



VERMONT

DEPARTMENT OF PUBLIC SERVICE

REQUEST FOR PROPOSAL

For

**For Technical Telecommunications and Finance Expert Services:
Review of Proposed Acquisition of FairPoint Communications by Consolidated
Communications**

Issue Date: December 21, 2016
Response Due Date: January 11, 2017 at 4:30 PM

Department Contact: Daniel Burke
Vermont Department of Public Service
112 State Street – Drawer 20
Montpelier, VT 05620-2601
Phone: (802) 828-4019
Email: Dan.Burke@vermont.gov

**VERMONT DEPARTMENT OF PUBLIC SERVICE
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December 21, 2016

The Vermont Department of Public Service (“Department” or “DPS”) which represents the public interest and Vermont ratepayers in utility cases before the Vermont Public Service Board (“Board” or “PSB”), federal regulatory agencies, and state and federal courts, is seeking proposals from qualified entities for telecommunications expert services to assist the Department in its review of a proposed acquisition of FairPoint Communications, Inc. (“FairPoint”) by Consolidated Communications Inc. (“CCI”).

The Department is seeking to retain a consultant (or consultants) with technical expertise in the following subject areas: (1) financial and economic analysis of the proposed acquisition; and (2) telecommunications company and network operations, with an emphasis on service offerings to consumers and associated service quality issues. Consultants are invited to respond either in part or in the entirety to this Request for Proposals (“RFP”), depending on the consultant’s experience. **The Department will accept proposals that respond to either or both of the subject areas listed above, and consultants will not need to respond to both subject areas to be considered.**

The selected contractor(s) is expected to provide assistance to the Department and participate in a contested administrative proceeding before the PSB, which has ultimate authority over whether to approve the proposed acquisition. The selected contractor’s preparation for and participation in the PSB proceeding is expected to include preparing discovery questions and responses, drafting prefiled testimony to be submitted to the PSB, and offering live testimony to the PSB.

Proposals are due by 4:30 p.m., Wednesday, January 11, 2017. There is no guarantee, express or implied, regarding the Department’s future needs. The Department retains the discretion to hire alternative or additional consultants during the contract period. The Department anticipates that the contract period will last for a period of up to two (2) years, with the possibility for renewal. The Department, however, anticipates that the majority of the work associated with this RFP will be completed within 6 months of selection of a contractor(s). One (1) original signed hard copy, three (3) additional hard copies, and an electronic copy of the proposal must be delivered to the attention of Daniel Burke, Department of Public Service. Proposals and questions can be submitted any time prior to the deadline, and should be directed to:

Daniel Burke
Vermont Department of Public Service
112 State Street – Drawer 20
Montpelier, VT 05620-2601
Phone: (802) 828-4019
Email: Dan.Burke@Vermont.gov

BACKGROUND

On December 5, 2016, CCI and FairPoint announced that the companies had reached a definitive agreement under which CCI would acquire FairPoint by an all-stock merger transaction. The proposed transaction includes the acquisition of all of FairPoint's northern New England assets and corporate affiliates, including FairPoint's Vermont subsidiary companies, the Telephone Operating Company of Vermont, LLC ("TOCV") and FairPoint Vermont, Inc. ("FPV"). TOCV is a successor Regional Bell Operating Company ("RBOC"), which was formed after FairPoint acquired Verizon's northern New England network in 2008. FPV is classified as a rural local exchange carrier ("RLEC"). CCI and FairPoint have publically stated that they hope to receive all regulatory approvals and close the acquisition by the end of the second quarter of 2016.

The proposed acquisition of TOCV and FPV is subject to regulatory review by the PSB. CCI and FairPoint have not yet filed a petition with the PSB regarding the acquisition, but the Department anticipates that a petition will be filed by the end of the 2016 calendar year. The Department's primary objective in its regulatory role is to determine whether the proposed transaction will serve the public good of Vermonters. The selected consultant(s) will assist the Department's legal and technical staff in its review of the proposed transaction through legal criteria established under Vermont statutory law and PSB precedent. Although CCI and FairPoint have not yet filed a petition with the PSB, the Department anticipates that a petition will be filed by in the near future and expects that the majority of the work associated with this RFP will need to be completed within the first six months of the 2017 calendar year. The Department also expects that the selected contractor(s) will need to be prepared to commence work in response to this RFP immediately upon selection.

