



REQUEST FOR PROPOSAL

For a

LOCAL AND REGIONAL JAIL EXERCISE

RFP NO.

EM-RFP-2013-03

December 18, 2012

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**SECTION I
GENERAL INFORMATION**

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified businesses to establish an optional-use statewide term contract for a variety of non-technology disaster/emergency management services for use by Commonwealth of Virginia state agencies, local governments, institutions of higher education, and other public bodies on an as-needed basis. This RFP is for disaster and emergency management consulting services to be used by Commonwealth of Virginia state agencies, local governments, institutions of higher education and other public bodies on an as-needed basis. The main objective of this request is to obtain proposals from qualified vendors and to select a vendor to provide the Hampton Roads Planning District Commission (HRPDC), on behalf of and in cooperation with the Hampton Roads Inmate Evacuation Planning Committee a functional jail assessment.

Proposal submission should not exceed thirty pages in length. The Proposal transmittal letter and letters of reference from recent clients will not count against the page limit. One (1) original and 6 copies of the proposal and one electronic copy in either MS Word or PDF format on a CD will be accepted until 3:00 P.M. Eastern Standard Time (EST) on January 18, 2013 at the Hampton Roads Planning District Commission's Regional Building by the receptionist or by mail to:

Hampton Roads Planning District Commission
Attn: Ms. Nancy Collins, Chief Financial Officer & Procurement Officer
EM-RFP-2013-03
Regional Office Building
723 Woodlake Drive
Chesapeake, Virginia 23320

A pre-proposal conference will not be held. All questions regarding EM-RFP-2013-03 must be submitted by 4:30 P.M. EST on January 2, 2013. Any changes determined necessary which may affect the responses to this proposal will be formally addressed by the HRPDC via addenda.

A. PROPOSAL SOURCE

If you receive a copy of this Request for Proposal from a source other than the HRPDC, contact the HRPDC and provide your name, address, telephone number, and the Proposal Item Number. You will be added to the vendors' list and will receive any addenda to the proposal.

B. PROPRIETARY INFORMATION

Proposers are advised that Title 2.2 Subtitle II Part B Chapter 43 (specifically Section 2.2-4342) of the Code of Virginia, 1950, as amended, shall govern public inspection of all records submitted by Proposer. Furthermore, proprietary information shall be submitted with the RFP package and under separate cover. Information not submitted under separate cover and not labeled proprietary shall be Public Information in accordance with State Statutes.

C. AUTHORIZED CONTRACT USERS

Virginia Department of Emergency Management, State Agencies, Institutions of Higher Education, Public Bodies, Community Service Boards, Cities, Counties, and other entities are authorized to use this contract in accordance with the Code of Virginia.

SECTION II
INSTRUCTIONS TO PROPOSERS

A. RECEIPT OF PROPOSALS

Proposals will be delivered to the receptionist at the Hampton Roads Planning District Commission's Regional Office Building, 723 Woodlake Drive, Chesapeake, Virginia 23320 until 3:00 P.M. Eastern Standard Time (EST) on January 18, 2013 in accordance with the specifications attached and the other terms and conditions set forth herein.

B. INTENT OF CONTRACT

It is the intent of this request for proposal to procure services as appropriate, for the needs of HRPDC in its support and administration for the Hampton Roads Inmate Evacuation Planning Committee (HRIEPC). Membership in the HRIEPC includes representatives from the following local and regional jails.

- | | |
|-------------------------------|------------------------------------|
| - Chesapeake City Jail | - Norfolk City Jail |
| - Hampton City Jail and Annex | - Portsmouth City Jail |
| - Newport News City Jail | - Virginia Beach Correction Center |
| - Newport News City Farm | - Virginia Peninsula Regional Jail |
| - Gloucester County Jail | - Western Tidewater Regional Jail |
| - Hampton Roads Regional Jail | |

C. PROPOSER'S RESPONSIBILITY

Proposers shall examine this RFP, shall exercise their own judgment as to the nature of the whole of the work to be done, and must assume all risk for any computations or statements made in completing the proposal.

D. CONTRACT LENGTH

The project must be completed by August 31, 2013.

E. BUDGET

The total budget for this project is \$30,000.

F. SUBCONTRACTS

The proposer is specifically advised that any person, firm or other party to whom it proposes to award a subcontract must be approved by the HRPDC.

