

# **REQUEST FOR PROPOSALS**

**for**

**Materials, Warehousing Services,  
& Supply Chain Services**



Prepared by CVFIBER

A Vermont Communications Union District

May 3, 2022

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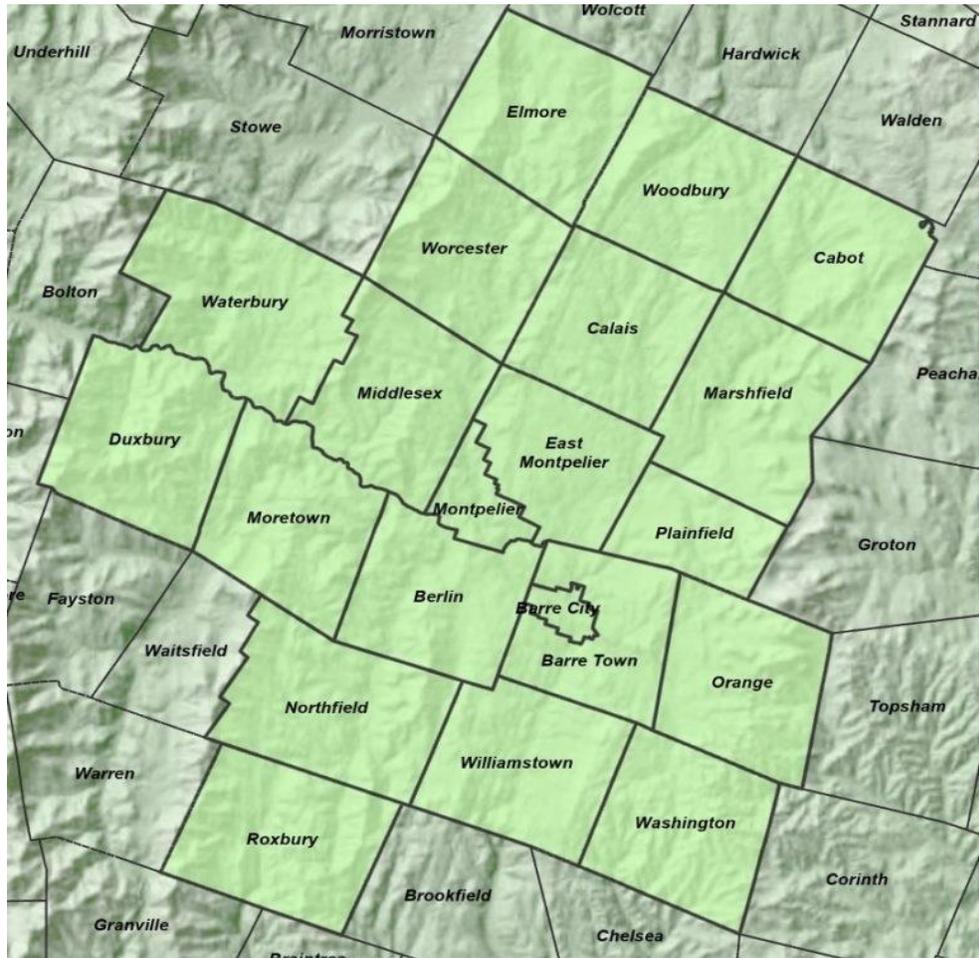
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# 1. Introduction

## 1.1. Background

The CVFIBER Communications Union District encompasses 21 municipalities in central Vermont. See Figure 1. Most CVFIBER municipalities suffer from a lack of access to affordable, high-speed broadband.

Figure 1 CVFIBER Member Municipalities



The mission of CVFIBER is providing Central Vermont residents, businesses, and civic institutions with universal access to a reliable, secure, locally owned and governed communications network able to grow to meet future community needs.

## 1.2. Overview of the RFP

CVFIBER is a Communications Union District in the State of Vermont with a mission to provide high-speed Internet access to our member municipalities (see Figure 1). We are in the process of beginning the build-out of a fiber-to-the-home (FTTH) system across the entire CVFIBER footprint and are developing partnerships with a variety of companies to make this project successful.

CVFIBER intends to construct approximately 400 miles of fiber communication infrastructure over a 12-month period and 1,200 miles over the next 4 years, with a minimum aggressive target construction

pace of 40 miles per month. Construction is expected to begin in September 2022.

