



# Policy for Procuring and Managing IT Contingent Workers

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**I. Purpose.**

This document covers policies and provides guidelines for procuring information technology (“IT”) staff augmentation and consulting services obtained through the IT Contingent Labor Contract (“ITCL Contract”) between VITA, on behalf of the Commonwealth of Virginia, and Computer Aid, Inc. (“CAI”). All Authorized Users of the ITCL Contract are subject to these policies and guidelines. VITA reserves the right to modify, alter, amend or waive these policies and guidelines as needed. Authorized Users of the ITCL Contract agree to follow these policies and guidelines when utilizing the ITCL Contract. Use of the ITCL Contract implies consent by the Authorized User to these policies and guidelines.

**II. Definitions.**

These definitions were taken from Staffing Industry Analysts “Lexicon of Global Workforce-Related Terms” available at:

<http://www2.staffingindustry.com/Research/Free-Resources> or from the ITCL Contract.

<https://vita.cobblestonesystems.com/public/ContractDetails.aspx?cid=1549&wc=oplYouSJ3cTDS2kwbVIpB7B9jkWJca5kFqoixwV30E72Kpa74yH7IUGDM23T14p9jIA2YFtQ3I5ExklZLLAPxA%3d%3d>.

- **Assignment** — A task or duty being performed by a Contingent Worker (i.e., a requisition for a temp, or each on boarded consultant associated with a consulting engagement). Assignment may also refer to the period of time that a Contingent Worker is working at an organization’s facility; however, change orders such as extensions, do not count as separate Assignments.
- **Authorized User(s)** - all public bodies, including VITA, as defined by § [2.2-4301](#) and referenced by § [2.2-4304](#) of the *Code of Virginia* and private institutions of higher education that are listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>.
- **Candidate** — an applicant for a Contingent Worker position who has been pre-qualified for temporary or full-time consideration. Also used to distinguish a qualified individual from a pool of unqualified applicants.

- **Co-employment (Co-employer)** — legally referred to as a “Joint Employer” relationship, co-employment is often used to describe the relationship among two or more organizations that exert some level of control over the same worker or group of workers. Co-employers often share some degree of liability for shared employees.
- **Co-employment Risk** — the specific legal and financial risk to Authorized Users arising from co-employment situations. These risks can include, but are not limited to, pay, benefits or unemployment claims; discrimination claims; harassment claims and, workers compensation claims.
- **Contingent Work/Worker** — Used to describe work arrangements that differ from regular/permanent, direct wage and salary employment. Contingent Work and Contingent Workers are primarily distinguished by having an explicitly defined or limited tenure. Contingent Workers include resources provided by an outside staffing agency or consulting firms that are subcontractors to the Commonwealth’s Managed Service Provider. “The “Contingent Worker” label applies to all workers of any skill type or experience level who meet this definition.
- **E-Verify Program** - For purposes of the ITCL Contract and pursuant to § [2.2-4308.2](#) of the *Code of Virginia*, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).
- **IT Staff Augmentation Services** – IT Contingent Workers who may supplement the current workforce for peak loads, special projects, operations and maintenance, as needed on a short-term basis for planned and unplanned worker absences.
- **Managed Service Provider (“MSP”)** — A company that takes on primary responsibility for managing an organization’s contingent workforce program. Typical responsibilities of an MSP include overall program management, reporting and tracking, supplier selection and management, order distribution and often consolidated billing. CAI serves as the MSP for VITA’s ITCL program.
- **Named Resources or Named Supplier** – In rare instances, an Authorized User may request the services of a Named Resource or Named Supplier. A Named Resource is defined as a specifically-identified Contingent Worker or Supplier who the Authorized User has determined is the ONLY resource available to provide the needed services.
- **Off-boarding** — the process of “checking-out” a Contingent Worker at the close of an Assignment. May include final compensation, equipment return, return of any badges and/or security access and an exit interview among other steps.

- **On-boarding** — the process of bringing a Contingent Worker into a position with a goal of providing all necessary tools to be productive as soon as possible. May include agency specific training, seat assignments, equipment requirements and other steps.
- **Operations and Maintenance Support Services Statement of Work (“O&M SOW”)** – A document that captures recurring operational and maintenance support activities to be performed on an IT system consisting of application software or application programs for a fixed monthly service fee. The O&M SOW may also include a time and materials (“T&M”) component, at a pre-defined, fixed hourly rate for additional support and minor enhancement work outside of the O&M base level support activities.