G. INTERPRETATIONS AND REQUESTS FOR SUBSTITUTION

1. Any proposer in doubt as to the true meaning of any part of this request for proposal may submit a written request to the HRPDC for an interpretation. The proposer submitting a request will be responsible for its prompt and actual delivery. Any interpretation or approval will be made by addendum duly issued. A copy of such addendum will be delivered to each proposer receiving a copy of the request for proposal. HRPDC will not be responsible for any other explanations or interpretations of such documents which anyone presumes to make. Only questions answered by formal written addenda will be binding; oral and other interpretations or clarifications will be without legal effect.
2. Proposers must submit every request for interpretation or clarification regarding the services to be provided in writing; by email to neasterday@hrpdcva.gov or by facsimile transmission to (757) 523-4881, to the attention of Ms. Natalie Easterday. To be given consideration, such requests must be received by 4:30 P.M. EST on January 2, 2013. Questions received after this time will not be answered. Any and all such interpretations, clarifications, and any supplemental instructions will be issued in the form of written addenda prior to the date fixed for receiving proposals. Failure to receive such addenda shall not relieve proposers from any obligation under this proposal as submitted.
3. When inquiring, replying or forwarding, please list the RFP (i.e., EM-RFP-2013-03) number in the subject line. This is used to direct the email or fax to the appropriate person so the HRPDC may provide prompt service to your request when staff are away from their desk.

H. IRREGULAR PROPOSALS

1. Proposals shall be considered irregular and may be rejected for any of the following reasons unless otherwise provided by law:
 - a. If there are unauthorized additions or conditional proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
 - b. If the proposer adds any provisions reserving the right to accept or reject any award, or to enter into a contract pursuant to an award.
 - c. If the proposer fails to meet the proposal specifications or is unresponsive to proposal specifications, questions, and/or terms.
 - d. If the proposal fails to include an authorized proposer representative's signature on company letterhead.

I. WITHDRAWAL OR REVISION OF PROPOSALS

1. A proposer may, without prejudice, withdraw a proposal submitted prior to the date and time specified for receipt of proposals by requesting such withdrawal in writing before the time set for receiving proposals. Telephonic communications for withdrawal shall not be accepted.
2. Any proposer may modify his proposal by facsimile communication at any time, provided such communication is received by HRPDC prior to the due date of proposals. The communication should not reveal the proposal price, but should provide the addition or subtraction or other modification. If written confirmation is not received within two days after the fax, no consideration will be given to the facsimile modification.

J. INSURANCE

1. Prior to starting work, proposers will furnish the HRPDC a certificate of insurance as evidence of the existence of the following insurance coverage in amounts not less than the amounts specified below:
 - a. Comprehensive General Liability: \$1,000,000 per occurrence.
 - b. Workmen's Compensation: As required by Federal and State Worker's Compensation and occupational statutes.
 - c. Professional Liability: \$1,000,000 per claim.
2. The Certificate of Insurance will provide for thirty days (30) written notice to the HRPDC by the Insurance Company prior to cancellation or material change in policy coverage.

J. PROPOSAL EVALUATION

1. The proposal will be evaluated using the following criteria:
 - a. Responsiveness to Scope of Work and Proposal Requirements.
 - b. Professional competence of the firm, including qualifications and competence of key personnel and joint venture or association participants related to the specific areas for which the firm is proposing.
 - c. Proposed exercise format.
 - d. Experience on projects involving multiple local jurisdictions and agencies.

- e. Experience with similar projects and submission of previous work samples.
- f. Record of the firm in accomplishing work on other projects with respect to such factors as the quality and adequacy of the work, resource allocation, ability to meet schedules, innovative approaches and cost control.
- g. Accessibility of the firm and the ability of key personnel to visit the project area.
- h. Knowledge of the Hampton Roads area.
- i. Knowledge of the Virginia Correction Standards
- j. Ownership of firm by minority or participation of minority personnel, or subcontractors on the project.

After the panel's initial evaluation of the proposals, the panel may, if necessary, hold interviews with the top ranked proposers. Proposers selected for an interview will be contacted by February 6, 2013. The HRPDC reserves the right to select a consultant based solely on written proposals and not convene oral interviews.

2. HRPDC reserves the right to reject any and all proposals and waive any and all informalities and the right to disregard all nonconforming or conditional proposals or counter proposals. HRPDC reserves the right to reject any proposal if investigation of such proposer fails to satisfy HRPDC that such proposer is properly qualified to carry out the obligations and to complete the work contemplated by the contract documents.

Any and all proposals will be rejected if there is reason to believe that collusion exists among the proposers. The signature on the face of this proposal certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person also submitting a proposal for the same services, and is in all respects fair and without collusion or fraud. Collusive bidding is a violation of the Virginia Governmental Frauds Act and federal law and can result in fines, prison sentences, and civil damage awards. Proposer's signatory agrees to abide by all conditions of this proposal and certifies that he/she is authorized to sign this proposal for the proposer.

