



STATE OF VERMONT
LEGISLATIVE JOINT FISCAL OFFICE

REQUEST FOR PROPOSAL

VERMONT - PROVISION OF CORRECTIONS HEALTH CARE

ISSUE DATE: July 16, 2018

QUESTIONS DUE BY: July 27, 2018

DUE DATE: August 10, 2018

CONTACT: Nolan Langweil

Legislative Joint Fiscal Office
1 Baldwin Street
Montpelier, Vermont 05633
(802) 828-2295
JFORFP@leg.state.vt.us

The State will make no attempt to contact vendors with updated information. It is the responsibility of each vendor to periodically check http://www.leg.state.vt.us/jfo/corrections_health_care.aspx for any and all notifications, releases, and amendments associated with the RFP.

1. OVERVIEW:

1.1. BACKGROUND:

Act 11 (H.16) of 2018 Special Session requires the Joint Fiscal Office (JFO), to review and evaluate the policies, contracts, and processes the Department of Corrections (DOC) uses to deliver health care services to assess whether current costs are excessive.

1.2. CONTRACT PERIOD:

The proposed start date is after mid-late August 2018, with an initial work plan outline due by mid to late September, with additional deliverables and meetings to be specified in the contract. A draft report for internal use is due on or before December 10, 2018; the final report is due on or before January 15, 2019. Following submission of the final report, the contractor will be available for up to three days for presentations of the report to legislative committees to be scheduled between January 15 and February 15, 2019.

1.3. QUESTIONS:

Any consultant requiring clarification of any section of this proposal or wishing to comment on any requirements or other portion of the RFP should direct their inquiry to JFORFP@leg.state.vt.us no later than 5:00 p.m. on July 27, 2018. Responses to questions will be posted on the JFO website at http://www.leg.state.vt.us/jfo/corrections_health_care.aspx.

1.4. INSTRUCTIONS FOR BIDDERS: See sections 5 and 6 of this RFP.

2. DETAILED REQUIREMENTS:

2.1. BACKGROUND:

Sec. E.127 of Act 11 (H.16) of 2018 Special Session requires the Joint Fiscal Office (JFO), in coordination with Legislative Council to review and evaluate the policies, contracts, and processes the Department of Corrections (DOC) uses to deliver health care services to assess whether current costs are excessive. The evaluation shall include a review of whether there is potential for the State to achieve savings in providing health care services to inmates and whether the State is contracting for appropriate services.

The JFO is authorized to contract for all or part of the review and evaluation and shall receive the assistance of the Agency of Human Services and other relevant State government entity, as needed.

The JFO shall submit an update on the review and evaluation to the Joint Legislative Justice Oversight Committee on or before November 1, 2018 and a final report to the Legislature on or before January 15, 2019.

2.2 SCOPE OF WORK:

To assist the Joint Fiscal Office in meeting this requirement the JFO is seeking request for proposals from one or a combination of the following: commercial management consulting entities; public policy research organizations; academic institutions; and/or organizations that specialize in corrections-related services, including health care provision for incarcerated populations. The scope of work for this RFP has three main components as follows:

(1) MULTI-STATE COMPARISON OF CORRECTIONS HEALTH CARE SYSTEMS AND COSTS

The contractor is expected to conduct research on the specific corrections health care models and costs in eight to ten states for comparison to Vermont. Eight of these states are identified, which include the five other states with a unified corrections system (Alaska, Connecticut, Delaware, Hawaii, and Rhode Island) and the three remaining New England states (Massachusetts, Maine, and New Hampshire). Information from up to two additional states or other countries may be added if these states/countries are deemed significantly similar in some respects to Vermont and add value to the analysis.

This multistate data collection and analysis will include, to the extent possible, information on the areas listed below as well as any other areas the contractor deems as pertinent for completing a thorough and accurate assessment consistent with the intent of Sec. E.127 of Act 11 of 2018 special session. This research should include but not be limited to documented, direct interviews of knowledgeable persons within each state as well as review of recent existing studies and documents available on the corrections systems and corrections health care systems in each state researched.