O&M Support Services are intended to ensure that the IT system performs in executing the work for which it was designed. O&M activities ensure that the IT system is fully functional and performs optimally until the system reaches its end of life. O&M activities can include:

- Management of changes to the IT system, application or programs to support end users
- Performance monitoring
- Server management for applications and infrastructure – configuration, maintenance, upgrades, patching, repairs, etc.
- Security activities such as backups, contingency planning, and audits
- Service Level Agreements for vendor response and problem resolution
- Release Management – application software upgrades to new releases
- Break/fix support activities
- Synchronization with database and database cleanup
- Moving applications from the development environment to the test environment and from test to the production environment
- Manage triage of reported incidents to determine application program error or application software error
- Maintain system and program training and documentation
- Other recurring operational support activities

An O&M SOW would not be appropriate for the following:

- Very large enhancements that could be considered a “new project”
- New application development
- **Rate Exceptions** – In some instances, an Authorized User may request a Contingent Worker which has a specialized or rare skill set or the MSP is unable to find anyone with a specific skill set within its defined rates. In those instances where a rate category is not available to meet an Authorized User’s needs, the Authorized User may request that the MSP allow a “Rate Exception” or a rate outside of the usual rate range for a skill set in order to obtain the services of the needed Contingent Worker.
- **Statement of Work (“SOW”)** — A document that captures work products and services needed by the Authorized User, including, but not limited to the work activities and deliverables to be supplied as part of a project timeline. In contrast to a typical temporary or Contingent Work arrangement which is billed based on time worked, SOW agreements are billed based on a fixed price for deliverables or services, or for achieving specific milestones. Under

the ITCL Contract, all services must be performed at the times and locations set forth in the applicable written SOW and at the rates set forth therein.

- **Supplier** – any person or entity that, as an outside party, provides goods or services to an Authorized User.
- **Vendor Management System (“VMS”)** – An Internet-enabled, often Web-based application that acts as a mechanism for business to manage and procure outside contract or contingent labor. Typical features of a VMS include order distribution, consolidated billing and significant enhancements in reporting capability.
- **Work Product** – Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship discovered, created, or developed by Supplier, or jointly by Supplier and an Authorized User(s) in the performance of the ITCL Contract or any purchase order issued pursuant to the ITCL Contract. Work Product shall not include configuration of software.

**III. VITA’s Statutory Purchasing Authority.**

Under § [2.2-2012](#) of the *Code of Virginia*, VITA has sole statutory authority to procure all information technology goods and services (including agency-specific applications) for executive branch agencies and institutions, except those explicitly exempted by the *Code of Virginia* or the Appropriations Act.

**IV. VITA’s Statutory Policy Authority.**

§ [2.2-2012\(A\)](#) of the *Code of Virginia* provides that the “The CIO shall develop policies, standards, and guidelines for the procurement of information technology of every description.” § [2.2-2012\(B\)](#) of the *Code of Virginia* provides that “1. Information technology shall be procured by (i) VITA for its own benefit or on behalf of other executive branch agencies or (ii) such other agencies to the extent authorized by VITA.” VITA has designated the ITCL Contract as a “Mandatory Use” contract for the procurement of IT-related contingent labor by all executive branch agencies and institutions of higher education that are not exempt from, but subject to, VITA’s IT procurement authority. Executive branch agencies and institutions do not have authority to sponsor, conduct or administer an IT contingent labor procurement arrangement unless such authority is delegated by VITA.

**V. VITA’s ITCL Contract.**

After conducting a competitive procurement, VITA awarded a mandatory use IT contingent labor services contract to CAI. The ITCL Contract, as well as the services being provided, is structured for maximum flexibility to allow for needed adjustments in the dynamic IT staffing industry. The ITCL Contract places emphasis on two areas: assuring the availability of high quality resources and driving effective cost containment.

Examples of services that are NOT included in the ITCL Contract:

- Software Licensing
- Hardware and hardware maintenance
- Non-IT staff augmentation

- Projects or initiatives that total greater than \$2,000,000

**VI. Who can use VITA's ITCL Contract?**

Authorized Users of the ITCL Contract include all public bodies, including VITA, as defined by § 2.2-4301 and referenced by § 2.2-4304 of the *Code of Virginia*. Authorized Users also include private institutions of higher education that are listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>. Authorized Users may have additional policies and guidelines that must be followed by any contingent worker or any consultant providing services under a SOW under this contract.

**VII. Requirement of Competition.**

In order to ensure that the best resources at reasonable market rates are available to the Commonwealth, an Authorized User is required to use competition in the selection of Contingent Workers. Use of specific Named Resources or Named Suppliers requires prior approval by the agency's AITR or CIO. For other public bodies, prior approval is needed by someone who can bind the public body contractually and financially. Use of Named Resources or Named Suppliers are tracked and recorded. Requests for Named Resources or Named Suppliers which do not have required prior approval will not be processed. Please see Section XI "Engaging a Named Resource or Named Supplier" below for further details.

**VIII. Staff Augmentation.**

The MSP engages Contingent Workers to address short term temporary needs such as backfill for absences or to provide specialized expertise or skills or to accommodate work volume spikes. The staff augmentation portion of the ITCL Contract provides IT Contingent Workers at hourly market rates based on job classification and experience. All Contingent Workers are paid based on hours worked. CAI will provide consultative assistance to Authorized Users in determining whether their needs can be best met through staff augmentation or through a Statement of Work.

