

REQUEST FOR PROPOSALS

ISSUE DATE: June 17, 2016
TITLE: Medicare Eligibility Determination and Related Services
RFP NUMBER: OHB 17-01
ISSUING AGENCY: Commonwealth of Virginia
Department of Human Resource Management
James Monroe Building, 13th Floor
101 North 14th Street
Richmond, Virginia 23219
PERIOD OF CONTRACT: From February 1, 2017 through January 31, 2020 with three renewal options.

Sealed proposals for furnishing services described herein will be received subject to the conditions cited herein until 2:00 p.m., September 19, 2016.

All Inquiries Must Be In Writing And Should Be Directed To:

Mr. Dan Hinderliter
Department of Human Resource Management
James Monroe Building, 13th Floor
101 North 14th Street
Richmond, Virginia 23219
Dan.hinderliter@dhrm.virginia.gov

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS SHOWN ABOVE.

NOTE: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

In compliance with this Request for Proposals, and to all the conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish materials and services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Name and Address of Firm:

	Date: _____
	By: _____
	(PRINTED NAME)
	(SIGNATURE IN INK)
	Title: _____
Fax Number: () _____	Telephone: () _____

PRE-PROPOSAL CONFERENCE: An Optional pre-proposal conference will be held on July 19, 2016, 10:00 a.m. at the James Monroe Building Room B. (Reference Paragraph 4.9) If special ADA accommodations are needed, please contact the Department at (804) 225-2131 by July 15, 2016.

1.0 INTRODUCTION

1.1 Purpose

The purpose of this Request for Proposals (RFP) is to secure services which would result in identification of Medicare entitlement or potential eligibility for Commonwealth of Virginia Health Benefits Program participants, The Local Choice (TLC) program participants, and participants in any new health benefits programs that are implemented by the Department of Human Resource Management (the Department) during the period of this contract. This information will be used to comply with the requirements of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 to provide disclosure of creditable drug coverage to Medicare Part D Eligible Individuals by entities that provide prescription drug coverage to Medicare beneficiaries and to facilitate identification of participants in any of the Department's health benefits programs who should have Medicare as their primary health plan coverage based on Medicare Secondary Payer guidance. This would include:

- Retirees, long-term disability participants, survivors, and their covered family members who are no longer covered under the program based on current employment;
- Active employees and their covered family members who are eligible for Medicare (and, therefore, eligible for Medicare Part D), including those eligible due to End Stage Renal Disease who have exhausted their coordination period;
- Extended Coverage/COBRA qualified beneficiaries who are entitled to Medicare prior to their Extended Coverage election or become entitled after their COBRA election.

The cost containment and avoidance objective of obtaining these services is to ensure that the Department's health benefits programs do not make primary payment for any health plan claims that should be paid by Medicare. In turn, this will ensure appropriate primary payment in order to avoid or resolve any Medicare Secondary Payer demands and associated interest liabilities, all to the benefit of the Programs and their participants.

1.2 Background

The Department of Human Resource Management (the Department) is the authorized agent of the Governor in administering the State Health Benefits Program for active employees, Extended Coverage/COBRA qualified beneficiaries, and retirees (including service retirees, disability retirees, long-term disability participants and survivors). There are approximately 90,000 active employees, 200 Extended Coverage/COBRA participants and 7,000 retiree group participants who have not been identified as eligible for Medicare.

The Department tracks Medicare eligibility due to age such that participants not covered due to current employment who reach age 65 are identified as being eligible for Medicare. At that time, unless they elect to discontinue participation, those identified participants are moved to the state's Medicare supplemental plan. However, the Program relies on notification from participants and the result

of its current Voluntary Data Sharing Agreement with the Centers for Medicare and Medicaid Services to identify Medicare eligibility prior to age 65. Move to Medicare primary coverage occurs prospectively upon identification of Medicare eligibility for those not covered due to current employment, regardless of Medicare enrollment. Claims that have already been paid as primary in error are adjusted within Medicare's filing limitations, but claims already paid for services that will not be covered by Medicare are not reversed.

The Department also administers The Local Choice (TLC) program, which is a health benefits program offered to localities statewide. This includes 300 member groups covering approximately 43,000 active employees, 2,000 retirees who have not been identified as eligible for Medicare, and 200 Extended Coverage participants. These groups can vary greatly in size from less than 20 to several thousand, thereby creating potential differences in coordination of benefits with Medicare. These groups have not previously been tracked for Medicare entitlement, but this is to be implemented with the start of this contract.

