

Contracting for Municipal Projects

A Manual for Vermont Municipalities



September 2001

ACKNOWLEDGMENTS

Informal procedures for bidding and letting contracts and for managing projects are common in Vermont. These practices can result in more expensive projects, open towns to liability, and lead to misunderstandings that injure the reputation of both municipal boards and the contractors.

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Funds were provided by:

- Vermont Local Roads at Saint Michael's College
- Vermont Agency of Transportation and the Federal Highway Administration, Local Technical Assistance Program
- American Consulting engineers Council of Vermont
- Associated General Contractors of Vermont
- Vermont League of Cities and Towns

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Section 1

INTRODUCTION

1.1 GENERAL

This manual provides a reference guide when a community constructs a project that will involve professional consulting or construction services. This manual provides guidance to avoid or minimize conflicts and achieve a complete project in a reasonable timeframe at a fair cost. Elected or appointed officials in municipal government who are responsible for making decisions related to the implementation of municipal infrastructure improvements will want to keep this guide close at hand.

The State of Vermont's procurement law provides little guidance to local officials when municipal purchases are made. It states only that construction contracts are within the scope of general responsibility of the selectmen, mayor, aldermen, trustee or prudential committees. This provides great latitude to local decision-makers in managing the responsibility for purchases or project implementation services.

While both public and private sectors share a common interest in obtaining good value at reasonable costs, responsibilities of municipal officials and the private sector are distinctly different. Unless there are shareholders, the private sector business owner is only obligated by the terms of an agreement and the principle of "good faith."

In the public sector, in addition to ensuring that there is good value for tax dollars expended, there is a responsibility to the community as a whole. The good faith and credit of a community is at stake each time a legislative body enters into a contractual relationship. Decisions made should not be construed as arbitrary, capricious, unreasonable, in bad faith or contrary to law. Expenditure of municipal funds is *always* subject to public disclosure and audit.

The potential contractor, professional consultant or supplier, who may be a taxpayer in the community, has a right to expect that all qualified individuals or companies will have an equal opportunity to be selected to perform services for the municipality through a clearly defined process. In order to avoid unnecessary litigation, it is important that any process be open, fair to all and well documented.

Given these responsibilities, local officials generally follow some form of a competitive selection process that results in an agreement between the municipality and a professional consultant and, eventually, with a construction firm. **This manual will describe in detail the selection process, as well as other alternatives that a community should follow.** Since state law provides clearer guidance to school boards in managing construction projects, this manual is *not* intended for schoolboard use. The State Department of Education has prepared a manual—*Vermont School Construction Planning Guide*—for that purpose. The manual can be obtained by contacting the Department of Education at (802) 828-3147.

In addition to ensuring that the selection process is fair, a project may also be required to further certain societal goals, particularly if state or federal funding is involved. When the US Congress adopts laws intended to affect the lives of its citizens, they often attach specific requirements to be met by public entities that apply for and receive federal funding. For this reason, consideration will be given to issues such as affirmative action, wage laws related to construction work, anti-kickback requirements and access for the disabled.

State government, when serving in the role of funding agency, also advances state goals through grants. Issues related to growth, support of downtowns and general land use planning are conditions in the state distribution of funding for certain types of municipal construction projects. When state agencies distribute federal funds, both federal and state requirements must be satisfied.

These requirements should not be considered deterrents to applying for such funding. Many contractors are familiar with and able to comply with the requirements. However, it is important to be aware that such requirements exist.

In addition to the federal/state requirements, some municipalities have their own policies and procedures.

