

Terms and Conditions for Procurements Funded in Whole or in Part by the American Recovery and Reinvestment Act of 2009

The following are terms and conditions to be used for VITA and VITA-delegated information technology and telecommunication procurements funded, in whole or in part, by the American Recovery and Reinvestment Act of 2009. Other special terms and conditions may be developed and included when appropriate. For the purposes of this Exhibit, "Contractor" also means "Supplier," as defined in the Contract referenced above. The "contracting agency" shall include an agency entering into the contract under a delegation of authority or a public body authorized and acting as an Authorized User under a VITA contract.

1. General

This Contract is governed by the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (the "Recovery Act") and Federal Regulations and other guidance from the federal government implementing the Recovery Act (collectively, "Recovery Act Requirements"), and the Contractor agrees that it will comply with all Recovery Act Requirements applicable to this contract. In the event of a conflict between the terms of this Contract and the Recovery Act Requirements, the provisions of the Recovery Act Requirements shall be controlling. The Contractor acknowledges that these Terms and Conditions may require changes due to future revisions of the Recovery Act Requirements, and Contractor agrees that it will abide by any such changes upon receipt of written notification from the Commonwealth or any Commonwealth agency of such changes. Such changes will become a material part of the Contract without the necessity of either party executing an amendment to this contract. Contractor also agrees that it will provide all information and documentation required by the Commonwealth in order to comply with the Recovery Act Requirements.

2. D-U-N-S® number

All Contractors are required to provide the Commonwealth of Virginia or the contracting agency with their unique Dun & Bradstreet Data Universal Numbering System D-U-N-S® number prior to award.

3. Executive compensation

The Contractor and each of its subcontractors shall provide to the Commonwealth or the contracting agency the names and total compensation of their five most highly compensated officers if:

(A) the Contractor or subcontractor in its preceding fiscal year received

(1) 80 percent or more of its annual gross revenues in Federal awards; and

(2) \$25,000,000 or more in annual gross revenues from Federal awards; and

(B) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the

Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 (26 USC § 6104).

“Total compensation” means the cash and noncash dollar value earned by the executives during the Contractor’s or subcontractor’s past fiscal year of the following:

- (1) Salary and bonus.
- (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (revised 2004)(FAS 123R)Share Based Payments.
- (3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (5) Above-market earnings on deferred compensation which are not tax qualified.
- (6) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

The Contractor and its subcontractors shall provide the required information below or write "NA" if not applicable. The Contractor’s or subcontractor’s fiscal year began on _____ and ended on _____.

NAMES	TOTAL COMPENSATION
_____	_____
_____	_____
_____	_____

4. Job creation and retention

The Contractor shall provide to the Commonwealth or the contracting agency an estimate of the number of new positions created and filled, positions retained, or previously existing unfilled positions that are filled or retained as a result of this Contract. The estimated number shall be expressed as full-time equivalent (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Contractor. The Contractor shall update the information regarding jobs creation and retention on a quarterly basis, and shall provide each updated report to the Commonwealth no later than ten business days before the end of each calendar quarter.

The Contractor shall provide a brief description of the types of jobs created or jobs retained in the United States and outlying areas. This description may rely on job titles, broader

labor categories, or the Contractor's existing practice for describing jobs provided the terms are widely understood and describe the general nature of the work.

DESCRIPTION OF THE TYPES OF JOBS CREATED OR RETAINED

5. Auditing

The Contractor shall retain all books, records, and other documents to this contract for five (5) years after final payment. Section 902 of the American Recovery and Reinvestment Act of 2009 provides the U.S. Comptroller General and his representatives with the authority to:

(A) examine any records of the Contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or any subcontract; and

(B) interview any officer or employee of the Contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the Recovery Act with respect to this contract, which is funded with funds made available under the Recovery Act. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Additionally, Section 1515(a) of the Recovery Act provides authority for any representatives of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 to examine any records or interview any employee or officers of the Contractor or its subcontractors working on this contract. The Contractor is advised that any representatives of an appropriate Inspector General appointed under Section 3 or 8G of the Inspector General Act of 1978 have the authority to examine any record and interview any employee or officer of the Contractor, its subcontractors or other firms working on this contract. This right of examination shall also include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

The Commonwealth's contracting officer and other representatives of the Commonwealth shall have, in addition to any other audit or inspection rights in this contract, all the audit and inspection rights contained in this section.

6. Job posting requirements

Contractor shall use the Virginia Workforce Connection (VWC) for the recruitment of direct jobs created by ARRA through this contract in accordance with the following provisions:

(A) The Contractor shall use VWC to post all direct jobs available. Instruction for posting jobs is located on the VWC website: www.vawc.vec.virginia.gov. Assistance is available from the Virginia Employment Commission (VEC) by phone on (804)225-3116 or by email at StimulusJobs@vec.virginia.gov.

(B) For the purposes of this requirement, "direct jobs" means those jobs funded fifty percent or more by ARRA project funds.

(C) Posting through VWC is not required when Contractor intends to fill the job opening created by ARRA funding with a present employee, a laid-off former employee or a job candidate from a previous recruitment.

(D) This requirement is not intended to prevent Contractor from also seeking needed employees by other means including industry specific employment programs.

(E) This job posting requirement does not fulfill any ARRA reporting responsibility pertaining to jobs created or retained as otherwise required under the terms and conditions of this contract, those contained in ARRA, or other Contractor reporting required by the Federal Government or the Commonwealth of Virginia.

7. Protecting state and local government and contractor whistleblowers

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of:

- gross mismanagement of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.

- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.)

8. Subcontractor flow-down requirements

Contractor agrees that it shall include these supplemental terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

9. Reporting requirements

Pursuant to Section 1512 of the ARRA, for all agency-specific procurements, including VITA-delegated IT procurements and for all orders placed by authorized users and public bodies against VITA statewide contracts, those state agencies, authorized users and public bodies receiving ARRA funds must submit a report to the federal government containing information on the use of ARRA funds no later than ten (10) calendar days after the end of each calendar quarter. Accordingly, Contractor agrees to provide the Commonwealth of Virginia/state agency/authorized user/public body, as appropriate, with such information, no later than five (5) calendar days after the end of each calendar quarter, as is required to comply with ARRA reporting requirements. Section 1512 of ARRA, its implementing regulations (2 CFR §176.50), guidance provided by the White House Office of Management and Budget and the terms of the ARRA grant that provides funds for this contract provide guidance on what information must be reported.

10. Additional terms and conditions

For all contracts for the construction, alteration, maintenance, or repair of a public building or public work funded in whole or in part by the American Recovery and Reinvestment Act of 2009 additional terms and conditions are required.