

## SECTION 5

### GENERAL CONDITIONS AND CONTRACT REQUIREMENTS

1. This solicitation for proposals in no way obligates SED to award a contract.
2. SED reserves the right to reject any and all proposals received as a result of this solicitation, to negotiate with any qualified source, to waive any formality and technicalities, or to cancel this RFP in part or in its entirety if it is in the best interests of SED.
3. SED shall not be responsible for any costs incurred by any party in preparation of any proposal submitted in response to this RFP.
4. Any bidder responding to this Request for Proposals is acting in an independent capacity and not as an officer or employee of SED or the Town of Stowe.
5. SED will give more weight to bidders with a proven relationship with Vermont based distribution utilities and a track record of successful project implementation in Vermont or ISO-NE.
6. The successful bidder will be required to meet the Scope of Work, General Terms, enter into a standard Contract which will include all conditions included the standard General Conditions, and furnish a Certificate of Insurance.
7. The contents of each bid are public records and may become available for public review and inspection upon execution of a contract. The contents of the successful bidder's proposal may become part of the contract awarded because of this process.
8. If any bidding party wishes to submit confidential information, all such information must be clearly designated and include an explanation for the designation.
9. All parties submitting proposals shall be Equal Opportunity Employers. During the duration of the performance of the contract, the consultants will be expected to comply with all federal, state, and local laws respecting non-discrimination in employment.
10. SED no liability with respect to this RFP or any matters related thereto. All prospective consultants and their subcontractors or successors, by their participation in the RFP process, shall indemnify, save and hold SED and its employees and agents free and harmless from all lawsuits, causes of action, debts, rights, judgments, claims, demands, damages, losses and expenses or whatsoever kind of law or equity known or unknown,

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foreseen or unforeseen, arising from or out of this RFP and/or any subsequent acts related thereto, including but not limited to the recommendation of a consultant and any action brought by an unsuccessful respondent.

11. Any Bidder who is aggrieved with the awarding of a procurement decision must notify the General Manager in writing within five (5) business days from the date of the notice of award. The Manager's decision shall be sent to the aggrieved party in writing by certified mail within 10-days from receipt of the grievance letter.

## **CONTRACT REQUIREMENTS**

### **TERM**

The term of this contract shall start from the date of signature by both parties and shall be completed no later than **TBD**. The term of the contract may be extended only by mutual written agreement of the parties.

### **SERVICES PROVIDED**

If SED accepts their bid, the Contractor agrees to perform the specified work according to the requirements indicated in "Scope of Work and Specifications." Contractor shall perform all services required under this Agreement in a good workmanlike manner consistent with industry standards and according to the specifications and performance standards established by SED, if any.

SED has the right to inspect and may reject any services provided by Contractor under this Agreement that, in SED's determination, were not completed in a good workmanlike manner or that otherwise failed to satisfy the established specifications or performance standards.

### **COMPENSATION AND BILLING**

Compensation for the above services will be as determined in the Bid submitted to SED. Payment is based on the Contractor's Lump Sum Fixed Price Bid and no changes in scope or additional costs shall be allowed without the expressed written consent of SED's General Manager resulting in an amendment or modification to the award amount of the contract. **Contractor is to bill SED at the conclusion of each project area. Invoices are to include dates and a description of the work performed.**

### **CONTRACTING**

The Contractor, prior to any contract between SED and the Contractor, shall be registered to do business in the State of Vermont through the Vermont Secretary of State's Office. The successful Contractor is expected to execute sub-agreements for each sub-consultant named in the proposal upon award of this contract. Prior to beginning any work, the Contractor shall obtain Insurance Coverage and provide a copy of the certificate of insurance coverage to SED.

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## **INDEMNIFICATION**

Contractor shall indemnify, defend, and hold harmless SED, its officers, and employees from all liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the Contractor's acts and/or omissions in or related to this Agreement. Contractor 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 Contractor or of any agent of the Contractor in connection with the performance of this Agreement. SED shall notify Contractor in the event of any such claim or suit, and the Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. SED retains the right to participate at its own expense in the defense of any claim. SED shall have the right to approve all proposed settlements of such claims or suits.

The Contractor shall indemnify SED and its officers and employees if SED, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Contractor or an agent of the Contractor 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 Contractor in connection with its performance under this Agreement obligate SED to (1) defend or indemnify the Contractor or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Contractor or any third party.

## **OWNERSHIP OF DOCUMENTS**

Any materials submitted to SED in response to this Request for Proposals shall become the property of SED unless another arrangement is made by written agreement between SED and the responding party. Bidders may retain copies of the original documents.

