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State of Vermont
Public Service Board

MEMORANDUM

To: Potential Auditors

From: Vermont Public Service Board

Re: Request for Proposal - Independent Auditor of EEU

Date: December 6, 2011

The Vermont Public Service Board ("Board") is seeking proposals for auditing services for individuals and firms with high levels of expertise and experience in the evaluation of energy efficiency programs. The desired services are described in more detail in the attached Request for Proposal ("RFP"). If you would like to submit a proposal for the provision of these services, please do so by December 30, 2011.

Any auditor that is selected will need to be available to begin work on or about January 17, 2012. In addition please review the conflict of interest provision set out in the RFP. Applicants should consider whether existing or planned relationships to entities involved in the energy utility industry (or related fields) would (or could) appear to conflict with his or her ability to provide the Board with an independent review.

Any questions regarding this RFP should be directed to Ed McNamara at 802-828-2358, or via email at ed.mcnamara@state.vt.us.

Again, proposals are due no later than December 30, 2011.

REQUEST FOR PROPOSAL

The Vermont Public Service Board (“Board”) is soliciting bids for an independent auditor to perform the functions described below beginning on January 17, 2012, and concluding March 30, 2012. Pursuant to 30 V.S.A. § 209(e)(12), the Board is required to conduct an independent audit of the reported savings and cost-effectiveness of programs delivered by the Vermont Energy Efficiency Utility (“EEU”).

The primary responsibility of the Independent Auditor will be to verify the savings achieved by the EEU in the years 2008, 2009, and 2010, and to verify the cost-effectiveness of EEU programs as provided in 30 V.S.A. § 209(e)(12) and as further described below.

The EEU delivers electric and heating-and-process-fuel energy efficiency services to residential and business electricity customers. The EEU program is composed of several entities, including Efficiency Vermont, the City of Burlington Electric Department (“BED”), and the Department of Public Service (“Department”). Efficiency Vermont provides energy efficiency services to all portions of the state except for BED’s service territory, which provides energy efficiency services in its own service territory. The Department conducts an independent evaluation of the EEU programs, including verifying the savings claimed by Efficiency Vermont. BED also submits savings claims; however, these claims are not analyzed by the Department. More information regarding the EEU can be found on the Board’s website at <http://psb.vermont.gov/utilityindustries/eeu/generalinfo>. The prior Independent Audit can be found at http://psb.vermont.gov/utilityindustries/eeu/generalinfo/oversightactivities#Audit_of_EEU_Programs_Cost-Effectiveness.

Prior to 2008, Efficiency Vermont and BED did not provide significant heating-and-process-fuel efficiency services. Accordingly, the prior independent audits have not analyzed the savings or cost-effectiveness of such services.

Minimum Requirements for the Independent Audit

The Department has analyzed Efficiency Vermont’s savings claims for the years 2008 through 2010 through a process referred to as the “savings claims verification process,” which is separate and distinct from the independent audit required by Section 209(e)(12). The Independent Auditor will review and critique the procedures and methodologies used by the Department in this “savings claims verification process” and provide an assessment of Efficiency Vermont and BED’s energy and capacity savings for the period January 1, 2008, through December 31, 2010. At a minimum, the Independent Auditor will perform an independent review of:

- The cost-effectiveness of the EEU;
- The reported energy and capacity savings achieved by Efficiency Vermont and BED;
- The Technical Reference Manual (which is a basis for Efficiency Vermont’s and BED’s savings claims) and the process for managing and updating it;
- The database and other information compiled by VEIC that is used to develop and track savings claims and project costs;

- The procedures and methodologies used in the Department's savings claims verification process; and
- Any other relevant information, including information developed through the Department's programmatic evaluation, when appropriate.

The Independent Auditor will also perform an independent review of the cost-effectiveness of Efficiency Vermont's and BED's programs. To accomplish this task, the Independent Auditor will use the materials listed above. The independent audit will report on the cost-effectiveness of the EEU's programs in three categories: (1) residential programs, (2) commercial and industrial programs, and (3) all programs combined. The audit will use at least three methodologies to assess the program's cost-effectiveness:

- a) The "utility test," which will include all of Efficiency Vermont's and BED's operating costs (including all administrative and information technology costs), the costs of EEU incentives, the costs of the Department's monitoring and evaluation activities, and the costs of the Contract Administrator and the Fiscal Agent;
- b) The "total resource cost test," which will include all the cost categories covered under the utility test plus participant costs, third-party costs, and other resource benefits; and
- c) The "Vermont societal test," which will include all the cost categories covered under the total resource cost test plus a risk adjustment and environmental adjustment, consistent with Vermont practice.