There will be a new program implemented effective July 1, 2017, that will start with a population of approximately 1,000. These participants and family members will need to be tracked for Medicare entitlement. In addition, there is the potential for another program to be implemented July 1, 2018, enrollment number unknown, that will also require these services.

1.3 General Description

The Commonwealth of Virginia offers two self-funded plans to all active employees and non-Medicare-eligible retiree group participants. These are administered by two third-party administrators. There are optional benefits that can be added to the basic plans. There is one fully-insured regional HMO. Retiree group participants who become eligible for Medicare may elect to continue their coverage through the Department's program by enrolling in its Medicare supplement plan (Advantage 65) to which a Medicare Part D Employee Group Waiver Plan and a dental/vision rider may be attached.

1.4 Policy Regarding Participation of Small, Women, and Minority Owned Businesses

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract are required. By submitting a proposal, offerors certify that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in rejection of the proposal.

All information requested by this RFP on the ownership, utilization, and planned involvement of small businesses, women owned businesses, and minority owned businesses must be submitted. If an offeror fails to submit all information

requested, the purchasing agency will require prompt submission of missing information after the receipt of vendor proposals in order for a non-compliance proposal to be considered.

1.5 Appendices

Appendix 1 is the current standard contract.

2.0 PROGRAM REQUIREMENTS

2.1 The Commonwealth of Virginia is seeking proposals for the following services:

2.1.1 Offeror will maintain and ensure compliance with the Voluntary Data Sharing Agreement (VDSA) with the Centers for Medicare and Medicaid Services (or other means of providing required services).

2.1.2 Through VDSA (or other processes to be proposed), offeror will identify all participants who are eligible for Medicare in any plans offered by the Department. Information should include date of Medicare eligibility and enrollment in Parts A, B and D, the reason for eligibility, and the ESRD coordination period, if applicable. This will be used to ensure appropriate Medicare primacy and to provide Medicare Part D Creditable Coverage Notices to Medicare-eligible active plan participants. Data should be available to DHRM in an Excel spreadsheet format within a week of receiving the file from CMS or other means of identification.

2.1.3 Offeror will work with claims administrators to retract primary payments made in error due to failure in timely moving participant to Medicare-primary coverage status; offeror will also coordinate with health plan to re-file claims with Medicare per program provisions and within Medicare time limits.

2.1.4 Offeror will resolve any IRS/SSA/CMS Data Match requests generated in error (VDSA should meet this obligation).

2.1.5 Offeror will monitor activities of all entities associated with Medicare coordination of benefits to ensure that the Commonwealth of Virginia Health Benefits Program is in compliance with MSP processes, and offeror should keep the Program informed of any changes affecting the process.

2.1.6 Offeror will work with the CMS, Medicare Secondary Payer Recovery administrator, the program, the health plans, and other related entities to ensure that Primary Payment Notices and Medicare Secondary Payer Demands are sent to the Department of Human Resource Management (DHRM), as plan administrator, and not to individual state agencies.

2.1.7 Offeror will assist Medicare-primary participants who have failed to enroll in Medicare Part B with a Disability Special Enrollment, if appropriate, thereby eliminating or reducing any premium

surcharge/penalty and allowing for filing of claims for primary Medicare coverage.

- 2.1.8 Offeror will respond to and resolve Medicare Secondary Payer Demand Letters, Intents to Refer to the Department of Treasury and subsequent collection activities on behalf of the Department, state agencies, and localities enrolled in Department programs. This will include developing a process for responding to Primary Payment Notice requests.
- 2.1.9 Offeror will be able to administer a program to identify participants who may be eligible for Social Security disability, assist with application, and ensure that Medicare becomes the primary payer immediately upon eligibility.
- 2.1.10 Offeror will be able to identify enrolled participants in any health plan offered by the Department who is deceased, including the date of death.
- 2.1.11 Offeror will adhere to the Commonwealth Information Security Standard SEC-501. A link is provided as Exhibit 4.