**IX. Engaging a Staff Augmentation Contingent Worker.**

CAI assists Authorized Users with the Contingent Worker job classification based on the Authorized User's needed skills and requirements. Through a subcontractor network, CAI competes the Authorized User's request, providing screened qualified Candidates to the Authorized User within four (4) days after submission of the request. Authorized Users are required to provide a purchase order prior to the release of the requisition to the subcontractor network. Requisition and purchase order approval is in accordance with each agency's (or public body's) approval process and requirements.

**X. Exceptions Category for Unique Skills or Labor Conditions for Staff Augmentation Contingent Workers.**

Occasionally there may be a situation where the prevailing labor rates have changed or a new category of IT skills is needed. In these situations, VITA and CAI will work with the Authorized User to determine a market rate as the basis for the not-to-exceed rate. The request will be competed based on this rate calculation. The request will be categorized as a Rate Exception and reviewed for possible addition or adjustment to the rate card.

**XI. Engaging a Named Resource or Named Supplier.**

Requesting a Named Resource or a Named Supplier for any staff augmentation purchase order or SOW of any type is strongly discouraged. Requesting Named Resources or Named Suppliers runs contrary to the competitive requirements of the ITCL Contract while also driving up costs for the Commonwealth. Authorized Users may request a Named Resource or Named Supplier provided one of the following conditions is met:

- Emergency situation exists where the subcontractor or Contingent Worker is the only firm/person practicable to perform the work or
- The Contingent Worker is a subject matter expert that has worked on the Authorized User’s system or project within the last 2 years.

Agencies which request a Named Resource must have prior approval from the agency AITR or CIO. Other public bodies must have prior approval for Named Resource requests signed by someone who is authorized to bind the public body contractually and financially. The prior approval must be provided to CAI before any purchase order or SOW may be processed. All requests for Named Resources or Named Suppliers by executive branch agencies will be tracked and may be reported to the agency CIO, Governor’s Office and/or the CIO of the Commonwealth.

**XII. Engaging a Former Full Time Employee (“FTE”).**

Any Authorized User who is requesting to engage a former FTE must ensure that the individual meets the minimum requirements for return to work as defined by each Authorized User’s Human Resources Department or policies. Generally, former agency employees are eligible for employment as a Contingent Worker immediately after they have left state employment provided that the former agency employee is not performing the same or similar work they performed as an agency FTE.

**XIII. On-boarding Staff Augmentation Contingent Workers**

**A. Background Checks**

As part of the onboarding process, all Candidates must successfully pass a criminal background check before they can begin to perform work for any Authorized User on a staff augmentation or SOW engagement. Authorized Users may also have additional requirements or screening tests that Candidates must pass before they can begin work. All Candidates will be required to sign a criminal background check authorization form for their contractor, MSP, and Authorized User. If a Candidate has been engaged with an Authorized User through a different agency or entity within the last 12 months, then no new background check is required for a new engagement. The MSP will work with the Authorized Users to review the results. Candidates’ eligibility to perform services for an Authorized User is determined by the Authorized User after return of the background check results. Contingent Workers that are working on purchase orders or SOWs which have been extended will be required to comply with the Authorized User’s background check policy, if applicable. Contingent Workers will also be required to comply with the MSP’s process for background check updates.

**B. Fingerprint Background Check**



Authorized Users who have need of additional security screenings can require any and all Candidates to submit to enhanced security screenings. See [http://www.vsp.state.va.us/CJIS\\_Criminal\\_Record\\_Check.shtm](http://www.vsp.state.va.us/CJIS_Criminal_Record_Check.shtm).

**C. E-VERIFY**

Pursuant to § [2.2-4308.2](#) of the *Code of Virginia*, the E-Verify program is required of any company entering into a contract in excess of \$50,000 to perform work or provide services to the Commonwealth. All new hire Contingent Workers must be verified as eligible for employment through the E-Verify system. This will be performed by the CAI through their subcontractors. New hire Contingent Workers are those employees, agents or subcontractors of Supplier or any subcontractor hired after the Supplier or subcontractor has agreed to the memorandum of understanding ("**MOU**") in the E-Verify system and all new Contingent Workers that are not existing employees as of the date of the MOU. New hire Contingent Workers would also include those employees, agents or subcontractors of Supplier or any subcontractor who is "newly -engaged" to fulfill needed services under a purchase order or SOW under the contract.

- More than 96% of E-Verify verification cases receive a case result of "Employment Authorized" which means the Contingent Worker is authorized to work in the U.S. Contingent Workers who receive an initial mismatch of "SSA or DHS Tentative NonConfirmation ("**TNC**") have the right to contest a case result and must be allowed to continue to work during this process. The Contingent Worker has eight federal government work days from the date the case was referred to E-Verify to resolve the problem. If a Contingent Worker does not resolve the mismatch, E-Verify will return a final nonconfirmation result. Only after a Contingent Worker receives a nonconfirmation result may an agency terminate the Contingent Worker based on E-Verify.

