and qualifying standard-offer resources.

G. Financial Reports, Reviews and Audits

For each fiscal year of operations, the Standard Offer Facilitator will use a competitive bidding process to retain an independent accountant to audit its financial reports. The Standard Offer Facilitator will obtain advance approval from the Commission for the accountant selected, the scope of the audit, and the audit contract. The Standard Offer Facilitator will request such approval with reasonable advance notice, given other relevant requirements of its contract with the Commission.

The scope of the audit will be defined by Generally Accepted Government Auditing Standards (“GAGAS”), if so required by the State of Vermont. The auditor’s report will include an opinion on the vendor’s financial statements relevant to its activities as the Standard Offer Facilitator, as well as a written report on internal controls and compliances. The vendor will furnish a copy of the independent accountant’s audit report to the Commission.

The vendor’s books and records relating to its activities as the Standard Offer Facilitator will be available on request for examination by the Commission or its authorized agent. The vendor will also make its relevant financial records, excluding confidential information, available at reasonable times to utilities, and qualifying standard-offer projects.

H. Contract Terms

The anticipated term of the initial contract between the Commission and the vendor will be for a period of two years beginning on July 1, 2023, and ending June 30, 2024, with the Commission reserving the option to renew the contract for a period of two subsequent years.

The Commission reserves the right to cancel the contract with thirty days’ notice to the vendor. The vendor may cancel its contract with the Commission with 12 months’ notice to the Commission. In the event the Commission chooses to contract with another vendor to provide the services of the Standard Offer Facilitator at the end of this contract term or upon cancellation of the contract, the existing vendor will provide reasonable transition assistance to the Commission at reasonable rates of compensation. Under no circumstances will the existing vendor have any right to compensation for

investments or other expenditures that were undertaken pursuant to, or in anticipation of, the extension of the contract.

III. PROPOSAL RESPONSE FORMAT

Vendors are asked to submit their proposals in the following format:

- Transmittal Letter
- Related Experience\Project Approach
- Staff Qualifications
- References
- Business Organization and Staffing
- Cost Proposal

Proposals should provide a straightforward description of the vendor's capabilities in performing the duties included in this RFP.

A. Transmittal Letter

To be considered, vendor proposals must be accompanied by a transmittal letter signed by a person authorized to bind the bidder in the proposal offerings (refer to **Section V.A.12**). The letter must include a statement that the vendor accepts the standard State of Vermont contract provisions (see **Appendix A**), and the terms, conditions, and stipulated administrative requirements included in this RFP.

The transmittal letter must include the vendor information listed below:

- Name of company or individual
- Mailing address
- Street address
- Total bid amount
- Name and title of company contact for questions regarding the proposal
- Contact telephone number, address, fax number, and email address

B. Related Experience\Project Approach

Vendors should describe the methods they will use in performing the specific duties of the Standard Offer Facilitator, which are described in **Section II**. In addition, vendors should specifically describe all proposed equipment, including any metering or monitoring equipment, data processing equipment, accounting software, and electronic backup capability they will use for this project.

Vendors must give a description of their involvement in projects that provide relevant experience directly related to the duties listed in **Section II** of this RFP.

C. Staff Qualifications

Vendors should give a brief description of their firm, including its history, organizational structure, and size. Vendors should also provide a complete description of the staff to be involved in this project and include resumes and qualifications of proposed staff who will be directly responsible for performance of the specific duties of the Standard Offer Facilitator.

D. References

Vendors must provide three references for their business organization and all staff members proposed for this project. Vendors should include the name, title, and contact information, including telephone numbers, for all references provided.

E. Business Organization

Vendors should provide a brief description of their business organization.

F. Cost Proposal

Vendors should provide not-to-exceed (“NTE”) cost proposals for a two-year contract, broken down by calendar year. Alternative cost proposals should be presented, with one proposal based on an hourly rate for services to be performed under the contract, using the estimated average of 40 hours per business week, and one proposal constituting a fixed-price amount for performance of all duties of the Standard Offer Facilitator. Vendors may, in addition, present a cost proposal for a combination of hourly-billing and fixed-price amounts.

If compensation is based on hourly billing, and the Standard Offer Facilitator work requirements do not use the full 40 hours per week, only actual hours may be billed to the State of Vermont. If compensation is based on hourly billing, and the Standard Offer Facilitator is required to work more than 40 hours per week, it will not be eligible for overtime compensation of any type and may bill only for the additional hours at its standard quoted hourly rate.

Vendors should provide an estimate of the number of weekly and annual billable person-hours necessary to perform the duties of the Standard Offer Facilitator.

Vendors should detail all costs not included in the hourly-billing rates or fixed-price amounts for which compensation will be requested.

Vendors should also provide a quotation or estimate of hourly-billing or fixed-price amounts for *outside services* that are not included in the hourly-billing or fixed-price amounts otherwise detailed. Such quotation should:

- identify the nature and purposes of anticipated outside services to be procured;
- describe the type of qualifications the vendor would require of any such provider of

- outside services;
- estimate the annual number of billable hours for which such services would be retained; and
- estimate the hourly-billing or fixed-price amounts that the vendor would expect any such provider to charge.