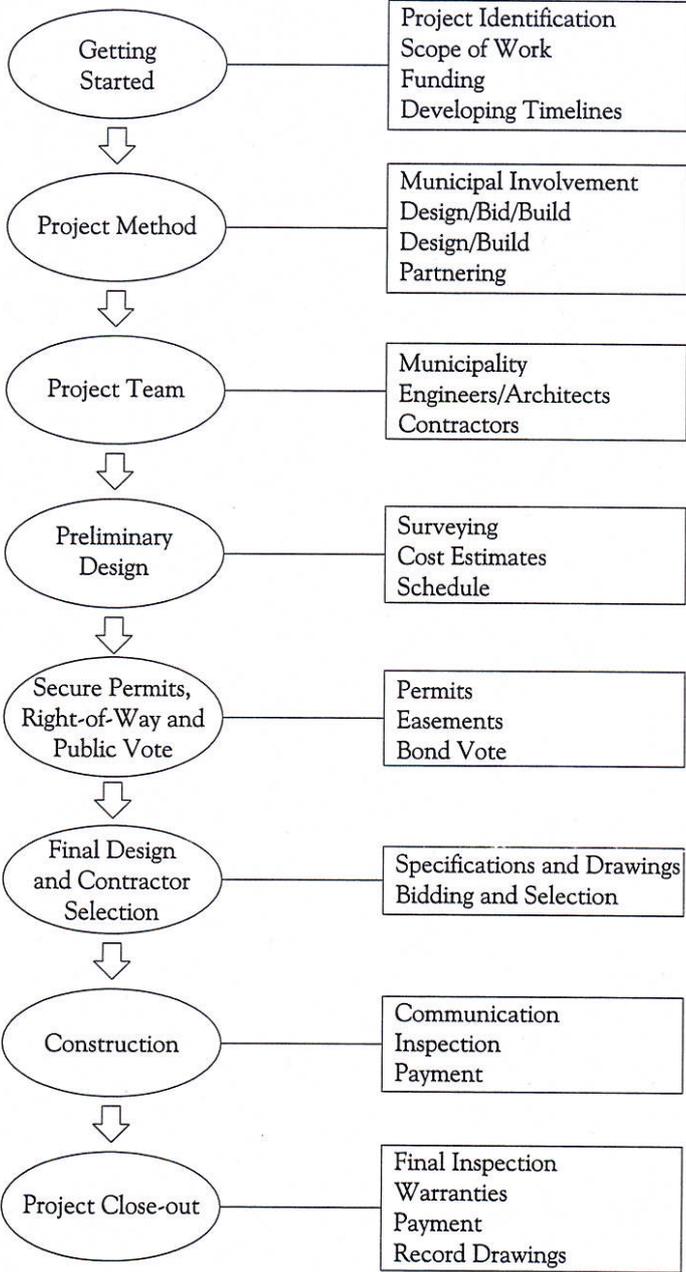
1.2 HOW TO USE THIS MANUAL

This manual describes the entire purchasing process from project identification to project completion. Topics include project scoping, management options, funding sources, establishment of timelines, the selection process for engineer or architect consulting services, design agreements, procurement of construction services, contract language, and management of a construction project to completion.

While the manual is intended for municipal construction projects, a section is included that briefly reviews the procedures for making other types of governmental purchases.

In addition, the manual is a reference. Sections can be read independently or sequentially. The following project sequence schematic shows the steps taken through a project. There is a glossary of terms at the end of the manual. Sample forms can be obtained from two websites: www.agc.org and www.aia.org.

Project Sequence



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Section 2 GETTING STARTED

2.1 PROJECT IDENTIFICATION

Initial identification of a project usually develops from a combination of sources. Input comes from residents of the community, municipal employees, or governing officials. A state agency, particularly the Agency of Transportation (VTrans), can also be a source. Since VTrans has district transportation administrators in nine regions of the state, they are often on the roads and identify issues. VTrans is required by state law to inspect every bridge in Vermont every two years. The inspection results are forwarded to a community for information/action. In implementing federal and state legislation related to environmental issues, the Agency of Natural Resources (ANR) may also identify projects.

Ideally a municipality prepares five- and ten-year capital improvement plans to identify infrastructure needs of the community, sets priorities for implementation, and identify potential sources of funding. Communities engaged in this process are better prepared to manage projects financially over the long term. Residents are also informed of anticipated projects so that when bond votes are presented they are not unexpected.

Before deciding the most appropriate process to follow in implementing a construction project, it is important to clearly define the project and understand the steps required to reach completion. The type and complexity of the process is determined to a large extent by the nature and size of the project. Some projects are fairly straightforward and others may involve a number of issues. Initial time spent in identifying the scope of a project will save time and money as well as avoid future problems. Discovery of issues late in a project can result in delays and frequent cost overruns.

A review of the questions listed below should help the municipality determine the complexity of a project and whether professional assistance is needed to better define its scope.

- **Where and how much land will be involved or impacted by the project?**
- **Are there natural and/or man-made resources in the area?**
- **Is the project area all within the public right-of-way?**
- **Will easements be required?** If so, is there a need for a permanent easement or a temporary construction easement? If the project will involve the permanent use of the property not owned by the municipality, then a permanent easement is needed. If the private property will be disrupted only during construction then a temporary (construction) easement will be required.

- **Given the area of construction, should consideration be given to making other improvements at the same time?** If the road base needs to be replaced, it would be logical to consider any drainage issues or improvements to other utilities located in the roadway. While this may increase the cost of the project, there is a risk that the utilities could be damaged during construction. If the utilities are in poor condition, it may make sense to have all the disruption in one year rather than over a period of years.
- **Are state or local permits required?** The public expects that their elected officials will observe all the laws related to permits. The permit process will sometimes identify potential problems during early stages of a project. These problems usually don't go away, and it is important to address them early. A professional consultant is familiar with the many permits that are required for various construction projects and can help to review and obtain these for the municipality.
- **Where will the money to fund the project come from? Are state or federal dollars available?**
- **Will voter approval for funding be required?**
- **How will the public be impacted by the project?** Will a road need to be closed? If so, for how long? Scheduling of projects to mitigate these impacts to the greatest extent possible will benefit all parties involved.
- **Will trees need to be removed?** This is often a sensitive subject to residents and should be addressed before the project begins.
- **Is this a specialized project that requires unique skills or is the project of a more general nature that will attract the interest of a wider group of contractors?**
- **What is the availability of contractors to do this work?**
- **What is a reasonable schedule for planning, designing, consulting and completing the project?**

Through this identification process, officials may determine that the project is fairly straightforward; there are few or no permitting requirements; and, there are only a few companies that specialize in this kind of work. This helps to define the next step for the municipality. While a scope of work will need to be developed, it may not require the assistance of a professional consultant.

For projects not requiring a professional consultant, please see Section 2.3.

If these answers identify some issues, the municipality may determine that professional assistance *is* needed to develop and implement this project. If so, see Section 2.2.

2.2 SCOPE OF WORK

Defining the scope of work is the responsibility of the municipality. Depending on what is determined in the project identification process, the hiring of a consultant may be the next step. See Section 4 for a description of this process.

The development of the scope may include the appointment of a committee to include municipal staff and interested citizens. This committee would work with the consultant to develop a scope of work and schedule that is then recommended for approval to the governing body. As an alternative, the legislative body may choose to develop the scope of work on their own.

The scope of work outlines all the issues and intended solutions without getting into the specific details of design. Detailed responses that address the specific questions listed above in the project identification will be developed. When the scope of work is clearly defined, the municipality is prepared to authorize the development of preliminary design and the development of cost estimates.

