

August 5, 2009

**SPECIAL TERMS AND CONDITIONS TO BE INCLUDED IN CONTRACTS FUNDED IN WHOLE OR IN PART BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

The following are Special Terms and Conditions to be used for procurements funded by the American Recovery and Reinvestment Act of 2009. Other special terms and conditions may be developed and included when appropriate or as required by the Federal granting agency.

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" or "ARRA") and Federal Regulations and other guidance from the federal government implementing the Recovery Act (collectively, "Recovery Act Requirements" or "ARRA 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 Special Terms and Conditions may require changes due to future revisions of the Recovery Act Requirements, and Contractor agrees that it shall comply with any such changes upon receipt of written notification from the Commonwealth 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. Contractor agrees that, to the extent ARRA Requirements conflict with Commonwealth of Virginia requirements, the ARRA Requirements shall control.
2. **D-U-N-S® NUMBER:** All Contractors are required to provide the Commonwealth of Virginia with their unique Dun & Bradstreet Data Universal Numbering System D-U-N-S® number prior to award.
3. **JOB CREATION AND RETENTION:** The Contractor shall provide to the Commonwealth 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

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4. **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:

(1) 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

(2) 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 right in this contract, all the audit and inspection rights contained in this section.

5. **BUY AMERICAN:** Section 1605 of the Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver by the head of the federal agency awarding the ARRA funds under three circumstances:
  - (a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
  - (b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
  - (c) Applying the domestic preference would be inconsistent with the public interest.
  
6. **WAGE RATE REQUIREMENTS:**
  - (a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. The standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated into this contract and any subcontracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).
  
  - (b) Inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project should be directed to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.
  
7. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, state agencies 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 with such information, no later than five (5) calendar days after the end of each calendar quarter, as is required by the Commonwealth of Virginia 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.

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.