MINIMUM SCOPE OF WORK REQUESTED

The selected contractor(s) will provide expert witness support during the course of the PSB proceeding to review the proposed transaction. The Department expects the work scope to include, but not necessarily be limited to, the tasks listed below. The specific tasks outlined in the scope of work are broken up into two general categories: (A) Financial and Economic Analysis and (B) Telecommunications Company and Network Operations. The Department will accept RFP responses that respond to either or both of these general categories. The scope of work will be subject to change based on information provided by FairPoint and/or CCI or requests from the PSB during the scope of the proceeding.

I. General Tasks and Requirements

- 1) Review and provide analysis on all filings made by the Department, FairPoint, CCI and any intervenors with the PSB, including all prefiled testimony and exhibits from FairPoint, CCI, and/or intervenors, and all discovery requests and responses;
- 2) Assist the Department in developing and drafting written discovery and information requests for service on other parties to the PSB proceeding;
- 3) Assist the Department in developing and drafting responses to discovery requests that are served on the Department by other parties to the PSB proceeding;
- 4) Develop and report possible solutions and/or appropriate modifications that should be made to FairPoint's network design and architecture to reduce the risk of future disruptions of delivery of calls to the E-911 network
- 5) Draft and revise as necessary prefiled testimony related to the issues outline in this RFP;
- 6) Present live testimony at technical hearing(s) before the PSB;
- 7) Assist the Department in presenting its findings and recommendations to the PSB.

II. Specific Tasks By Subject Area

A. Financial & Economic Analysis

1) *Task 1 - Company Structure: Financial Stability and Soundness*

- a) Assess the financial capacity of CCI to adequately operate and maintain property and service obligations acquired from FairPoint for the provisioning of communications services subject to the jurisdiction of the PSB. This analysis is expected to include an assessment of CCI's financial capacity to maintain the existing FairPoint plant, fund capital expenditures needed for any required future plant and equipment repairs or upgrades, and acquire any necessary infrastructure or assets that will not be acquired from FairPoint.
- b) Conduct an examination of CCI's proposed company structure that assesses its financial stability and soundness on a pre- and post-merger basis. The pre-merger financial examination shall cover the five (5) year historical period from 2011 through 2016. The post-merger financial examination shall cover a prospective period of five (5) years from 2017 through 2022.
- c) Assess and evaluate the proposed or assumed ROE and capital structure for CCI's consolidated operations and their impact on its regulated operations in Vermont.
- d) Examine and assess CCI's proposed or assumed depreciation methods and depreciation rates for public utility property for regulatory purposes.
- e) Examine and assess any regulatory assets and liabilities and deferred debits/credits that may be included in the acquisition.
- f) Assess the impact of the transaction on CCI's projected net earnings after dividends, or the trend in shareholder equity post-merger.
- g) Assess the ability of CCI to satisfy any existing debt covenants and/or any debt covenants that arise out of the acquisition. This assessment is expected to include an analysis of assets pledged by CCI as collateral for any debt covenants arising out of the transaction and how the risk associated with such arrangements may affect Vermont ratepayers.
- h) Examine and assess the actual policies and practices of CCI related to the separation of and accounting for affiliate company transactions, transactions between different state jurisdictions within a single company and any intra-company transfers and transactions, between their regulated and non-regulated operations, if any. This analysis includes

affiliate transactions between operating units and between an operating unit and the Parent Corporation or holding company.

