

GENERAL TERMS AND CONDITIONS

1. Definitions

The following terms will have the meaning as set forth below:

- a. "May" is permissive.
- b. "Will" is imperative.
- c. "Subcontract" will mean any contract, agreement, or purchase entered into by the Contractor with a third party for the purpose of procuring property and/or services under this contract.

2. Change

Changes can be made to the contract in any of the following ways:

- a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
- b. The Workforce Investment Board (WIB) staff representative may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the WIB a credit for any savings. Said compensation shall be determined by one of the following methods:
 1. By mutual agreement between the parties in writing; or
 2. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. The contractor shall present the WIB with all vouchers and records of expenses incurred and savings realized. The WIB shall have the right to audit the records of the contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the WIB within thirty (30) days from the date of receipt of the written order from the WIB. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedure for resolving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provisions of this contract shall excuse the contractor from promptly complying with the changes ordered by the WIB or with the performance of the contract generally.

3. Stop Work/Suspension of Performance

The WIB Staff Representative may issue a stop performance notice at any time. The Contractor, upon receipt of such written notice, will immediately stop performance on the date specified in the notice and incur no further costs and will not undertake any further performance until directed to do so in writing by the WIB Staff Representative. Any costs incurred or performances done by the Contractor after receipt of a stop performance notice is at the sole risk of the Contractor. Under no circumstances will a stop performance notice be used to terminate a contract. In any case, where it is determined that performance will not be permitted to be resumed; a formal termination notice will be issued.

4. Termination of Convenience

- a. The WIB staff representative reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is more than 12 months, either party, without penalty, may terminate the resulting contract after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- b. After receipt of the Notice of Termination, the Contractor will cancel outstanding commitments covering the procurement or rental of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor will exercise all reasonable diligence to accomplish the cancellation or diversion of outstanding commitments covering personal services that extend beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments, the Contractor agrees to each of the following:
 1. Settle all outstanding liabilities and all claims arising out of such cancellation of commitments.
 2. Assign to the Issuing Activity in the manner, at the time, and to the extent directed by the WIB Staff Representative all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated. At its direction, the Issuing Activity will have the right to settle or pay any or all claims arising out of the termination of such order and subcontracts.

5. Termination of Default

If the Contractor fails to perform under this contract or fails to make satisfactory progress so as to endanger performance, the WIB Staff Representative will advise the Contractor in writing and the Contractor has ten (10) days from receipt of such notice to correct the condition. If the deficiency is not satisfactorily remedied, the Contractor may be determined to be in default and the contract may be terminated by the WIB Staff Representative through written notice.

In the event of such termination, the Contractor will be paid to the date of termination of such work as has been properly performed hereunder in accordance with the payment provisions.

Should it finally be determined that the Contractor has, in fact, performed properly, and then the termination will be treated as a termination for convenience.

6. Disputes

- a. Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract, which is not disposed of by agreement, will be decided by the WIB Staff Representative, who will reduce the decision to writing and mail or otherwise furnish a copy of it to the Contractor. The decision of the WIB Staff Representative will be final and conclusive unless, within thirty (30) calendar days from date of receipt of such decision, the Contractor mails or otherwise furnishes to the WIB Staff Representative a written appeal addressed to the Issuing Activity. The decision of the Issuing Activity, or its duly authorized representative for the determination of such appeals, will be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of the contract and in accordance with the Staff Representative's decision.
- b. The "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph "a" above; PROVIDED that nothing in this contract will be construed as making final the decision of any administrative official, representative, or board on a question of law.

7. Contract Modifications

Modifications to this contract can be effected only through the following methods:

- a. The WIB Staff Representative, when necessary, will modify the contract:
 1. By use of the "Changes" clause, or
 2. For administrative reasons (such actions have no effect on performance required or terms of the contract).
- b. The Contractor may recommend revisions to the WIB Staff Representative. When the Contractor desires to recommend revisions to the WIB Staff Representative, the recommendation will be submitted in writing with complete budget adjustment. The Contractor will submit the applicable revised budget page(s) with the recommendation. No modification to the contract may be implemented until finalized, unless specific written permission is granted by the WIB Staff Representative.

8. Financial Limitation

The Issuing Activity will have no liability for any costs incurred above the ceiling limit shown in Block 13 of the Proposal and Award Sheet for this contract. Any costs incurred by the Con-

tractor above that limit during the performance period, as specified in Block 7 of the Proposal and Award Sheet will be at the sole risk of the Contractor. This in no way restricts the right to increase the ceiling by mutual consent of both parties; provided such an increase was accomplished prior to any incurred cost exceeding the existing ceiling.