In rare cases, the U.S. Department of Homeland Security or the Social Security Administration will need more time to verify the Contingent Worker's employment eligibility. When this happens E-Verify will return a case in continuance result. When a Contingent Worker's case is in continuance the agency must allow the Contingent Worker to continue to work until E-Verify gives a final result of "Employment Authorized" or a "Final Nonconfirmation."

**D. Authorized User Policies**

It is incumbent on each agency and each Authorized User to provide each new Contingent Worker with a copy of all applicable policies that would be applicable to the Contingent Worker providing services.

**E. Equipment/Access for New Contingent Workers**

Part of the on-boarding process will involve providing security access/badging for new Candidates. Candidates should not be provided access to any agency facility prior to completion of the complete on-boarding process. Authorized Users should not provide equipment and/or network access to Candidates unless such equipment or access is necessary for the Candidate to perform the work as specified in the purchase order or SOW.

**XIV. Managing the Staff Augmentation Contingent Worker**

**A. Ethics**



All Authorized Users, Contingent Workers, and subcontractors utilizing the ITCL Contract are expected to maintain high ethical standards in interactions with other subcontractors, employees (of Authorized Users), and other contractors and Contingent Workers. This includes:

- Support of required competition
- Ensuring the agency and Contingent Workers follow the ITCL Contract, the Commonwealth and the Authorized Users policies and guidelines as well as this policy
- All Contingent Workers are responsible for acting with integrity and supporting ethical business practices
- All Contingent Workers and consultants must comply with all laws, rules and legal regulations.

**B. Conflicts of Interest**

Any and all Contingent Workers engaged under the ITCL Contract must not engage in activities that would present a conflict of interest related to the agency where they are engaged for or any Authorized User under the ITCL Contract. During their Assignment, all Contingent Workers must disclose to the agency or Authorized User all situations where they may be conducting business with members of their family, friends or others with whom they have a close personal relationship. Violations of this policy may result in immediate termination of the engagement with the Contingent Worker.

**C. Use of Authorized User Resources**

Any use of an agency or Authorized User's assets, resources or equipment must be solely for agency or Authorized User business purposes and must be consistent with the agency or Authorized User's policies and guidelines. All Contingent Workers may not use an agency or Authorized User asset or equipment in violation of the law and must not allow others to use such asset or equipment for that purpose. Agency or Authorized User assets or equipment may not be used to create, transmit, share, copy, or display messages, images, or materials that are: for personal gain; solicitations; chain letters or messages; gaming; images; or materials that the agency or Authorized User deems to be threatening, pornographic, sexually explicit, harassing, or demeaning to any person or group. Contingent Workers should not have any expectation of personal privacy in any messages or records created, transmitted or shared using agency or Authorized Users assets or equipment. The agency or Authorized User has the right to access or retrieve any such data or correspondence at any time.

**D. Confidentiality**

All Contingent Workers engaged under the ITCL Contract are expected to be familiar with and adhere to all applicable agency and/or Authorized User confidentiality policies or terms. Any learned information by a Contingent Worker while on Assignment under a staff augmentation engagement or SOW is considered proprietary to the agency or Authorized User and not to be discussed outside of work. Contingent Workers may not use, disclose or distribute any confidential information except as necessary or required to perform the specified Assignment. All materials containing confidential information shall remain the property of the agency or Authorized User and the Contingent Worker shall not retain such materials after the Assignment is terminated.

**E. Compliance with IRS Publication 1075**

Any Contingent Worker who has access to or shares Federal Tax Information (“FTI”) must adhere to the data safeguard requirements of IRS Publication 1075. Please refer to the following links for additional information regarding FTI data: [http://vita.virginia.gov/media/vitavirginiagov/supply-chain/pdf/Mandatory\\_IRS\\_Pub\\_1075\\_for\\_FTI\\_data-1.pdf](http://vita.virginia.gov/media/vitavirginiagov/supply-chain/pdf/Mandatory_IRS_Pub_1075_for_FTI_data-1.pdf) and <https://www.irs.gov/pub/irs-pdf/p1075.pdf>.

**F. Copyrights, Patents, and Intellectual Property**

Contingent Workers may have opportunities to work on projects involving trade secrets, copyrighted information or other intellectual property information. Intellectual property includes but is not limited to patents, patent applications, inventions, conceptions, ideas, know-how, specifications, methods, techniques, computer programs, copyrightable works, and/or technical and product information. Any and all intellectual property and/or work product of any kind that is conceived or created by a Contingent Worker under Assignment to an agency or Authorized User is deemed the exclusive property of the agency or Authorized User and the Contingent Worker assigns all rights in such intellectual property or work product to the agency or Authorized User without additional compensation.

