

HOIST INSPECTIONS AND REPAIR AT WATERBURY DAM

Release Date: December 18, 2017

Optional Onsite Pre-bid Meeting: January 2, 2017 at 1:00 PM

Proposals Due: January 12, 2018

Contact for Proposals: Kim McKee, ANR, Department of Environmental Conservation
Grant Programs Manager; (802) 477-3349, Kimberley.McKee@vermont.gov

Introduction and Purpose

The State of Vermont Department of Environmental Conservation (DEC) Dam Safety Program is the Owner and Operator of Waterbury Dam in Waterbury, Vermont. The Dam Safety Program is requesting technical and fee proposals from qualified firms with experience with crane and hoist inspection and repair. The objective of the project is to perform inspections of six hoist systems as well as repair to the limit switches for one of the hoists at the dam. The hoists include:

- two small manual trolley hoists,
- one electric hoist used to raise and lower the vertical lift gate in the gatehouse, and
- three electric hoists used to raise and lower the radial arm flood gates at the principal spillway.

More detailed information on the hoists is provided in the table below. All of the subject equipment is located in buildings in limited access areas at the dam.

Green Mountain Power Cooperation (GMP) owns and operates the Little River Hydropower Facility located in the downstream area of the dam. In accordance with recent permitting requirements, GMP is currently making facility upgrades that requires the Vertical Lift Gate be in the closed position. During the closure of the Vertical Lift Gate, GMP and DEC Staff noticed that the limit switch was not operating properly. The gate appeared to lower properly, but would only raise when the controller was held in the “jump” mode. This problem was temporarily resolved by installing bypass wiring on the limit switch. It was also noted that it does not appear the limit switch is set to stop the gate prior to the closed or open position. The Vertical Life Gate will remain in the closed position through March 2018. It is a goal of this work to coordinate the inspection of this hoist and repair to the limit switch in March when the gate is operated to place GMP’s hydropower facility back in service.

Hoist	No.	Location	Data
5 Ton Manual Trolley Hoist	1	Gatehouse on Dam Crest	<ul style="list-style-type: none"> • Unit manufactured by Wright Manufacturing Company. • 5 Ton capacity based on manufacturer badging on the unit. • Operated vertically and laterally by chain system. • Infrequently used to bring in and remove heavy equipment from the gatehouse.
20 Ton Manual Trolley Hoist	1	Conduit House at Downstream Toe of Dam	<ul style="list-style-type: none"> • Unit manufactured by Wright Manufacturing Company. • 20 Ton capacity based on manufacturer badging on the unit. • Operated vertically and laterally by chain system. • Infrequently used to bring in and remove heavy equipment from the conduit house
Vertical Lift Gate Hoist	1	Gatehouse at Dam Crest	<ul style="list-style-type: none"> • Unit manufactured by Phillips and Davies, Inc. of Kenton, Ohio • The reported weight of the steel vertical lift gate is 20 tons. • The distance between full open and full closure of the gate is approximately 130 feet. The gate can be opened or closed in approximately 1 hour and 20 minutes. • System includes an electric motor, gear works, two main drums with 1-inch diameter wire rope and ten mechanical advantage pulleys. • Electric motor is manufactured by Leeson, model Watt Saver, 230/460 V, 62/31 amp, 25 h.p. • Includes braking system with manual override. • Electric/mechanical limit switch by General Electric. • Gate is typically left in the open position, but is used on occasional basis to control flow in the outlet tunnel at the dam. Operation of critical importance in emergency situation at the dam. • Test operation conducted yearly.
Radial Arm Flood Gate Hoist for 35 foot Gate	1	Principal Spillway bridge	<ul style="list-style-type: none"> • Unit manufacturer is not clear. • The reported weight of gate is 45.4 tons. • The distance between open and full closure is about 25 feet. The gate can be opened or closed in about 20 minutes. • System includes an electric motor, gear works, and two drums with 1.75 inch diameter wire rope. • Electric motor is manufactured by Marathon Electric and is XRI High Efficiency, 7.5 hp, 3 phase, 220-440 volts, 21/10.5 amps. • Includes breaking system but does not appear to have a manual override. • Gate is typically left in the open position, but is used during flood events in accordance with the Reservoir Management Manual. Operation of critical importance in emergency situation at the dam. • Test operation conducted approximately every 6 months.

