



Procurement Procedures

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1.0 PURPOSE AND AUTHORITY

This document describes the process through which the Central Vermont Regional Planning Commission (CVRPC) will procure contractor services and equipment for the accomplishment of assignments provided by State and/or Federal agencies that are beyond the ability of the Commission staff either due to workload or available in-house expertise.

CVRPC, in its role as a Clean Water Service Provider pursuant to Act 76 (the Clean Water Service Delivery Act) and Environmental Protection Rule Chapter 39 (the Rule), will procure project implementor, engineering and construction services to help the Commission meet its phosphorous reduction target established by the State Department of Environmental Conservation.

This document also is intended to satisfy the requirements to self-certify CVRPC's procurement procedures in compliance with applicable Federal regulations 2 CFR §§200.317-326. Specific Federal agency or Vermont requirements also apply and are in addition to those outlined in Title 2. Staff shall verify whether additional requirements apply prior to making procurements and shall document the determination and any alternate requirements used in the procurement summary.

These policies and procedures have been developed in accordance with the following State and Federal statutes and regulations:

24 VSA Chapter 117 - Vermont Municipal and Regional Planning and Development Act.

Vermont Agency of Administration Administrative Bulletin 3.5 - Procurement and Contracting Procedures.

Vermont Agency of Administration Administrative Bulletin 5 – Policy for Grant Issuance and Monitoring

Code of Federal Regulations (CFR) Title 2, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

- 2 CFR §§200.317-326, Procurement Standards
- 2 CFR §200.112, Conflict of Interest
- 2 CFR §200.113, Mandatory Disclosures

Environmental Protection Rule – Chapter 39—Clean Water Service Provider Rule

2.0 DEFINITIONS

Contract – Any legally enforceable agreement by which CVRPC purchases products or services needed to carry out a project or program. The term contract includes all such agreements, whether or not characterized as a “contract”, “agreement”, “purchase order”, “procurement”, “license agreement”, “maintenance agreement”, “support agreement”, or other similar term (Vermont Bulletin 3.5). A contract is for the purpose of obtaining goods and services for CVRPC’s own use and creates a procurement relationship (2 CFR §200.300).

Contractor - Any party with which CVRPC has signed a contract. Characteristics indicative of a procurement relationship between CVRPC and a contractor are when the contractor provides goods and services within normal business operations, provides similar goods or services to many different purchasers, normally operates in a competitive environment, provides goods or services that are ancillary to the operation of the Federal program, and is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons (2 CFR §200.300).

Equipment - Tangible, personal property, including information technology systems, having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

Pass-through Entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a State or Federal program.

Subaward – An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a State or Federal award received by the pass-through entity.

Subrecipient – A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a State or Federal program.

Supplies – All tangible personal property other than those as described as Equipment above.

3.0 GENERAL PROCUREMENT

- a. CVRPC will maintain oversight to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

- b. CVRPC will maintain a written code of standards of conduct governing the performance of its employees engaged in the selection, award, and administration of contracts. No employee, officer or agent of CVRPC shall participate in the selection, award or administration of a contract supported by State or Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent or, any member of his or her immediate family or, his or her partner, or any organization that employs, or is about to employ, any of the above has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

CVRPC officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts. CVRPC may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct will provide for disciplinary actions to be applied for violations of such standards by officers, employees or agents of CVRPC.

- c. CVRPC will review proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis should be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- d. To foster greater economy and efficiency, CVRPC will endeavor to enter into State and local intergovernmental agreements for procurement or use of common or shared goods and services.
- e. CVRPC will endeavor to use Federal and State excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- f. CVRPC will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- g. CVRPC will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- h. CVRPC will use time and material-type contracts on State and/or Federal jobs only after a determination that no other contract is suitable, and if the contract includes a ceiling price that the contractor exceeds at its own risk.

Time and material type contract means a contract whose cost to a non-Federal entity is the sum of: the actual cost of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Since this formula generates an open-

ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, CVRPC must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost control.

- i. CVRPC alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. If there is a dispute related to procurement conducted by CVRPC in its role as a Clean Water Service Provider, the Vermont Agency of Natural Resources will be notified. These issues include, but are not limited to, source evaluation, protest, disputes, and claims. These standards do not relieve CVRPC of any contractual responsibilities under its contracts. The State or Federal awarding agency will not substitute its judgment for that of CVRPC unless the matter is primarily a State or Federal concern. Violations of law will be referred to the local, State or Federal authority having proper jurisdiction.
- j. All procurement transactions will be conducted in a manner providing full and open competition. To ensure objective contractor performance and to eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals will be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include, but are not limited to:
 - i. Placing unreasonable requirements on firms in order for them to qualify to do business.
 - ii. Requiring unnecessary experience and excessive bonding;
 - iii. Noncompetitive pricing practices between firms or between affiliated companies;
 - iv. Noncompetitive contracts to consultants that are on retainer contracts;
 - v. Organizational conflicts of interest;
 - vi. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - vii. Any arbitrary action in the procurement process.
- k. CVRPC will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable State or Federal statutes expressly mandate or encourage geographic preference. This shall not preempt state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion

provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

- l. Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurement, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance of other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated. All solicitations will identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- m. CVRPC will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. CVRPC will not preclude potential bidders from qualifying during the solicitation period.