**G. Co-Employment**

Authorized Users should follow practices that minimize the risk that a Contingent Worker is considered an employee of the Authorized User for the purposes of employment law or taxation. For more information on how to minimize the risk of co-employment refer to the Department of Human Resource Management’s (“DHRM”) “Contingent Workforce Risk Management Toolkit” at <http://web1.dhrm.virginia.gov/itech/talentmanagement/documents/ContingentWorkforceRiskManagementToolkit.pdf> or consult with your H/R department.

**H. Treatment of Contingent Worker While on Premises of Agency or Authorized User**

Authorized Users should not take actions that are the responsibility, or could be construed to be the responsibility, of the Contingent Worker’s employer including: approving vacation requests or approving notifications by the Contingent Worker of a sick day, or the need to work from home. Contingent Workers may only work 40 hours a week across all engagements including situations where a Contingent Worker is working on more than one project or with more than one Authorized User. In the event an engagement manager needs a Contingent Worker to work more than 40 hours a week, such engagement manager must pre-approve any such additional hours. If the overtime is not pre-approved by the Contingent Worker’s engagement manager, overtime will not be paid. Overtime may not be approved after it has occurred. All Contingent Workers under the ITCL Contract will be paid the contracted bill rate for all hours worked.

Authorized Users should insure that Contingent Workers do not:

- Serve in management roles or supervise any Authorized User employee
- Write or deliver performance reviews – participate or contribute to any disciplinary action, communicate feedback to MSP if needed.
- Participate in any way in processes related to hiring or termination of an employee or Contingent Worker.
- Have access to any employee or Contingent Worker personal information (salary or bill rate information, performance reviews, etc.)

In addition, Authorized Users should insure that:

- Contingent Worker wear their contractor badge at all times and return his/her badge upon termination of the Assignment or upon request of the Authorized User. All badges should be labeled "contractor."
- Contingent Workers are not eligible for any agency or Authorized User recognition programs.
- Contingent Workers are not eligible to participate in any Authorized User's employee benefits plans and are not eligible for agency or Commonwealth benefits.
- Careful consideration should be given to whether Contingent Workers should attend agency or Authorized User meetings. Agencies or Authorized Users should invite Contingent Workers only to meetings that directly pertain to their Assignment or the service they provide.
- Engagement managers are strongly discouraged from permitting Contingent Workers to attend non-work related functions, play on agency-sponsored sports teams or participate in any event that is not open to visitors, guests or the general public.

**I. Use of Title/Name in E-Mails, Presentations, and Correspondence**

No Contingent Worker provided under the ITCL Contract should use agency or Authorized User titles, sign documents on behalf of the agency or Authorized User or obtain and use agency or Authorized User business cards. In addition, all Contingent Workers should denote their role as "contractor" in all e-mails, presentation and correspondence prepared during the course of their Assignment as "contractor to X agency/Authorized User." At all times, the Contingent Worker should identify themselves as a "contractor."

**J. Wage or Pay Rates**

Negotiation of wage or pay is not allowed by Contingent Workers. Contingent Worker rates are based on contractual rate cards and no individual increases are allowed. Authorized Users and engagement managers are not allowed to discuss rates with Contingent Workers. Contingent Workers are not eligible for any other remuneration except that on the specific rate card. No additional compensation is allowed by the agency or Authorized User under any circumstances.

**K. Contractor Performance**

Agencies and Authorized Users should be careful not to communicate any performance related feedback to any Contingent Worker. Do not conduct performance evaluations of Contingent Workers or attempt to discuss or resolve performance or contract related issues directly with the Contingent Worker or the ITCL Contract subcontractor. All Contingent Worker performance or ITCL Contract related issues should be discussed only with CAI.

**L. Removal of a Contingent Worker**

Any Authorized User may require the immediate removal from such Authorized User's premises of any Contingent Worker that such Authorized User believes has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

**M. Travel or Business Reimbursement**

All travel and business expense reimbursement should have prior approval of the agency or Authorized User. All travel and expense reimbursements should

be approved and paid by CAI. Reimbursements are only allowed where the expense (i) has been approved in advance; (ii) is a line item on the purchase order; and (iii) payment is made through the MSP. Payments must not be directed to the individual contingent worker. Reimbursement for travel expenses or other expenses under a SOW is only allowed when payment for pre-approved travel expenses is negotiated in the SOW. All executive branch agencies must comply with Department of Account (“DOA”) travel guidelines. Authorized Users may not approve travel related expenses within the Richmond metro area or for parking at the workplace. Expenses for spouses or relocation are not reimbursable.