2.2 Reporting Requirements

- 2.2.1 Medicare Eligibility – Quarterly report of participants eligible for Medicare
- 2.2.2 Claims Dollars Recovered – Monthly report of primary payments recovered and net savings to the program.
- 2.2.3 MSP Summary – Monthly report of MSP open cases, resolved cases and the amount of any claims paid or recovered.
- 2.2.4 Monthly report of Disability Special Enrollments or other Part B enrollment assistance.
- 2.2.5 Monthly report of End Stage Renal Disease coordination dates
- 2.2.6 Monthly report of deceased participants
- 2.2.7 Annual Summary of all Reporting Criteria

3.0 DELIVERABLES

3.1 Utilization of Small Businesses and Businesses Owned by Women and Minorities.

See Exhibit ONE for the format of this report. This **must** be completed, signed and returned with all proposals

4.0 PROCUREMENT PROCEDURES

4.1 Method of Award

- 4.1.1 The Department shall select two or more Offerors deemed to be fully qualified and best suited among those Offerors submitting proposals, unless the Department has made a determination in writing that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration. The selection of Offerors will be based on the evaluation factors included in this RFP. Negotiations shall be conducted with the selected Offeror(s). Price shall be considered when selecting finalists for negotiation, but shall not be the sole determining factor.
- 4.1.2 After negotiations have been conducted with each selected Offeror, the Department shall select the Offeror which, in its opinion, has made the best proposal. The Department shall award the contract to that Offeror. The Department may cancel this RFP, or reject proposals at any time prior to an award. The Department is not required to furnish a statement of the reason why a particular Offeror was not deemed to have made the best proposal (Section 2.2-4359, Code of Virginia).
- 4.1.3 Should the Department determine in writing, and in its sole discretion, that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
- 4.1.4 The contract will incorporate by reference all the requirements, terms and conditions of this RFP and the Contractor's proposal, except as either or both may be amended through negotiation. All statements and representations, written or verbal, relating to the award of this and renewal contracts must be construed to be consistent with the following.

4.2 Submission of Written Proposals

- 4.2.1 All proposals must be in the form requested. The data required on the schedules submitted in response to this RFP are subject to verification. Material errors shall be a basis for rejecting such a proposal. An original, and five electronic copies on separate CDs shall be delivered in a sealed envelope, and labeled as a proposal, with the words "Do Not Open" and Medicare Eligibility Determination and Related Services prominently displayed on the face of the envelope. Additionally, each offeror shall include an additional CD-Rom with an electronic version of their proposal, labelled as follows: "the company name, RFP OHB17-01 Redacted Version". The redacted electronic version shall contain all information included in the original submission with the exception of "proprietary and confidential information". Proposals must be received no later than 2:00 p.m. on September 19, 2016 by:

Mr. Dan Hinderliter
Department of Human Resource Management
James Monroe Building, 13th Floor
101 North 14th Street
Richmond, Virginia 23219

Each copy of the proposal should be bound in a loose-leaf notebook. All documentation submitted with the proposal should be contained in that single volume. (If necessary, additional notebooks may be submitted in clearly marked and referenced sequence.)

- 4.2.2 Ownership of all data, materials and documentation originated and prepared for the Department pursuant to the RFP shall belong exclusively to the Department and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of Section 2.2-4342 of the Code of Virginia, in writing, at the time the data or other material is submitted. An electronic version of the complete submission, less the proprietary and confidential information must be submitted on CD Rom disk. This disk must be labelled with the company name and "Redacted OHB 10-02". The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified as required and must indicate only the specific words, figures, or paragraphs which constitute trade secrets or proprietary information. The Department, in its sole discretion, may not consider proposals with unduly broad requests for protection against disclosure.

4.3 Modification of Proposals

Any changes, amendments or modifications of an offeror's proposal prior to the deadline for receipt of proposals must be in writing and submitted in the same manner as the original proposals. All modifications must be labeled conspicuously as a change, amendment, or modification of the previously submitted proposal. Changes, amendments, or modifications of proposals will not be considered after the deadline for receipt of proposals, except when the Department requests modifications.

4.4 Oral Presentation

Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the Department. This provides an opportunity for the offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The Department will schedule the time and location of these presentations. Oral presentations are an option of the Department and may or may not be conducted.

4.5 Inquiries Concerning the RFP

Any communication concerning this RFP or any resulting contracts must be addressed in writing to:

Mr. Dan Hinderliter
Department of Human Resource Management
James Monroe Building, 13th Floor
101 North 14th Street
Richmond, Virginia 23219
E-mail Address: dan.hinderliter@dhrm.virginia.gov

4.6 Public Inspection of Procurement Records

Proposals will be subject to public inspection only in accordance with Section 2.2-4342 of the Code of Virginia.

4.7 Clarification Of Proposal Information

The Department reserves the right to request verification, validation or clarification of any information contained in any of the proposals. This clarification may include checking references and securing other data from outside sources, as well as from the offeror.