Radial Arm Flood Gate Hoist for 20 foot Gate	2	Principal Spillway bridge	<ul style="list-style-type: none"> • Unit manufactured Earle Operating Machinery of Philadelphia, Pennsylvania. • The reported weight of each gate is 17.75 tons. • The distance between open and full closure is about 25 feet. The gates can be opened or closed in about 20 minutes. • System includes an electric motor, gear works, and two drums with 1.25 inch diameter wire rope. • Electric motor is manufactured by Marathon Electric and is XRI High Efficiency, 7.5 hp, 3 phase, 220-440 volts, 21/10.5 amps. • Includes breaking system with manual override. • Gates are typically left in the open position, but are used during flood events in accordance with the Reservoir Management Manual. Operation of critical importance in emergency situation at the dam. • Test operation conducted approximately every 6 months.
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Scope of Work

The scope of services for this project should, at a minimum, include the following:

1. Up to three (3) meetings with DEC staff including a project kickoff meeting, a meeting to review preliminary findings, and a meeting to discuss inspection findings and recommendations prior to delivery of the final reports.
2. Examination and/or collection of all available information and records as necessary in the files of the State Dam Safety Program, and other sources to understand the history of the subject equipment.
3. The selected contractor shall be responsible for the safety of their personnel while they are onsite performing the inspections and repairs. The contractor shall be required to follow all applicable State and Federal safety requirements to perform the work, including provisions such as fall protection and confined space entry. The selected contractor shall provide to the State, prior to the start of work, a basic safety plan that outlines anticipated safety issues and methods and equipment to safely complete the work.
4. Perform field inspections of the two Manual Trolley Hoists. All inspections should be completed in compliance with applicable OSHA, ASME, NEC, and ANSI standards and regulations
5. Perform field inspection of the electrical Vertical Life Gate Hoist. Evaluate and repair the limit switch of this hoist in March 2018 to coincide with the scheduled opening of the gate. All inspections should be completed in compliance with applicable OSHA, ASME, NEC, and ANSI standards and regulations.
6. Perform field inspections of the three electrical Radial Arm Gate Hoists. All inspections should be completed in general compliance with applicable OSHA, ASME, NEC, and ANSI standards and regulations.
7. Prepare detailed inspection reports that document the above-mentioned inspections and the applicable standards with recommendations for future inspection intervals as well as

minor and major maintenance, and repairs for each hoist.

8. The State reserves the right to retain the selected contractor to perform minor or major maintenance or repairs that were identified and recommended in the inspection reports.

Tasks:

1. Inspection and reporting for six hoists at Waterbury Dam.
2. Vertical Lift Gate Hoist Limit Switch Assessment and Proposal for Repair.
3. Vertical Lift Gate Hoist Limit Switch Repair.
4. Performance of minor or major maintenance or repairs identified and recommended in the inspection reports and authorized by the State.

Project Timeline and Deliverables

The DEC expects to select the consultant and execute a contract in February 2018. The project will end by December 1, 2018, unless additional funds become available.

The project deliverables for this contract are:

- Two (2) paper copies as well as electronic copies of the Inspection Report and recommendations for each hoist and supporting documents.
- Proposal for and confirmation of repair of the Vertical Lift Gate Limit Switch.

Funding and Method of Payment

Funding for the RFP will be through Dam Safety Program Capital funds. Payment is contingent upon available funding. All payments will be made after satisfactory completion of each deliverable as outlined in an agreement between the State and the selected entity.

Project Timeline

All work is to be completed between contract execution and December 1, 2018. The inspection of the Vertical Lift Gate hoist and the repair of the limit switch must be completed in March 2018 to coincide with the planned gate operation. The other inspections shall be performed at a time mutually agreed upon by the Contractor, DEC, and GMP.

Deadlines and Content of Proposals

Questions: All questions are required to be submitted electronically via email to Kim Mckee at kimberley.mckee@vermont.gov by **January 5, 2017, 12:00 pm (noon) EST** using the subject line "HOIST INSPECTIONS AND REPAIR AT WATERBURY DAM."

Pre-Bid Meeting: An optional pre-bid meeting will be held for interested contractors at Waterbury Dam, located approximately 2.7 miles up Little River Road from the intersection with Route 2. The meeting will begin at the western end of the dam on **Tuesday, January 2, 2017 at 1:00 PM EST**. It is requested that contractors planning to attend the pre-bid meeting inform Kim Mckee of their intention electronically via email at Kimberley.Mckee@vermont.gov.

Submittal: All proposals must be submitted electronically via email to Kim Mckee at Kimberley.Mckee@vermont.gov by **January 12, 2017, at 11:00 am EST** using the subject line "HOIST INSPECTIONS AND REPAIR AT WATERBURY DAM."