CVRPC, in its role as a Clean Water Service Provider, will issue a Request for Qualifications at least once per year to prequalify:

- i. municipalities and organizations to serve as Project Implementors; and
- ii. Subcontractors to provide design and construction services.

Project Implementors and Subcontractors shall be selected and managed consistent with Act 76, the Rule and Act 76 Guidance. The prequalification term shall be valid for up to three years. Statements of Qualifications will be evaluated by a selection committee consisting of three CVRPC staff and possibly others (external to CVRPC) with expertise in the area of the request. Evaluation criteria may include, but are not limited to the following:

- Knowledge of the program goals,
- Staff experience and capacity,
- Demonstrated success with similar project phases and project types, and
- Technical and equipment resources.

- n. CVRPC will use one of the following methods of procurement.
 - i. Procurement by Micro-Purchase. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate annual dollar amount of which does not exceed the micro-purchase threshold as stated in 2 CFR § 200.67, currently defined at \$3,000.

However, when a micro-purchase occurs pursuant to Environmental Protection Rule Chapter 39, the value of any single item shall not exceed \$1,000 and micro-purchases made pursuant to this Rule are only allowed for goods. Micro-purchases may be awarded without soliciting competitive quotations if CVRPC considers the price to be reasonable. To the extent practicable, CVRPC will distribute micro-purchases equitably among qualified suppliers. In the case of acquisitions for construction subject to the Davis-Bacon Act, the micro-purchase limit is \$2,000.

- ii. Procurement by Small Purchase. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$25,000 (Vermont Bulletin 3.5). A Small Purchase of a good or category of goods that occurs pursuant to Environmental Protection Rule Chapter 39 and totals \$15,000 or greater from one vendor in one year shall be by written contract. If small purchase procedures are used, price or rate quotations must be obtained from at least three qualified sources.
- iii. Simplified Bid Process. Contracts greater than \$25,000, but not more than \$100,000, can follow either a simplified bid process or a standard bid process (Vermont Bulletin 3.5). A “simplified bid process” means that CVRPC has developed a specific and detailed statement of work for the service or product desired and has solicited written price quotations from at least three potential vendors known to provide the specified services or products.

Procedures for the Simplified Bid Process:

- 1. Prepare written specifications before bid solicitation consisting of:
 - a. General statement of services required,
 - b. Performance requirements,
 - c. Expectations regarding service location, schedule, including deadlines for deliverables and/or milestones, if applicable, and
 - d. Other specific requirements or conditions.
 - 2. Prepare a list of at least three (3) potential vendors to be solicited.
 - 3. Obtain price quotations by one or a combination of the following methods: current price lists, advertisements, telephone or verbal quotes, facsimile quotations, email quotes or written bids.
 - 4. Construct the procurement file as outlined in CVRPC’s procurement summary. All records relating to the simplified bid process shall be retained in the contract file in accordance with CVRPC’s record retention schedule.
 - 5. Document and retain in the procurement file all communications with contractors to obtain price quotes.
- iv. Standard Bid Process. A standard Request for Proposals (RFP) is required for all services which are anticipated to exceed a maximum contract amount of \$100,000 or more (Vermont Bulletin 3.5). An RFP must contain a clear and concise statement of

work and describe the criteria used to select the contractor. The RFP will include a cover page, introduction, brief description of CVRPC, statement of work to be performed, RFP response requirements, contract elements, and basis for selection.

The bid most responsive to the selection criteria established in the RFP should be accepted. A complete copy of the RFP, contractors solicited, price quotations, bids received, and written selection justification shall be placed in the contract file.

- v. Procurement by Sealed Bids (formal advertising) (2 CFR §200.320(c)). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the following conditions apply.
 - 1. A complete, adequate, and realistic specification or purchase description is available;
 - 2. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - 3. The procurement lends itself to a firm fixed price, and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- 1. The invitation for bids will be publicly advertised, and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
 - 2. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services for the bidder to properly respond;
 - 3. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - 4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - 5. Any or all bids may be rejected if there is a sound documented reason.
- vi. Procurement by Competitive Proposals (2 CFR §200.320(d)). The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum practical;
2. Proposals must be solicited from an adequate number of qualified sources;
3. CVRPC will have a written method for conducting technical evaluation of the proposals received and for selecting recipients; and
4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
5. CVRPC may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms are a potential source to perform the proposed effort.

vii. Procurement by Noncompetitive Proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from CVRPC; or
4. After solicitation of a number of sources, competition is determined inadequate.