**SECTION III
SCOPE OF WORK**

A. BACKGROUND

Since 2006, the Hampton Roads Inmate Evacuation Planning Committee (HRIEPC) has been coming together to address the unique needs associated with a jail evacuation or shelter-in-place response effort resulting from a local or regional disaster. Inclusive of the 11 local and regional jails within the Hampton Roads (HR) region, the HRIEPC understands the vulnerability of the HR region and the need for solid all-hazard emergency plans. The HRIEPC further understands that a regional emergency would strain its ability to evacuate or shelter-in-place the average daily population of over 8,000 inmates.

The HRIEPC has recently completed a Functional Jail Assessment that resulted in the development of a regional Gap Analysis, Regional Guidance, and Implementation Plan.

B. OBJECTIVE

The HRPDC, on behalf of the HRIEPC, requires contractor services to provide a training and exercise series to evaluate and enhance the capabilities of the 11 local and regional jail facilities, listed below, in the HR region. The series must meet Homeland Security Exercise and Evaluation Program (HSEEP) compliance and the project is not intended to assess any state or federally operated facilities.

- Chesapeake City Jail
- Hampton City Jail and Annex
- Newport News City Jail
- Newport News City Farm
- Gloucester County Jail
- Hampton Roads Regional Jail
- Norfolk City Jail
- Portsmouth City Jail
- Virginia Beach Correction Center
- Virginia Peninsula Regional Jail
- Western Tidewater Regional Jail

The HRIEPC will work closely with the Contractor and provide the best available data to support this process, timely feedback and guidance throughout the project.

The Project Director and point of contact for this RFP is Natalie Easterday, Regional Emergency Management Planner, HRPDC.

C. PRIMARY SCOPE OF WORK

Task 1: Provide a project initiation briefing to the HRIEPC.

- a. Coordinate logistics and provide handouts, as necessary
 - i. Brief goals and objective of the project
 - ii. Present project and staffing plans

Task 2: Facilitate exercise planning to include the following documents and actions using HSEEP templates. Exercise should test each jail's ability to respond to an event as well as their ability to coordinate regionally.

- Development of an exercise planning team
- Concept and Objectives meeting facilitation
- Initial Planning Conference facilitation
- Mid-Term Planning Conference facilitation
- Evaluator Briefings
- Player Briefings
- After Action Report Conference
- Meeting facilitation as needed
- Providing a Target Capabilities List (TCL) and Core Capabilities Cross Walk for TCLs assessed in the exercise
- Enter information into the Corrective Action Program

Task 3: Design and execute a HSEEP compliant table top exercise series to include

- Participants from each local and regional jail, emergency management office, and state partners who want to participate
- Exercise evaluators, note takers and related support staff where applicable

Task 4: Provide the HRPDC and HRIEPC with documentation related to the exercise such as, but not limited to

- Exercise Plan
- Master Scenario Event List
- Controller/Evaluator Handbook
- After Action Report/ Implementation Plan

Task 5: Provide three (3) hard copies per participating jail facility of all final written reports and/or documents. In addition all final products must be provided in Word and PDF.

D. REPORTING REQUIREMENTS

Contractor shall be responsible for the following:

1. Monthly reports to Project Director that shall include updates on the status of the planning process and the project expense reports.
2. Other requirements as determined during the contracting process.

E. MATERIAL HANDLING

The required services will involve the handling of Sensitive Security Information (SSI) according to 49 CFR 1520.7.

1. Firm(s) handling SSI material will be required to sign non-disclosure agreements. Individuals with the firm(s) that handle SSI material will be required to sign non-disclosure agreements

2. Individual jail results and assessments are to remain private to the jail and are not to be included as part of regional reports.

**SECTION IV
REQUIRED SUBMITTALS**

A. PROPOSAL FORMAT

The proposal shall be prepared in accordance with the format listed below, noting that the total response submitted should not exceed 30 pages, exclusive of resumes, proof of financial stability, references, information describing the proposer's organization and copies of previous relevant work. Legibility, clarity, and completeness are essential. Please be comprehensive, but brief.

1. Transmittal Letter

A transmittal letter signed by an official authorized to solicit business and enter into agreements for the firm. The transmittal letter should include the name, address, telephone and fax of a contact person. You may use your own format.

2. Title Page

A title page should show the RFP title, number, proposer's firm, name of contact person, address, telephone number and the date.