Vendors' proposals should itemize and clearly separate start-up costs (such as software purchases and system development costs) from ongoing operational costs.

IV. PROPOSAL EVALUATION

A. Evaluation Process

Proposals will be reviewed by the Commission and its staff. Proposals will be evaluated on the following components using a percentage weighted system. Rough approximations of the percentage weight to be given to each component are listed below. Vendors must provide comprehensive responses in all sections of their proposals.

- Staff Qualifications 25%
- Related Experience 25%
- References 10%
- Cost Proposal 40%

B. Finalists

Generally the vendor with the highest scoring proposal is most likely to be awarded the contract; however, the Commission reserves the right to reject any and all proposals, and the final decision to contract with any vendor is at the sole discretion of the Commission. Upon the notification of selection as a finalist in the bid for this contract, vendors may be requested to negotiate certain aspects of their proposals. In addition, vendors should be prepared to give an oral presentation/interview upon the request of the Commission.

V. STIPULATED ADMINISTRATIVE REQUIREMENTS

A. Vendor Instructions

(1) Conformity to Instructions

Vendors must conform with all RFP instructions and conditions when responding to this RFP. The State of Vermont, at its discretion, may reject any nonconforming vendor proposal or response.

(2) Proposal Responses to this RFP

Vendors desiring to participate in this RFP must submit proposal responses with the format and content as outlined.

(3) Vendors Not Submitting Proposals

As a courtesy, vendors provided a copy of this RFP and deciding not to offer a proposal to the State are asked to submit a negative reply to verify their receipt and consideration of this RFP.

(4) Identifying RFP Communications

All proposals and other communications with the Commission regarding this RFP must be submitted by email and clearly identify the RFP title, the contact name and address of the vendor, and an indication of the nature of the communication(e.g., “BID,” “NEGATIVE RESPONSE,” or “QUESTIONS”). Any material received that does not indicate the RFP-related content may be delayed.

Proposals and related correspondence must be delivered to:

**Karen Hutchinson, Business Manager
Vermont Public Utility Commission
Puc.businessmanager@vermont.gov**

(5) Vendor Questions and State Replies

The Vermont Public Utility Commission will reply to any *written* vendor questions received no later than the close of business on **January 27, 2023**. Communications should be clearly identified in accordance with **Section V.A.4** above.

Vendor Questions should be addressed to the attention of:

**Karen Hutchinson, Business Manager
Vermont Public Utility Commission
puc.businessmanager@vermont.gov**

A copy of all pertinent questions and their replies will be posted on the Commission’s website.

(6) Acceptance of Stipulated Administrative Requirements

Vendor proposals must include unequivocal statements accepting the stipulated administrative requirements of this RFP (**Section V.B**) and must reflect compliance with such requirements. Any failure to do so may result in the State’s rejection of the proposal or a portion thereof.

(7) Deviating From RFP Specifications

The State of Vermont may reject any vendor’s proposal, or portion thereof reflecting significant deviation from the specifications of this RFP. Vendors submitting proposals with any minor deviations must identify and fully justify such deviations for State consideration.

(8) Exclusion of Taxes from Prices

The State of Vermont is exempt from the payment of excise and sales taxes imposed by the Federal Government and/or the State. Vendors remain liable, however, for personal property taxes levied by municipalities upon any and all property leased to the State.

(9) Vendor Contacts

The proposal should provide the name, title, address, telephone number, FAX number and email (if available) of the vendor contact person(s) responsible for clarifying proposal content and for approving any agreement (or agreement amendment) with the State of Vermont.

(10) Vendor References

Vendors must provide at least three customer references that reflect similar project experience. References should include current contact name, telephone number, and location.

(11) Validation of Proposal Offerings

The State considers proposals as binding commitments that the State may include by reference into any agreement with a vendor. Therefore, each vendor's proposal must be validated by the signature of a person having such authority to commit the company, and the signer's authority in this regard must be authenticated by a signed statement to that effect by an appropriate high-level company official.

(12) Proposal Completeness

To be acceptable, proposals must contain all required information and statements in the format requested by this RFP. Vendor proposals must submit "no" or "not applicable" responses to any RFP question or information request, when such a response is appropriate.

B. RFP Conditions

(1) Amendment or Cancellation of RFP

The Commission reserves the right to amend or cancel this RFP at any time if, in the Commission's sole judgment, the best interest of the State requires such action.

(2) Proposal Modifications

No additions or changes to any vendor's proposal will be allowed after the proposal due date unless such modification is specifically requested by the State.

(3) RFP Events and Timing

The timing and sequence of events resulting from this RFP will be determined by the Commission. The schedule is planned as follows; vendor contacts will be notified of any amendment to this schedule during the RFP process.

November 14, 2022	RFP Released
January 27, 2023	Last Date for Receipt of Written Questions
January 31, 2023	Proposals Due
March of 2023	Contract Award

(4) Proposal Expenses

The State of Vermont assumes no liability for payment of any expenses incurred by any vendor in responding to this RFP.