For each of the tests, actual costs for the years 2008, 2009, and 2010 will be used where available and appropriate. The Independent Auditor will work with Board staff to determine the amount of costs to be used for items for which actual figures are either not available or not appropriate because they are linked to the end of the three-year contract period (such as Efficiency Vermont's and BED's performance incentives and the Department's evaluation costs). A pro rata share methodology will be developed for this category of costs.

The maximum payment under the resulting contract will be \$50,000. Within the overall budget constraint, bidders should propose any additional measurements that would be helpful in determining the overall cost-effectiveness of the EEU.

The Independent Auditor will provide the Board with a Report to the Legislature and a Management Letter. The Report to the Legislature will summarize the Independent Auditor's conclusions regarding (1) the verified energy and capacity savings from the Efficiency Vermont's and BED's programs in the years 2008, 2009, and 2010, and (2) the cost-effectiveness of the Efficiency Vermont's and BED's residential programs, commercial and industrial programs, and all programs combined. The Report will include a brief description of:

- The process followed by the Independent Auditor to conduct the independent audit;
- The date and tools used to perform the audit; and
- The entities or persons who had significant involvement of the review.

In addition, the Report will include the Independent Auditor's assessment of whether the Department's savings claim verification activities undertaken in 2008, 2009, and 2010 are likely

to reflect material and/or systematic errors in data entry or accuracy by the DPS, Efficiency Vermont or BED. The Report will also include the Independent Auditor's assessment of whether the results of the cost-effectiveness analysis are robust (i.e., whether there are identifiable factors that are likely to change or have changed that would significantly alter the results in year 2011) The primary audience for this Report is state legislators who may not be familiar with technical energy efficiency evaluation terminology; as a result, the use of such terminology should be minimized to the extent possible.

The Management Letter will include the Independent Auditor's assessment of the strengths, weaknesses, and recommendations for improvement of any of the elements that were components of the review, such as the Efficiency Vermont's and BED's databases and the Department's savings claim verification methodology. The primary audience for the Management Letter is the Board, the Department, Efficiency Vermont and BED; the use of technical terminology is appropriate for this audience. The Independent Auditor will provide the Board with the final Management Letter on the same date that it provides the Board with the independent audit report.

The Independent Auditor may, at the discretion of the Board, be called upon to respond to legislative inquiries about the report.

Information Management

The Independent Auditor must agree to provide the Board with electronic copies of its reports and work papers upon request.

Some of the information that may be used by the Independent Auditor may be customer-specific or could provide an unfair competitive advantage to an entity delivering electricity or heating-and-process-fuel services outside of the energy efficiency services and initiatives approved by the Board for EEU implementation. The Independent Auditor will safeguard this information using systems that provide appropriate protection in the collection, processing, storage, and retrieval of such information.

The Independent Auditor and any support personnel with access to confidential information will sign a non-disclosure agreement provided by the Board relative to protection of confidential information.

The Independent Auditor will take reasonable steps to ensure the physical security of confidential information maintained by the Independent Auditor.

In the event that the Independent Auditor receives a request to disclose confidential information from a person or organization other than the Board, the Department, or their authorized employees, the Independent Auditor shall deny the request and inform the requester that such requests for the information may be filed at the Board. The Board will then determine whether the information should be disclosed.

In order to perform an adequate review of Efficiency Vermont's and BED's savings claims, as well as the Department's evaluation of Efficiency Vermont's reported savings claims, the Independent Auditor will require access to the files and personnel of Efficiency Vermont, BED, and the Department. However, to preserve the independence of the auditor's work, the

Independent Auditor will not be required to respond to any direct requests or recommendations from these entities. Should any conflicts arise in this regard, the Independent Auditor will bring the dispute to the attention of the Board.

The Independent Auditor's opinions and decisions regarding the performance of the EEU, the savings verification process undertaken by the Department, and determinations of cost-effectiveness will not be binding on the Board.

Any and all information collected under this contract shall be made available to the Board and its authorized employees and contractors upon request of the Board or its staff.

Conflicts of Interest

The Independent Auditor may engage in business activities, other than those described directly below, as long as these activities do not create a conflict of interest with the performance of the audit. The Independent Auditor also affirms that it, its applicable employees and its applicable subcontractor(s) shall promptly and fully inform the Board of any business activities and/or relationships which any person, fully acquainted with the circumstances, could reasonably conclude might unfairly disadvantage another party, and agree that they shall abide by the Board's reasonable determination as to whether such activities or relationships fall within the terms of this Paragraph.

The Independent Auditor affirms that neither it, nor any of its applicable personnel or subcontractor(s), have or presently expect any beneficial, contractual or business relationship with the Department, BED, or VEIC that will be directly affected by the Independent Auditor's performance of the audit. The Independent Auditor further affirms that it and its applicable personnel and subcontractor(s) shall not develop, pursue, or confirm any such beneficial, contractual, or business relationships with the Department, BED, or VEIC throughout the term of any contract with the Board to conduct the audit, and for 6 months thereafter, without the written permission of the Board.