- i) Complete an analysis of the proposed transaction to: (a) determine the impact on rates over the next five years; (b) ensure that the proposed Vermont rate base, cost of capital (debt and equity), expenses, taxes and income are prudent; (c) determine that the resulting retail and wholesale rates will be “just and reasonable”; and (d) examine the impact on cash flows and credit worthiness of CCI.
- j) Assess CCI’s financial capacity to effectively compete with existing and potentially new facilities-based providers over the next five years.

2) ***Task 2 – Economic Effect and Impact***

- a) Conduct an examination of the proposed economic effect and impact on ratepayers and the State of Vermont. The objective of this examination is to determine whether the proposed transaction will create new benefits for the State of Vermont. The examination will assess any proposed efficiencies accruing from this transaction and assess the reasonableness and likelihood of attainment over the next five years. This examination is likely to include, but not be limited to, the following components:
 - i) The identification and assessment of any probable positive or negative economic impact on ratepayers or the State of Vermont generally;
 - ii) An assessment of the proposed preservation of existing jobs in the State of Vermont;
 - iii) An assessment of the proposed creation of new jobs that will preserve or enhance the company's ability to provide quality products and services to its customers;
 - iv) An assessment of the extent to which creating new jobs will produce economic efficiencies and benefits in and for Vermont; this analysis will require a comparison of FairPoint infrastructure costs with costs CCI will incur to carry out the same support functions not transferring from FairPoint; and
 - v) Conduct an assessment of the potential operating impact of existing and potentially new competition on CCI’s proposed Vermont operations.
- b) Evaluate whether and how the proposed transaction will affect the level of Federal Universal Service Funding (“USF”) for Vermont ratepayers.
- c) Evaluate whether and how the proposed transaction will affect the existing FairPoint study area for purposes of FCC ratemaking. The task will require an analysis of whether CCI’s acquisition of FairPoint’s assets would affect revenues for CCI and/or rates by paid by users of the network in Vermont.

B. Telecommunications Company and Network Operations

1) *Task 1 – Network Operations and Quality*

- a) The DPS requires assistance to assess the extent of any areas of weakness in the FairPoint network which CCI would be acquiring, the extent to which the quality of the network and any weaknesses are known to CCI, and the extent to which CCI has a readiness to make necessary repairs and/or improvements in the FairPoint network. The assessment should include:
 - i) Discovery of the extent to which CCI has obtained a thorough understanding of the quality of the network it would be acquiring from FairPoint.
 - ii) An evaluation of any proposed significant repairs, modifications, or upgrades that CCI plans for the FairPoint plant and network within five years of the acquisition.
 - iii) An evaluation of standards and practices proposed by CCI for the planning, maintenance, and construction of the network it will acquire from FairPoint, compared against industry norms.
 - iv) An assessment of the reasonableness of CCI's proposed rate of capital investment in the Vermont network that it will acquire from FairPoint.
 - v) An evaluation of the adequacy of FairPoint's current and CCI's proposed staffing levels, especially staff which deal with maintenance, repair, construction, and customer services when compared against industry norms and accounting for the age and condition of FairPoint's network and its required service quality standards in Vermont.
 - vi) Characterization of the state and readiness of FairPoint's physical plant, based on information obtained from FairPoint and any other sources which may be available, including an assessment of the extent to which FairPoint's systems for tracking this readiness are likely to produce accurate or inaccurate information.
 - vii) Characterization and evaluation of FairPoint's systems for tracking customer-affecting troubles and the rate at which troubles are cleared, including an assessment of the extent to which these systems are likely to produce accurate or inaccurate information.
 - viii) The extent to which FairPoint's physical plant is ready to support expansion of DSL or other broadband services into unserved or underserved areas and the extent to which FairPoint's systems accurately represent the readiness of its physical plant for such purposes.

- b) Assess CCI's ability to operate its network in a manner to ensure reliable provision of emergency services, with a focus on Enhanced 911 ("E911") services.