## **PUBLIC RECORDS**

Any and all records submitted to SED, and in any form, are subject to the Vermont Public Records Act. SED has the determination of how those records shall be handled.

Any and all records the Contractor considers to be trade secrets, as that term is defined by Vermont Public Records Act, 1 V.S.A. §317(c)(9), or that the Bidder otherwise seeks to have SED consider exempt must be identified clearly and specifically at the time of submission. It is not sufficient to merely state generally that a proposal is proprietary, contains a trade secret, or is otherwise exempt. Rather, the records the Contractor believes are exempt must be specifically identified and separated from other records submitted with the RFP bid package along with a rationale sufficient to justify each exemption from release consistent with 1 V.S.A. §317 et. seq.

## **DUTY TO INFORM SED OF BID DOCUMENT ERRORS**

If Contractor knows, suspects, or has reasonable cause to believe, that an error or omission exists in any bid documents, including but not limited to unit prices and rate calculations, the bidder shall immediately give SED written notice thereof. A Bidder selected as the Contractor

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shall not cause or permit any work to be conducted that may be related to the error or omission without first receiving written acknowledgment from SED that SED representatives understand the possible error or omission and have approved the requested modifications to the bid or contract documents or that the contractor may proceed without any modification being made to the bid or contract documents.

#### **INDEPENDENT CONTRACTOR**

Contractor further acknowledges and agrees that it is an independent contractor and that nothing herein shall be construed to create the relationship of employer and employee between SED and Contractor. No employee-related withholdings or deductions shall be made from payments due Contractor. Contractor shall not be entitled to receive any benefits from SED and shall not be eligible for workers' compensation or unemployment benefits.

#### **ASSIGNMENT AND SUBCONTRACTING**

Contract is binding upon and insures to the benefit of the heirs, successors and assigns of the parties hereto. Contractor shall not enter into any subcontract for performance of any services contemplated under this Contract nor assign any interest in the Contract to another party.

#### **CONTRACTOR OBLIGATIONS**

Contractor warrants that it has the necessary equipment to provide the services required by this Agreement. All materials used or supplied under this Agreement shall be of first quality and meet the specifications established by SED, if any. Contractor will be solely responsible for supplying, storing, maintaining, and replacing any and all equipment that is necessary for implementing the services under this contract. SED will not supply, nor will it pay for any repairs, maintenance, or replacement of, or new equipment expenses, or temporary work related to signs, cones, or other traffic controlling equipment.

#### **SUPERVISION/CUSTOMER NOTIFICATION**

Contractor shall remain in close communication with SED's General Manager, Regulatory Affairs Manager, or Chief Financial Officer. Contractor shall check in with SED before starting site work.

#### **SAFETY AND CONTRACTOR QUALIFICATIONS**

Job site activities shall at all times be conducted in accordance with applicable Federal, State and Local requirements to include but not limited to the National Electric Safety Code (NESC) and Code of Federal Regulations 29 CFR Parts 1910-1926. Contractor shall meet and/or exceed the safety standards established and promulgated under the American Public Power Association (APPA) Safety Manual Section 508 (508.1 through 508.7) and, if applicable, the U.S Department of Transportation or any applicable law of a state in lieu thereof. Contractor shall comply with all applicable laws governing safety and the safe operation of commercial motor vehicles and the safe performance of the work. Contractor shall perform all work in accordance with American National Standards Institute (ANSI) A300 specifications and current (ANSI) Z133

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safety requirements as updated and amended.

### **PERSONNEL**

Contractor is responsible for compliance with all applicable State and Federal laws. Contractor will manage his/her own personnel without general oversight by SED. All drivers and equipment operators will be properly trained and have all certifications and valid licensing required to operate said equipment.

Contractor alone shall be responsible for ensuring compliance with all applicable regulatory requirements including but not limited to Vermont Occupational Safety and Health Administration (VOSHA).

### **INSURANCE**

Contractors and service providers shall be required to provide SED with a Certificate of Insurance showing evidence of the coverage and limits as listed above. Any construction contract over \$50,000 shall also name SED as an Additional Insured on the certificate of insurance.

In lieu of providing a certificate of insurance for workers compensation, a sole proprietor or partnership of an unincorporated business may provide a non-employee work agreement if they meet its conditions. If Contractor is not required by law to carry workers' compensation insurance, in place of proof of workers' compensation insurance Contractor may provide a fully executed Non-Employee Work Agreement specifying the particular provision of 21 V.S.A. §601(14)(F) that exempts Contractor from having to carry such coverage.