The Independent Auditor's subcontractor(s) may work for distribution utilities, the Department, or other parties that appear in proceedings before the Board as long as these activities do not create a conflict of interest with the performance of the work. The Independent Auditor shall require its subcontractor(s) to disclose to the Independent Auditor, on an on-going basis throughout the term of their contracts with the Independent Auditor, any contracts they enter into with any Vermont transmission or distribution utilities or the Department. The Independent Auditor shall promptly provide a copy of all such disclosures to the Board.

Terms of Auditor's Services

All responses to this RFP must specify: (1) the personnel who would work on the audit, and the qualifications of those personnel; (2) the hourly rate of all personnel involved in the preparation of the report; and (3) a maximum dollar amount that the consultant would charge for the audit.

The contract for services shall include the State Contract Provisions set forth in the State of Vermont Agency of Administration Bulletin 3.5, Appendix C, a copy of which is attached.

Responses will be considered by the Board based both on the qualifications and prior experience of the auditor and the overall price of the auditor's services.

Deadlines for Responses

Responses to this RFP shall be submitted to Ed McNamara, Staff Attorney, via email (ed.mcnamara@state.vt.us) no later than December 30, 2011. In addition, respondent should submit one hard copy to Brenda Chamberlin, Business Manager, 112 State Street, Montpelier, VT 05620, postmarked on or before December 30, 2011. Any questions regarding this RFP should be directed to Ed McNamara at 802-828-2358, or via the above email address.

Responses received shall be public records, available for public inspection, after a final contract for these services has been executed.

STATE OF VERMONT Contract # _____
STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, _____ (hereafter called "State"), and _____, with _____ principal place of business in _____, (hereafter called "Contractor"). Contractor's form of business organization is _____. It is the contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of _____. Detailed services to be provided by the contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$ _____ .00.

4. **Contract Term.** The period of contractor's performance shall begin on _____, 20__ and end on _____, 20__.

5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

- Approval by the Attorney General's Office /is/is not/ required.
- Approval by the Secretary of Administration /is/is not/ required.
- Approval by the CIO/Commissioner DII /is/is not/ required.

6. **Amendment.** This agreement represents the entire agreement between the parties; No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Cancellation.** This contract may be canceled by either party by giving written notice at least _____ days in advance.

8. **Attachments.** This contract consists of _____ pages including the following attachments which are incorporated herein:

- Attachment A - Specifications of Work to be Performed
- Attachment B - Payment Provisions
- Attachment C - "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 01/10/2011), except that the following numbered

paragraphs are not included:

Attachment D - Other Provisions

9. Order of Precedence. Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment C (Standard Contract Provisions for Contracts and Grants)
- (3) Attachment D (if applicable)
- (4) Attachment A
- (5) List other attachments in order of precedence
- (6) Attachment B

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

By the State of Vermont:

Date: _____

Signature: _____

Name: _____

Agency: _____

By the Contractor:

Date: _____

Signature: _____

Name: _____

Title: _____

ATTACHMENT C: STANDARD STATE PROVISIONS

FOR CONTRACTS AND GRANTS

(REVISED 1/2011)

1. **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. **APPLICABLE LAW:** This Agreement will be governed by the laws of the State of Vermont.
2. **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.
3. **APPROPRIATIONS:** 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.
4. **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.
5. **INDEPENDENCE, LIABILITY:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the

Party. 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.

After a final judgment or settlement the party may request recoupment of specific defense costs and may file suite 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.

The Party shall indemnify the State and its officers and employees in the vent that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

- 6. INSURANCE:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

WORKERS COMPENSATION: With respect to all operations performed, the party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

GENERAL LIABILITY AND PROPERTY DAMAGE: With respect to all operations performed under the contract, 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 Per Occurrence

\$1,000,000 General Aggregate

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

\$ 50,000 Fire/Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

AUTOMOBILE 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: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

7. **RELIANCE BY THE STATE ON REPRESENTATIONS:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
8. **REQUIREMENT TO HAVE A SINGLE AUDIT:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$5000,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://Finance.vermont.gov/forms>

9. **RECORDS AVAILABLE FOR AUDIT:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter 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. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. FAIR EMPLOYMENT PRACTICES AND AMERICANS WITH DISABILITIES ACT: Party agrees to comply with the requirement of Title 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. Party further agrees to include this provision in all subcontracts.

11. 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 thereafter.

12. TAXES DUE TO THE STATE:

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has filed 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.

13. CHILD SUPPORT: (Applicable if the party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
 - b. Is under such an obligation and is in good standing with respect to that obligation;
- or

- c. Has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

- 14. SUB-AGREEMENTS:** Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
- 15. NO GIFTS OR GRATUITIES:** Party shall not give title or possession of any thing 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.
- 16. COPIES:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 17. 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.