Data Collection and Analysis: State-Specific Provision of Prison Health Care Services

- State-specific corrections health care cost data
- Scope of health care services provided
- Break out of costs for individual services, ideally calculated as per inmate per month (PIPM) rate.
- Description of the corrections health care service delivery model used in each state.
- How each state's correctional healthcare system addresses the following:
 - Continuity Of Care, with regard to providing ongoing treatment for individuals who are admitted to, and released from DOC custody.
 - Care Planning, which aids the ability to coordinate and manage care for individuals as they transition between the community and correctional facilities.
 - Women's Health, health care issues and costs, adequacy of services, unique circumstances and challenges specific to incarcerated women.
 - Data Sharing, which facilitates the availability of individual health information within and between the community and DOC facilities.
 - Standardization Of Procedures For Prior Authorization And Utilization Management.

- Data Collection And Metrics, collected and monitored to achieve transparency, establish accountability, and improve performance.
- Continuous Quality Improvement, through regular auditing, reviews of sentinel events, and performance-based indicators.
- Governance and oversight of the health services staff.
 - Health services staffing matrices, by facility, position, FTE, and annual cost.
 - Administrative costs/overhead and vendor profit margin.
 - Procurement methods and contract management.
 - Status of the National Commission on Correctional Health Care (NCCHC) accreditation for prisons
 - Assessment/Ranking on:
 - Capacity – how well the corrections healthcare system operates, ability to hire, vacancy levels

The multistate research should also include contextual information on each states baseline demographics, overall approach to criminal justice, and overall corrections system.

(2) REVIEW VERMONT PROCUREMENT PROCESSES FOR INMATE HEALTHCARE

The contractor will review current and past processes regarding the procurement of healthcare services for the Vermont incarcerated population. This will include interview of Vermont Department of Corrections personnel, review of contract documents, RFPs issued, correspondence with contractor, and financial data. The contractor will provide an assessment and recommendations on the procurement and contract management of the Vermont DOC.

(3) CONSULT WITH JFO ON EVALUATION METHODS

The contractor will consultant with the JFO on the following:

- Work plan outline and timeline
- How to compare corrections health care costs on a consistent basis
- Understanding Vermont’s incarcerated population health status compared to other states.
- Identify possible policy levers that could reduce corrections’ health care costs.
- Identify ways to achieve economy of scale:
 - Example - calculating potential savings for a single state corrections campus, strategies for release and transition, etc.

3. GENERAL REQUIREMENTS:

3.1. INVOICING:

All invoices must be submitted by the consultant on the consultant's standard billhead and forwarded directly to the Joint Fiscal Office. The invoice shall specify the address to which payments will be sent.

3.2. CANCELLATION:

The State specifically reserves the right to cancel the contract, or any portion thereof, if, in the opinion of the Legislature's Chief Fiscal Officer, the services or materials supplied by the consultant are not satisfactory or are not consistent with the terms of the contract.

3.3. EVALUATION CRITERIA:

Proposals will be evaluated on how the project plan elements (direct field research and review of existing reports and studies) meet the scope of work within the timeline specified as well as the independence, experience and qualifications of the key personnel and project team assigned to the project and other specifications in this RFP.

3.4. CONFIDENTIALTY:

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

3.5. CONTRACT TERMS:

The selected consultant will sign a contract with the Joint Fiscal Office to provide the evaluation named in their response at the price listed or agreed upon. The contract will include the standard State provisions described in Attachment B. The terms and conditions from this RFP and the consultant's response will become part of the contract. This contract will be subject to review throughout its term. The State will consider cancellation upon discovery that the consultant is in violation of any portion of the agreement, including an inability by the consultant to provide the services offered in their response.

3.6. STATEMENT OF RIGHTS:

The State reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Failure of a bidder to respond to a request for additional information or clarification could result in rejection of that bidder's proposal. To secure a project that is deemed to be in the best interests 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.

3.7. TAXES:

Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items. If taxes are to be applied to a purchase it must be so noted in the response.

3.8. ORDER OF PRECEDENCE:

The order of preference for documentation will be the contract and attachments, the RFP, and the contractor's response and any amendments.

3.9. AMENDMENTS:

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 the consultant.

3.10. NO-COLLUSION:

The State is conscious of and concerned about collusion. It should therefore be understood by all that in signing bid and contract documents they agree 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 consultant. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, all bidders should understand that this paragraph might be used as a basis for litigation.