Bid opening: Proposals are anticipated to be opened **January 12, 2017, at 1:00 pm EDST**.

Notification: Proposal preliminarily accepted by DEC is anticipated to be notified no later than **January 19, 2018**.

All proposals must include the following information:

- Basic information on the applicant, including contact information, mailing address, project team members, qualifications, and type of organization.
- Proposals must clearly address each of the selection criteria identified in this RFP below.
- A detailed scope of work describing how the deliverables will be met, including information on project understanding, approach, planned scope of services, and schedule.
- Brief resumes of key personnel who will manage and complete the project. The personnel performing the inspections should be experienced in the field of crane and hoist inspection, operation, maintenance and repair. The inspection team should have formal training in the areas of applicable safety and design codes as well as Federal, State, and Local codes and standards. The lead inspector should have at least 2,000 field hours of experience directly related to the maintenance, servicing, repairing, and testing of cranes and hoists, as recommended by the Crane Manufacturers Association of American (CMAA).
- References (supply at least three relevant).
- A statement identifying individuals who were involved in the preparation of the proposal as well as a single point of contact.
- A certificate of insurance, indicating that the entity or entities have met the insurance requirements listed in Attachment C and Attachment D.
- In your submittal, include and fill out the following table:

Description	Deliverable	Fee
Task 1. Inspection and reporting for six hoists at Waterbury Dam.	Required inspection reports for six hoists	\$ Lump Sum Cost <hr/>
Task 2: Vertical Lift Gate Hoist Limit Switch Assessment and Proposal for Repair.	Written cost estimate including labor, parts, and expenses for review and authorization by the State.	\$ Lump Sum Cost <hr/>
Task 3: Vertical Lift Gate Hoist Limit Switch Repair.	Based on approval from Task 2, above, test operation of vertical lift gate witnessed by State personnel successfully demonstrating that the limit switch has been repaired.	\$ Hourly Rate <hr/> % Expense Markup* <hr/>
Task 4. Performance of minor or major maintenance or repairs identified and recommended in the inspection reports and authorized by the State.	Demonstration and confirmation in the field by State personnel that the authorized items have been successfully completed.	\$ Hourly Rate <hr/> % Expense Markup* <hr/>

*Expense markup shall not exceed 10%.

Selection Criteria

Proposals will be reviewed and evaluated by three or more DEC staff members. Selection will be based on the following criteria:

- **30 points** – Qualifications and experience of the staff
- **30 points** – Approach to the Project Scope
- **10 points** – Recommendations from references
- **30 points** - Value

Eligibility

A current Vermont state employee responding to this RFP as a sole proprietor or owner of other form of business must obtain a waiver from the Vermont Department of Human Resources prior to entering into contract with the State.

Reservation of State's Rights

The State reserves the right:

- to accept or reject any and all bids, in whole or in part, with or without cause in the best interest of the State;
- waive technicalities in submissions; (A technicality is a minor deviation from the requirements of an RFP that does not impact the substantive terms of the bid/RFP and can be considered without a material impact on the RFP process, etc.). If uncertain of whether a condition qualifies as a technicality, consult with the OPC or AGO for clarification. For example, a late bid is NOT considered a technicality;
- to make purchases outside of the awarded contracts where it is deemed in the best interest of the State; and
- to obtain clarification or additional information.

Insurance

Respondents to this RFP should be aware that they will need to agree to the State of Vermont Customary Contract Provisions (Attachment C) in order to execute an agreement for this project.

Special care should be paid to Workers' Compensation coverage for out-of-state Vendors. Vermont statute requires insurance carriers be specifically licensed to write Workers' Compensation coverage in Vermont. Out-of-state Vendors may have Workers' Compensation coverage valid in their home state, but their carrier may not be licensed to cover workers' compensation for work actually performed by their employees in Vermont.

Confidentiality

After conclusion of the contracting process, Proposals are a matter of public record. If an application includes material considered by the applicant to be proprietary and confidential under 1 V.S.A., Chapter 5, the application shall clearly designate the material as such and explain why such material should be considered confidential. The Vendor must identify each page or section of the Proposal 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 applicant if the identified material were to be released.