(5) Acceptance or Rejection of Proposals

The State reserves the right to accept or reject any or all proposals submitted for consideration in whole or in part, and to waive technical defects, irregularities, or omissions, if, in its sole judgment, the best interest of the State will be served.

(6) Ownership of Proposals

All proposals submitted in response to this RFP will become the sole property of the State of Vermont.

(7) Oral Agreements and Arrangements

Any alleged oral agreement or arrangement made by a vendor with any State agency or employee will be disregarded in any State proposal evaluation or associated award.

(8) Vendor Presentation of Supporting Evidence/Surety

Vendors must be prepared to provide any evidence of experience, performance ability, and/or financial surety that the State deems necessary to fully establish the performance capabilities represented in their proposals.

(9) Vendor Demonstration of Proposed Services

Vendors may be asked to demonstrate specific proposed services or products including program

components, software and hardware included in their responses. Any requested demonstration will be provided at a site approved by the State of Vermont and without cost to the State.

(10) Vendor Misrepresentation or Default

The State reserves the right to reject the proposal of any vendor and avoid any award resulting from this RFP to a vendor who materially misrepresents any product or defaults on any State contract.

(11) State Fiscal and Performance Requirements

Any product acquisition resulting from this RFP must be contingent upon contractual provision for cancellation of such acquisition, without penalty, if the applicable funds are not available for required payment or if the product fails to meet the minimum State criteria for acceptance.

(12) Conformance of Awards with State Statutes

Any award resulting from this RFP must be in full conformance with State of Vermont statutory requirements.

(13) Erroneous Awards

The State of Vermont reserves the right to correct inaccurate awards resulting from its clerical errors.

(14) Public Records

Vendors should be aware that all materials associated with the procurement are subject to the terms of the Vermont Access to Public Records Act (1 V.S.A. Chapter 5, Subchapter 3) and all rules, regulations and interpretations resulting there from, including those from the Commission, the office of the Attorney General of the State of Vermont, and the office of the Vermont Secretary of State, and any other applicable rules, regulations or judicial decisions regarding access to the records of government.

The Commission does not favor the filing of proprietary information in this context. In particular, the Commission does not anticipate that price or rate information will be deemed proprietary. If a vendor believes it necessary to include allegedly confidential material in a bid, **all such materials must be marked "CONFIDENTIAL."**

It will not be sufficient for vendors to merely state generally that the proposal is proprietary in nature and not therefore subject to release to third parties. Those particular pages or sections that a vendor believes to be proprietary and of a trade secret nature must be specifically identified as such and must be separated from other sections or pages of its proposal. Convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated must accompany the proposal. The rationale and explanation must be stated in terms

of the prospective harm to the competitive position of the vendor that would result if the material were to be released and the reasons why the materials are legally exempt from release pursuant to the above cited statute. Vendors must understand and agree that final discretion to release or exempt any or all material so identified rests with the Commission, and that a Commission decision to exempt any information may be subject to judicial review.

All bids submitted in response to this RFP will be open for public review on and after the first business day following the due date for proposals (except as specifically noted immediately above). Any interested person or party may request to view the bids by contacting the Commission's Business Manager, beginning **February 1, 2023**.

(15) Offer of Gratuities

The vendor warrants, represents and certifies that no elected or appointed official or employee of the State of Vermont has or will benefit financially or materially from this procurement. Any contract and/or award arising from this RFP may be terminated by the State if it is determined that gratuities of any kind were either offered to, or received by, any of the aforementioned officials or employees from the vendor, the vendor's agent or the vendor's employees.

(16) Business Registration

Vendors must acquire a valid business registration from the Vermont Secretary of State's Office upon notification of a contract award.

(17) Vermont Tax ID Number

A Vermont business account tax number is required for contractors if the contractor is a corporation or if the contractor, under whatever form of business, has employees who are subject to federal income tax withholding and who perform their services within the State of Vermont. Contracts cannot be executed without a Vermont Tax ID Number.

(18) Joint Ventures

Proposals that request joint ventures between vendors will not be accepted. The State will only enter a contract or award with a prime contractor who will be required to assume full responsibility for the delivery of contracted services outlined in this RFP.

(19) Readiness of Offered Products

All products and services offered in vendor responses to this RFP, including computer software, hardware and program products must be currently manufactured and available for general sale, lease, or license on the date the proposal is submitted.

(20) Inspection of Work Performed

During and after the commencement of this project, the State of Vermont, and its authorized representatives, shall be allowed access to inspect all contractor materials, documents, work papers, equipment and products, deliverables, or any such other items that pertain to the scope of work for this RFP and contract. This requirement also applies to any subcontractors who may be engaged by the vendor.

(21) Collusion

By responding, the vendors implicitly state that the proposal is not made in conjunction with any competing vendor submitting a separate response to this RFP and that it is in all respects fair and without collusion or fraud.

VI. Appendix A
STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

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

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

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

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

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to

the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

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

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

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

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

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

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

- B.** Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C.** Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D.** Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

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

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

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

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

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

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

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

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

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

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

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

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

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

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

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case

that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

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

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

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

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

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

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

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

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

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

32. Requirements Pertaining Only to State-Funded Grants:

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

(End of Standard Provisions)