2) ***Task 2 – Service Offerings***

- a) The DPS seeks an examination and evaluation of existing regulated and non-regulated consumer service offerings for FairPoint and CCI. This analysis should identify the service products of each utility, including:
 - i) Price and terms to consumers, including least cost options and value added additional services;
 - ii) Bundled and unbundled product options;
 - iii) Local and intrastate offerings;
 - iv) Availability and speed of data services;

3) ***Task 3 – Service Quality***

- a) Evaluation of existing service quality measures and/or metrics that apply to FairPoint as a result of prior PSB orders, and whether those measures and/or metrics should be modified as a result of the proposed acquisition by CCI.
- b) Evaluation of CCI's performance with respect to applicable service quality standards and/or metrics for the past five years from each jurisdiction where CCI provides regulated telecommunications services.
- c) Analysis of the number and types of consumer complaints against CCI reported by any jurisdiction or agency that has regulatory oversight over CCI, including, but not limited to, any state utility commission, state attorneys general, the Federal Communications Commission, the Federal Trade Commission, or any other consumer protection regulator.

4) ***Task 4 - Existing and Proposed Back Office Systems and Support***

- a) Evaluation and analysis of CCI's proposed back office systems for its operations in Vermont. This evaluation will require an analysis of various operation and financial back office systems, including, but not limited to, the following:
 - i) Information systems and management, including consumer service records, billing systems and formats;
 - ii) Financial systems, including accounting, budgeting and taxes;

- iii) Service center operations, including trouble calls, maintenance and repair, dispatch, and customer feedback;
- iv) Reasonableness of plans to acquire, build and operate information systems for CCI's post-merger operations.
- v) Strategic planning and business planning;
- vi) Marketing and sales;
- vii) General management support
- viii) Executive support.

5) ***Task 5 – Transition Planning and Documentation***

- a) Evaluation of CCI's proposed transition plan, which should review and proposed transition plans for the following areas:
 - i) Billing systems and formats;
 - ii) Customer database(s) and systems;
 - iii) Proposed location of offices and staffing within Vermont;
 - iv) Customer service training and other support of retained and proposed new staff;
 - v) Introduction and integration of services offered for each company;
 - vi) Engineering;
 - vii) Construction;
 - viii) Traffic and Traffic Engineering;
 - ix) Information Systems;
 - x) Information Management;
 - xi) Strategic Planning and Business Planning.

6) ***Task 6 – Wholesale Obligations***

The Department requires assistance to evaluate how the proposed transaction may impact or change wholesale service obligations currently held by FairPoint. The consultant will be required to evaluate the structure of the transaction proposed by FairPoint and CCI against requirements imposed by the Telecommunications Act, especially, Sections 251 and 271 and the Vermont proceedings implementing them, and any other state law requirements, including those under Dockets 5713 (the Board's investigation into Open Network Architecture), 6167

(Bell Atlantic's alternative regulation plan), and 6959 (Verizon's successor alternative regulation plan) and 8337 (FairPoint's current successor alternative regulation plan). The consultant will be required to evaluate the extent, adequacy, and quality of CCI's plan to create systems that support service to Competitive Local Exchange Carriers (CLECs). The consultant will be required to make recommendations on what specific conditions should be required of CCI to insure that instruments, including but not limited to the SGAT, the Wholesale Performance Plan, and interconnection agreements which currently exist to implement FairPoint's wholesale obligations are preserved or improved as a result of the transaction. The consultant will also be required to evaluate claims made by FairPoint, CCI, CLECs, and any other parties of the impact of the proposed transaction on competition, to the extent that the claims are related to impacts to CCI's wholesale obligations.

7) ***Task 7 – Examination of the Business Reputation of CCI***

The Department requires assistance to develop a report on the reputation of CCI in the other 11 states in which it currently operates a telecommunications business. The consultant hired by the department will be expected to contact state and federal utility, consumer protection, labor, and financial regulators, in addition to reviewing published reports. In addition to any other deliverables, the Department seeks to have a written report that would highlight any factors, which would diminish or enhance the business reputation of CCI, including the following:

- Any known legal actions or investigations against CCI by financial regulators, public utility commissions, or attorneys general in the last five years, including the status or resolution of such actions.
- Any known legal actions taken against CCI by state or federal agencies for labor practices, including the status or resolution of such actions.

