

## *Request for Proposal (RFP)*

# Public, Educational and Government Access Television Financial Viability Study

The Vermont Agency of Commerce and Community Development (hereinafter the “State”) is seeking proposals to develop and write an analysis of the financial viability for Public, Educational and Government Access television (PEG) that meets the requirements set forth by Act 137, **An act relating to COVID-19 funding and assistance for broadband connectivity, housing, and economic relief - Section 19**

Key RFP Events	Date & Time
<b>Issue Date:</b>	<b>October 13, 2020</b>
<b>Bidder’s Conference:</b>	<b>NA</b>
<b>Questions Due:</b>	<b>October 23, 2020 by 4:00 pm</b>
<b>Proposals Due:</b>	<b>November 5, 2020 by 4:00 pm</b>

**Please be advised all notifications, releases, addenda associated with this RFP will be posted at the following website referencing the same RFP title:**

<https://accd.vermont.gov/about-us/contract-bidding-opportunities>

*The State will not notify interested parties with updated information. It is the bidder’s responsibility to periodically check the web site above for all notifications, releases and addenda pertaining to this RFP.*

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Email: ACCD.Contracts@vermont.gov



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## 1. OVERVIEW:

The Vermont Agency of Commerce and Community Development (hereinafter the “State”) is seeking proposals to develop and write an analysis of the financial viability for Public, Educational and Government Access television (PEG) that meets the requirements set forth by Act 137, **An act relating to COVID-19 funding and assistance for broadband connectivity, housing, and economic relief** - Section 19

- 1.1 **Contract Period.** Contracts arising from this RFP will be for a base period of one year, with the option to renew if necessary and mutually agreeable. The anticipated start date will be November 16, 2020.
- 1.2 **Point of Contact.** All communications concerning this RFP are to be addressed in writing to the contact listed on the front page of this RFP. Actual or attempted contact with any other individual from the State of Vermont concerning this RFP is strictly prohibited and may result in disqualification.
- 1.3 **Bidders’ Conference.** A bidder’s conference is not scheduled for this RFP.
- 1.4 **Question & Answer Period.** Any vendor requiring clarification of any section of this RFP or wishing to comment on any requirement of the RFP must email specific questions in writing to the point of contact by the question deadline, both of which may be found on the cover page of this RFP. Questions or comments not raised in writing on or before the last day of the question period are thereafter waived. At the close of the question period a copy of all questions and answers will be disseminated as an addendum to the RFP and posted on the web address indicated on the cover page. Every effort will be made to respond and distribute this information as soon as possible after the question period ends, contingent on the number and complexity of the questions.

## 2 SCOPE OF WORK:

### 2.1 **Background.**

Through this Request for Proposal (RFP) the Vermont Agency of Commerce and Community Development (hereinafter the “State”) is seeking proposals to develop and write an analysis of the financial viability for Public, Educational and Government Access television (PEG) that meets the requirements set forth by Act 137, **An act relating to COVID-19 funding and assistance for broadband connectivity, housing, and economic relief** - Section 19

*The Agency of Commerce and Community Development shall retain a consultant to review the current business model for Vermont Public, Educational, and Governmental Access (PEG) television channels and provide recommendations concerning how to ensure the future financial stability and viability of PEG channels.*

*(b) The consultant shall prepare a written report that:*

- (1) provides a range of estimates of the projected decline in revenues from cable franchise fees;*
- (2) reviews the budgets of entities that provide PEG services, including salaries, operations, and equipment, and other substantial categories of outlays and expenditures;*
- (3) sets forth and analyzes alternative sources of revenue, including fees levied against voice and broadband providers;*
- (4) sets forth and analyzes ways to contain costs without losing*

*effectiveness, including encouraging or requiring entities that provide PEG services to consolidate administrative functions or share resources and exploring partnership opportunities with other public entities, such as schools;*

*(5) reviews PEG television channel business models from other states; and  
(6) provides recommendations concerning how to ensure the future financial stability and viability of Vermont PEG television channels.*

*(c) On or before January 15, 2021, the consultant shall submit the written report prepared pursuant to subsection (b) of this section to the House Committees on Appropriations and on Energy and Technology and to the Senate Committees on Appropriations and on Finance.*