3. Overview and Summary

This section should clearly convey that the proposer understands the nature of the work and the general approach to be taken. It should include, but not be limited to the following:

- a. A description of the work required.
- b. A discussion of the purpose of the project
- c. A summary of proposed approach
- d. The assumptions made in selecting the approach

4. Detailed Work Plan

- a. A discussion of how you will conduct each task of the project, identification of deliverables and a preliminary schedule. The description of the proposed approach to performing the project should fully discuss the tasks in sufficient detail to demonstrate a clear understanding of the project. The schedule should show the expected sequence of tasks, subtasks, and important milestones.

- b. A detailed staffing plan for each task and subtask of work. Identify all staff by name and the specific tasks for which the individual will be responsible. Include a roster of key personnel and a description of consultant's approach to managing resources and ensuring quality results. Also include a description of subcontractors, if any and their role and specific tasks.
- c. Indicate who will act as project manager and approach to managing the project to ensure completion within budget and schedule. Also indicate proposer's expected role of HRPDC staff including time requirements of staff to aid in the completion of the project.

B. QUALIFICATION, EXPERIENCE AND REFERENCES

1. Resumes

This section should include one-page resumes for each staff person assigned to the project, summarizing the individual's training and experience relevant to the work. Resumes should also be provided for principals and key personnel of subcontractors proposed to provide work on this project. This section may be included as an appendix.

Qualified personnel should have experience in the following areas:

- a. Local adult corrections
- b. Virginia correction standards
- c. Jail emergency response operations

2. Office Location

Include office location where work would be performed.

3. Sample Documentation

Provide a one page description of any previous projects similar to the services requested, indicating the project title, timing, budget, sponsoring agency, agency project manager and roles of individuals used in those projects. Include the name of the contact person, agency for whom the work was performed, telephone and fax numbers and the year in which the work was completed. Sample documentation must be provided of similar work performed.

List any present activities and job commitments, including an indication of availability to pursue completion of the work tasks as described in the scope of work.

4. References

Please provide a list of organizations that may be contacted for reference, including name, title, and phone number of contact person for each. Also note types of services provided to each organization listed. This section may be included as an appendix. References may be checked for one or more of the short-list candidates.

5. Licenses Requirements

Proposers need to provide proof of a valid Virginia business license.

6. Financial Stability

Please provide a copy of your most recent audit report or financial statements as proof of financial stability.

C. ADDITIONAL REQUIREMENTS

1. All information requested in this Request for Proposal should be submitted. Failure to submit all information requested could result in the rejection of the proposal.
2. All proposals submitted under this RFP will become the property of HRPDC and will not be returned. However, if any portion of the proposal is marked "proprietary" or "confidential" and is clearly noted, this portion may be returned to the proposer after award of contract upon request.
3. HRPDC may make such investigations as it deems necessary to determine the ability of the proposer to perform the work, and the proposer shall furnish to HRPDC all such information and data for this purpose, as HRPDC may request. HRPDC reserves the right to reject any proposal if the evidence submitted by, or investigated of, such proposer fails to satisfy HRPDC that such proposer understands the full scope of work and is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.

D. AFFIRMATIVE ACTION AND DBE PARTICIPATION

Consultant shall present documentation to describe its compliance with the Federal and State nondiscrimination laws and regulations and its Disadvantaged Business Enterprise (DBE) activities and proposed DBE commitment for this project.

A description of (1) consultant's activities undertaken to comply with the provisions of the RFP concerning DBE participation, and (2) consultant's proposed DBE Commitments.

E. BASIS FOR SELECTION

An evaluation team may identify two or more offerors for interview, based on the evaluation criteria stated in Section II, Paragraph J. At the conclusion of the interviews, the evaluation team will select, in order of preference, those offerors whose proposals are deemed most meritorious. Negotiations will be conducted with the offeror ranked first. If a satisfactory contract can be negotiated at a price considered fair and reasonable, the award will be made to that offeror. If a contract with the offeror ranked first cannot be negotiated, negotiations may be conducted with the offeror ranked second, and so on until a contract has been negotiated or all proposals are rejected. Final award of the contract will be made by the Executive Director of HRPDC at his discretion.

E. STATEMENT OF COMPLIANCE

Please note any deviation in compliance with this Request for Proposal, as requested by HRPDC.