**N. Training**

Only agency specific or Authorized User-specific training shall be provided to any Contingent Worker. This requirement includes that no training shall be provided or required except for unique agency or Authorized User requirements as necessary to perform the specific work requested allowed. Agencies and Authorized Users shall provide instruction related to agency specific procedures and agency specific policies that are necessary and essential to the Contingent Worker to perform work. Training for skills and competencies needed for the Contingent Worker are the responsibility of the Contingent Worker and the Contingent Worker’s firm to provide and see that such responsibilities are met.

**O. Agency Evaluation of Suppliers**

Supplier evaluations must be completed at expiration of the Assignment or, if a long-term Assignment, at regular annual intervals by agencies and Authorized Users. Managers are required to complete evaluations.

**P. Tenure**

Agencies and Authorized Users are expected to establish appropriate tenure policies and practices to minimize Co-employment Risk to their agency or institution and to the Commonwealth. Agencies and institutions should consult with their internal HR departments and DHRM.

**XV. Off-Boarding the Staff Augmentation Contingent Worker.**

Authorized Users must ensure that the Contingent Worker returns all property including but not limited to equipment, all badging, parking permits, security fobs or access cards of the Authorized User and that all system access, including email, etc. have been disabled. Authorized Users are responsible to ensure that they require receipt of all work product and/or any intellectual property as well as all documentation generated during the Contingent Worker’s tenure prior to release of the Contingent Worker. Engagement managers must complete feedback survey and complete the final timesheets promptly.

**XVI. Statements of Work (“SOW”).**

This section covers policies for procurement of IT consulting services through a Statement of Work through the ITCL Contract. This includes policies for procurement of IT SOW contracts for fixed priced projects and for an O&M Support Services SOW that may include the optional T&M component.

The SOW process is designed to assist Authorized Users with the following:

- provides a common and expedited process for Authorized Users to obtain services with defined deliverables, services and outcomes in a SOW contract
- Promotes cost containment by linking payment to delivery of outcomes
- Leverages competition so that agencies obtain high quality project-based consulting services at market rates.

The following list provides examples of specialty areas that may be used for SOWs:

- Application Development
- Business Continuity Planning
- Business Intelligence
- Business Process Reengineering
- Enterprise Architecture
- Enterprise Content Management
- Back Office Solutions
- Geographical Info Systems
- Information Security
- IT Infrastructure
- IT Strategic Planning
- Project Management
- Public Safety Communications
- Radio Engineering Services
- IV&V Services

#### **XVII. Beginning the SOW Process.**

To begin the SOW process, a statement of requirements (“**SOR**”) is created by the Authorized User’s engagement manager in collaboration with their Procurement Officer. Since a formal SOW will document the supplier’s commitment to satisfy the Authorized User’s SOR, the SOR should reflect all results and outcomes desired from the engagement, rather than the effort involved in producing the outcomes. SORs should be complete, comprehensive and provide sufficient detail to enable the supplier to understand the expected outcomes or services to be delivered, the environment and to propose a price based on the engagement type. Payments to the supplier should be based on specific deliverables or services, and may include interim milestones payments after agency acceptance of such milestones or services. The SOR template can be downloaded by all Authorized Users from:

<https://www.vita.virginia.gov/supply-chain/it-contingent-labor/resources/>.

The SOR template is designed for the Authorized User to easily describe the IT services needed to a Supplier in a consistent manner. It includes criteria such as project roles, responsibilities, scope, required documentation, expected outcomes or reporting. This document is the expression of the business need by the Authorized User and can be used for any internal approvals.

For executive branch agencies, SORs and SOWs with a total value of \$1M or greater or as designated as a major project, must be approved by VITA. Specifically, the SOR, SOW and contract will be reviewed by VITA to ensure compliance with the agency’s IT strategic plan and well as IT policies and standards of the Commonwealth. Those SORs and SOWs that are found to not

comply with these standards must be modified by the agency and brought into compliance before being approved by the CIO of the Commonwealth.

**XVIII. SOW or Deliverables-Based IT Contingent Labor – Maximum Budget.**

The maximum value for a SOW under the program is \$2 million. All project phases and change orders are expected to fall within that limit. Large and/or highly complex projects should be publicly competed through a Commonwealth solicitation. To assist the MSP in engaging the appropriate subcontractors, users are requested to provide the estimated size of their project by selecting from the following three tiers:

- Tier 1 subcontractors are eligible for engagements up to \$300,000;
- Tier 2 companies are eligible for engagements up to \$800,000; and
- Tier 3 firms are eligible up to \$2 million.
- This classification allows a larger number of smaller subcontractors to participate in the program.

**XIX. Optional T&M Component of Operations and Maintenance Support (“O&M SOW”).**

The SOW should outline the base level operations and maintenance support activities and the monthly deliverables to be billed at a fixed monthly service fee. It may also include an additional T&M budget component for hourly labor or on-demand work as needed outside of the scope of the defined base level services. This type of SOW will allow Authorized Users to request additional support within the same SOW for other ad hoc support work as needed to be paid on an hourly basis.