9. Eligibility Certification

The Contractor agrees that all participants in this contract must be certified eligible. Eligibility will be performed and documented by the Contractor with periodic review by WIB staff.

10. Nondiscrimination

a. This contract is subject to the rules and regulations contained in Title VI and Title VII of the Civil rights Act of 1964 (42 U.S.C. 2000 et seq.), as amended by the Equal Opportunity Act of 1972 (42 U.S.C. 2000e), the Age Discrimination in Employment Act (29 U.S.C. 620 et seq.), the Age Discrimination Act (42 U.S.C. 6101 et seq.), the Rehabilitation Act (29 U.S.C. 794 et seq.), and the Education Amendments of 1972, Title IX-Sex. In undertaking to carry out its obligation under said Acts and Regulation(s), the Contractor specifically agrees that all work/training for which it receives federal financial assistance through this contract will be carried out in such a manner that no person involved in the work/training will be discriminated against in ways set forth in the Acts and Regulation(s) referred to above because of race, color, religion, sex, age, national origin, handicap, political affiliations, or beliefs. Contractor will make available to all participants under this contract information regarding his/her obligations under this section in such form and at such times as the WIB Staff Representative may specify.

b. Participants under this program will be subject to the same rules and regulations, and will receive no less than those benefits/services of other employees similarly employed or trainees of the Contractor.

c. Contractor will also comply with the requirements of the Virginia Fair Employment Act.

11. Grievances or Complaints

All grievances or complaints, if not satisfied through informal discussion with appropriate supervisors, will be filed in accordance with Contractor=s established grievance procedures. Appeals to decision rendered will be processed in accordance with the procedures provided by the WIB Staff Representative.

12. Availability of Funds

It is understood and agreed between the Service Provider and the Workforce Investment Board that the Workforce Investment Board will be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this contract.

13. Accountability for Funds

The Service Provider agrees to receive, administer, disburse, and account for the said funds and such property as may be acquired therewith or otherwise be placed under its control in accordance with all applicable local, state, and federal requirements. By receipt of said funds, the Service Provider will be accountable for mis-expenditure of said funds. Any required repayment will not be by or from federal funds.

14. Cost Liability

Neither the Governor, the Commonwealth of Virginia, nor the Workforce Investment Board assumes liability by virtue of this contract for any costs incurred above the amount provided pursuant to this contract for costs incurred by the Contractor that are determined to be unallowable. Any such costs will be at the sole risk of the Contractor. The foregoing provisions of this paragraph are not intended to preclude and will not be deemed to preclude the Contractor from asserting any defense that may be asserted hereafter.

The Contractor is responsible to ensure that all known outstanding financial obligations under this contract, except for wages and salaries incurred, have been paid within 60 days after the contract ending date. Upon expiration of this 60 day period, the Issuing Activity no longer has any liability for such costs, and they become the sole financial responsibility of the Contractor. Furthermore, any contract funds in the possession of the Contractor for these obligations revert to the control of the Issuing Activity and must be returned immediately, unless specifically directed otherwise in writing by the WIB Staff Representative. In the event unusual circumstances indicate the Contractor may have difficulty satisfying such obligations within the specified time allotted, he must notify the WIB Staff Representative in writing within 30 days after the contract ending date. Such notification will in no way be construed as relieving the Contractor of stated responsibility and liability nor as any acceptance of liability on the part of the Issuing Activity after expiration of said 60 day period.

15. Allowable Costs

- a. Funds granted under the Workforce Investment Act may be expended only for purposes specified in this contract.
- b. The program activities against which program costs will be allocated, controlled, and reported are as directed in applicable regulations.

16. Payments

Payments for contract services shall be cost reimbursement only.

No payment shall be due the Contractor for work performed prior to the effective date nor beyond the termination date of the contract. Advance payment status shall be requested subject to approval by WIB Staff.

17. Withholding of Payment

Payment of final invoice may be withheld until the Contractor has completed required actions to close out the contract.