- 2.2 **DETAILED REQUIREMENTS/DESIRED OUTCOMES:** The work product for this RFP must be prepared in accordance with Act No. 137, Section 19. Including:
- 2.3 Provide a range of estimates of the projected decline in revenues from cable franchise fees: using existing studies, the vendor will produce a 5-10 year projection of declines in revenues from Vermont cable franchise vendors.
- 2.4 Review the budgets of entities that provide PEG services, including salaries, operations, and equipment, and other substantial categories of outlays and expenditures. The purpose of this review is to highlight any category of expense that is available for possible cost efficiencies. ACCD will provide the vendor the budget information and the vendor will analyze alternative sources of revenue, including fees levied against voice and broadband providers. These options shall include the use of connection charges, the telephone personal property tax and Right-of-Way fees, as well as any other alternatives the vendor wishes to present. The basis of this analysis shall include the use of these alternatives in other jurisdictions outside of Vermont and the literature that explores their potential.
- 2.5 Set forth and analyze ways to contain costs without losing effectiveness, including encouraging or requiring entities that provide PEG services to consolidate administrative functions or share resources and exploring partnership opportunities with other public entities, such as schools. The starting point for this section shall be the results of the budget review described in Section 2.2.
- 2.6 Review PEG television channel business models from other states. The starting point for this section is to use review work that has already been published. Follow up discussions with PEG providers in other states is expected.
- 2.7 Provide recommendations concerning how to ensure the future financial stability and viability of Vermont PEG television channels. This concluding section should be based on the results of the review of funding models and possible cost efficiencies identified in sections 2.1 – 2.5.
- 2.8 Prepare a presentation to be made before the Vermont Legislature. The vendor will make a presentation to the Vermont Legislature during the first six weeks of the Legislative session that starts in early January of 2021.
- 2.9 Provide regular updates to a review team organized by the Agency of Commerce and Community Development. In order to ensure progress in this project, a review team will meet with the vendors every two to four weeks after the start of the project.

### **3 GENERAL REQUIREMENTS:**

- 3.1 **Pricing:** Bidders must price the terms of this solicitation at their best pricing. Any and all costs that bidder wishes the State to consider must be submitted for consideration. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored. All equipment shall be delivered assembled, serviced, and ready for immediate use, unless otherwise requested by the State.
- 3.1.1 Prices and/or rates shall remain firm for the base term of the contract. The pricing policy submitted by bidder must be clearly structured, accountable, and auditable; and cover the full spectrum of materials and/or services required.
- 3.1.2 **Cooperative Agreements:** Bidders that have been awarded similar contracts through a competitive bidding process with another state and/or cooperative are welcome to submit the pricing in response to this solicitation.
- 3.1.3 **Retainage:** In the discretion of the State, a contract resulting from this RFP may provide that the State withhold a percentage of the total amount payable for some or all deliverables, such retainage to be payable upon satisfactory completion and State acceptance in accordance with the terms and conditions of the contract.
- 3.1.4 **Cost Estimate Worksheet:** Bidders shall submit their pricing information in the Price Schedule attached to the RFP
- 3.2 **Best and Final Offer (BAFO):** At any time after submission of Responses and prior to the final selection of bidder(s) for Contract negotiation or execution, the State may invite bidder(s) that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process to provide a BAFO.
- 3.3 **Evaluation of Responses and Method of Award:** Awards will be made in the best interest of the State. The State may award one or more contracts and reserves the right to make additional awards to other compliant bidders at any time if such award is deemed to be in the best interest of the State. All other considerations being equal, preference will be given first to resident bidders in the New England region and then to bidders who have practices that promote clean energy and address climate change, as identified in the applicable Certificate of Compliance.
- Evaluation Criteria: Consideration shall be given to the Bidder's experience, breadth of work, demonstrated technical ability and past work.
- 3.4 **Executive Order 05-16: Climate Change Considerations in State Procurements:** For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.
- 3.4.1 After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.
- 3.5 **Statement of Rights:** The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Vendors may be asked to give a verbal presentation of their proposal after submission. Failure of vendor to respond to a request for additional

information or clarification could result in rejection of that vendor's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

### 3.6 **Contracting Requirements:**

- 3.6.1 The awarded bidder(s) will be expected to enter into a contractual agreement with the State. The contract will obligate the bidder to provide the services and/or products identified in this RFP and their respective bid.
- 3.6.2 The awarded bidder(s) must be registered with the Vermont Secretary of State to do business in the State of Vermont. This includes out-of-state bidders.
- 3.6.3 The awarded bidder will agree to comply with the provisions set forth in Attachment C-Standard State Provisions for Contracts and Grants and Attachment D-Other Contract Provisions which are attached to this RFP for reference provided herein.
- 3.6.4 Payment Terms shall be Net 30 days upon receipt of accurate invoice and applicable supporting documentation. All invoices are to be rendered by the Vendor on the Vendor's standard billhead and forwarded directly to the institution or agency ordering materials or services. Invoices shall specify the remittance address and State contract number. Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

## **4 CONTENT AND FORMAT OF RESPONSES:**

The content and format requirements listed below are the minimum requirements for State evaluation. These requirements are not intended to limit the content of a bidder's proposal. Bidders may include additional information or offer alternative solutions for the State's consideration. However, the State discourages overly lengthy and costly proposals, and bidders are advised to include only such information in their response as may be relevant to the requirements of this RFP.