F. VENDOR SUBMITTAL

Vendor _____ Federal ID# (Please include W-9) _____

Address _____ Remittance Address: _____

City, State, Zip Code _____

Email Address _____ Payment Terms _____

Typed Name, Title, _____

Signature _____ Date _____

Telephone # _____ Fax # _____

Check block below for applicable minority indicator:

- Asian Indian
- Black
- Asian Pacific
- Hispanic
- Native American
- Small Business
- Women Owned
- Small Disadvantage Business
- Service Disabled Veteran-Owned Business

**SECTION V
TERMS AND CONDITIONS**

A. COMMONWEALTH OF VIRGINIA PUBLIC PROCUREMENT ACT

This request for proposal is subject to the provisions of the Commonwealth of Virginia Public Procurement Act, and any revisions thereto in effect at the time of this Request for Proposal.

B. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

In the solicitation or awarding of contracts, HRPDC shall not discriminate on the basis of race, religion, age, disability, color, sex, or ethnicity of the bidder or offeror. Every contract in excess of ten thousand dollars, (\$10,000) shall include the following provision:

All proposers shall abide by applicable state and federal laws including, but not limited to, all provisions of the Americans with Disabilities Act. Each proposer agrees to hold HRPDC harmless regarding all claims in connection with the proposer's failure to comply with applicable laws and regulations.

C. PURCHASE ORDER/CONTRACT

This proposal and any resulting purchase order/contract shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Virginia.

D. KICKBACK

By signing proposal, the proposer's representative certifies that he/she has not offered or received any kickback from any other proposer, supplier, manufacturer, or subcontractor in connection with this proposal. A kickback is defined as an inducement for the award of the contract, subcontract, or order through any payment, loan, subscription, advance, deposit of money, services, or anything of value in return for an agreement not to compete on a public contract.

E. PROPOSAL TERMS

Proposals submitted must be firm for a period of ninety days from proposal submission date, unless otherwise specified, and no proposal may be withdrawn during that period.

H. ADDITIONAL USERS

This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at anytime during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the Contractor. Such modification shall name the specific agency added or deleted and the effective date. The Contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.

**SECTION VI
HRPDC CONTRACT**

HAMPTON ROADS PLANNING DISTRICT COMMISSION

CONTRACT

This Contract is made this [REDACTED] day of [REDACTED] 2012, by and between the Hampton Roads Planning District Commission (hereinafter referred to as the "Commission") and [REDACTED] (hereinafter referred to as the "Consultant"). The parties to this Contract, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

1. PROJECT. The Consultant shall carry out the project as set forth in Attachment A - RFP No. EM-RFP-2012-01 and Attachment B the Technical Proposal dated [REDACTED], known as the "Scope of Services" for the Hampton Roads Planning District Commission (HRPDC), on behalf of and in cooperation with the Hampton Roads Inmate Evacuation Planning Committee, subject to and in accordance with the terms and conditions listed within this contract.
2. TIME OF PERFORMANCE. The project shall commence on [REDACTED], 2012 and shall terminate no later than [REDACTED], 2012. All work will be accomplished in accordance with the schedule outlined in Attachment A, Section II, E.

The Commission may extend the period of performance to provide for the performance by the Consultant of the optional services, described in Attachment A - Scope of Services and/or any other changes to the Scope of Services, as mutually agreed upon by the Commission and the Consultant.

3. RENEWAL OF CONTRACT. This contract may be renewed by the Commission upon written agreement of both parties for one year and up to four {4} successive one year periods, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
4. SUBCONTRACTS. No portion of the work shall be subcontracted without prior written consent of the Commission. In the event that the Consultant desires to subcontract some part of the work specified herein, the Consultant shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.
5. PAYMENT. The Commission shall pay the Consultant as services are rendered satisfactorily complete. Maximum payment by the Commission to the Consultant will not be greater than \$_____ without prior authorization by the Commission. Requests for payment must be accompanied by appropriate financial and work

progress documentation to support the request for payment. Such reports and invoices shall be detailed in accordance with Attachment A to show what tasks have been completed and to compare the time of completion with the proposed time of completion. Subject to receipt of funds by the Commission as provided in Paragraph 6, payment by the Commission shall be made to the Consultant within forty-five (45) days of receipt of an invoice in satisfactory form in accordance with the requirements of this contract and in accordance with Commission procedures. Payments due the Consultant shall be subject to a service charge of one and one-half (1.5) percent per month for invoices not paid when due.

- a. Invoices for items ordered, delivered and accepted shall be submitted by the Consultant directly to the Hampton Roads Planning District Commission, 723 Woodlake Dr. Chesapeake, VA 23320. All invoices shall show the HRPDC contract number; social security number (for individual consultants), or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Consultant at the contract price, regardless of which public agency is being billed.

6. SOURCE OF FUNDS. Funds to support the work effort provided for in this Contract are being provided to the Commission by the Department of Homeland Security (DHS) Urban Areas Security Initiative (UASI) grant funds through the Virginia Department of Emergency Management (VDEM). Payment of invoices under this Contract by the Commission is subject to receipt of funds drawn down from DHS via VDEM.