CVFIBER seeks partners to warehouse the materials required throughout construction of the project, ensuring a steady supply and flow of the specific parts needed to construct the network as quickly as possible. The successful supplier will coordinate with CVFIBER to forecast supply needs and, critically, will maintain construction materials inventory to appropriately provide stock where and when necessary. Proposer acknowledges that entering into an agreement with CVFIBER to provide these services does not obligate CVFIBER to assign or guarantee any work to Proposer.

This Request for Proposal (RFP) is issued by CVFIBER to solicit proposals from interested firms, manufacturers, companies, and distributors for materials, warehouse services, and supply chain services. Proposals may be for separate components – materials, warehouse services, supply chain services – or for the entire enterprise.

All materials must meet CVFIBER's specifications. CVFIBER intends to evaluate all proposals submitted and reserves the sole right to reject any or all proposals and to enter into agreements with one or more firms based on the results of its evaluations.

## 2. RFP Services Requested

### 2.1. Material Pricing

CVFIBER is seeking pricing and lead times for the items contained in the attached pricing sheet, included as Appendix A. The Vendor's proposal must list the price per applicable unit as well as the lead time for each item in Appendix A. All materials must meet CVFIBER's specifications. Any proposed deviation from CVFIBER's specifications must be approved by CVFIBER.

Supply services will also include cost reduction ideas and goals that are measured annually. The Vendor will identify and apply best practices across the supply chain to help reduce operating costs and capital costs for both parties. The ability to provide materials that meet specifications in a timely manner that does not delay construction is critical. Meeting that requirement will require being on top of the pace of construction, material inventory, material lead times, and alternative material sources.

Pricing is to be held for 2022 unless market conditions change and warrant price negotiations on a more frequent basis. At maximum, price changes will be considered quarterly.

The preference is for American-made products wherever possible.

#### ***Bid Form***

- Provide material pricing on the included Bid Form in Appendix A. Descriptions for each unit are on the bid form.
- Complete all items based on the unit of measure and estimated quantities provided.
- Any item that is not generic in nature may be considered with an equivalent item by entering the product information in the bid sheet along with an accompanying explanation. No description is intended to preclude any bidder.
- Each item with a bid price must have an accompanying lead time. Multiple lead times may be provided for sub quantities of each lead item. In other words, if a line item calls for 1000 units and you have 200 available for shipment in two weeks and the other 800 will be 12 weeks, please identify those options.
- Excepting very standard items, please provide spec sheets with any relevant warranty

information and return policy.

- As a Communications Union District in the State of Vermont, all purchases will be exempt from Sales Tax. A tax-exempt certificate will be provided to the winning Applicant(s).
- The proposed item price must be valid until December 31, 2022. Any item for which a firm price cannot be maintained through December 31, 2022 must be identified specifically on the bid sheet in red with its firm price commitment date.
- Per grant requirements a restocking option is required. Please confirm restocking is available with any restocking fees.
- Please provide payment, order, and shipping terms. If shipping terms are specific to line items in the bid sheet, then specify such on the bid sheet.

## 2.2. Warehousing / Materials Management

CVFIBER is seeking warehousing services for the construction materials and electronics required to build and activate the network. CVFIBER prefers that the warehouse for storing materials be within a 15-mile radius of Exit 9 off I-89, and that the warehouse be located within the CVFIBER service area.

CVFIBER is open to alternative proposals that place the warehouse outside of the CVFIBER footprint. CVFIBER will also consider proposals that provide for shipments to job sites or facilities throughout the CVFIBER footprint as the project progresses.

CVFIBER and other Vermont-based CUD's have discussed the possibility of pooling resources to solve supply chain and warehousing challenges. Vendors should address their ability to scale to meet the possible needs of multiple CUDs with similar construction goals.

All electronics MUST be kept in an environmentally controlled facility.

The preference is that all remaining materials will be stored inside, however, CVFIBER is open to the options below:

- Some materials such as reels of fiber and strand may be stored outdoors. In this scenario work crews must have clear access to all material 24x7x365 without having to plow or shovel snow.
- Materials may be kept in storage containers and buildings that are not environmentally controlled provided they have no active electronic components.

