

## General Requirements for use of Private Technical Service Provider Vermont

### General

Statements of Work (SOW) set forth the minimum requirements for Design, Installation, and Checkout of conservation practices. The conservation practices checked on the Table of Contents (page 6) pertain to work to be contracted by a Technical Service Provider (TSP).

All work shall meet NRCS standards and policies, and comply with all federal, state, tribal, and local laws, and regulations.

TSP funds are budgeted by federal fiscal year (October through September) and can only be used for services that will be completed or substantially completed within the fiscal year. TSP contracts can only be done on an annual basis and for work to be completed during the fiscal year that the funds become available to NRCS.

Technical Service Providers hired directly by program participants are not subject to Federal disclosure and privacy laws, including the Freedom of Information Act and the Privacy Act. Therefore, the Department encourages program participants to ensure that their contracts with their Technical Service Providers provide for the appropriate confidentiality of personal information.

### Responsibilities

#### NRCS Representative

The NRCS representative is the person who provides leadership and serves as the point of contact regarding technical services provided at the local level by Technical Service Providers. NRCS and other partnership employees are not to assist the TSP during the scope of their work, except to provide programmatic information or documents authorized by the program participant

- Establishes Not-to-Exceed (NTE) rates that determine maximum payments for work completed by TSPs.
- Will make technology and technical tools available to the maximum extent possible for use by Technical Service Providers. NRCS equipment is NOT available for use by Technical Service Providers. NRCS is also NOT responsible for technology training. NRCS will provide Technical Service Providers with access to technical and related materials on-line, such as the Field Office Technical Guide (eFOTG [http://efotg.nrcs.usda.gov/efotg\\_locator.aspx?map=VT](http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=VT)), appropriate manuals and handbooks, etc.; or will provide links or referrals to other technical and related resources as appropriate. Materials not available on-line will be provided based upon reasonable request.
- Conducts appropriate reviews and resolves any issues related to compliance with resources protection laws, including but not limited to the National Historic Preservation Act (NHPA)/Cultural Resources compliance responsibilities, the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), etc at the planning stage of a project. NRCS is responsible for ALL decision-making and consultation required of Federal agencies. The TSP is responsible for all post-review discoveries during construction (see TSP Responsibilities below).
- Maintains program participant case files including components completed by a TSP. This will include a listing of all disclosed records released to a TSP as per written authorization from the program participant to the local NRCS office.
- Provides relevant documentation and guidance necessary to complete the contracted technical services including relevant parts of the program participant's conservation plan. The practice purpose(s) as identified in the program participant's conservation plan will always be provided.
- Receives the Technical Service Provider's signed CCC-1245 or AD1161, and *Warranty of Technical Services Provided* from the program participant that documents the technical services they provided meet NRCS standards and policies and are in accordance with their Certification Agreement.