Under no circumstances shall the entire Proposal be designated as proprietary or confidential. If the Vendor marks portions of the Proposal confidential, the Vendor shall provide a redacted version of the Proposal for release to the public. Notwithstanding the above, the Secretary has an independent obligation under Vermont law to determine whether any proposal material is subject to public inspection and copying upon request, which may include material that has otherwise been designated as proprietary and confidential by the Vendor. The Vendor's designation of material as proprietary and confidential, and submission of a redacted Proposal, are provided to the Secretary for informational purposes in the event the Agency receives a public records request and will not result in withholding of materials by the Secretary unless expressly supported by Vermont law.

Attachments

- SFA – Standard Contract for Personal Services (template)
- Attachment C – Standard State Provisions for Contracts and Grants, Revised July 1, 2016
- Request for Approval to Subcontract

SFA - STANDARD CONTRACT FOR SERVICES

1. Parties: This is a contract for services between the State of Vermont, Department of Environmental Conservation (hereinfter called “State”), and _____ with principal place of business at _____ hereafter called “Contractor). Contractor’s form of business organization is Limited Liability Corporation. It is the Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. Subject Matter: The subject matter of this contract is services generally on the subject of _____. Detailed services to be provided by the contractor are described in Attachment A.
3. Maximum Amount: In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$ _____. This contract cannot be used as match for the purpose of obtaining additional federal funds by the contractor without the written approval from the State.
4. Subcontracting: Contractor shall not assign labor duties to a subcontractor without the prior written approval of the State. Written approval is obtained by completing the Request for Approval to Subcontract form.
5. Ownership and Disposition of Equipment: Any equipment purchased or furnished to the Contractor by the State under this Agreement is provided on a loan basis only and remains the property of the State. Contractor must submit a written request to retain the equipment at the end of agreement term for the same use and intended purpose as outlined in this agreement. The written request should include: description of equipment, date of purchase, original cost and estimated current market value.
6. Contract Term: The period of contractor’s performance shall on _____ and end on _____. This contract may be renewed for up to 2 additional one year periods upon written agreement by the State and the Contractor.
7. Source of Funds: State funds
8. Amendment: No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor. No amendment will be considered without a detailed justification to support the amendment request. Failure to provide an adequate justification may result in the denial of the request. Any request for an amendment to this agreement must be made in writing at least 30 days prior to the end date of this agreement or the request may be denied.

9. Cancellation: This contract may be canceled by either party by giving written notice at least days in advance.
10. Fiscal Year: The contractor's fiscal year starts and ends .
11. Work product ownership: Upon full payment by the State, all products of the Contractor's work, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by Contractor.
12. Attachments: This contract consists of the following attachments which are incorporated herein:

Attachment A - Specifications of Work to be Performed

Attachment B - Payment Provisions

Attachment C - Customary State Contract Provisions

Attachment D - Other Provisions

Request for Approval to Subcontract

13. Order of Precedence: Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:
 - a. Standard Contract
 - b. Attachment D (if applicable)
 - c. Attachment C (Standard Contract Provisions for Contracts and Grants)
 - d. Attachment A
 - e. Attachment B

**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)

**Department of Environmental Conservation
Request for Approval to Subgrant/Subcontract**

Date of Request:	
Original Grantee/Contractor:	
Address:	
Phone Number:	
Agreement #:	

Subcontractor Name:	
Address:	
Phone Number:	
Contact Person:	
Scope of Services:	
Maximum Amount::	\$

Original Grantee/Contractor Signature:	
By signing above, the Grantee/Contractor certifies that the subcontractor has been selected using their procurement policy, as required by the original agreement, and certifies that any conflict of interest has been disclosed in writing as required by the original agreement (Attachment C, Section 24).	

DEC Business Office Review

Approval: _____ **Date:** _____

On the reverse side of this form there is language that must be included by the contractor in all subcontracting agreements.

Language to be included in all subcontracting agreements:

- 1. 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.

- 2. 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.

- 3. 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.

- 4. 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.

5. 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.

6. 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.

7. 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>

8. 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.

9. 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.

10. 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.

11. Taxes Due To The State:

- a. Contractor 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. Contractor certifies under the pains and penalties of perjury that, as of the date the contract is signed, the Contractor 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. Contractor understands that final payment under this contract may be withheld if the Commissioner of Taxes determines that the Contractor 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. Contractor also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Contractor has no further legal recourse to contest the amounts due.

12. Child Support: (Applicable if the Contractor is a natural person, not a corporation or partnership.) Contractor states that, as of the date the contract 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.

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

13. Subcontractors: Contractor shall not assign or subcontract the performance of this agreement or any portion thereof to any other contractor without the prior written approval of the State. Contractor also agrees to include in all subcontract agreements a tax certification in accordance with paragraph 11 above.