2.3 MUNICIPAL PURCHASING POLICY

While this manual is intended to focus on construction projects of a size and cost to warrant both consulting and construction related services, many of the purchases made by a community will be completed directly through a supplier and will not require a formal bid process. A well-developed purchasing policy establishes procedures for both large and small purchases.

Legislative bodies should be familiar with any adopted purchasing policies or procedures on record in the community. While a previous board may have adopted the policy, the current board is obligated to follow it unless it is amended or rescinded.

If a policy does not already exist, consideration should be given to adopting one. This will assure taxpayers, suppliers, and contractors that the community intends to follow a fair process when purchases are made. It will also serve to clarify to staff and the board the procedure to be followed when making purchases. Consideration and adoption of such a policy should preferably be done when the community is not in the midst of a major purchase. Sufficient time should be taken to prepare a thoughtful document with full discussion and without having a specific project complicating the issue.

Purchasing policies define:

- Who is authorized to make a purchase.
- What criteria to follow for the various levels of purchase.
- If a local business preference is allowed.
- How potential conflicts of interest should be addressed.
- How to handle the acquisition of professional services.
- When quotations are acceptable.

- When a full competitive bid process is required.
- Exceptions to the rule and waiver procedure.

2.3.1 AUTHORIZED PURCHASE

Depending on the level of staff expertise, there should be some ability to make purchases of a reasonable dollar amount without requiring board authorization. By setting certain thresholds as to the dollar amount that can be spent, and specifying procedures to follow when a purchase is made, municipal affairs can continue to function between board meetings.

In communities where there is a town/city manager, that individual is the authorized purchasing agent by state law. In communities without a manager or administrator, a specific employee may be designated to authorize purchases at a certain level.

2.3.2 PURCHASING POLICY CRITERIA TO FOLLOW

In developing the purchasing criteria, a number of factors should be considered, such as type of purchase, availability of suppliers, transportation costs, and frequency of purchase. In getting started, it might be helpful to list the types of purchases made.

Generally, purchases fall into two categories:

1. **Materials and supplies**, including road materials (culverts, gravel, salt and sand), fuel (for vehicles and buildings), tires, tools, electricity, computer supplies, office furniture and supplies, recording books etc.
2. **Services**, including paving, telephone, or professional services such as legal, engineering and auditing.

Less frequent purchases might include more expensive items such as a dump truck, computer, road reconstruction, renovation or new construction of buildings, etc.

There are generally three categories of purchases: major, minor and incidental. Major purchases are those of a significant cost that would require a formal bid process. A minor purchase may be of a certain dollar value to require approval by an authorized purchasing agent and may also require the purchaser to obtain several quotes. Incidental purchases are usually low in cost (less than \$500). Dollar thresholds are assigned to the categories, and the amounts will vary depending on the size of a community and staff expertise.

Even within these defined levels there may be reason to exclude certain items from these categories that meet the dollar threshold, but for other reasons the established rules may not achieve the best results. An example is the purchase of road salt. While a community spends a lot of money to purchase salt, there are not a lot of vendors to choose from. The state has, through its bid process, selected a supplier that is required to sell salt to local communities at the same price it sells to the state. By selling in large volumes, the

supplier can offer a better price and the community has benefited by combining their needs with others to take advantage of this block purchase.

Other board policy may negate the purposes in bidding for certain items. For instance, if the board has a policy that establishes the specific type of pipe to be used in all construction projects and there is only one supplier, a formal bid process would be inappropriate. **A community should not bid an item when a specific supplier has already been designated.**

2.3.3 LOCAL SUPPLIER PREFERENCE

If there is a desire to deal with local suppliers as much as possible, this should be stated in the policy. Some communities have set a percentage rate above the low bid when preference will be given to the local contractor. For the most part, suppliers and contractors understand this.

Businesses located in the community are taxpayers and deserve the consideration of town officials. While there may be reasons not to deal locally when certain purchases are made, it is important that this subject is handled in a manner that does not negatively impact either the business or the municipality's reputation. In such instances a competitive bid process is helpful to avoid any potential criticism.

2.3.4 CONFLICTS OF INTEREST

It is not uncommon for a board member, or a board family member, to own a local business that supplies materials and/or services that a community may have occasion to purchase. If a separate conflict of interest policy does not exist, it is important to address this topic in the purchasing policy. At a minimum, the policy should define a procedure for public disclosure of the potential conflict and the level of participation permitted when discussion or voting takes place related to the purchase of an item where the conflict exists. Municipalities interested in adopting a conflict of interest policy may contact the Vermont League of Cities and Towns (VLCT) at 800-649-7915 for a model.

2.3.5 PROFESSIONAL CONTRACTUAL SERVICES

In purchasing the services of a professional consultant, or when a service is of a specialized nature, the selection process is somewhat different. Cost, while important, should not be the most important factor. More important factors to consider are the expertise, knowledge, financial resources and experience of the individual or company providing the service.

The selection processes can include the following:

Request for Qualification (RFQ). The RFQ process evaluates the professional qualifications of an individual or firm to provide consulting services. It usually is not project specific, but may be related to specific skills being sought. If you are planning a

bridge renovation, you will be interested in structural engineering services. VTrans uses the RFQ process to develop a list of qualified consultants that will be considered for any future work the agency may be planning. These lists are available to communities upon request.

Request for Proposal (RFP). An RFP invites qualified firms to submit proposals for a specific project. The project should be sufficiently well defined to give the consultant some good understanding of the task to be accomplished and any timelines, meetings with the public and/or board members or other tasks to be performed.