18. Property Accountability

- a. All consumable property acquired through cost reimbursement contracts, unless specifically exempted, shall revert to the Issuing Activity upon the termination of this contract. The Issuing Activity may, however, assign such property to the Contractor for use under another or a subsequent contract. Subsequent to closeout of this contract, the Issuing Activity is responsible for the relocation/disposal of all remaining property purchased under this contract.
- b. The Contractor assumes responsibility for inventory control, maintenance, and physical security of non-consumable WIB property.
- c. For those Contractors on cost reimbursement, all requirements for purchase or rental of non-consumable property for direct WIA activities must be approved by the WIB Staff Representative (or duly-authorized representative) prior to purchasing or any commitment to purchase or acquired. (Approval of budget figures for purchasing and/or renting non-consumable property does not constitute approval for purchase or rental.)
- d. Intangible Property:
 1. Inventions and Patents -- The Contractor will report promptly and fully to the WIB any program which produces patentable items, patent rights, processes or inventions in the course of work under the WIA contract. Unless the Contractor and the WIB previously agreed on the disposition, the WIB will determine whether protection of the invention or discovery will be sought. The WIB will also determine how the invention or discovery rights, including rights under any patent issued thereon, will be allocated and administered.
 2. Copyrights -- Unless otherwise provided in the terms and conditions of the contract, the Contractor may copyright material or permit others to do so for copyrightable material developed under a contract. If any material developed under a WIA contract is copyrighted, the Department of Labor will have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, and otherwise use, and authorize others to use, the work for federal purposes.

19. Loss or Theft of Federal Property

All equipment or other non-consumable property purchased through cost reimbursement contracts is WIB property. In any instance of loss or theft of such property, the Contractor will take the following minimum actions:

- a. Report the loss or theft to local police and request a copy of the police report; and
- b. Report the loss or theft in writing to the WIB Staff Representative with a copy of the report to the Property Officer and a copy to the Contractor's file. Include in the report at least the following:

1. A description of the missing article of property including the cost, serial number, WIA tag numbers, and other such pertinent information;
2. A description of the circumstances surrounding the loss or theft; and
3. A copy of the police report or, should the police not make such information available, a description of the report made to the police, including the date and name of the police officer who declined to make the police report available.

20. Reporting Requirements in General

Each Contractor will submit periodic reports as requested. Other requested information will be submitted no later than the date specified at the time of the request.

21. Retention of Records

- a. Records will be retained in accordance with established requirements. Contractor will notify the WIB Staff Representative prior to destroying any records pertinent to the contract.
- b. Records will be retained if audit findings have not been resolved.

22. Confidentiality of Records

The Contractor will not divulge any information regarding applicants, participants, or their families without the express written permission of the applicant or participant. Based on written agreements that ensure the privacy of program data, the contractor will provide information necessary for the purposes related to the performance or evaluation of the contract. Participant information/data may be divulged to parties having responsibilities under the contract for monitoring or evaluating the services and performances of the contract, to the WIB Staff Representative (or duly-authorized representative) or to governmental authorities to the extent necessary for proper administration of the law.

The contractor will make available to members of the public, who request them, the names of all individuals employed in staff positions. If the participant provides express documented permission to the contractor, the contractor may make available to the public information regarding the participant to the extent the permission allows.

23. Legal Actions

The Contractor agrees to give the Issuing Activity immediate notice in writing of any action or suits filed and prompt notice of any claims made against the Contractor, Subcontractor(s), or any of the parties involved in the implementation and administration of the WIA program.

24. Right of Access

The VCCS, the U.S. Secretary of Labor, the Comptroller General of the United States, the Workforce Investment Board, or any of their representatives will have access to work and training sites and to any books, documents, papers, and records (including computer records) of the

Subcontractor(s) which are directly pertinent to this contract, in order to conduct audits and examinations and to make excerpts, transcripts, and photocopies. This right also includes timely and reasonable access to the personnel for the purpose of interviews and discussions related to such documents. The right of access is not limited to the required retention period (five years), but will last as long as the records are retained.

25. Inspections

- a. All Contractor operations incident to performance under this contract will be subject to inspection by the WIB Staff Representative (or duly-authorized representative) to the extent reasonable and practicable at all times and places during the contract period. Instances of Contractor non-compliance with requirements of this contract will be properly corrected. Failure to correct these discrepancies promptly is cause for termination of this contract for fault, as provided under "Termination for Default."
- b. The inspections by the WIB Staff Representative (or duly-authorized representative) do not relieve the Contractor from any responsibility for failure to meet contract requirements, which may be discovered at a later date.

26. Liability Clause

The Issuing Activity has no liability with respect to bodily injury, illness, or any other damages or loss to person or property, or claims in respect to any such injury, illness, damages, or losses whether concerning persons or property in the Contractor=s organization or third parties. The Contractor will obtain a public liability insurance policy in accordance with Virginia State law. Premiums chargeable for the insurance will be paid by the Contractor.