4. **BIDDER RESPONSE CONTENT AND FORMAT:** The content and format requirements listed below are the minimum required for our evaluation. They are not intended to limit the content of the proposals; bidders may include additional information or offer alternatives that may be considered.

4.1. NUMBER OF COPIES:

Submit one original and two copies unless submitting electronically as a PDF.

4.2. BACKGROUND AND EXPERIENCE:

Provide a description of your technical experience and qualifications, including a list of any work done for other entities in Vermont. The bidder shall disclose any current or planned contracts or relationships with any Vermont State agencies or departments or other entities that may be directly or indirectly relevant to this work.

4.3. PROJECT PLAN:

Describe the project management structure. Submit a plan for major project milestones and timing of periodic updates for approval to the Joint Fiscal Office. Describe the

process for involving and soliciting input from other states and key stakeholders in the State.

4.4. PROJECT STAFFING:

Describe the qualifications of key personnel and the role each of them is expected to play. Describe the assistance you expect from Vermont State employees, including legislative and agency staff, as well as from other Vermont stakeholders. The legislation provides for some assistance from legislative staff and State agency personnel, but this should supplement, not substitute for, expertise on the consultant's team.

4.5. DATA SETS AND MODELS:

Summarize the analytic approaches and data sets you expect to use for this evaluation including the factors set forth in the legislation. Include as part of the project plan the approaches to collecting data needed from other states within the time period of the project.

4.6. REFERENCES:

Provide names, addresses, and telephone numbers of at least two clients with whom you have transacted similar business in the last three years. You must include contact names who can speak knowledgeably about your performance.

4.7. PRICING:

Any and all costs that you wish the State to consider must be submitted. The cost structure for the project should be described including billing rates and estimated hours for key staff, payments to any subcontractors, overhead rates, and estimated nonsalary expenses, including travel.

5. SUBMISSION INSTRUCTIONS:

5.1. CLOSING DATE:

The closing date for the receipt of proposals is 5:00 p.m. August 10, 2018. Questions accepted until 5:00 p.m. on July 27, 2018.

5.2. DELIVERY METHODS:

5.2.1. ELECTRONIC:

Electronic bids may be submitted as a PDF file.

5.2.2. U.S. MAIL:

Bidders are cautioned that it is their responsibility to originate the mailing of bids in sufficient time to ensure bids are received and time stamped by the Joint Fiscal Office prior to the time of the bid opening.

5.2.3. EXPRESS DELIVERY:

If bids are sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery packages will not be considered received by the State until the express delivery package has been received and time stamped by the Joint Fiscal Office.

5.2.4. HAND DELIVERY:

Hand carried bids shall be delivered to the Joint Fiscal Office and time stamped prior to the bid opening.

5.2.5. FAXED BIDS:

Faxed responses are not acceptable.

6. ATTACHMENTS:

6.1. Attachment A: Legislation

6.2. Attachment B: State Contract Provisions

ATTACHMENT A: LEGISLATION

ACT 11 of 2018 Special Session

**Sec. E.127 REVIEW AND EVALUATION OF DEPARTMENT OF
CORRECTIONS HEALTH CARE SERVICES**

(a) The Joint Fiscal Office (JFO), in coordination with the Office of Legislative Council, shall review and evaluate the policies, contracts, and processes the Department of Corrections (DOC) uses to deliver health care services to assess whether current costs are excessive. The evaluation shall include a review of whether there is potential for the State to achieve savings in providing health care services to inmates and whether the State is contracting for appropriate services.

(b) The JFO is authorized to contract for all or part of the review and evaluation described in subsection (a) of this section. The JFO shall also receive the assistance of the Agency of Human Services and any other relevant State government entity, as needed.

(c) On or before November 1, 2018, the JFO shall submit an update on the review and evaluation described in subsection (a) of this section to the Joint Legislative Justice Oversight Committee. On or before January 15, 2019, the JFO shall submit a final report to the House Committees on Appropriations, on Corrections and Institutions, and on Health Care, and the Senate Committees on Appropriations, on Institutions, and on Health and Welfare.

**ATTACHMENT B: 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)