In either process the procedure to follow for soliciting proposals is similar. Prepare an invitation to submit a proposal that briefly defines the professional service being sought. Include a reasonable deadline (including date, time and location) for submitting the proposals. Advertise this invitation in a newspaper with a sufficiently broad circulation to reach all who may be qualified. In addition to the newspaper ad, send the notice to a selected group that has previously worked for the community or that may be qualified. Allow sufficient time from the date the notice first appears in the newspaper to the date for opening the proposals to allow the consultant to put together a responsible proposal. The submitted proposals should be opened publicly at the designated time. Either the board or an appointed selection committee should review the proposals and arrange for interviews of those determined to be most qualified.

Submitted proposals should define:

- The firm's approach to completing the task.
- Estimated time assigned to each task.
- Process to be followed (public hearings, meetings with committees or board).
- Specific person assigned to the project.
- Total project cost estimate based on individual costs and hours involved.

Include a biographical sketch with each proposal so that the legislative body can fully evaluate the qualifications. Also include references of prior experience on similar projects. They should be checked before any final decision is made to procure services.

The RFP process is generally used to select professional as opposed to construction services. However, in some instances where a unique construction service is required, a community may use a RFP process as opposed to a formal bid process. An example of a unique service might be the restoration of an historic monument. The professional in the field of masonry is more technically qualified to describe the work elements involved in this type of restoration than is the design consultant. The design consultant may be an expert on construction methods but is less familiar with the detailed work elements of monument restoration.

2.3.6 QUOTATIONS

When the purchase is of a certain dollar amount, and/or there is limited availability of suppliers, the policy should allow the staff to obtain quotations from two or three suppliers/contractors. While creating some competition, obtaining quotes assists in confirming the cost of the product being purchased. This process will avoid unnecessary advertising expenses and perhaps save time. Examples may be the purchase of a computer, carpeting or, in some instances, large fuel purchases. Once the quotes are obtained, they should be presented to the board or the designated purchasing agent for approval.

When such a practice is allowed, it should be defined in the policy so that it is clear to those making the purchases. Requiring that quotes be obtained will assist staff in periodically validating that vendors remain competitive.

2.3.7 COMPETITIVE BID PROCESS

Due to the nature of government, it has become a preferred practice to include competition in the purchasing process when warranted. In most instances, competition assures the costs of the project will be fair and all have an opportunity to participate in the process. While the construction industry is moving more towards construction management services—particularly in the private sector—the competitive bid process is a generally accepted practice.

In this process specifications are prepared and an invitation to bid is advertised in the newspaper. This invitation should include the purpose of the project; location where the detailed specifications can be obtained; time and place for the sealed bid to be delivered; and, appropriate insurance and bonding requirements. A statement should also be included that “reserves the community’s right to reject any or all bids if such action is deemed in the best interest of the community.” Details of this process can be found in Section 7.

2.3.8 EXCEPTIONS OR WAIVERS TO THE RULES

A clause should be included in the policy to allow for exceptions to the policy or a waiver. The latter may be decided on a case-by-case basis. An exception to the policy could be a situation where there is a sole source supplier of a particular product.

Several communities have developed purchasing policies. Samples are available from the Vermont League of Cities and Towns at 800-649-7915.

2.4 SOURCES OF FUNDING

While the simplest and most straightforward means of funding a project is through the property tax or utility user fees, it is also the most expensive. If capital budgeting is in place, this can serve to mitigate some of the financial impact. When only local dollars

are involved, the applicable rules and regulations are limited only to those that a municipality has adopted plus any permit requirements.

2.4.1 STATE FUNDS

A number of state grant and loan programs can be used to supplement local tax dollars, or utility user fees, to complete a project. These programs may require a local match of dollars, and the amount of the match will differ for each of the programs. In addition to the local match, there are often requirements that the Legislature has attached to implement its own societal goals.

Vermont Agency of Transportation (VTrans). Several VTrans funding programs for bridges, culverts, and roads are available annually. The amount of dollars available varies annually depending on funding levels set by the Legislature. These funds are distributed on a competitive basis through each of the nine district transportation administrators (DTA). The DTA can help determine if the project is eligible for funding and can advise about the rules and reporting requirements. Contact VTrans at 802-828-2667.

Agency of Commerce and Community Development. This agency manages funding programs for downtown development, economic development, historic preservation and both regional and local planning. These programs are dependent on the funding levels established by the Legislature on an annual basis. Contact the agency at 1-800-622-4553.

Agency of Natural Resources (ANR). While being the conduit for the Environmental Protection Agency, U.S. Forest Services and federal land and water conservation funds, ANR also has several state grant programs for water, wastewater, solid waste and water quality. Contact the agency at 802-241-3600.

2.4.2 FEDERAL FUNDS

In addition to the state funds, a number of federal programs make monies available to communities. These programs are often managed by the various state agencies that serve as the conduit for these funds. Each agency develops criteria for the application of these funds and decides which communities best meet these criteria. In some programs, the federal government requires that the state provide matching funds to demonstrate the state's commitment to the project. The state in turn requires a match by the community.

The state, as a conduit of federal dollars, is required to ensure that all federal requirements are observed. Details of requirements vary from program to program and agency to agency; each has developed guidelines on the process to be followed.