The consultant should also be prepared to develop and assess discovery related to any legal action which may have been concluded or which is pending against the senior management of CCI.

SCHEDULE

This will be an on-call contract with the selected contractor(s) throughout the pendency of the PSB proceeding related to the proposed acquisition. The Department anticipates that FairPoint and CCI will file a petition with the PSB by the end of the 2016 calendar year, and that the PSB will adopt a docket schedule shortly thereafter. The Department also anticipates that the docket schedule will require that the majority of the work associated with this RFP will be completed in the first 6 months of the 2017 calendar year. Discovery is expected to commence in January or February of 2017, with written testimony to follow shortly thereafter. Live technical hearings before the PSB are likely to be held during the second quarter of 2016. The selected contractor(s) must be able to begin work immediately upon award of the contract.

SETTING

General guidance and assistance will take place in the context of a general services consulting relationship between the Department and the selected contractor(s). The selected contractor(s) will be expected to respond to specific technical inquiries and assist with development of Department policy positions from time to time as the need arises and within a reasonable timeframe. The selected contractor(s) may be expected to write and to assist Department technical and legal staff in the preparation of written information requests, and provide a written summary of issues including findings and conclusions for review by the Department technical and legal staff. Field visits to facility sites may be necessary to review records and facilities, and interview appropriate individuals. The deliverable(s) of the Tasks outlined above will be prepared at the selected contractor(s) office(s) and sent electronically to the Department. One or more in-person meetings may be required to review the deliverables and/or to provide general guidance.

OVERSIGHT

The overall contract will be managed by Daniel Burke, Telecommunications Special Counsel. Department personnel will be available for guidance and collaboration on related issues, proposed conclusions, policy formulation and articulation, and the drafting and filing of testimony. Contracts with the Department include performance criteria.

FINAL DELIVERABLES AND WORK PRODUCT

The primary final deliverables and work product of the selected contractor(s) resulting from work conducted under a contract resulting from this Request for Proposals will consist of:

1. Preparation of a work plan and work schedule that allows time for Department technical and legal staff to review the selected contractor(s)' work in advance of filing, and within any schedule set by the PSB;
2. Preliminary identification and assessment of issues, risks, and proposed solutions and recommendations;
3. Preparation of and responses to information requests and evaluation of responses if any;
4. Written memoranda, and/or technical reports drafted in response to specific inquiries of the Department, including a description of the review methods, materials reviewed, conclusions, and, as requested, recommendations with supporting analysis;
5. Drafting and revision as needed of prefiled testimony in support of findings and recommendations;
6. Presentation of live testimony at technical hearing(s) before the PSB; and
7. Provide support to Department staff in preparing reports, testimony, and/or legal briefs related to this PSB proceeding and any appeal that may result therefrom.

The selected contractor(s) shall provide multiple electronic and hard copies of all deliverables, exhibits and written products that constitute supporting work papers and any material intended to be submitted as responsive to Department and/or third-party inquiries, or filed with the PSB. **Electronic Materials to be filed in final form shall be delivered to the Department in Word and Excel formats as appropriate.** The consultants further shall maintain the confidentiality of information and documents as specified and directed by the PSD or by order of the PSB.

Reimbursement for time and materials will be by voucher based upon the actual staff time spent, at the rates agreed upon, and upon other actual costs incurred based upon documentation acceptable to the Department, subject to the maximum amount indicated.