In order to utilize an O&M SOW, the following guidelines apply:

- All O&M SOWs must have a fixed monthly fee component that covers the base level of O&M support. This monthly services fee is for the base level of support as defined within the scope of the SOR/SOW for the SOW contract term.
- A T&M component is optional and is a blended hourly rate based on various skill sets required to maintain the IT systems, applications and/or programs as defined in the SOR.
- T&M budget and hours is not intended to be used to fund labor for new major system enhancements that would classify as a new IT project.
- T&M budgets are to be used exclusively to support work related to the IT system(s) defined in the original SOR/SOW scope and not for other IT systems within the agency or other agency projects.
- The period of performance for an O&M SOW shall be (12 months or years). The Authorized User may elect to extend the services for additional (2 1-year periods) periods, but the total maximum term for such a SOW and any extensions thereto may not exceed three years. The price of the fixed monthly fee for the base level services for the renewal period shall not exceed five percent (5%) of the base price of the original SOW.

**XX. Obtaining SOW Services – (The Engagement Phase).**

The Engagement Phase begins with the review of the prequalified vendor submissions. After CAI reviews proposals for completeness, the Authorized User will evaluate the responses. Using pre-determined evaluation criteria, the

agency/Authorized User will determine which vendor will be awarded the SOW. Authorized Users are encouraged to negotiate with prospective vendors for best pricing, deliverables, timelines, etc. prior to engagement. Any changes to milestones, services and/or pricing are made by the vendor upon direction from the Authorized User contact. The final SOW contract is finalized between CAI and the Authorized User. The Authorized User will then create a purchase order in the eVA system, or their designated purchasing system, and will attach the signed SOW. When the purchase order is approved, the requirement is ready to be "Engaged". Any changes to deliverables, milestones, base level support pricing, and/or time and materials rates must be agreed upon between the vendor and the Authorized User prior to the purchase order being entered into eVA.

**XXI. SOW Additional Terms and Conditions.**

A SOW from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of the ITCL Contract, the terms of the ITCL Contract will supersede. In no event will any SOW or any modification to a SOW require a Supplier to perform any work beyond the scope of the ITCL Contract as the scope is defined in the ITCL Contract. If an Authorized User would like to propose longer acceptance and/or testing periods in a SOW than those provided in the ITCL Contract, the Authorized User may do so. If those extended periods are accepted by the MSP and the subcontractor, they may become part of the SOW.

**XXII. SOWs Require Competition.**

Competition must be utilized in the selection of all SOW contractors or firms. Agencies must ensure fair competition for each engagement and should not pre-select Named Resources or Named Suppliers. Use of Named Suppliers is not appropriate; exceptions require documentation to justify the need for such supplier and also require in the case of executive branch agencies the prior approval of the agency AITR, CIO or in the case of public bodies, the prior approval of an agency official or agent who is authorized to sign contracts and financially bind such public body.

**XXIII. Selection of Named Firms or Named Resources for SOWs.**

Requesting a Named Resource or a Named Supplier for any staff augmentation or SOW of any type is strongly discouraged. Requesting Named Resources/Named Suppliers runs contrary to the competitive requirements of the ITCL Contract while also driving up costs for the Commonwealth. Authorized Users may request a Named Resource or Named Supplier provided one of the following conditions are met:

- Emergency situation exists where the Named Resource or Named Supplier is the only entity practicable to perform the work or
- The Named Resource is a subject matter expert that has worked on the Authorized User's system or project within the last 2 years.

Agencies that request a Named Resource must have prior approval from the agency AITR or CIO. Other public bodies must have prior approval signed by someone who is authorized to bind the public body contractually and financially. The prior approval must be provided to CAI before any purchase order or SOW may be processed. All requests for Named Resources or Named Suppliers by



executive branch agencies will be tracked and may be reported to the agency AITR, Governor's Office and the CIO of the Commonwealth.

**XXIV. SOW Approvals.**

Requisition approval is in accordance with each agency's or Authorized User's approval process. Additional purchase order information is available on VITA's website at: <https://vita.virginia.gov/supply-chain/it-contingent-labor/>

**XXV. SOW Designation of Key Personnel or Project Managers.**

A SOW may designate certain of Supplier's personnel as Key Personnel or Project Managers. Supplier's obligations with respect to Key Personnel and Project Managers will be described in the SOW.

**XXVI. On-Boarding of SOW Contingent Workers.**

Section XIII "On-Boarding Staff Augmentation Contingent Workers" (above), including background checks, E-Verify, etc. is also applicable to SOW on-boarding.

**XXVII. Managing the SOW.**

Section XIV "Managing the Staff Augmentation Contingent Workers" (above) is also applicable to managing SOW Contingent Workers. If any individual Contingent Worker provided under a SOW is unable to perform at an acceptable level within a reasonable length of time, as determined by the Authorized User, such Authorized User shall have the right to request that Supplier immediately remove such individual from performing on the SOW and replace such individual with a more qualified Contingent Worker.

