

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 Vermont 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 TSP payments (http://techreg.sc.egov.usda.gov/NTE/TSPNTE2/county.asp?st_cd=50&st_abr=VT&st_nm=Vermont) Nutrient management plan rates are found on www.vt.nrcs.gov/technical/TechServiceProvider.html
- 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), 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.
- Generates a partially completed CCC-1245 in ProTracts. The partially completed CCC-1245 will automatically include the participant's SS# or Tax ID. Since this is confidential information it is best to blank this out along with the "\$0.00" installation cost in 14a, and make a photocopy that then should be provided to the participant with written guidance as to what they need to do next. As with prior TSP

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contracts, it is the participant's responsibility to then provide the partially completed form to the TSP for them to complete 13F (**Note: Indicate units of measure**), 14a, 14b, 15 and 16. Once the TSP has completed their portions, the participant will sign and date block 28 and return the signed CCC-1245 with invoices/documentation for work to NRCS to complete the payment approval process. For Nutrient Management 590 technical assistance, invoices should NOT include soil sampling, manure sampling, or other services not traditionally provided by NRCS.

A written communication should be sent to the program participant with the partially completed CCC-1245. For example:

Please find enclosed a partially completed CCC-1245 form for the conservation practice(s) your Technical Service Provider has completed. Please provide it to them and have them complete items 13F (units are in acres), 14a, 14b, 15, and sign block 16. **Note: The TSP must sign CCC-1245 Block #16 certifying completion of work according to specifications.** Once this is completed, have them return the form with invoices for the identified work completed to you, then sign and date Block 28, and return the form to NRCS with the invoices for final processing.

- Receives completed CCC-1245 with corresponding invoices from participant.
- Approves contract payments for technical services provided by a TSP by finalizing Form CCC-1245 in ProTracts, attach the signed CCC-1245 to the final ProTracts generated CCC-1245, and place in the participant's case file. The NRCS employee who electronically signs block 16 in ProTracts should enter an explanation into block 15, Performance Report, stating "Performance certified by <<TSP Name>> on <<Date>> on a hard copy of CCC-1245 or by project certification report." 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 participant 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 dependent practice is efficiently and effectively planned.
- Reports practice completion in PRS on behalf of the TSP/Program Participant.
- 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 assurance purposes. A quality review of a TSP's 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.

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- 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 TSP. **NRCS highly recommends the participant obtains a written contract with the selected TSP.**
- 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 as long as TSP funds are available, the TSP meets certification requirements, and the work is completed according to NRCS standards and specifications. The program participant can negotiate a price for technical services provided and hires the Technical Service Provider.
- 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 by filling out and signing an "Authorization and Release of Information to Technical Service Provider" form (see attached). 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 by the TSP. The program participant should then request a partially completed CCC-1245 *Practice Approval for Payment* from NRCS.
- Provides the partially completed Payment Application form from NRCS to the TSP and request that they complete items 13F, 14a, 14b, 15, sign block 16, and provide invoices for the identified work completed. Once this is completed by the TSP, the program participant will sign and date block 28 and return the completed form with invoices to NRCS for final processing.
- 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.

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- 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 (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 local Field Office and 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 participant 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: 1) subcontractors are certified by NRCS for the particular technical services; and 2) technical services are provided in accordance with the 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.
- 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 complete items 13F, 14a, 14b, 15, sign block 16 of the CCC-1245, and provide invoices for the identified work completed signed CCC-1245 (**Note:** For practices like Nutrient Management 590 Technical Assistance, invoices should not include soil sampling, manure sampling, or other services not traditionally provided by NRCS). All technical services provided will:
 1. Comply with all applicable Federal, State, Tribal, and local laws and requirements;
 2. Meet applicable Departmental standards, specifications, and program requirements;
 3. Be 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;

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4. Incorporate, 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.
- Receives payment in accordance with the invoice, but not more than the NTE rate from the program participant (posted on the TechReg web site or the Vermont NRCS website for Nutrient Management), 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.

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 participants and TSPs.

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| | 561 | Heavy Use Area Protection | June 2004 |
| | 634 | Manure Transfer | June 2004 |
| | 590 | Nutrient Management | May 2005 |
| | 558 | Roof Runoff Structure | June 2004 |
| | 580 | Streambank and Shoreline Protection | June 2004 |
| | 313 | Waste Storage Facility | June 2004 |

**AUTHORIZATION FOR RELEASE OF INFORMATION TO
TECHNICAL SERVICE PROVIDER**

Name: _____

Background: Section 2004 of the Farm Security and Rural Investment Act of 2002 mandates that information provided by individuals to NRCS, or to contractors, or consultants, or partners of NRCS, participating in conservation programs, is not considered public information and is not releasable to the public by any employee, contractor, or consultant or partner.

Technical Service Providers (TSP) hired by a program participant will on occasion require information already collected by NRCS for the purpose of providing technical services related to conservation practice installation. The release of information to a TSP will be in the course of providing technical assistance, and will only consist of the information stated below and only be released to the person(s) listed below.

Because TSPs are hired directly by the program participant and are not NRCS representatives, the TSP is ultimately responsible for maintaining the confidentiality of this information on behalf of the program participant.

Information to be released:

Person(s) information will be released to:

The Freedom of Information Acts, (FOIA) 5 U.S.C. 552, as amended by the Freedom of Information Reform Act of 1986, generally provides that a person has a court enforceable right to access Federal records, except when portions of those records are protected from disclosure by one of nine exemptions or by one of three new special law enforcement record exclusions. The Government recognizes the importance of protecting sensitive, commercial, and personal interests that can be implicated in Government records.

I, _____, (*program participant name*) hereby authorize the release of the information listed above to the person(s) listed above for the specific purpose of providing me with technical services related to conservation practice installation.

Program Participant Signature

Date