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- Receives a transaction number from the TSP once a practice(s) are reported in TechPRS and verifies the transaction in TechPRS (View Prior Entries) at the following website:  
<http://techprs.sc.egov.usda.gov/ViewPriorEntries.aspx>.
- Approves contract payments for technical services provided by a TSP by completing a Form CCC-1245 *Practice Approval for Payment Application* for EQIP and AMA, and AD-1161 for WHIP, PL-566 and WRP. Form CCC-1245, entry block #8 (Contract Number – Fiscal Year & Number) and AD-1161, entry block # 4 (Agreement or Contract No. should include “TSP” in front of the contract number (e.g. TSP2003XXXX). These forms can be accessed electronically at <http://forms.sc.egov.usda.gov/eforms/formsearchservlet>. This does not include verifying the technical quality of the technical services provided. **Note: The Program Participant must have the TSP sign CCC-1245 Block #16 or AD-1161 Block # 14 (as the “Designated Conservationist”) certifying completion of work according to specifications.** Technical quality will be handled through the quality assurance process. When the conservation plan includes engineering practices that are a component of a waste storage system, the Comprehensive Nutrient Management Plan (CNMP) must be developed, certified, and signed by the producer prior to the approval, signing and release of engineering design plans for construction. CNMP development and completion will be scheduled in advance of scheduled structural practices to insure that each dependant practice will be completed prior to the end of the fiscal year.
- Adjusts payment rates, as needed on a case by case basis, in response to unusual conditions or unforeseen circumstances in delivering technical services such as highly complex technical situations, emergency conditions, and serious threats to human health or the environment or major resource limitations. Adjusted payment rates will be approved by the NRCS State Conservationist.
- Will implement a measurement and accountability system (spot check) that measures and monitors the use and performance of Technical Service Providers. Quality assurance reviews will determine if the technical service provided meets policy, procedures, standards, specifications, and other requirements. The first land treatment, nutrient management plan, and engineering job completed and warranted by any TSP will be reviewed before payment will be made. Subsequently, a minimum of 10%, or one job per year, will be reviewed for quality assurances purposes. A quality review of a TSPs work can be done more often if deficiencies are noted.
- Initiates a decertification process for any Technical Service Provider who fails to act responsibly in providing technical services, including meeting NRCS standards and specifications, violation of the terms and conditions of the Certification Agreement, or any other cause of a serious or compelling nature. The existing NRCS appeals system will be used to resolve disputes.

### Program Participant (Client)

The program participant is the person who is the official spokesperson for the project. He/she enters into all contractual agreements with the TSP. The program participant also agrees to properly operate and maintain this practice for the expected lifespan.

- Is responsible to follow and be in compliance with all USDA program and regulatory requirements. Obtains all approvals, authorities, rights, permits, and easements necessary for the implementation, operation, and maintenance of conservation practices prior to practice installation.
- Selects technical service from a TSP in lieu of NRCS technical assistance when TSP funds are available. Technical Service Providers are selected by accessing the NRCS approved list on the TechReg web site at <http://techreg.usda.gov>. The approved list will indicate the specific technical services the Technical Service Provider is certified to provide.
- Is responsible to select, hire, and pay the Technical Service Provider. Any contract arrangements established between the program participant and a TSP, including the costs of the technical services to be provided, are the sole responsibility of the program participant and the provider. NRCS highly recommends a written contract with the selected TSP.

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- Can only employ the services of a TSP under USDA contract once their program contract has funds for TSP services. However, program participants may be reimbursed for TSP cost incurred prior to entering into a program contract or agreement as long as TSP funds are available, and the participant meets the eligibility requirements for participating in the conservation program and the participant subsequently enters into a program contract or agreement. The program participant can negotiate a price for technical services provided and hires the Technical Service Provider.
- Receives reimbursement for technical services provided up to not-to-exceed (NTE) rates. NRCS will provide program participants up to 50 percent of the difference between the actual charges below the NTE rate and the NTE rate to apply towards their cost for practice installation within the cost share limits of the conservation program (within the eligible maximum cost share percentage for the approved contract item), thereby decreasing their share of the cost of practice installation.
- Upon signing the contract or agreement to use the services of a technical services provider, NRCS will not provide technical assistance relating to contracted service.
- Should ensure that their contracting arrangements with Technical Service Providers they hire provide for the appropriate confidentiality of their personal information.
- Must authorize, in writing to the local NRCS office, the disclosure of their records on file that they wish to make available to specific Technical Service Providers. Upon receipt of such a written authorization, the District Conservationist will provide the Technical Service Provider access to the requested records, however, only those records specifically requested will be provided, and a listing of all records released will be documented in the program participant's case file.
- Informs NRCS when the technical service has been completed and provides completed invoice, documentation and *Warranty of Technical Services Provided* for the TSP service(s), and a TechPRS transaction number for the reported practices (or has the TSP contact NRCS with the transaction number).
- Signs a CCC-1245 *Practice Approval for Payment Application* for EQIP and AMA, or AD-1161 for WHIP, PL-566 and WRP.
- Receives payment for Technical Service Provider assistance or payments can be made directly to the Technical Service Provider if the program participant completes an Assignment of Payment Document.