### 4.1 ***Cover Letter.***

- 4.1.1 **Confidentiality:** To the extent your bid contains information you consider to be proprietary and confidential, you must comply with the following requirements concerning the contents of your cover letter and the submission of a redacted copy of your bid (or affected portions thereof).
- 4.1.2 The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under the State's Public Records Act, 1 V.S.A. § 315 et seq., the bidder shall submit a cover letter that clearly identifies each page or section of the response that it believes is proprietary and confidential. The bidder 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 bidder if the identified material were to be released. Additionally, the bidder 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.

4.1.3 Exceptions to Contract Terms and Conditions: Samples of the State’s Standard Contract Form and Applicable Attachments are provided for the bidder’s reference. If the bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. 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. Note that exceptions to contract terms may cause rejection of the proposal.

4.2 **Background & Experience.** Provide a succinct description of:

4.2.1 Business organization, company size and resources

4.2.2 Experience relevant to the proposed project and list all current or past State projects

4.3 **References.** Provide the Company name, address, point of contact and phone numbers of three companies with whom you have transacted similar business in the last 12 months. Please provide the point of contact who can talk knowledgeably about performance.

4.4 **Certificate of Compliance.** This form must be completed and submitted as part of the response for the proposal to be considered valid.

4.5 **Pricing.** Bidders shall submit their pricing information in the Price Schedule attached to the RFP.

## **5 BID PROPOSALS:**

**5.1 Submission Format.** Submit all bid proposals electronically. **No hard copies or faxes will be accepted.** *(During the pendency of the State emergency relating to Covid-19, State office buildings are locked or otherwise closed to the public. Therefore, bids will not be received by means of courier or in-person delivery.)*

5.1.1 Bids must be submitted in PDF File Format

5.1.2 Bidders must submit bids via email to [ACCD.Contracts@vermont.gov](mailto:ACCD.Contracts@vermont.gov)

5.1.2.1 The PDF file may be attached to the email, or

5.1.2.2 Provided via a download link within the email

5.1.3 The email subject line must read “**Public, Educational and Government Access Television Financial Viability Study**”

5.1.4 The email must be received by the closing date and time found on the cover of this RFP.

5.1.5 The bid document must be a single digitally searchable PDF with the following naming convention <<**Vendor Name- Public, Educational and Government Access Television Financial Viability Study**>> . The PDF attachment must contain all components of the bid. Multiple emails and/or multiple attachments will not be accepted.

**5.2 Closing Date.** Bids must be received by the proposal due date, time and location specified on the front page of this RFP. Bidders are cautioned to initiate mailing in sufficient time to insure receipt by the due date. Courier and hand delivered bids must be delivered to a representative of the issuing State Agency or Department identified on the cover of this RFP. Late submissions will be returned to the bidder unopened.

**5.3 Public Bid Opening.** In accordance with the State of Vermont’s health and safety measures employed to mitigate the spread of COVID-19, a public (in-person) bid opening will not be held. The State will post results on the same web site as this RFP and identified on the cover page. Results will list the bidders

from whom proposals were received timely and their respective city and state. Bid results are public record but only available for disclosure upon contract execution.

Certain circumstances, such as inclement weather, may force the State to change the bid opening (bid due date and time) late in the process and/or close to the due date and recommends bidders frequently check the website where the RFP was posted for updates which are released and issued as an addendum to the RFP. If weather is of concern, please call the point of contact to inquire if a change in due date has been issued.

## **6 ATTACHMENTS:**

6.1 Certificate of Compliance Form (*Required with Bid Submission*)

6.2 Price Schedule (*Required with Bid Submission*)

6.3 Sample State of Vermont Contract Document

State of Vermont Standard Contract for Services

Attachment A – Scope of Work

Attachment B – Payment Provisions

Attachment C – Standard State Provisions for Contracts & Grants

Attachment D – Other Contract Provisions for IT Services

Attachment E – State of Vermont Federal Terms Supplement (non-construction)

*The sample contract document is provided to afford the bidder awareness and understanding of the State's contract format, terms, conditions and standard provisions required of the awarded bidder. Be advised, some of the terms, conditions and provisions may impact the bidder's proposal. For example (though not exclusively), "Attachment C – Standard State Contract Provisions for Contracts & Grants" outlines the insurance requirements the awarded vendor will need to procure.*

# CERTIFICATE OF COMPLIANCE

*This form must accompany your Bid*

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

- A. **NON-COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.
  
- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including the terms outlined in the sample State of Vermont Standard Contract for Services and associated attachments.
  - 1. Bidder agrees to the provisions set forth in the State of Vermont’s Standard Contract Attachment C – Standard State Contract Provisions, and Attachment D – Other State of Vermont Contract Provisions
  - 2. Bidder (except an individual doing business in his/her own name) agree to register with the Vermont Secretary of State’s office <http://www.sec.state.vt.us/tutor/dobiz/forms/fcregist.htm>
  - 3. Bidder agrees to obtain a Contractor’s Business Account Number issued by the Vermont Department of Taxes <http://tax.vermont.gov/>.

C. **ADDENDA:** Acknowledge receipt of Addenda associated with thisRFP:

Addendum No.:	_____	Dated:	_____
Addendum No.:	_____	Dated:	_____
Addendum No.:	_____	Dated:	_____

D. **VERMONT TAX CERTIFICATE:** To meet the requirements of Vermont Statute 32 V.S.A. § 3113, by law, no agency of the State may enter into, extend or renew any contract for the provision of goods, services or real estate space with any person unless such person first certifies, under the pains and penalties of perjury, that he or she is in good standing with the Department of Taxes. A person is in good standing if no taxes are due, if the liability for any tax that may be due is on appeal, or if the person is in compliance with a payment plan approved by the Commissioner of Taxes, 32 V.S.A. § 3113

In signing this bid, the bidder certifies under the pains and penalties of perjury that the individual or company is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes owed the State of Vermont.

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**E. BIDDER INFORMATION & CERTIFYING SIGNATURE**

Vendor Name: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Fax: \_\_\_\_\_

email: \_\_\_\_\_

Vendor Website: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**END OF CERTIFICATE OF COMPLIANCE**

# PRICE PROPOSAL

*This form must accompany your Bid*

1. The bidder hereby acknowledges they have read, understand and agree to the terms of this RFP.
2. The bidder hereby acknowledges they have read, understand and if awarded agree to the State’s standard contract conditions and requirements; and procure the required insurance provisions as set forth.
3. Bidder’s Price Proposal must be valid for a minimum of 30 days.
4. Price Proposal: The base contract term is one year.
5. Cost Itemization (add/delete rows as needed)

	Job Title	Hourly Rate	Hours	Subtotal
1.		\$		\$
2.		\$		\$
3.		\$		\$
4.		\$		\$
5.		\$		\$
6.		\$		\$
7.		\$		\$
8.		\$		\$
9.		\$		\$
10.		\$		\$
11.		\$		\$
12.		\$		\$
	<b>Total Project Cost:</b>			<b>\$</b>

6. Rate or percent increase (if necessary) for two optional 12-month renewals:  
 Renewal Option 1 (Year 2) rate or percent increase not to exceed: \_\_\_\_\_

7. **Expenses** incurred in relation to this project are not reimbursable.
8. **Vermont Tax Certificate:** To meet the requirements of Vermont Statute 32 V.S.A. § 3113, by law, no agency of the State may enter into, extend or renew any contract for the provision of goods, services or real estate space with any person unless such person first certifies, under the pains and penalties of perjury, that he or she is in good standing with the Department of Taxes. A person is in good standing if no taxes are due, if the liability for any tax that may be due is on appeal, or if the person is in compliance with a payment plan approved by the Commissioner of Taxes, 32 V.S.A. § 3113.

In signing this bid, the bidder certifies under the pains and penalties of perjury that the company / individual 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 as of the date this statement is made.

**9. Bidder Information & Signature:**

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Vendor Name:

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Authorized Agent Signature:

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Date:

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Printed Name:

# STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, \_\_\_\_\_ (hereinafter called "State"), and \_\_\_\_\_, with a principal place of business in \_\_\_\_\_, (hereinafter called "Vendor"). Vendor's form of business organization is \_\_\_\_\_. It is Vendor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Vendor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of \_\_\_\_\_. Detailed services to be provided by Vendor are described in Attachment A.

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

4. **Contract Term.** The period of Vendor's performance shall begin on \_\_\_\_\_, 20\_\_\_\_, and end on \_\_\_\_\_, 20\_\_\_\_.