Single Audit Act. Federal funding is subject to special audit requirements. The federal Single Audit Act details all financial reporting requirements that a community is required to observe when using federal funds. The Act defines a certain dollar threshold when a special audit of all town funds will be required. This threshold includes the cumulative

total of all federal funds received by a community in a single budget year. For example, if a community receives federal funds from FEMA, a tree grant and a federal transportation grant in a single year, the combined total of these funds determines the auditing requirements. **When a single audit is required, the auditor is required to perform specific reviews and prepare additional reports that may result in additional charges.**

USDA Rural Development. The USDA Rural Development manages a federal program for water and wastewater, solid waste disposal and storm drainage direct loans and grants. For communities with populations of 10,000 or less, public entities may access funds for such projects. All federal requirements are applicable and priority is given to public entities in areas with fewer than 5,500 people to restore deteriorating or inadequate water supply and wastewater facilities. Preference is also given to projects where small facilities merge and for projects serving low-income communities. This program has an extensive application process but is worth exploring for projects meeting the criteria. Contact USDA Rural Development at 802-828-6033.

Special Requirements. Besides administrative responsibilities, acceptance of these funds requires the observance of certain federal laws. Examples include the affirmative action regulations such as DBE (Disadvantage Business Enterprise), MBE (Minority Business Enterprise) and WBE (Women's Business Enterprise); the Equal Employment Opportunity Clause; the payment and monitoring of established construction wages (Davis-Bacon Act), and observance of the Copeland Act, anti-kickback regulations. *29 C.F.R. Parts 3 and 5.*

- **Affirmative Action Regulations** have been established by Congress to ensure that consideration is given to the employment of disadvantaged, minority and women business enterprises any time federal dollars are spent on a construction project. Each agency has developed different rules to implement these regulations. The municipality is required to meet certain thresholds and document steps taken to achieve these goals.
- The **Davis-Bacon Act** is incorporated in the Code of Federal Regulations and is intended to ensure that all workers are paid fair wages and benefits while working on federally funded construction projects. The wage rates are set by regional offices to reflect the prevailing minimum wage paid for each construction job classification. There are reporting and monitoring requirements to be met as well. *29 C.F.R. Part 5.*
- The **Copeland Act** is contained in the Code of Federal Regulations and is intended to prevent contract awards based on an inappropriate action taken by the bidder and/or the municipality.

The use of federal funds will likely add to the time that it takes to complete a project. Depending on the agency, this can be significant. Some of this is due to the extra steps added to a project to assure both the state and the federal government that the monies are being used responsibly. It is important to keep in mind that the federal government has

developed these rules based on years of experience with construction projects across the country. It should not be taken personally. Some will seem out of place in rural areas, but there are no exceptions to these rules.

2.4.3 STATE IMPLEMENTATION OF FEDERAL PROGRAMS

State agencies have developed different policies and procedures to both distribute and manage federal funds coming to the state.

Agency of Transportation (VTrans). VTrans distributes federal funds through several different programs. As the criteria for the use of these funds has expanded, the agency has adopted new policies and procedures. These policies are intended to allow more local control of a project and to reduce, although not eliminate state oversight.

- **Enhancement Program.** With the adoption of the Intermodal Surface Transportation Efficiency Act (ISTEA) in 1991 and the reauthorization under the Transportation Equity Act (TEA-21) in 1998, federal funds were made available for a broader range of state and local transportation needs beyond basic road and bridge construction. The uses of these funds were expanded to include highway safety, transit, transportation centers, bike paths, signage, sidewalks and other surface transportation programs. With expanded uses more communities have the opportunity to receive these funds. While the communities manage the funds they are still responsible for observing the associated state and federal regulations.
- **Local Transportation Facilities Program (LTF).** Through the LTF program, communities gained the opportunity to manage the development and construction of projects funded with federal and state transportation dollars. These projects are local in nature and selected on the basis of priorities set by Vermont's regional transportation planning initiative.

The ISTEA initiative technical advisory committees (TACs) were established in regional commissions throughout the state. Each town/city represented on the regional commission should send a delegate to the local TAC. This will ensure that the community has a voice in setting transportation priorities for the region. To gain a better understanding of the purpose and/or existence of the TAC, contact your regional planning commission.

The management of LTF programs requires a commitment by local government to take on this responsibility; however, the agency has agreed to pay for the services of a project manager to assist in this work. The project manager can be either a staff person from the community, or someone hired by the municipality specifically for this purpose. For communities with little or no administrative staff, this has significantly increased their opportunity to become recipients of funds to implement local projects.

While VTrans still maintains oversight of the project, the municipality takes a leadership role in hiring of consultants and contractors. VTrans assigns staff to provide technical

assistance, however the detailed agency review customary in the past is no longer required. More specific details of this process can be found in VTrans' *Local Transportation Facilities Guidebook for Municipality-Managed Projects* (January 20, 1999).

- **Transportation Capital Construction Bill.** In order to include local projects in the state Legislature's transportation capital construction bill, they must involve state highways or local/state owned bridges. Time frame for implementation of these projects is difficult to predict. Over the past several years, many projects on this list have been eliminated while some have subsequently been reinstated. There is no guarantee that the project contained in one capital plan will eventually be built. The priorities of the state will change, as will the dollars available and the make up of the Legislature. If a community has a project included on the list, it is important to watch these projects carefully and ask the elected representative from the community to keep the municipality informed of any activity. While members of the Senate and House Transportation Committees are very familiar with all the projects in the capital construction bill, other members of the Legislature may not be.

Agency of Natural Resources (ANR). ANR is responsible for the distribution of federal funds from the U.S. Environmental Protection Agency. These funds are distributed to assist in complying with the Federal Clean Water, Safe Drinking Water and Clean Air Acts. A priority point system has been developed to rank the projects based on the degree of pollution, local community support (bond vote) and need, as well as the potential for "sprawl development."