### ***Vendor Submissions I - IV:***

- I. Vendors shall describe:
  - a. warehouse and outside storage requirements,
  - b. possible location(s), their pros and cons,
  - c. transportation access for each location including local trucking options,
  - d. loading options and docks,
  - e. shelving requirements,
  - f. finished and climate-controlled office and conference room space,
  - g. secure space for high value items,
  - h. reception and restroom for vendors, partners, staff, and subcontractors

- i. warehouse and outside equipment requirements,
  - j. proposed security procedures and processes that will be implemented to secure the materials,
  - k. solutions for disposal,
  - l. ability to manage materials by release, and
  - m. such other information as may be necessary or useful to make an informed decision.
- II. Vendors shall describe warehouse staffing, their experience, key personnel, resumes; procedures for in-bound receiving and documentation of materials, appropriate chain of custody and outbound LOA documentation for contractor releases; and ramp down and demobilization of project.
- III. Vendors shall discuss their experience of providing similar services for municipal and corporate clients, with references, phone numbers, and email addresses.
- IV. Vendors are asked to prepare pricing for storage, management, personnel, equipment, utilities, technology, and systems for 400 miles of materials (see Attachment A) and their replenishment as needed, and include options scaled for two and three times that requirement to accommodate other CUDs, projected for a five-year period.
- i. For Warehouse and Supply Chain services the desire is that pricing is provided on a per square foot basis or as a monthly fee in addition to the pricing related to materials and shipping. Please explain all pricing line items with sufficient detail to understand the components. Vendors may include costs of additional services beyond raw storage in the per square foot cost, such as logistics, shipping, supply chain management etc., and note the different pricing components that make up the per square foot cost.

### 2.3. Supply Chain Services

Propose a plan to optimize the inventory levels at the proposed warehouse location where the respondent will store materials. CVFIBER desires to have all materials on hand for immediate work projects 100% of the time, even if that requires collaboration with other distributors in the industry. Construction delay attributable to material shortage is to be avoided. This will require the vendor to be on top of the pace of construction, material inventory, material lead times, and alternative material sources.

The winning vendor will do the following:

- Provide copies of reports available to CVFIBER on an ongoing basis to manage inventory and analyze your stock, keeping units on hand;
- Participate in planning and forecasting meetings and make such recommendations to properly manage volatile and lengthy lead times on materials;
- Maintain adequate stock locally to provide necessary materials to CVFIBER during construction.

#### ***Vendor Submissions I - IV:***

I. Vendors are asked to prepare pricing for supply chain services for the replenishment of 400 miles of materials (see Attachment A) and as scaled for two and three times that requirement should other CUDs choose to participate in this contractual arrangement.

II. Vendors shall discuss their relationships with suppliers, the length of that relationship, their products, purchasing/acquisition history over the last five years with each vendor, and aggregate annual

purchasing/acquisition across the industry.

III. Vendors shall discuss their experience of providing similar services for municipal and corporate clients, with references, phone numbers, and email addresses.

IV. Vendors shall discuss the ability to manage materials by release.

## 2.4. Rights Reserved

CVFIBER reserves the right to:

- Accept or reject any or all responses, or any part thereof;
- Multiple awards may be awarded as a result of this RFP. Vendors may limit their proposals to less than the full list of items in the Bid List.
- Waive any informalities or technicalities contained in any response received;
- Conduct discussions with respondents and accept revisions of quotations after the closing date;
- Award based upon selection criteria defined in this RFP;
- Request clarification from any respondents on any or all aspects of its quotations;
- Request interviews of any respondents
- Cancel or re-issue this RFP at any time;
- Retain all quotations submitted in response to this RFP

## 2.5. State of Vermont – Terms Supplement

Funding is provided from the State of Vermont using federal ARPA funds. Consequently, the following contract terms are mandatory for any contract that uses these funds. The winning bidder must agree to the terms in the State of Vermont Federal Terms Supplement attached as Appendix B. In addition, the winning bidder must agree to provisions of the State of Vermont Attachment C: Standard State Provisions for Contracts and Grants hereto attached as Appendix C. In the case of any conflict or inconsistency between the specific provisions of an agreement, relevant attachments, federal requirements or the Application, any conflict or inconsistency shall be resolved as follows: (a) State of Vermont Federal Terms Supplement; (b) State of Vermont Attachment C provisions identified; (c) the agreement. Note that the state terms and conditions of Appendix B and C are subject to change.

## 3. Applicant Qualifications

All Applicants must meet the following qualifications:

- Must have experience distributing or manufacturing some or all of the items listed in the fiber construction materials bid sheet attached as Appendix A;
- Must be in good standing with the State of Vermont;
- Must agree to the terms outlined in Appendix B;
- Demonstrate procurement expertise in the area of fiber infrastructure;
- Demonstrate strong relationships with the industry-leading suppliers;
- Have inventory management and logistics systems;
- And such other qualifications as reflected in sections 2.1, 2.2, and 2.3.