PROPOSAL FORMAT

All respondents to this Request for Proposals (“RFP”) must include the following information:

1. A brief description of the firm, which includes its history, organizational structure, and qualifications of relevant professional staff, including names and resumes with detailed qualifications and levels of competence of all individuals proposed to perform services.
2. Respondents must complete the attached “Certificate of Compliance” and be able to enter a contract which contains all standard State of Vermont contract terms included in the attached “Attachment C” document.
3. A list of recent work performed, particularly including contracts with or appearances before utility regulatory agencies (if any), with a short narrative explaining the nature and extent of each such engagement. In the case of sworn testimony and depositions, please include a comprehensive list of all such appearances, including docket numbers of any contested cases, as well as the name and telephone number of a reference person familiar with the respondent’s work.
4. A discussion of the respondent staff’s expertise and experience relevant to the subject matter of this RFP.
5. A statement and discussion of the respondent's analysis of the RFP scope and requirements. This should include:
 - a. A proposed scope of services for the tasks listed and to which the respondent is choosing to respond, with an explanation of technical approaches and an outline of a proposed program for implementing the objectives of the RFP; and
 - b. Statements and discussion of anticipated major difficulties and problem areas, together with potential or recommended approaches for their solution.
6. A description of the rationale for the approach(es) identified, including:
 - a. An explanation of why the proposed approach is superior to other alternative approaches; and
 - b. A statement of the extent to which the proposed approach and program can be expected to meet or exceed the requirements of this RFP.
7. A scheduling proposal and work plan specifying the date upon which the respondent would be ready to commence work, and estimated hours needed to perform each task.

8. Explanation of all known or probable scheduling constraints, and/or limitations on staff availability.
9. The selected contractor(s) will be compensated on a time and material basis. Please indicate the following:
 - a. Fees for staff time, indicating the level of staff to be assigned, titles, hourly rates and estimated number of hours;
 - b. Travel expenses, including transportation costs, lodging, and meals, including “all-in” cost to attend meeting in Montpelier, Vermont; and
 - c. Description of all overhead and other costs that may be billed.
10. A declaratory statement identifying the respondent’s current or potential relationships, obligations and commitments with any of the participants, including Telephone Operating Company of Vermont LLC d/b/a FairPoint Communications, any parent, subsidiary, or affiliated company thereof and Consolidated Communications, Inc., any parent, subsidiary, or affiliate company thereof.
11. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENTS:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.

Self Reporting: For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the Certificate of Compliance (Attachment i) for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

Subcontractor Reporting: For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with 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). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list **MUST** be updated and provided to the State as additional subcontractors are hired.

EVALUATION CRITERIA

The Department will evaluate all proposals received based upon its assessment of the reasonableness of cost, completeness, and quality of the proposal, qualifications of the individuals proposed to perform the work, relevance of previous experience, and any other criteria it deems

relevant. Acceptance or rejection of any or all proposals will be determined by the exercise of the Department's sole discretion.

REQUIREMENTS

All proposals must be received no later than **4:30 p.m., Wednesday, January 11, 2016** in hard copy and in electronic format.

One (1) original and signed, and two (2) additional hard copies should be sent to:

Daniel Burke
Vermont Public Service Department
112 State Street – Drawer 20
Montpelier, VT 05620-2601

Electronic copies should be sent to:

Dan.Burke@vermont.gov

The Department reserves the right to accept or reject any or all bids. The proposals will be evaluated by the Department's technical and legal staff. If a respondent is selected, it will be invited to negotiate a contract.

QUESTIONS CONCERNING RFP

Questions about this RFP should be directed to:

Daniel Burke
Vermont Public Service Department
112 State Street – Drawer 20
Montpelier, VT 05620-2601
Phone: (802) 828-4019
Email: Dan.Burke@vermont.gov