- **State Revolving Loan Fund.** The federal government has authorized the use of federal loans to improve or correct environmental problems at the local level. This is a change from the previous direct grant program, but has allowed the state to develop a program that extends the use of the funds. Rather than receive direct grants to fund a portion of planning and construction projects, communities are eligible to receive loans. When repaid, these funds can then be reused for projects in other communities.
- **ANR has implemented a program authorized by statute to allow municipalities to borrow funds to finance water, wastewater, storm water separation, and solid waste projects.** Since there is a limit to the amount of dollars in this fund in any one year, the agency has developed a process for the distribution of these funds by determining eligibility on a priority point system. Points are given for several factors that include the degree of pollution, population served, and voter approval for the project.

Once the community has obtained approval from the agency through an application process, it is required to file an application with the Vermont Bond Bank if it intends to bond for funds through the bond bank. The bond bank's role is to coordinate these loans and to oversee the repayment schedules. See Section 2.4.4 for additional information.

Agency of Commerce and Community Development. The Agency of Commerce and Community Development administers several municipal grant/loan programs. Funding comes from the federal government based on allocations made by Congress. These programs have similar requirements to other federally funded programs administered by state agencies.

The Vermont Community Development Program (VCDP) provides funding to communities to identify and address local needs and priorities in the areas of housing, economic development, public facilities and public services. To receive these funds applicants must clearly demonstrate the benefit to persons of low and moderate income. The Agency of Commerce and Community Development administers these funds from the federal government Community Development Block Grant program. *24 CFR Part 570.*

This program receives a federal allocation annually, subject to change or reauthorization by Congress. Access to these funds is through a formal application process designed by the Department of Housing and Community Development (DHCD). Applications are accepted under specific timelines and cycles. While the DHCD staff makes recommendations, the Vermont Community Development Board makes final decisions as to the receipt of funds.

These funds have been used primarily for economic development and affordable housing projects. It is common for a community to be the applicant on behalf of some not-for-profit organization that will actually develop the project in the community. As the applicant, the municipality is responsible for proper management of the funds. Proper administration of the funds is important, and the municipality should decide who would manage the funds before any application is submitted.

While funds are available for municipal public facility improvement projects, a limited amount is allocated for this annually. Projects must meet benefit requirements for low-income residents. The municipality is required to provide a local match.

Current rules related to grants or loans are found in the State of Vermont's Department of Housing and Community Affairs' *Consolidated Strategy and Action Plan for Housing and Community Development Programs* (May 2000). This publication states, "All direct assistance to a non-profit entity must be in the form of a loan, which cannot be deferred more than two years and cannot have a loan term length exceeding twenty-five years. All direct assistance to a non-profit housing entity providing perpetual affordability must be in the form of a grant, except those projects where a deferred loan is necessary for tax credit purposes. All other projects may be structured as a grant or a loan."

While the loan repayment is made to the community, the community must now return 50% of this money to the Department of Housing and Community Affairs. The exception to this is for housing rehabilitation projects funded through revolving loan funds where the repayments are made to the fund for reuse. The funds going back to the

department are made available to other projects in another funding cycle. The funds going directly to the community can be used for economic development purposes and community emergencies not otherwise fundable.

Information about other state and federal grant/loan programs not mentioned above can be obtained from the local regional planning commissions, the Vermont League of Cities and Towns and various state agencies.

2.4.4 DEBT FINANCING

It is possible that a project will not be eligible for any state/federal programs, or, even with these funds, that additional money may be needed. If this is the case, or, if funding from the state comes in the form of a loan, the community may find conventional financing through a bank.

The community should carefully weigh the decision to borrow by reviewing its existing debt load and any anticipated expenses the community will be facing in the next five to ten years. A cost-benefit analysis is appropriate to determine whether the community benefit justifies the long-term commitment of future tax dollars. While initial capital cost vs. life-cycle operation and maintenance costs are quantifiable, it is more difficult to put dollar values on the non-technical benefits such as environmental, cultural, business and tourism.

Since borrowing of this nature will require voter approval, this analysis will provide information to help voters make their decision.

Anytime a loan is considered, questions should be raised as to:

- The availability of funds.
- Interest rate.
- Duration of the loan.
- The possibility of early repayment.

Local Banking Institution. Once it has been decided that borrowing funds will be necessary, the community has several options to consider. An initial contact with local banks will establish whether they would be willing to provide the funding. The local bank will determine if it can make the loan based on the loan amount, duration and set an interest rate. This option may be preferable when the loan is for a short period of time and the possibility may exist for an early repayment.

Another option is for the community to sell bonds for the project. Within the world of finance, these bonds are referred to as “general obligation bonds” or “revenue bonds.”

The ability for a community to bond is found in 24 V.S.A § 1828. Separate authority is outlined in 24 V.S.A. § 3613 for the bonding of sewage disposal systems.

Vermont Municipal Bond Bank. While a few communities sell their own bonds, the majority work through the Vermont Municipal Bond Bank. The interest rate is usually less than that of a local lending institution and the bond bank administers the sale. While the bond bank does allow a community to make early repayments, there is no incentive to do so since the community will be obligated for all interest due for the original term of the bond. The most common period for the debt repayment is 20 years, decided locally.

The bond bank combines the bonds for all local governments and schools at the sale. By this consolidation, the sale is more attractive and results in a rate that is more favorable to individual communities. After the sale, the Bond Bank notifies the community of the rate and forwards the bond notes for acceptance by the municipality.