### Technical Service Provider

The Technical Service Provider (TSP) is the person who is selected by the program participant to provide technical assistance or technical service(s) needed in conjunction with their conservation program contract or agreement. The TSP must perform all work (survey, design, construction plan preparation, installation, and checkout) as appropriate for the practice or contract item. TSP and NRCS technical assistance will NOT be mixed for practice contract items. NRCS and other partnership employees are not to assist the TSP during the scope of their work, except to provide programmatic information or documents authorized by the program participant.

- Must be certified and be placed on the NRCS approved list of Technical Service Providers on the TechReg website (<http://techreg.usda.gov>) and meet the minimum requirements for each category where services are provided.
- Shall work with the program participants to ensure that all approvals, authorities, rights, permits, and easements necessary for the implementation, operation, and maintenance of conservation practices have been obtained prior to practice installation.
- Shall work with program participants to provide information to NRCS on all compliance issues relating to federal, state, tribal, and local laws, regulations and NRCS policies during design and installation

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(i.e. HEL, Wetlands, cultural resources, endangered species, permits, etc.). NRCS retains responsibility for ALL decision-making and consultation required of Federal agencies.

- Shall work with the NRCS State Cultural Resources Coordinator and/or Specialist (CRC/CRS) **when any ground disturbing activities are conducted** (normal tillage is not included) to ensure that NRCS is in compliance with Section 106 of the National Historic Preservation Act, as implemented by the Advisory Council on Historic Preservation's regulations at 36 CFR Part 800. To this end, the NRCS CRC/CRS, during the earliest phases of the project planning process shall fully identify and evaluate cultural resources that are in the project's area of potential effect and provide documentation that meets the Secretary of Interior's Standards and Guidelines for Historic Preservation. The TSP shall work with the State CRC/CRS to ensure that all identified cultural resources are protected during project implementation. That is, all National Register listed or eligible cultural resources must be appropriately avoided or treated by NRCS in accordance with NRCS policy and procedure requirements and any provisions of current State Level Agreements or Tribal Consultation Agreements. Must also complete all eight modules of NRCS cultural resources training in order to ensure they have adequate awareness of NRCS policies and procedures. If previously unidentified cultural resources are identified during project construction, all work must cease and the State CRC/CRS called to provide advice on how to proceed. In all circumstances, the senior NRCS official, the State Conservationist, working with his/her CRC/CRS shall complete all consultation with the SHPOs and Tribes and make all final decisions on how to proceed in order to ensure NRCS is in compliance with to Section 106.
- Follows the requirement that when the conservation plan includes engineering practices that are a component of a waste storage system, a CNMP must be developed, certified, and signed by the producer prior to the approval, signing and release of engineering design plans for construction.
- May utilize the services of subcontractors to provide specific technical services or expertise needed by the TSP, provided that the subcontractors are certified by NRCS for the particular technical services and the technical services are provided in terms of their Certification Agreement. Payments will not be made for any technical services provided by uncertified subcontractors. The TSP is ultimately responsible for all work performed by subcontractor(s).
- Develops, maintains, and provides the program participant and NRCS with a complete set of documentation for the technical service provided per the Statement of Work (SOW) for each contract item. Appropriate Statements of Work are attached. The documentation will be in accordance with NRCS documentation requirements as defined in each SOW.
- Shall invoice the program participant and furnish a copy of the invoice to NRCS for the technical services provided.
- Is legally responsible for the technical services they provide. Must Indemnify and hold the USDA and the program participant harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts of the Technical Service Provider in connection with the technical service provided.
- Must warrant in writing (*Warranty of Technical Services Provided* and signed CCC-1245 Block #16 or AD1161 Block # 14) once work is completed that the particular technical service they provide that documents the technical services they provide:
  1. Complies with all applicable Federal, State, Tribal, and local laws and requirements,
  2. Meets applicable Departmental standards, specifications, and program requirements,
  3. Is consistent with the particular conservation program goals and objectives for which the program agreement or contract was entered into between the Department and the program participant;
  4. Incorporates, where appropriate, low-cost alternatives that would address the resource issues and meet the objectives of both the program and the program participants for which the assistance is being provided.
- Follow administrative and program protocols of NRCS and FSA delivery systems (i.e. USDA tract and field numbers, NRCS TSP progress reporting system [TechPRS at <http://techreg.usda.gov>], etc.).