TERMS AND CONDITIONS

1. The Department reserves the right to reject any and all proposals received as a result of this RFP for any reason, to waive minor irregularities in any proposals received, to negotiate with any party in any manner deemed necessary to best serve the interests of the State, and to obtain clarification or additional information.
2. All responses and other information disclosed in connection with this RFP become the property of the Department and, once the resulting contract is finalized, may be subject to disclosure under the State's Access to Public Records Law, 1 V.S.A. § 315 et seq. It is the respondent's responsibility to identify any material included in the response that is considered by the respondent to be proprietary or otherwise exempt from public disclosure in the event of a public records request. It is also the respondent's responsibility to include a redacted copy of its response and include a written explanation for each marked section that would support a reasonable claim of exemption.
3. The Department shall not be responsible for any costs incurred by any party in preparation of any proposal submitted in response to this RFP.
4. The Department reserves the right to amend or cancel this RFP at any time if the best interest of the State requires such action.
5. News releases pertaining to this RFP, contract award, or the project shall not be made without prior written approval from the Department.
6. The Department will pay for actual work performed and expenses incurred under this project up to the specified contract amount. Specific payment provisions will be arrived at upon mutual agreement of the parties. All payments will require the submission of an itemized billing of work performed to date in sufficient detail to justify payment.
7. Any respondent submitting a proposal shall be an Equal Opportunity Employer. During the duration of the performance of this contract, the selected contractor will be expected to comply with all federal, state, and local laws respecting non-discrimination in employment.
8. All deliverables submitted by the selected contractor shall become the property of the Department and the State of Vermont.
9. The Department assumes no liability in any fashion with respect to this RFP or any matters related thereto. All prospective contractors and their subcontractors or successors, by their

participation in the RFP process, shall indemnify, save and hold the Department, and its employees and agents free and harmless from all lawsuits, causes of action, debts, rights, judgments, claims, demands, damages, losses and expenses or whatsoever kind in law or equity, known and unknown, foreseen and unforeseen, arising from or out of this RFP and/or any subsequent acts related thereto, including but not limited to the recommendation of a contractor and any action brought by an unsuccessful applicant.

10. The selected contractor must complete the attached “Certificate of Compliance” and will be required to enter into a standard Vermont State Contract, which will include all conditions included the standard “Attachment C” form, which is attached to this RFP.

ATTACHMENTS

- i. Certificate of Compliance (must be completed and included with a response)
- ii. Attachment C: Standard State Contract Provisions (July 1, 2016)

CERTIFICATE OF COMPLIANCE

This form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.

TAXES: Pursuant to 32 V.S.A. § 3113, bidder hereby 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 to the State of Vermont as of the date this statement is made. 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.

INSURANCE: Bidder certifies that the company/individual is in compliance with, or is prepared to comply with, the insurance requirements as detailed in Section 7 of Attachment C: Standard State Contract Provisions. Certificates of insurance must be provided prior to issuance of a contract and/or purchase order. If the certificate(s) of insurance is/are not received by the Office of Purchasing & Contracting within five (5) days of notification of award, the State of Vermont reserves the right to select another vendor. Please reference the RFP and/or RFQ # when submitting the certificate of insurance.

CONTRACT TERMS: The undersigned hereby acknowledges and agrees to Attachment C: Standard State Contract Provisions.

TERMS OF SALE: The undersigned agrees to furnish the products or services listed at the prices quoted. The Terms of Sales are Net 30 days from receipt of service or invoice, whichever is later. 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.

Form of Payment: Would you accept the Visa Purchasing Card as a form of payment?
__ Yes __ No

Worker Classification Compliance Requirement: In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

Self-Reporting. Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

Subcontractor Reporting. Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

Insurance Certificate(s): Attached __, OR will provide upon notification of award ____.

Quotation Valid for: ____ days

Date: _____

Name of Company: _____ Contact Name: _____

Address: _____ Fax Number: _____

Email: _____

By: _____ Name: _____
Signature (Bid Not Valid Unless Signed) (Type of Print)

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED JULY 1, 2016**

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 the 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. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

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 the 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 the Contract, 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. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

A. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, 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 the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, 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 the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR 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.

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 the 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 the 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 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 23 (“Certification Regarding Use of State Funds”); Section 31 (“State Facilities”); and Section 32 (“Location of State Data”).

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. Certification Regarding Use of State Funds: In the case that 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.

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

25. 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.

26. 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.

27. 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.

28. Termination: In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

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. No Implied Waiver of Remedies: A 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.

29. 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.

30. 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.

31. 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.

32. 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 continental United States, except with the express written permission of the State.

(End of Standard Provisions)