There are specific times each year when the bond bank goes to sale. To participate in this sale, the community will have to submit an application and demonstrate that they have obtained voter approval. The timing of the sale can become an important factor in the scheduling of a project.

While the application form may seem daunting, it is well worth the effort in terms of the interest rate the community will pay over the life of the debt. In the application the community is asked to provide detailed financial information for both the municipality and area public schools. The intent is to ensure that, with this new debt, the school and the municipality have not taxed beyond the ability of their citizens to pay.

If the timing of the bond sale does not correspond with the community construction schedule, it may be possible to arrange a short-term loan from a local bank to assist in managing the cash flow of a project in the interim. This short-term borrowing can then be repaid when the community receives the funds from the bond bank. While this will incur some interest expense, it may be the only option other than delaying the project.

To understand all the ramifications of such borrowing, call the State of Vermont Municipal Bond Bank at (802) 223-2717. Information regarding the responsibility of the bank and the process can be found in 24 V.S.A. §§ 4551, et seq.

Special Assessments. Another option for a community is to finance some infrastructure improvements through special assessment districts. This practice works best when it can be shown that the planned improvement has a direct benefit to a specific area of the community as opposed to the community as a whole. Such assessments may include sewer or water extensions, street lighting, or downtown improvements.

State law defines the procedure for establishing a special assessment district, which includes a public vote. Before deciding to pursue an assessment district option, the municipality should devote time to develop a consensus among the property owners who will be directly impacted. Since only those within the district will be responsible for paying this extra assessment, their cooperation is extremely important to the success of the vote and the project. Some municipal charters allow other processes for the formation of an assessment district.

If the district is created, then the property owners within the district will receive a separate tax bill from the community to pay for their share of the assessment. This assessment can be used either to pay for a specific project in a single tax year or for the payment of bonds over a period of years.

When water and wastewater improvements are to be financed in this manner, it may not be necessary to create a special assessment district. The statutory authority for water and sewer commissioners is different than for other governing bodies. At a minimum, a written agreement between the municipality and the individuals directly benefiting should be completed. This will assure their commitment to making payments for the bonds. This agreement should be recorded in the land records to protect the community's right to continue to assess this fee should the property change hands.

Tax Increment Financing. With voter authorization the governing body can create tax increment financing districts to provide revenues for improvements located wholly or partly within the district. It must be demonstrated that the creation of a district will encourage development, provide employment opportunities, improve and broaden the tax base, or enhance the general economy of the municipality.

Once the district has been created with specifically defined boundaries and properties, infrastructure improvements can be paid for through debt financing. The principal and interest on the debt will be paid for by the net increase in the aggregate taxable valuation of land and improvements in all areas covered within the defined district. Rather than having the new taxes generated from the district go into the general fund, the revenues are set aside for the debt payments on the project. This continues only until the debt is paid off in full.

This is a creative means of financing improvements in a specific area of the community as long as there is assurance that, within the district, there will be several years of growth in the grand list and that it works with your town's Act 60 status. This financing mechanism is authorized in 24. V.S.A. §§ 1891-1900.

An example might be the development of an industrial area where it is expected that building construction will take place over several years. The community commits to installing the water and sewer utilities for the area through bonds. The annual debt payments on these bonds would be made from the taxes paid on the net increase in the grand list for development that takes place within the district.

2.5 DEVELOPMENT OF TIMELINES

Once the scope of work for a project is developed and the source of funding has been defined, then a realistic timeline should be developed. The timeline should include all the steps necessary to bring the project to completion. The time involved usually seems much longer than initially anticipated. This may come as a surprise to someone new to

municipal construction and can be especially frustrating to someone who runs a business in the private sector where the same project could be done more quickly.

Weather is an important factor in Vermont and will affect the construction and time it takes to complete the project. Some projects, such as road construction, cannot be conducted during the winter. Materials used in road construction are either not available in the winter months (e.g., hot mix) or will have been contaminated by snow and ice. While it may be possible to do some types of work during the winter, it may be at a higher cost.

On the other hand, it is sometimes attractive to a contractor to have work in the winter if it is inside. If a building can be framed in the fall, then work can move ahead on the inside. It has become increasingly important to some contractors to keep their employees working through the winter. This may be attractive enough to affect the bid price.

Identifying these various factors in advance will help in assigning times for the various elements of the project.

A reasonable timeline should include dates and durations assigned to the following activities:

- Define the scope of work
- Request for consultant proposals
- Selection of consultant
- Engineer/architect prepares preliminary design
- Request submitted for state/federal grants or loans
- Board accepts a plan to present to the voters
- Public notice to vote
- Presentation of plan to community
- Voter approval
- Application for Vermont Municipal Bond Bank funding
- Obtaining permits
- Obtaining easements
- Utility identification
- Final design with bid specifications
- Public advertisement of contractor bids
- Bid opening
- Bid review and reference checks
- Bid award (voted upon by the legislative body at a duly warned meeting)
- Contractor notification
- Contract signing
- Start-up date
- Construction phase
- Completion date (consultant should provide a reasonable estimate of the time needed to complete a project)
- Final acceptance by the community

For the most part, the amount of time required for the process to be followed defines each of the activities. Permit and easement acquisition can be difficult to estimate. Sufficient time should be allowed whenever advertising is required so that it corresponds to the newspaper's publishing schedules. The consultant and/or the contractor should be given sufficient time to prepare responses to the municipality's requests. The municipality also needs time for careful review.

Once the project has been sufficiently defined, the consultant will prepare a preliminary design. Depending on the process, this may include several public meetings for input, design time and then solicitation of estimates.