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All progress for technical services obtained from technical service providers must be reported in TechPRS. Refer to attached TechPRS process and flow charts, Attachment #1 - Reporting Progress in TechPRS; Attachment #2 - TSP Performance Reporting Process For Private Entity TSPs. Once a practice(s) has been reported in Tech PRS the transaction number must be provided to NRCS to verify the transaction.

- Receives payment in accordance with the invoice, but not more than the NTE rate posted on the TechReg web site from the program participant, or directly from USDA if the program participant completes an Assignment of Payment.

### **Appeals**

Program appeals by program participants will be processed in accordance with the appeals process specific to the applicable program they are participating in, regardless of the source of the technical service.

- Technical Service Providers may appeal determinations that the technical services they provided did not meet the requirements for delivering technical services. The appeals process is as follows:
  1. Appeals must be made in writing to the State Conservationist not later than 30 calendar days after the date an agency determination is provided to the Technical Service Provider. The appeal may contain any documentary evidence that the Technical Service Provider wishes to submit to support the appeal.

Francis M. Keeler, State Conservationist  
USDA NRCS  
356 Mountainview Drive, Suite 105  
Colchester, VT 05446
  2. The State Conservationist must issue a written decision on the appeal not later than 30 calendar days after receiving the appeal.
  3. The Technical Service Provider may further appeal in writing to the NRCS National Headquarters within 30 calendar days of the State Conservationist's decision.
- The appeals process does not cover disputes between landowners and TSPs.

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**General Requirements for use of Private Technical Service Provider**  
**Attachment #1 – Reporting Progress in TechPRS**  
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**Reporting Progress in TechPRS, Vermont Guidance**

All progress for technical services obtained from Technical Service Providers must be reported in TechPRS, which is accessible from the TechReg website at <http://techreg.usda.gov>. Click on "Progress Reporting System.". Progress to be reported in TechPRS is limited to planning activities and implementation of practices (design, installation, checkout) under any program when TSP monies fund that activity. This includes technical services obtained through program participant contracts, federal contracts, cooperative agreements, contribution agreements, and architectural and engineering contracts.

Those TSPs certified in TechReg will use their e-government login and password to access TechPRS. Once the prerequisites have been met then the following procedure is utilized to report performance:

**Instructions For Private TSPs** and private entities that must be certified in TechReg, and engaged in architectural and engineering (A&E) contracts utilizing TSP funds:

- Go to the TechReg website and click on Progress Reporting System.
- Login using the e-government login and password for access to TechPRS
- Enter Customer information as necessary
- Enter Performance, a transaction code will be assigned automatically
- Print the screen showing record entered and the transaction code
- If you forget to print the screen, you may do so later using "View Prior Entries"
- Take or mail a copy of the printed screen to landowner. Note: If the landowner has signed an Assignment of Payment Document allowing payment directly to the TSP this step is unnecessary and the form can be taken directly to the servicing NRCS office.
- The landowner is responsible for taking the page showing the transaction code to the servicing NRCS office.
- The NRCS official will check and verify the transaction code and the receipt of products specified in the contract (the NRCS official can view the transaction code in TechPRS also using "View Prior Entries").
- The NRCS official authorizes payment and payment is made to the landowner (or to the TSP if the Assignment of Payment Document is authorized by the landowner)

**General Requirements for use of Private Technical Service Provider**  
**Attachement #2 – TSP Performance Reporting Process For Private TSPs**  
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