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

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

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

8. **Attachments.** This contract consists of \_\_\_\_\_ pages including the following attachments which are incorporated herein: \_\_\_\_\_

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C - Standard State Provisions for Contracts & Grants (revision date 12/15/2017)

Attachment D - Other State Contract Provisions

Attachment E - State of Vermont Federal Terms Supplement (non-construction)

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

- (1) Standard Contract
- (2) Attachment C
- (3) Attachment D
- (4) Attachment E
- (5) Attachment A
- (6) Attachment B

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT**

**STATE OF VERMONT:**

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VENDOR:**

Date: -  
Signature: -  
Name: -  
Title: -

## ATTACHMENT A – STATEMENT OF WORK

Scope of work to be performed:

1. The Vendor shall: \_\_\_\_\_
2. The State shall \_\_\_\_\_

SAMPLE

## ATTACHMENT B – PAYMENT PROVISIONS

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

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

# ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

REVISED DECEMBER 15, 2017

**1. Definitions:** For purposes of this Attachment, “Party” shall mean the Vendor, 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)

**ATTACHMENT D**  
**OTHER STATE OF VERMONT CONTRACT PROVISIONS**

1. **Cost of Materials.** Contractor will not buy materials and resell to the State at a profit.
2. **Ownership of Equipment.** Any equipment purchased or furnished to the Contractor by the State under this Contract Agreements provided on a loan basis only and remains the property of the State.
3. **Publications.** Contractor shall submit any and all notices, information pamphlets, press releases, research reports or other like publications prepared by the Contractor to the State for review and approval prior to release.
4. **Copyright:** Upon full payment by the State, all products of the contractor's work, including but not limited to outlines, reports, charts, sketches, drawings, artwork, plans, photographs, specifications, estimates, computer programs, or similar documents, becomes the sole property of the State of Vermont and may not be copyrighted or resold by Contractor. The Contractor will exercise due care in creating or selecting material for publication to ensure that such material does not violate the copyright, trademark, or similar rights of others. To the extent the Contractor uses copyrighted materials in performance of work under this Contract, the Contractor shall document and provide the state with the precise terms of the licensed use granted to the State by the owner of the copyright for future use of the copyrighted material. The Contractor shall not use any copyright protected material in the performance of the work under this contract that would require the payment of any additional fee not contemplated herein for present or future use of the same by the State.
5. **Contractor's Liens.** Contractor will discharge any and all contractors or mechanics' liens imposed on property of the State through the actions of subcontractors.
6. **State Minimum Wage.** The Contractor will comply with state minimum wage laws and regulations, if applicable.
7. **Equal Opportunity Plan.** If they are required by the Federal Office of Civil Rights to have a plan, the Contractor must furnish a copy of the approval of their Equal Opportunity Plan upon request.

(End of Attachment D)

# ATTACHMENT E

## STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction)

### for all Contracts and Purchases<sup>1</sup> of Products and Services Connected with 2020 Pandemic

#### **BYRD ANTI-LOBBYING AMENDMENT**

Contractors who apply or bid for an award of \$100,000 or more certify that each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient who in turn will forward the certification(s) to the awarding agency

#### **PROCUREMENT OF RECOVERED MATERIALS**

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated Items unless the products cannot be acquired-

1. Competitively within a time frame providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

#### **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
4. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
5. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
6. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. **a.** Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

#### **CONTRACTOR BREACH, ERRORS AND OMISSIONS**

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<sup>1</sup> These terms, developed by the Vermont Attorney General's Office, are to be included, without any changes, in all contracts, and any amendments to contracts, intended or expected to be used in connection with the State of Vermont's response to the 2020 Pandemic. THESE TERMS ARE ALSO TO BE USED AND ADDED FOR ANY **TRANSACTIONS**, SUCH AS BUT NOT

ONLY PURCHASE ORDERS, TAKING PLACE UNDER AN EXISTING CONTRACT, IF THE PURCHASE IS FOR THE PANDEMIC AND IF THERE IS ANY POTENTIAL DOUBT AS TO WHETHER THE OVERLYING CONTRACT HAS THESE TERMS. These terms and conditions shall also be added in instances in which a purchase without formal contract is otherwise duly authorized.

1. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance.
2. Neither the States' review, approval or acceptance of nor payment for, the services required under this contract shall 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.
3. 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.

## **TERMINATION FOR CONVENIENCE**

### **1. General**

- a. Any termination for convenience 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.
- b. 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.
- c. No compensation will be allowed for items eliminated from the Contract.
- d. Termination of the Contract, or portion 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 the State, the Contractor shall immediately proceed to:

- a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
- b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- d. Transfer to the State 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 the State.
- e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.
- f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.

### **3. Claim by Contractor**

- a. After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-day period, the State may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

### **4. Negotiation**

- a. Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. 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/or 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.