## 4. Administrative Issues

#### 4.1. Availability of the RFP, Amendments, and Q&A

- The RFP will be distributed to bid boards, known distributors and manufacturers, and posted on the CVFIBER website.
- The RFP is subject to amendment and errata. Respondents are responsible for knowledge of and compliance with any amendments and errata.
- Questions are due by the scheduled date. Questions and answers will be posted on the CVFIBER.net on the scheduled date, as well as directly to those who submitted questions. The identity of the questioner will not be revealed.

#### 4.2. Inquiries about the RFP

All inquiries about the RFP should be emailed to [cvfiber-rfp@missionbroadband.com](mailto:cvfiber-rfp@missionbroadband.com) with copies to [chair@cvfiber.net](mailto:chair@cvfiber.net)

### 5. Schedule

DATE	EVENT
May 3, 2022	RFP Issued for Bids
May 10, 2022	Respondent Questions Due by 5:00 PM
May 12, 2022	All Questions Answered
May 23, 2022	All Bids Due by 5:00 PM
June 15, 2022	Contract Award, subject to successful negotiations

### 6. Proposal Submission and Format

#### 6.1. Proposal Submission

Email an electronic copy of your proposals to [cvfiber-rfp@missionbroadband.com](mailto:cvfiber-rfp@missionbroadband.com) no later than 5 PM 23 May 2022.

Late proposals may not be accepted.

Offerors will be notified acknowledging receipt of their proposal.

#### 6.2. Proposal Format

##### 1. Cover Letter

Each Applicant submitting a proposal must provide a cover letter signed by an individual authorized and empowered to bind the Applicant to the provisions of this RFP and any contract awarded pursuant to it. The cover letter should include the following:

- The legal name of the Applicant
- Business Address
- Primary Point of Contact (POC) (Authorized to Bind the Company)
- Primary POC Telephone Number
- Primary POC Email Address
- A statement that the entity is qualified, licensed, insured, and otherwise authorized to do business of the sort contemplated in the project.
- Company Federal Employer Identification Number (FEID)
- DUNS Number
- SAM Number

2. Table of Contents
3. Executive Summary
4. Proposal

Applicants may submit a proposal for one or more of the RFP components: Materials, Warehousing Services, Supply Chain Services. Component proposals shall be included as Attachments.

A responsive proposal for:

1. Materials: response to section 2.1 and completion of Appendix A Bid Form
2. Warehouse Services: Response to section 2.2 Vendor Submission I – IV.
3. Supply Chain Services: response to section 2.3 Vendor Submissions I - IV.
4. All three: responses to the foregoing 1 – 3.

Responses to each shall include any assumptions and exclusions.

5. Proposed Subcontractor Information (if any)
6. Relationships, Conflicts of Interest, Disclosures

Describe any relationship between the company and subcontractor, or any parent, subsidiary or related company, or any director or officer of any of them, with CVFIBER, or members of its Board. Coincident with the execution of an agreement, applicant shall be required to execute a Conflict of Interest form stating that the applicant is unaware of any conflict it, and any of its approved subcontractors, may have.

- Applicant affirms that they have not given, offered to give, nor intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.
- The Applicant affirms that, to the best of their knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

7. Resumes of Key Personnel
8. Miscellaneous Material

## 7. Insurance

At all times during the term of its contract, each Contractor shall maintain, in full-force and effect, the insurance as listed below. All insurances shall be issued by insurers and for policy limits acceptable to CVFIBER. Successful Contractors must provide certificates of insurance or other evidence that the required insurance has been procured and is in force. In the event of cancellation, non-renewal, or material modification affecting the certificate holder, thirty (30) days prior written notice will be given to CVFIBER detailing the material changes to the insurance coverage limits.

<b>Coverage</b>	<b>Minimum Limits of Liability</b>
Commercial General Liability	\$5,000,000 bodily injury and property damage, each occurrence, including advertising and personal injury, projects, and completed operations.
	\$5,000,000 products/completed operations,