7. FUNDING CREDIT. Any reports and documents produced under the terms of this Contract will include the following credits:

“This document was prepared under a grant from the Federal Emergency Management Agency’s Grant Programs Directorate (FEMA/GDP) within the U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA/GPD or the U.S. Department of Homeland Security.”

8. COMMONWEALTH OF VIRGINIA PUBLIC PROCUREMENT ACT. This contract is subject to the provisions of the Commonwealth of Virginia Public Procurement Act, and any revisions thereto in effect at the time of this contract.

9. PURCHASE ORDER/CONTRACT. This resulting purchase order/contract shall be governed in all respects, whether as to validity, construction, capacity, performance,

or otherwise by the laws of the Commonwealth of Virginia.

10. KICKBACK. By signing this contract, the Consultant certifies that he/she has not offered or received any kickback from any other proposer, supplier, manufacturer, or subcontractor in connection with this proposal. A kickback is defined as an inducement for the award of the contract, subcontract, or order through any payment, loan, subscription, advance, deposit of money, services, or anything of value in return for an agreement not to compete on a public contract.
11. LIABILITY. The Consultant will maintain appropriate liability insurance coverage throughout the term of this Agreement, as follows:
 - a. Name the Commission as an additional insured and provide certificates or other evidence that the required insurance is in force.
 - b. Worker's compensation and employer's liability insurance as required by the Commonwealth of Virginia.
 - c. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, and owned, non-owned or hired vehicles with \$1,000,000 combined single limits.
 - d. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the Consultant or of any of its employees, agents, or subcontractors, with \$1,000,000 per occurrence and in the aggregate.

It is the intent of the parties to this Contract that the Commission shall not be held liable for damages to the extent they are caused by the fault or negligence of the Consultant.

Consultant's liability for the Commission's damages, not otherwise covered by required insurances, will, in the aggregate, not exceed \$_____. This provision takes precedence over any conflicting Article of this Contract or any document incorporated into it referenced by it. This limitation of liability will apply whether Consultant's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, and shall include Consultant's officers, affiliated corporations, employees, and subcontractors.

12. NONDISCRIMINATION. In its performance of work activities under this Contract, the Consultant warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, national origin or handicapped status. The Consultant agrees to post in conspicuous places,

available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

The Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of the Commission, state that the Consultant is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of the Contract.

The Consultant shall include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that such provision shall be binding upon each subcontractor or vendor.

All proposers shall abide by applicable state and federal laws including, but not limited to, all provisions of the Americans with Disabilities Act. Each proposer agrees to hold HRPDC harmless regarding all claims in connection with the proposer's failure to comply with applicable laws and regulations.

13. CHANGES. The Commission may direct changes within the general Scope of Work in this Contract. Any Change will require prior notice to the Consultant and agreement on the price of the change. The Consultant must obtain prior written approval from the Commission for any changes to the project, including, but not limited to, changes of substance in program activities, designs, or plans set forth in Attachment A, which are proposed by the Consultant. If such changes affect the Consultant's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to the Contract.
14. TERMINATION FOR CAUSE. The Commission reserves the right to terminate the Contract, in whole or in part, at any time before the date of completion, upon written notice to the Consultant that it has failed to comply with the conditions of the Contract. The Consultant shall not incur new obligations for the terminated portion of the project after the date of the termination notice, and shall cancel as many outstanding obligations as possible. In the case of a termination for cause, the Commission shall pay for contracted services successfully completed by the Consultant through the effective date of the termination. The Commission will not be liable for damages or costs of any kind following termination and final payment to the Consultant, specifically including claims for anticipated profit. Any damages of the Commission associated with a termination for cause shall be compensated for or recovered by the Commission through separate agreement.
15. TERMINATION FOR CONVENIENCE. The Commission may terminate the Contract, in whole or in part, if the Commission determines that the continuation of the Contract supported activities will not produce beneficial results commensurate with further expenditure of funds. The Consultant shall not incur new obligations for the terminated portion after termination notice and shall cancel as many outstanding obligations as possible. In the case of a termination for convenience, the Commission

shall pay for contracted services, rendered by the Consultant through the effective date of the termination. The Commission will not be liable for damages or costs of any kind

following termination and final payment to the Consultant, specifically including claims for anticipated profit.

16. MAINTENANCE OF RECORDS. The Consultant shall maintain all required records and provide the Commission an audit in accordance with applicable state and federal laws and Generally Accepted Accounting Procedures. That audit will be reviewed by the Commission for compliance with state and federal laws and regulations. The Consultant will ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with state and federal laws and regulations.