For Project Implementors recruited via a Request for Qualifications process and retained by CVRPC in its role as a Clean Water Service Provider:

1. Upon a positive vote of a Basin Water Quality Council, Project Implementors are selected to receive funds from CVRPC for a phase of a clean water project;
2. At the start of a clean water project, the CVRPC or its Project Implementors must seek proposals from at least three potential Subcontractors;
3. Project Implementors may continue to manage subsequent phases of a clean water project and employ the same Subcontractor:
 - i. based on an affirmative vote of the Basin Water Quality Council,

- ii. provided the project costs are consistent with the standard cost as identified by the Secretary of the Agency of Natural Resources as noted in Act 76, and
 - iii. so long as the CVRPC in its role as a Clean Water Service Provider is satisfied with the work performed in prior project phases.
- 4. The CVRPC or its Project Implementors may choose to solicit new proposals for Operations & Maintenance and / or Inspection / Verification project phases.
- o. CVRPC will take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are used when possible. Affirmative steps must include:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises, are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.
- p. Procurement of Recovered Materials. CVRPC, as a political subdivision of Vermont, and its contractors will comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- q. Contract cost and price. CVRPC will perform a cost or price analysis in connection with every procurement action in excess of the \$100,000 threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, CVRPC will make independent estimates before receiving bids or proposals.

CVRPC will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Cost of prices based on estimated costs for contracts under a State or Federal award are allowable only to the extent that costs incurred or costs estimates included in the negotiated prices would be allowable for CVRPC under 2 CFR §200, Subpart E - Cost Principles. CVRPC may reference its own cost principles that comply with the State or Federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

- r. State or Federal awarding agency or pass-through entity review. CVRPC will make available, upon request of the State or Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the State or Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if CVRPC desires to have the review accomplished after a solicitation has been developed, the State or Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
 - i. CVRPC will make available upon request, for the State or Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent costs estimates when:
 - 1. CVRPC's procurement procedures or operation fails to comply with these procurement standards;
 - 2. The procurement is expected to exceed the \$100,000 threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - 3. The procurement, which is expected to exceed the \$100,000 threshold, specifies a "brand name" product;
 - 4. The proposed contract is more than the \$100,000 threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the \$100,000 threshold.
- ii. CVRPC is exempt from the pre-procurement review if the State or Federal awarding agency or pass-through entity determines that its procurement systems comply with these standards.
 1. CVRPC may request that its procurement system be reviewed by the State or Federal awarding agency or pass-through entity to determine whether its system meets these standards for its system to be certified. Generally, these reviews must occur where there is a continuous high-dollar funding, and third party contracts are awarded on a regular basis.
 2. CVRPC may self-certify its procurement system. Such self-certification must not limit the State or Federal awarding agency's right to survey the system. Under a self-certification procedure, the State or Federal awarding agency may rely on written assurances from CVRPC that it is complying with these standards. CVRPC will cite specific policies, procedures, regulations or standards as being in compliance with these requirements and have its system available for review.
- s. Bonding Requirements. For construction or facility improvement contracts or subcontracts exceeding the \$100,000 threshold, the State or Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the CVRPC provided that the State or Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:
 - i. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 - ii. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - iii. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

- t. **Contract Provisions.** CVRPC’s contracts will contain the applicable provisions as described below and contained in 2 CFR Part 200, Appendix II – Contract Provisions for non-Federal Entity Contracts Under Federal Awards. In addition to other provisions required by State or Federal agencies or CVRPC, all contracts made by CVRPC under State or Federal awards will contain provisions covering the following, as applicable:
- i. Contracts for more than the \$100,000 threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions as appropriate.
 - ii. All contracts in excess of \$10,000 will address termination for cause and for convenience by CVRPC, including the manner by which it will be effected and the basis for settlement.
 - iii. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 will include the equal opportunity clause provided under 41 CFR 601-4(b), in accordance with Executive Order 11246 “Equal Employment Opportunity” (30FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375 “amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFP part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
 - iv. **Davis-Bacon Act,** as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions as Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors will be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in wage determination made by the Secretary of Labor. In addition, contractors will be required to pay wages not less than once a week. CVRPC will place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. CVRPC will report all suspected or reported violations to the Federal awarding agency. The contracts will also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractors or subrecipient will be prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of

the compensation to which he or she is otherwise entitled. CVRPC will report all suspected or reported violations to the Federal awarding agency.