Before the award of this Contract the Contractor must provide certificates of insurance to show that the following minimum coverages are in effect. Contractor agrees that it will provide and maintain during the entire term of this Agreement the following insurances with at least the indicated amounts of coverage and provide SED a certificate of insurance showing such coverages before providing any services under this Agreement. The standard insurance coverage and limits is as follows:

1. **Commercial General Liability:** Contractors and service providers are required to maintain commercial general liability insurance including but not limited to Bodily Injury, Personal/Advertising Injury, Broad Form Property Damage, Products and Completed Operations and Contractual Liability with limits of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate annually.
2. **Workers' Compensation:** Contractors and service providers who perform work on-site are required to maintain workers compensation and Employers Liability insurance of at least one hundred thousand dollars (\$100,000) per occurrence and five hundred

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thousand dollars (\$500,000) in the aggregate annually.

### **TERMINATION**

SED may terminate this Agreement, with or without cause, upon 30 days written notice.

### **Continuity of Performance**

In the event of a dispute between the Party and SED, 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.

### **DEFAULT**

The occurrence of any of the following shall constitute default by Contractor and, if not corrected within 10 days of SED providing Contractor written notice of the default, shall allow SED to terminate this contract:

1. Failure to adequately perform or deliver the required services;
2. If applicable, failure to provide the required bonds or other security acceptable to SED before starting any work;
3. Declaration of bankruptcy by Contractor;
4. Making a material misrepresentation to SED;
5. Persistently disregarding laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or failure to perform any other material provision of this Contract.

Upon default of this contract by Contractor, SED may withhold any payment due to Contractor for purposes of set-off until such time as the exact amount of damages due is determined. Such withholding shall not constitute default or failure to perform on the part of SED.

### **CONFLICT OF INTEREST**

Contractor shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

### **FORCE MAJEURE**

Neither SED nor the Contractor 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.

## **REMEDIES**

Default or breach of this Contract by Contractor shall entitle SED to seek remedies under law and as provided by this Contract. In the event this Contract is terminated by reason of default by Contractor, SED may recover the necessary costs of termination, including but not limited to, administrative, attorneys fees and legal costs, from Contractor. Except when caused by uncontrollable circumstances, if Contractor fails to meet any performance deadlines established by this Contract, or fails to perform in accordance with the specification, terms, and conditions of this Contract, SED shall have the right to purchase the services and materials from other sources on the open market or to purchase those items necessary to continue functioning until delivery from Contractor is complete. SED may deduct as damages from any money due or coming due to Contractor the differences between Contractor's price and the higher price or the cost of temporary items. SED may require Contractor, at Contractor's sole expense, to re-perform any items of work provided for in this Contract that do not meet the established specifications, standards, or SED directives. Any remedies available to SED are cumulative and not exclusive. The seeking or exercising by SED of a remedy does not waive its right to seek or exercise any other remedy available to it at law, in equity, by statute, or under this Agreement.

## **GOVERNING LAW, JURISDICTION AND VENUE; NO WAIVER OF JURY TRIAL**

This Agreement shall be governed by the laws of the State of Vermont. Any action or proceeding brought by either Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Lamoille 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 SED with regard to its performance under this Agreement. Party agrees that SED shall not be required to submit to binding arbitration or waive its right to a jury trial.

## **DISPUTE RESOLUTION**

Either SED or Contractor may request mediation of any unresolved dispute. SED and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 90 days of the request for mediation. If the dispute is not resolved by mediation, SED or Contractor may:

1. agree with the other party to submit the Claim to another dispute resolution process; or
2. give written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

Should disputes arise between the Contractor and SED about this contract or any related matter, the parties agree to arbitrate any such controversy, pursuant to the Vermont Arbitration Act, 12 V.S.A. § 5651 et seq, prior to filing any litigation.

### **CONTRACT DOCUMENTS**

These Contract Documents shall constitute the entire agreement between the parties on the subject matters. All prior agreements, representations, statements, negotiations, and understandings shall have no effect. There shall be no modification or amendments to this Contract or to the Addendum unless said changes, modifications or amendments are in writing duly executed by the parties.

### **SEVERABILITY**

The provisions of this contract are severable and if a court of competent jurisdiction holds any portion of this contract unconstitutional or invalid, the remainder of this Contract shall not be affected and shall remain in full force and effect.