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Neale F. Lunderville, Secretary

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### **MEMORANDUM**

TO: Secretaries, Commissioners, Deputies, and Business Managers

FROM: Neale F. Lunderville

RE: Addendum to Bulletins 3.5 ~ 2009 Act 54 Sec. 32 (a)

**DATE:** August 10, 2009

Please forward a copy of this Addendum to each departmental staff member involved in the issuance and/or monitoring of contracts.

### ADDENDUM TO BULLETIN 3.5 – EFFECTIVE 8/10/2009

This Addendum to Bulletin 3.5 has been issued in order to comply with 2009 Act 54 Sec. 32 (a). This section applies to contracts for all state construction and transportation projects with a total project cost\* of more than \$250,000. Sec. 32 (a) is aimed at reducing the incidents of misclassification of employees and/or independent contractors working for prime contractors and their subcontractors through the required disclosure of previous classification compliance history, subcontractors to be used, and worker compensation insurance coverage as part of the bid process, or at the time of pre-qualification. Also included is a provision requiring the inclusion of language mandating the recording and submission of a pay period census of workers onsite each day.

\*For purposes of this Addendum, "total project cost" is defined as the cumulative direct and indirect cost incurred to complete the stated project goal, including planning, design and engineering services, materials procurements, construction services, and construction management and oversight. For example: the State plans to construct a storage building on State land. The State plans to award the following contracts: \$10,000 contract for architectural design; \$15,000 contract for the structural engineering; and \$200,000 contract to a builder for physical construction of a storage building. In addition, the State plans to issue a \$100,000 P.O. to a lumber company for materials, and the estimated salary and benefits for the on-staff project manager who will be overseeing this project if \$2,500 for the duration of the project. Taken individually, none of the three contracts is above the \$250,000 threshold; in fact, when added together, the three contracts total only \$225,000. However, when we include all the related costs - the direct cost of the lumber, and the indirect costs of the project management - this brings the "total project cost" to \$327,500 which is above the \$250,000 threshold. In this case, all three of the contracts would be subject to Section 32 (a) (1) and (2). Compliance with this Section 32 (a) (1) and (2) is a requirement for the Agency of Transportation and for BGS; compliance for other agencies and departments that may engage in construction or transportation projects over \$250,000 is optional. Although a time period for a bidder to self report violations is not specifically defined under Act 54 Sec. 32 (a) (1), the State has defined

the timeline to be twelve (12) months for a bidder to self report information on any violations that had occurred.

BGS has revised the <u>Sample RFP Shell</u> and has developed attachments for the new requirements; copies are attached for reference, along with the text of Act 54, Sec. 54 (a).

Please be aware that the attached forms are for reference only. The current official version of the *Sample RFP Shell* and Sec. 32 Attachment Forms are available on the BGS website at:

http://bgs.vermont.gov/purchasing/forms

Please refer questions to Susan Zeller, Deputy Commissioner of Finance & Management at: <a href="mailto:Susan.zeller@state.vt.us">Susan.zeller@state.vt.us</a> or (802) 828-6448; or Deborah Damore, BGS Purchasing & Contracting Manager at (802) 828-2211 or <a href="mailto:Deborah.Damore@state.vt.us">Deborah.Damore@state.vt.us</a>.

Sz/Attachments

### No. 54. The Vermont Recovery and Reinvestment Act of 2009.

# Sec. 32. WORKERS' COMPENSATION; STATE CONTRACTS; COMPLIANCE WITH DAVIS-BACON

- (a) The agencies of administration and transportation shall establish procedures to assure that state contracting procedures and contracts are designed to minimize the incidents of miscoding of employees in NCCI job codes and misclassification of the status of workers as independent contractors rather than employees by state contractors on projects with a total project cost of more than \$250,000.00 by requiring those contractors to provide, at a minimum, all the following:
  - (1) Detailed information including information relating to past violations, convictions, suspensions, and any other information related to past performance and likely compliance with proper coding and classification of employees requested by the applicable agency. This information shall be included with the project bid.
  - (2) A list of subcontractors on the job along with lists of the subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. For purposes of this subsection and subdivision (3) of this subsection, subcontractors do not include entities that provide supplies only and no labor to the overall contract or project.
  - (3) For construction and transportation projects over \$250,000.00, a payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request.
  - (4) For all other state contracts not otherwise covered under subdivision (3) of this subsection, the information required under subdivision (3) shall only be required upon request of the agencies or departments.
  - (5) Any contract provisions or procedures designed to minimize instances of misclassification through enhanced reporting and greater transparency may be flexibly designed to account for the size of the contract, contractor, and subcontractor.

#### Instruction to Bidders for Construction and RFP for services will include the following statement:

**WORKER'S COMPENSATION; STATE CONTRACTS COMPLIANCE REQUIREMENT**: The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00, requires bidders comply with the following provisions and requirements.

• (a) (1) Bidder is required to self report detailed information including information relating to past violations, convictions, suspensions, and any other information related to past performance and likely compliance with proper coding and classification of employees requested by the applicable agency.

The bidder is required to report information on any violations that occurred in the previous 12 months.

• (a) (2) Bidder is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. <u>Include additional pages if necessary</u>. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

In order for a bidder's response to be considered valid bidders must complete and submit the following two (2) forms at time of bid:

- Self Reporting
- Subcontractor Reporting

**Construction Terms and Conditions will include the following statement:** 

**WORKER'S COMPENSATION; STATE CONTRACTS COMPLIANCE REQUIREMENT**: The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00 requires bidders comply with the following provisions and requirements.

(a) (3) For construction and transportation projects over \$250,000.00, a payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request.

### SAMPLE ONLY

RFP: DATE:

#### WORKERS' COMPENSATION; STATE CONTRACTS COMPLIANCE REQUIREMENT

### Self Reporting Page 1 of 2

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

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00, requires bidders comply with the following provisions and requirements.

Bidder is required to self report the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification for worker's compensation. The state is requiring information on any violations that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome		
S	AMPLE ONLY			
		•		

**WORKERS' COMPENSATION STATE CONTRACTS COMPLIANCE REQUIREMENT:** Bidder hereby certifies that the company/individual is in compliance with the requirements as detailed in Act 54, Section 32 of the Acts of 2009.

Date:	
Name of Company:	Contact Name:
Address:	Title:
	Phone Number:
E-mail:	Fax Number:
Ву:	Name:
Signature (Bid Not Valid Unless Signed)*	(Type or Print)

<sup>\*</sup>Form must be signed by individual authorized to sign on the bidder's behalf.

RFP: DATE:

#### WORKERS' COMPENSATION; STATE CONTRACTS COMPLIANCE REQUIREMENT

## Subcontractor Reporting Form 2 of 2

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

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00 requires bidders to comply with the following provisions and requirements.

Bidder is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. <a href="Include additional pages if necessary">Include additional pages if necessary</a>. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

Subcontractor	Insured By		Subcontractor's Sub	Insured By
	SAM	P	LE ONLY	
Date:				
Name of Company:			Contact Name:	
Address:			Title:	
			Phone Number:	
E-mail:			Fax Number:	
By:Signature (Bid Not Valid Unless Signed)*			Name:(Type or Print)	

\*Form must be signed by individual authorized to sign on the bidder's behalf.