- v. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by CVRPC in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
- vi. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- vii. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires CVRPC to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Contract Act as amended (33 U.S.C. 1251-1387).
- viii. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (43 U.S.C. 6201).
- ix. Debarment and Suspension (executive Orders 12549 and 12689). A contract award (see 2 CFR §180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1968 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- x. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not, and has not, used Federal appropriated funds to pay any person

or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- xi. CVRPC will comply with 19 VSA 10a for procurement of Architectural Engineering (A/E) and related professional services.
- xii. CVRPC shall use State and/or Federal agency provided pro-forma contracts and agreements for contractual compliance with State and Federal requirements.
- xiii. All contracts using U.S. EPA Assistance. All contracts using U.S. EPA Assistance shall include the following:
 - 1. Salary Caps. All contracts using U.S. EPA assistance for a contractor or subrecipient shall comply with 40 CFR 30.21-28 including 30.27(b) dealing with the authorized direct salary cap under federal assistance agreements.
 - 2. Minority/Women's Business Enterprise (MBE/WBE). CVRPC shall make a good faith effort to encourage the participation and bidding of minority and women-owned business enterprises whenever procuring construction, equipment, services and supplies, especially as related to accomplishing the goals and conditions of federal assistance awards and contracts. CVRPC will follow the guidelines and requirement of Title 40 CFR Part 33, Subpart C, in addition to using the basic reporting requirements of EPA Form 5700-52A to document and implement the policies, procedures and systems necessary to make opportunities available to MBE/WBE firms.
- xiv. All contracts using State of Vermont Department of Environmental Conservation Formula Grant funding: All contracts using DEC Formula Grant funding will include Standard State Provisions for Contracts and Grants, as well as any other provisions specified in the current Clean Water Initiative Funding Policy.
- u. Cost Sharing, Matching, and In-Kind Contributions. CVRPC may accept cash and third-party in-kind support to assist in the implementation and pursuit of its goals and mission. When addressing federal cost share, match or in-kind contribution requirements of federal assistance awards, all contributions, including cash and third party in-kind, shall meet all of the requirements of 40 CFR 30.23, including the following criteria:
 - i. Contributions are verifiable from the recipient's records.

- ii. Contributions are not included as contributions for any other federally-assisted project or program.
- iii. Contributions are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- iv. Contributions are allowable under the applicable cost principles.
- v. Contributions are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

4.0 PURCHASE OF EQUIPMENT

All equipment procured on behalf of a State and/or Federal agency must be pre-approved if not in an approved work plan. Title to the equipment shall be jointly held between said State and/or Federal agency and CVRPC. The purchased equipment must be directly related to the implementation of a specific State and/or Federal program and is to be used only for the originally authorized purpose. If the equipment is no longer needed, CVRPC will notify the State and/or Federal agency of this for possible use on other projects or programs supported by said agency.

However, when acquiring replacement equipment approved by a specific State and/or Federal agency, CVRPC may use the equipment to be replaced as a trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment with agency approval. All documentation showing trade in value must accompany CVRPC's invoice in which reimbursement is being requested for that equipment.

CVRPC will not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private firms which provide equivalent services.

CVRPC will be responsible for the management of the equipment while in use in such a fashion that at a minimum meets the following requirements:

- i. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds title, the acquisition date, the cost of the property, the location and use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- ii. A physical inventory of the property must be taken and the results reconciled with the property records at least every two years.

- iii. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage, or theft shall be investigated.
- iv. Adequate maintenance procedures must be developed to keep the property in good condition.
- v. Proper sales procedures designed to ensure the highest possible return must be developed and implemented if CVRPC is authorized to sell the property.

When original or replacement equipment acquired under an agreement is no longer needed for the original project or program, disposition of the equipment will be made as follows:

- i. Items of equipment with a current per-unit market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation.
- ii. Items of equipment with a current per-unit market value in excess of \$5,000 may be retained or sold and the State or Federal agency shall have the right to an amount calculated by multiplying the current market value or proceeds from sale by the State or Federal government's share of the equipment.

In cases where CVRPC fails to take appropriate disposition actions, the State and/or Federal awarding agency may direct CVRPC to take excess property and disposition actions. The Federal government may reserve the right to transfer title to the Federal government or a third party when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

- i. The property shall be identified in the agreement or otherwise made known to CVRPC in writing.
- ii. The State and/or Federal awarding agency shall issue disposition instructions within 120 calendar days after the end of said agency's support of the project for which it was acquired. If the State and/or Federal agency fails to issue disposition instructions within the time frame, CVRPC will follow the instructions as described above. When title is transferred, CVRPC will be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value.

5.0 PURCHASE OF SUPPLIES

Title to supplies acquired under an agreement will vest upon acquisition to CVRPC. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the agreement, and if the supplies are not needed for any other State

and/or Federally sponsored programs or projects, CVRPC shall compensate the awarding agency for its share.

Adopted by the Central Vermont Regional Planning Commission Executive Committee, May 9, 2023.

Steve Lotspeich
Chair