27. Assurances

The Contractor assures that he/she:

- a. Will fully comply with the Workforce Investment Act Grant, all federal regulations issued pursuant to the Grant, and all state and Issuing Activity policies and requirements.
- b. Will establish and use internal program management procedures sufficient to prevent fraud and program abuse.
- c. Will maintain auditable and otherwise adequate records, which support the expenditure of all funds under its contract.
- d. Will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as it requires removing all architectural barriers to the handicapped.
- e. Will comply with the child labor requirements of the Fair Labor Standards Act or the Child Labor Laws of Virginia, whichever is more restrictive.
- f. Will comply with the provisions of the Hatch Act, which limits the political activity of certain state and local government employees.

- g. Will, for contracts in excess of \$100,000, or if a facility to be used has been the subject of a conviction under the Clean Air Act [42 U.S.C. 1857-8(c)(1)] or the Federal Water Pollution Control Act [33 U.S.C. 1319(c)] and is listed by the Environmental Protection Agency (EPA) or is not otherwise exempt, assure that:
 - 1. No facility to be utilized in the performance of the contract has been listed on the EPA List of Violating Facilities.
 - 2. It will notice the WIB Staff Representative of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
 - 3. It will include substantially this assurance, including this third part, in every non-exempt subcontract.
- h. Will comply with the Executive Order 11246 (Equal Employment Opportunities), the Copeland Anti-Kick-Back Act, and the Davis-Bacon Act, whenever the Act's provisions apply to the contract.
- i. Will comply with all applicable provisions of the Americans with Disabilities Act.

28. Title to Property Acquired or Materials Developed

Title to all property furnished by the WIB will remain with the WIB unless or until such title is specifically relinquished in writing by the WIB. Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost or materials developed will pass to and vest in the WIB upon delivery of such property by the vendor or materials by the Contractor. Property and materials developed, the cost of which is reimbursable to the Contractor under this contract, will pass to and vest in the WIB upon:

- a. Commencement of processing or use of such property and/or materials developed in the performance of the contract, or
- b. Reimbursement of the cost thereof by the WIB in whole or in part, whichever first occurs.

Title to Property will not be affected by the incorporation or attachment thereof to any property and/or materials not owned by the WIB or any part thereof, which becomes a fixture or loses its identity or personality by reason of affixation to any realty.

29. Ownership of Materials

The VCCS, the USDOL, and the WIB will have unlimited rights to any data, materials, reports, studies, photographs, negatives, films, videos, or other documents first produced or delivered under this contract.

30. Order of Precedence

In the event there are inconsistencies or conflicts in the contract, unless otherwise provided therein, the inconsistencies shall be resolved by giving precedence in the following order:

- a. The Workforce Investment Act,
- b. State Procurement Regulations,
- c. The regulations as approved by the Secretary of Labor,
- d. And these General Terms and Conditions.

31. Federal Rules and Regulations

This contract is under State Procurement Regulations and the Contractor agrees to abide by these and all present or future rules and regulations imposed upon the WIA.

32. Contingency Clause

The Contractor agrees to comply with all present or future federal and/or state rules and regulations imposed upon the Issuing Activity. The Contractor further agrees that, as a result of any changes in the Workforce Investment Act Grant, passage of replacement legislation, or other legislation causing a change to current legislation which affects this contract programmatically and/or monetarily, compliance on the Contractor's part is assured. The Contractor agrees to a mutual consent modification being issued to implement changes, if such changes are considered within the scope of original intent of this contract. If such changes are not within said scope, termination of this contract by act of law will be considered to have occurred, and settlement will be under General Terms and Conditions "Termination for Convenience." Furthermore, since all funding for this contract is contingent on the availability of federal funds by authorization and appropriation for activities contained in the contract, the Issuing Activity reserves the right to unilaterally amend or terminate the contract should the necessary funding authorizations and appropriations not be made or be changed after initially being enacted.

33. Internal Organization

The Services Provider agrees that it will not, by act of commission or omission, do or fail to do any act that would hinder, frustrate or delay the performance of this contract or any act or duty required hereby.

34. Subletting and Assignment

The Contractor will not assign this contract or any part therein, unless otherwise provided or without the written consent of the WIB Staff Representative, but in no case will such consent relieve the Contractor from the obligation under or change the terms of the contract. The Contractor will not transfer or assign any contract funds or claims due or to become due without the written approval of the WIB Staff Representative having been obtained. The transfer or as-

signment of any contract funds, either in whole or in part, or any interest therein, which will be due or become due to the Contractor, will cause the annulment of said transfer or assignment so far as the WIB is concerned.