The Consultant agrees to retain all books, records and other documents relative to this Contract for three (3) years after final payment, or until the Project is audited by the Commission, whichever is later. The Commission, its authorized agents and/or auditors shall have full access to and right to examine any of said materials during said period.

17. COLLATERAL CONTRACTS. Where there exists any inconsistency between this Contract and other provisions of collateral contractual agreements which are made a part of this Contract by reference or otherwise, the provisions of this Contract shall control.
18. PRIME CONSULTANT RESPONSIBILITIES. The Consultant shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime consultant. The Consultant agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
19. INTEGRATION AND MODIFICATION. This Contract constitutes the entire Contract between the Commission and the Consultant. No alteration, amendment, or modification in the provisions of the Contract shall be effective unless it is reduced to writing, signed by the parties and attached hereto.
20. SEVERABILITY. Each paragraph and provision of this Contract is severable from the entire Contract; and, if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect, at the option of the Commission.
21. INDEMNIFICATION. Consultant agrees to indemnify, defend and hold harmless the Commission and the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in

equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Consultant, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Consultant on the materials, goods or equipment delivered.

22. INVENTIONS AND COPYRIGHTS. As, and only as, requested by the Commission, the Consultant shall apply, or promptly and willingly assist (including without limitation by executing and delivering documents) the Commission in applying, for patent, copyright, and/or other intellectual-property protection of any inventions, discoveries, documents, designs, drawings, papers, notes, forms, interim reports, final reports, graphics, images, computer programs and data, other works of authorship, and other information and/or materials, whether in electronic, magnetic/optical-media, or printed form, (collectively, "Materials") prepared by the Consultant in the performance of its obligations under this Contract. The provisions of this paragraph are further subject to the provisions of Paragraphs 23 and 24 of this Contract.
23. OWNERSHIP OF MATERIALS. The Consultant acknowledges and agrees that the Commission has and shall have ownership of any and all Materials prepared by the Consultant in the performance of its obligations under this Contract. The Consultant shall promptly disclose to the Commission any and all Materials and, at the Commission's request, shall provide the Commission with one or, if so requested by the Commission, more electronic, magnetic/optical-media, and/or printed copies of each of the Materials. The Consultant may retain electronic, magnetic/optical-media, and/or printed copies of the Materials and with the Commission's prior written consent on a case-by-case basis, use such copies, but only in the course of the Consultant's business and provided that the Consultant includes on any and all such Materials, regardless of form, any and all appropriate notices of the Commission's rights, including without limitation its intellectual property rights, in and to the Materials. The provisions of this paragraph are further subject to the provisions of Paragraph 22 of this Contract.
24. CREATION OF INTELLECTUAL PROPERTY. The Consultant acknowledges and agrees that the Commission owns and shall own any and all patent rights, copyrights, other intellectual property rights, and any and all other proprietary rights in and to the Materials prepared by the Consultant in the performance of its obligations under this Contract. The Consultant agrees to assign, and hereby does assign, to the Commission any and all rights, including without limitation copyrights and any other rights arising under Title 17 of the United States Code, that the Consultant would, except for such assignment, have in and to the Materials. With the Commission's prior written consent, the Consultant may create and use, but only in the course of the Consultant's business, derivative works based on the Materials. The preceding does not apply to any background materials which Consultant supplies to complete [the task] which is subject to preexisting copyright protections.

25. CONFIDENTIALITY. The Consultant expressly acknowledges and agrees that all reports, documents and communications of every kind, whether written or oral, concerning specific contractual matters, planning or assumptions received in the performance of the work from the Hampton Roads Planning District Commission (HRPDC), its staff, Board, legal counsel, or other agents or advisors (collectively “Confidential Information”) shall be held in strictest confidence and maintained as strictly confidential. Confidential Information shall include information that, when taking into consideration the circumstances surrounding disclosure of the same, a reasonable person would consider being confidential or proprietary. This provision shall not apply to information which (1) has been published and is in the public domain, (2) has been provided to Consultant by third parties who have the legal right to possess and disclose the information, (3) was in the possession of Consultant prior to the disclosure of such information to Consultant by HRPDC, (4) is required by law or any governmental agency to be disclosed, or (5) would require disclosure to comply with the ethical obligations of Consultant to protect the public.

No Confidential Information shall be disclosed to other clients of the Consultant, other consultants, private companies, public entities, the media, the general public, or any other third party unless directed to do so by the Commission’s Executive Director. However, such Confidential Information may be documented in briefing materials provided to the Commission and its staff, and the Urban Area Working Group; provided such briefing materials are clearly annotated as Confidential Working Papers.