There are, however, additional responsibilities that must be performed by the Authorized User during the performance of the SOW. The Authorized User will be responsible for performing the administrative and oversight functions in the SOW, including the timely creation of change orders or extensions if the project scope changes or needs additional time for completion. The Authorized User is also responsible for performing the necessary Acceptance testing and providing written acceptance or rejection of any services or deliverables that have been received pursuant to the SOW. Authorized Users must also provide the Supplier with written notice of any non-conforming service or deliverable. Supplier shall correct any non-conformities identified and shall submit a new or revised service or deliverable within **seven (7) days** of receiving notice of the non-conformance, or such other time as agreed upon between the Authorized User and the Supplier. See Section(s) XXX "Acceptance of Services and Deliverables Under a SOW" and XXI "Cure Period" below for additional information.

**XXVIII. Removal of a SOW Contingent Worker.**

Any Authorized User may require the immediate removal from such Authorized User's premises of any Contingent Worker that such Authorized User believes has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

**XXIX. SOW Change Orders.**

All changes to the services in a SOW must be described in a written change request, which includes any appropriate adjustments to the SOW. Either party to

a SOW may issue a change request that will be subject to written approval of the other party before it becomes part of the SOW. An SOW from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of the ITCL Contract, the terms of the ITCL Contract shall supersede. In no event will any SOW or any modification thereto require the Supplier to perform any work beyond the scope of the ITCL Contract. Any change in scope or cost must be reflected in the change order and no other changes are allowed outside of the change order process. Changes for a fixed price SOW are not to exceed fifty percent (50%) or go over \$2M or extend the length of the SOW for more than six (6) months. Changes to the fixed monthly service fee for an O&M SOW for the base level services for any renewal period shall not exceed five percent (5%) of the base price of the original SOW. The total maximum term for an O&M SOW and any extensions thereto may not exceed three years.

Authorized Users must keep all change orders for a period of three (3) years from the date of the original engagement or SOW date for auditing purposes.

**XXX. Reimbursement of Travel and Business Related Expenses Under a SOW.**

Any travel expenses not included in the total price of a fixed price type SOW must be pre-approved by the Authorized User and shall be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts [http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335-2015.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335-2015.pdf) or a successor URL(s)).

Authorized Users are strongly encouraged to minimize travel requirements and require Suppliers to include these costs in the fixed price of the SOW.

All reimbursed expenses will be billed to the Authorized User on a pass through basis by CAI (Authorized User shall not make payments directly to CAI subcontractors.). At Authorized User's request, Supplier shall provide copies of receipts for all travel expenses over US\$30.00. The ITCL Contract does not provide for reimbursement of any relocation expenses incurred by Supplier.

**XXXI. Termination of a SOW.**

On rare occasions, SOWs must be terminated. SOWs can only be terminated by an Authorized User. Suppliers do not have the right under the ITCL Contract to terminate any SOW. In the event that the Authorized User wants or needs to terminate a SOW prior to its planned completion, the Authorized User must give the Supplier thirty (30) days written notice of such termination. The Authorized User should determine what deliverables, milestones and/or payments are deemed accepted under the SOW. The purchase order is changed to reflect final payments for those accepted deliverables, if appropriate, and a change order is sent to CAI. It is necessary, however, to establish which deliverables or services are accepted and which services or deliverables are non-conforming to the SOW and if final payments are in order.

**XXXII. Close-Out of a SOW.**

The "Finalization Phase" of a project begins after the invoice/payment tasks for the final milestone have been completed. The Authorized User should verify that all assets (e.g., security card, VPN token, equipment) and documentation (e.g.,

knowledge transfer, application) have been returned by all Contingent Workers prior to approving the final milestone deliverable for payment. If the milestone payment is the final payment, and after verifying that all invoices and expenses have been paid, the Authorized User can close out the purchase order in eVA, or their designated purchasing system.

**XXXIII. SOW Customer Satisfaction Survey.**

The last task in the closeout of a project is the completion of the "Customer Satisfaction Survey" by the agency or Authorized User. The agency or Authorized User will receive the Customer Satisfaction Survey after project completion. Authorized Users will have two (2) weeks to complete the survey and return it to CAI.

**XXXIV. Authority References.**

§ [2.2-2012](#) of the *Code of Virginia*; Procurement of information technology and telecommunications goods and services; Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii) such other agencies or institutions to the extent authorized by VITA.

§ [2.2-2020](#) of the *Code of Virginia*; Procurement approval for major information technology projects.

§ [2.2-4300](#), *et seq.* of the *Code of Virginia*; Virginia Public Procurement Act and specifically § [2.2-4301](#) and § [2.2-4304](#).

§ [2.2-4308.2](#) of the *Code of Virginia*; requirement for e-Verify.