35. Standard of Conduct

The Contractor hereby agrees that in administering this sub-grant, they will comply with the standards of conduct, hereinafter specified, for maintaining the integrity of the project and avoiding any conflict of interest in their administration.

a. General Assurance

Every reasonable course of action will be taken by the Contractor in order to maintain the integrity of this expenditure of public funds and to avoid any favoritism or questionable or improper conduct. This sub-grant will be administered in an impartial manner, free from personal, financial, or political gain. The Contractor, their executive staff and employees, in administering this sub-grant, will avoid situations, which give rise to a suggestion that any decision was influenced by prejudice, bias, special interest, or personal gain.

b. Conducting Business Involving Relatives

No relatives by blood, adoption, or marriage for any executive or employee of the Contractor will receive favorable treatment for enrollment into services provided by, or employment with, the Contractor. The Contractor will also avoid entering into any agreements for services with a relative by blood, adoption, or marriage. When it is in the public interest for the Contractor to conduct business (only for the purpose of services to be provided) with a relative, the Contractor will obtain approval from the WIB Staff Representative before entering into an agreement. All correspondence will be kept on file and available for monitoring and audit reviews.

c. Conducting Business Involving Close Personal Friends and Associates

Executives and employees of the Contractor will be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates and, in administering the sub-grant, will exercise due diligence to avoid situations which may give rise to an assertion that favorable treatment is being granted to friends and associates. When it is in the public interest for the Contractor to conduct business with a friend or associate of an executive or employee of the Contractor, a permanent record of the transaction will be retained.

d. Avoidance of Conflict of Economic Interest

An executive, officer, agent, representative, or employee of the Contractor will not solicit or accept money or any other consideration from a third person or entity for the performance of an act reimbursed in whole or in part by the Contractor. Supplies, materials, equipment, or services purchased with sub-grant funds will be used solely for purposes allowed under the grant.

36. Bonding

A blanket fidelity bond must be secured for all officers, directors, agents, and employees of the Contractor/Subcontractor(s) with authority over and accessibility to WIA funds. Coverage will be in the sum of \$100,000. Once contracts are awarded, the face value of the bond must be at least the total of all contracts awarded or \$100,000, whichever is less.

37. Coverage

All entities/organizations funded, either partially or wholly using Workforce Investment Act funds will be required to obtain, have in force and produce documentation of coverage necessary to cover any disallowed cost that may result from their activities under the Workforce Investment Act. All entities must meet this requirement as a condition of receiving a contract with the WIB and subsequent funding.

38. Performance

The Workforce Investment Board may monitor and evaluate the Service Provider=s performance under the contract through analysis of required reports, expenditure statements, site visits, interviews with or surveys of relevant agencies/organizations and individuals having knowledge of the Service Provider=s services or operations, audit reports and other mechanisms deemed appropriate by the Workforce Investment Board. Performance under this contract may be a consideration in future contracts and negotiations.

39. Audit

The Service Provider will have an independent audit performed annually. The Contractor will ensure that the auditor, immediately and in writing, notifies the WIB of possible acts of fraud discovered during the performance of the audit. The Service Provider will ensure the auditor issues the Workforce Investment Board a copy of the audit report upon its completion. The WIB, VCCS, and the Virginia Auditor of Public Accounts will determine the acceptability of the audit reports.

The WIB will provide the VCCS with written documentation of the disposition of all questioned costs and administrative finds in the audit. The disposition must detail actions taken and include appropriate supporting documentation. A determination of allowability of questioned costs will not be deemed final until accepted by the USDOL Grant Officer.

40. Modification

No waiver or modification of the terms of the contract, including, without limitation, this provision, will be valid unless in writing and duly executed by the parties to be bound thereby.

41. Public Announcements

When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money, the Subcontractor(s) receiving funds pursuant to this contract will clearly identify:

- § The percentage of the total costs of the program or project that will be financed with federal money.
- § The dollar amount of federal funds for the project or program, and
- § The percentage and dollar amount of the total cost of the project or program that will be financed by non-federal sources.

42. Disallowed Costs

The WIB will give the VCCS timely notification of the possibility of disallowed costs incurred by its Subcontractor(s). In appropriate cases, the VCCS will petition the USDOL for guidance. In the event that repayment is required, the WIB will use prompt and efficient debt collection procedures to obtain cash repayment of disallowed costs. The WIB will not forego debt collection procedures without the express written approval of the VCCS. Any required repayment will not be by or from federal funds.