Coverage	Minimum Limits of Liability
	<p>independent Contractor's liability, contractual liability, and coverage for property damage from perils of explosion, collapse, or damage to underground utilities</p> <p>\$10,000,000 general annual aggregate</p>
Workers Compensation	Statutory Limits
Employee Liability	<p>\$1,000,000 bodily injury by accident, each accident</p> <p>\$1,000,000 bodily injury by disease, each employee</p> <p>\$1,000,000 bodily injury by disease, policy aggregate</p>
Umbrella/Excess Liability	<p>\$5,000,000 each occurrence and annual aggregate</p> <p>Underlying coverage shall include General Liability, Auto Liability, and Employers Liability</p>
Pollution/Legal Liability	<p>\$1,000,000 per individual claim</p> <p>\$1,000,000 annual aggregate covering damages or liability arising or resulting from Contractor services rendered or which should have been rendered, pursuant to the Contract.</p>
Property Insurance	<p>The Contractor shall purchase and maintain property insurance covering the machinery, equipment, mobile equipment, and tools used or owned by the Contractor in the performance of construction services under the Contract. Once materials are delivered to the job site for Contractor, the Contractor will be responsible for all materials misused, misplaced, lost or stolen. CVFIBER shall, under no circumstances, be responsible or liable for the loss, damage to, or disappearance of any machinery, equipment, mobile equipment and tools used or owned by the Contractor in the performance of services under the Contract.</p>
Installation Insurance	<p>The Contractor shall purchase and maintain insurance covering the materials, equipment,</p>

Coverage	Minimum Limits of Liability
	<p>machinery and supplies from the moment they leave the premises until a job is complete and before it becomes a permanent feature of a project or structure, including: While being stored at a temporary location; While in transit to a job site; While being staged or awaiting installation; While being installed; While pending acceptance including through any period of testing or drops. CVFIBER shall, under no circumstances, be responsible or liable for the loss, damage to, or disappearance of any machinery, equipment, mobile equipment and tools used or owned by the Contractor in the performance of services under the Contract.</p>

The Contractor will be responsible for the payment of all deductibles or retentions under the policies of insurance purchased and maintained by it pursuant to the Contract. To the extent permitted by law all or any part of any required insurance coverage may be provided under an approved plan. Contractor’s insurer shall waive rights of subrogation.

Any Subcontractors utilized on the project shall carry in full force and effect commercial general liability, pollution liability, automobile liability, workers compensation, and employer liability insurance that complies with all terms of this section.

**7.1. Hold Harmless and Indemnification**

The Contractor shall defend, indemnify, and hold harmless CVFIBER and its directors, officers, employees, agents, consultants, members, affiliates, attorneys, subcontractors and customers from and against any and all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs, and expenses (including without limitation attorneys’ fees and costs) which arise out of, relate to or result from any act or omission of Contractor or its affiliates during the bid process or the work to be performed. Contractor's defense and indemnity obligations shall include the duty to reimburse any reasonable attorney’s fees and expenses incurred by CVFIBER for legal action to enforce Contractor's indemnity obligations or other provisions of this Agreement. Upon Contract award, the Contractor will also be required to sign a separate Hold Harmless Agreement which shall contain language of equal or more broad scope as set out herein and a Non-Disclosure Agreement as part of the definitive agreement.

**7.2. Additional Insured Endorsement**

The Contractor shall cause the commercial liability coverage required by the Contract to include (1) CVFIBER (to include its board, officers, directors and subsidiaries) its lender(s), the Architect and Mission Broadband as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) CVFIBER as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the

Contractor's completed operations. The Contractor shall provide an additional insured endorsement from the Contractor's General Liability Insurance naming CVFIBER and Mission Broadband as additional insured under a policy that cannot be cancelled absent forty-five (45) days' notice to the additional insureds.

## 8. Incurred Costs to Propose

CVFIBER is not liable or responsible for any costs incurred by any Applicant in the preparation of proposals or related matters arising out of the same. All costs associated with responding to this RFP are ~~in~~ by the Applicant at its own cost.

## 9. Revisions to RFP

### 9.1. Errors and Omissions in an Applicant Proposal

An Applicant may revise a proposal on its own initiative at any time before the deadline for submission.

### 9.2. Errors and Omissions in the RFP

If an Applicant discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the RFP, the Applicant should immediately notify CVFIBER at [cvfiber-rfp@missionbroadband.com](mailto:cvfiber-rfp@missionbroadband.com) of the error and request clarification of the RFP language. Should the RFP be amended, copies of the amended RFP will be provided to each Applicant receiving the RFP and posted on the CVFIBER.net website. Applicants are responsible for checking the website prior to submission of its proposal.

### 9.3. Acceptance of RFP/Proposal

The contents of this RFP and the Applicant's proposal may become a portion of the contractual obligations and the definitive agreement if a contract award ensues. CVFIBER has final and complete discretion as to acceptance or non-acceptance of any proposal, for any reason. CVFIBER may accept a proposal in part for any combination of line items.