When estimates are available, the municipality is ready to schedule a community vote to authorize the funding. A special town meeting can be held at any time as long as the proper warning and process defined by state law is followed. There is, however, some benefit in scheduling major votes at the March town meeting. This is usually the best time to gain wide citizen participation. Scheduling major votes to correspond with a general election (November) will also assure good public participation. Whenever the vote is held, the objective is to obtain the greatest participation of the community.

If the intent is to finance the project through the Vermont Municipal Bond Bank, there are specific requirements, including a notice in the newspaper, a waiting period and a validation of the vote. Depending on the nature of the project and the funding source, there may be other requirements. See Section 6.3 for further discussion.

Some permits will require outside work that can only take place at certain times of the year (e.g. archeological evaluations). Allowance should be made for taking a project through the local and state review processes. An Act 250 review can take a considerable amount of time for scheduling and review depending on the nature and size of the project.

Section 3
**ALTERNATIVE METHODS FOR PROJECT
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Section 3

ALTERNATIVE METHODS FOR PROJECT IMPLEMENTATION

Deciding the best means of implementation is important for achieving a successful project within budget and in a timely manner. There are several different alternatives for completing the project, and the right choice is dependent on the size of the project, funding sources, the various requirements and what is most comfortable to a community.

3.1 IN-HOUSE STAFF

Some municipalities have staff capable of providing technical services for a project. Depending on the size of the project and the availability of staff, this can be an attractive alternative in terms of cost. Once design is complete, it may also be possible to utilize municipal employees to complete construction.

An alternative may be to contract for consulting services with the municipal employees completing the construction. Conversely, municipal employees could design the project and then bid the construction services.

If one of these alternatives is considered, there should be an evaluation of the other scheduled work to be completed by the municipal employees. This will help to determine if both new construction and existing maintenance work can be completed in a satisfactory and timely manner. Residents will not be happy if, in the interest of saving money, work such as culvert replacements, road grading, and roadside brush removal is not done.

It is also important to consider the disruption, which is not uncommon for municipal crews. An unplanned event can occur at any time that draws the crew away from a particular project. This can result in delays and can have other impacts as well. While a project is under construction, the work area is disrupted and the public's use is affected. Extra safety precautions will need to be in place to avoid unnecessary accidents, which could expose the community to insurance claims or lawsuits.

Another factor is staffing. A good part of the construction will take place during the summer months when vacation and other staffing issues should be considered.

3.2 DESIGN-BID-BUILD

The most traditional method of public construction is referred to as *Design-Bid-Build*. A consultant is hired to prepare the preliminary and final design, obtain all permits and then prepare the bid document. The bid document is used to solicit bids for a single, comprehensive contract encompassing all labor, materials and equipment needed to complete the project.

This is a formal process understood by those associated with the construction industry. It identifies the roles and responsibilities of all participants. The competitive bid process puts a control on the price and ensures that all bidders are using the same information. It invites widespread participation, which, in turn, should produce more attractive prices resulting in lower overall project costs. The selection of the consultant is described in more detail in Section 4.2.1, and the selection of the contractor is described in Section 7.3.

In some instances, the municipality may directly purchase the major materials or supplies required for the project. This will require careful coordination of the delivery schedules and may not be a practice approved by the funding sources.

3.3 DESIGN/BUILD

It has become more common for larger construction firms to develop in-house expertise to offer both design and construction services for a project. These firms are prepared to work with the municipality to develop plans, obtain necessary permits and construct the project.

Entering into such a relationship requires a careful selection process to ensure that a good working relationship can be maintained throughout the project. A higher level of trust must exist since municipal approval rights are more constrained than in a design-bid-build process.

Some of the selection process can take place if the community is able to provide all bidders with sufficient detailed information for the design/build firms to develop a preliminary design with a cost estimate. The firms will have some expenses in developing a preliminary design, and this may discourage some companies from submitting proposals.

In order to provide a fair evaluation of the proposals received, the municipality may wish to hire an independent designer to review the preliminary design. In this process, a formal presentation by several of the top choices should be required to better understand the nature of the design being proposed. This will also allow for an assessment of the individuals with whom the community will be working during the project development and construction.

The agreement should specifically define responsibilities for:

- Addressing the permitting and environmental process.
- Observing both permit and funding source requirements.
- Insurance and bonding requirements
- Basis and authority for quality control and assurances.

Design/build has worked in some communities when bonds have already been approved. In such a relationship, the designers are more closely in touch with construction costs.

Contracts for a design/build service can be lump sum, cost plus a fee, or cost plus a fee with a maximum price. (See Section 4.2.2.)

This particular process does reduce considerably the number of firms that are able to participate and therefore eliminates to some extent the competitive selection process.

If there is an external funding source, it is important to check to make sure that the design/build process is acceptable to it.

3.4 OWNER/DESIGN/CONSTRUCTION

Another alternative is owner/design/construction. It involves the municipality, designer and a construction service. The municipality will have separate contracts with the designer and the company providing construction services. The difference is that the contractor is involved in the project during the planning and design phase. The municipality and design consultant can benefit from the suggestions of the contractor as to alternate uses of materials and construction methods that may result in a better project design and cost savings.

Other benefits of such a process are:

- Expedited construction phase.
- Advanced ordering of supplies and materials that are not readily available.
- Construction can begin before all the plans are complete.
- Eliminates the final bid process for construction services.

It is not uncommon for the construction firm to use more subcontractors in this process and fewer of the firm's employees.

The basis of payment to the contractor in such an arrangement can be determined by either a cost of the work plus a fixed fee for the contract, or a cost plus fee contract with a guaranteed maximum price.