The Consultant shall take all appropriate and necessary steps to protect Confidential Information and to limit access to Confidential Information in its possession to those of its employees, agents and subcontractors required to have access to the Confidential Information in the performance of this work and who are bound in writing to keep the information confidential pursuant to confidentiality agreements with terms no less restrictive than those contained in this Agreement. The Consultant shall include these confidentiality provisions in any agreement between the Consultant and a subcontractor or agent related to the performance of the work so that these provisions will be binding upon them with equal and like effect. The Consultant shall be responsible for communicating to each party identified in this paragraph C who receives or is given access to Confidential Information the terms of these provisions and the obligations of that party to abide by the requirements hereof.

Upon completion of performance of the work, the Consultant, its agents and any subcontractors, agree to deliver to the Commission all Confidential Information obtained during performance of the work, in any medium, and, if requested by the Commission, to provide written confirmation that all such Confidential Information has been delivered to the Commission; provided, however, Consultant may retain a record copy of its work product.

The Consultant shall immediately notify the Commission if the Consultant learns of any unauthorized use or disclosure of Confidential Information and will cooperate in good faith to remedy such occurrence immediately to the extent reasonably possible.

In the event that Consultant becomes legally compelled to disclose any such Confidential Information, Consultant will provide the Commission with prompt notice so that the Commission may seek a protective order or other appropriate remedy; in the event that such protective order or other remedy is not obtained, Consultant will furnish only that portion of the Confidential Information which Consultant is advised by opinion of counsel is legally required and will cooperate with the Commission in seeking reliable assurance that confidential treatment will be accorded the Confidential Information.

The Consultant acknowledges and agrees that a violation of the provisions of this confidentiality requirement may cause irreparable damage to the Commission, the Urban Area Working Group, or the member cities and counties of the Urban Area Working Group (together, the "Affected Parties"), and these confidentiality provisions are made for the express benefit of and shall be enforceable by any of the Affected Parties. Consultant agrees that these provisions may be specifically enforced in any court of law having jurisdiction. In addition to and not in limitation of any other rights or remedies the Affected Party may have for a breach of the provisions of this confidentiality requirement, the Affected Party may recover money damages, subject to the limitations in Section 14; and in addition to money damages, the Affected Party shall be entitled to obtain equitable relief for any such breach (without requirement of bond or corporate surety) so that Consultant shall be required to cease and desist immediately from breaching such provision (it being agreed that damages alone would be inadequate to compensate the Affected Parties and would be an inadequate remedy for such breach).

These provisions shall expressly apply to and bind the Consultant, its agents, officers, employees, subcontractors and any permitted assigns.

26. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION. The Consultant assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Consultants who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Consultants shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Consultants and their employees working on this project may be required to sign a confidentiality statement.

27. CONTINGENT FEE WARRANTY. The Consultant warrants that it has not employed or retained any person or persons for the purpose of soliciting or securing this Contract. The Consultant further warrants that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon the award or making of this Contract. For breach of one or both of the foregoing warranties, the Commission shall have the right to terminate this Contract without liability, or in its discretion, to deduct from the agreed fee, amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.
28. CONFLICT OF INTEREST. The Consultant warrants that it has fully complied with the State and Local Government Conflict of Interests Act.
29. DISCLAIMER. Nothing in this Contract shall be construed as authority for either party to make commitments, which will bind the other party beyond the project contained herein.
30. USE OF FUNDS. Funds, paid by the Commission shall only be used for the purposes and activities covered in Attachment A.
31. FISCAL CONTROL. The Consultant shall establish fiscal control and fund accounting procedures which assure proper disbursement of, and accounting for, project funds, including any required matching funds.
32. STANDARD OF CARE. The standard of care applicable to the Consultant's services will be the degree of skill and diligence normally employed by professional consultants performing the same or similar services at the time said services are performed. The Consultant will re-perform, without additional compensation, any services not meeting this standard.
33. FORCE MAJEURE. If performance of the Services is affected by causes beyond the Consultant's reasonable control, project schedule and compensation shall be equitably adjusted.
34. DISPUTE RESOLUTION. The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options.
35. NOTICE TO PROCEED. Execution of the contract by both parties will constitute a Notice to Proceed. A separate Notice to Proceed will be required prior to beginning any additional services as may be directed by the Commission.

HAMPTON ROADS PLANNING
DISTRICT COMMISSION



Dwight L Farmer
Executive Director/Secretary

Date

Date