### 9.4. No Waiver of RFP Provisions

No waiver by CVFIBER of any provision of this RFP shall be implied from any failure by CVFIBER to recognize or act on account of any failure by an Applicant to observe any provision of this RFP.

### 9.5 Ownership and Disclosure of Proposals

Proposals submitted in response to this competitive procurement shall become the property of CVFIBER. CVFIBER will share all proposals with its evaluation team and approval bodies for the purposes of evaluating each proposal. All proposals received shall remain confidential, except for any information CVFIBER is legally required to disclose as a governmental entity. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt.

## 10. Contingencies

This RFP may not be considered as a Contract to purchase goods or services but is a Request for Proposal in accordance with the Terms and Conditions herein and will not necessarily give rise to a contract. However, RFP responses should be as detailed and complete as possible to facilitate the formation of a contract based on the RFP response(s) that are pursued, should CVFIBER decide to do so.

Applicants must submit a complete proposal package, but may submit price proposals for individual line items without submitting a price proposal for every line item. Failure to submit a complete proposal package may disqualify your RFP response submittal. Applicants must submit RFP responses by the due date and time as specified herein. Late proposals may not be accepted. Applicants will be considered nonresponsive if the above requirements are not submitted as requested.

## 11. Evaluation Criteria

CVFIBER reserves the right to place purchase orders with multiple vendors. CVFIBER is seeking the best value for the desired services. Best value does not mean lowest costs. Value includes, but is not limited to, consideration of such factors as cost, experience, quality, and timeliness of service.

Evaluation Criteria:

- (1) The following criteria will be used in evaluation and scoring of the proposals:
  - a. Material Pricing: Lead times are the most critical component of the material pricing. Higher costs will be considered for parts if lead times are improved. Other considerations for material pricing:
    1. Competitive Prices and Length of firm pricing
    2. Product Line depth
    3. Services and Warranties
    4. Shipping, order, and payment terms
    5. References and Manufacturing Relationships
  - b. Warehouse, Supply Chain Services: The ability of the vendor to house and manage necessary levels of materials for the project will be an important evaluation point. The proposer's knowledge and experience developing warehousing and supply chain solutions for previous customers will be important as well. The following criteria will be used in evaluating and scoring proposals
    1. Lead times are the most critical component of the material pricing. Higher costs will be considered for parts if lead times are improved.
    2. Competitive Prices and Length of firm pricing
    3. Product Line depth
    4. Services and Warranties
    4. Shipping, order, and payment terms
    5. References and Manufacturing Relationships

## 12. Appendix A – Bid Sheet

Vendors are asked to use the spreadsheet titled “Appendix A CVFIBER Material RFP List 3May22” that is included as an attachment in both PDF and Excel format.

# 13. Appendix B – State and Federal Terms Sheet

## Appendix B

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

for *all* Contracts and Purchases<sup>1</sup>

of Products and Services Connected with 2020 Pandemic BYRD ANTI-LOBBYING AMENDMENT

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

#### PROCUREMENT OF RECOVERED MATERIALS

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

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

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive

Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

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

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

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

(Nonprocurement Debarment and Suspension).

## CONTRACTOR BREACH, ERRORS AND OMISSIONS

1. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance.

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

POTENTIAL DOUBT AS TO WHETHER THE OVERLYING CONTRACT HAS THESE TERMS. These terms and conditions shall also be added in instances in which a purchase without formal contract is otherwise duly authorized.

2. Neither the State's review, approval or acceptance of nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.
3. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract.

## TERMINATION FOR CONVENIENCE

1. General
  - a. Any termination for convenience shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
  - b. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
  - c. No compensation will be allowed for items eliminated from the Contract.
  - d. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed.

## 2. Contractor Obligations

After receipt of the Notice of Termination and except as otherwise directed by the State, the Contractor shall immediately proceed to:

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

## 3. Claim by Contractor

After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for

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

4. Negotiation

Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. Settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.

## 14. Appendix C – Standard Provisions for Contracts and Grants

Appendix C

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

REVISED DECEMBER 15, 2017

- 1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.
- 2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- 4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
- 7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall

have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

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

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations Personal Injury Liability Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A.

§ 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement.

"Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or

acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21

V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. **Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.
24. **Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.
25. **Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.
26. **Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.
27. Termination:
- A. **Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
  - B. **Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
  - C. **Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.
28. **Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.