4.8 Reference To Other Materials

The offeror cannot compel the Department to consider any information except that which is contained in its proposal, or which is offered in response to a request from the Department. The offeror should rely solely on its proposal. The Department, however, reserves the right, in its sole discretion, to take into consideration its prior experience with offerors and information gained from other sources.

4.9 Optional Pre-Proposal Conference

An optional pre-proposal conference will be held at 10:00 a.m. on July 19, 2016, in the James Monroe Building, Conference Room B 1st Floor, 101 North 14th Street, Richmond, Virginia. The purpose of this conference is to allow potential offerors an opportunity to present questions and to obtain clarification relative to any facet of this procurement.

Attendance at the conference will be documented by the representative's signature on the attendance roster.

It is requested that any known questions regarding the RFP be emailed to Dan Hinderliter prior to date of conference to facilitate the conference. See contact information and E-mail address in paragraph 4.5.

Offerors should bring a copy of this RFP to the conference. Any changes, which result from this conference, will be issued in a written addendum to the RFP.

4.10 Timetable

RFP Published	June 17, 2016
Optional Pre-Proposal Conference	July 19, 2016
Proposals Due: 2:00 P.M.	September 19, 2016
Notice of Intent to Award	December 20, 2016

5.0 FORM OF RESPONSE AND CRITERIA

5.1 General

Each proposal shall be in the form of a loose-leaf binder, tabbed to point to each section below. Before the first tab, place the executed RFP Cover Sheet followed by a statement defining those sections of your proposal which may not be released because they are proprietary. Each page so designated shall also be marked "Confidential: Proprietary Information," and, if not so marked, shall not be protected.

An original proposal and five electronic copies are required. The original shall contain a Cover Sheet bearing an original signature signed in BLUE ink and be labeled on the cover as "Original". A redacted electronic version of the proposal shall be labelled and submitted on a separate CDROM.

5.2 Organizational Questionnaire (Tab 3)

Exhibit two contains a questionnaire to be completed by each Offeror, which, must be submitted along with its latest certified audit report.

5.3 Cost Proposal (Tab 4)

See Section IV of the Organizational Questionnaire.

5.4 Participation of Small, Women, and Minority Owned Businesses (Tab 5)

Complete the information required on Exhibit ONE.

5.5 Criteria for Evaluation

Proposals will be evaluated on five criteria: offeror's organization and financial stability (20%); communication material and services (20%); innovation and administrative capability (20%); Cost (20%); and small, women owned, and minority business (20%).

6.0 GENERAL TERMS AND CONDITIONS

- A. VENDORS MANUAL: This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the Vendors Manual. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the vendors tab.

- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the Vendors Manual. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation,. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

- G. ANTITRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. CLARIFICATION OF TERMS: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. PAYMENT:
1. To Prime Contractor:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) 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 contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).
 2. To Subcontractors:
 - a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

- (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
 3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
 4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
 - K. PRECEDENCE OF TERMS: The following General Terms and Conditions VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
 - L. QUALIFICATIONS OF OFFERORS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
 - M. Deleted
 - N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
 - O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:
 1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any 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.
 2. The Purchasing Agency 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 method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to

comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency 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 Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. 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 procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. Deleted
- R. Deleted
- S. Deleted
- T. INSURANCE: By signing and submitting a bid or proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.

3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$2,150,000 per occurrence, \$4,250,000 aggregate (Limits increase each July 1 through fiscal year 2031 per Code of Virginia § 8.01-581.15.)
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

- U. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.
- V. DRUG-FREE WORKPLACE: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- W. NONDISCRIMINATION OF CONTRACTORS: An offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

- X. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS: The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

1. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
 - a. DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
 - b. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
2. Refer to Special Term and Condition "eVA Orders and Contracts" to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at www.eVA.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- Z. Deleted
- AA. BID PRICE CURRENCY: Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.
- BB. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

7.0 Special Terms and Conditions

- 7.1 AUDIT: The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- 7.2 AWARD OF CONTRACT: the purchasing agency will award to a reasonably priced and highest ranking offeror.

7.3 CANCELLATION OF CONTRACT: The purchasing agency 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 for more than 12 months, the resulting contract may be terminated by either party, without penalty, 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.

7.4 eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS: The solicitation/contract will result in (_____) purchase order(s) with the eVA transaction fee specified below assessed for each order.

7.4.1 For orders issued January 1, 2014, and after, the Vendor Transaction Fee is:

- (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
- (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.

The specified vendor transaction fee will be invoiced by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

The eVA Internet electronic procurement solution, website portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

7.5 RENEWAL OF CONTRACT:

7.5.1 The term of this contract is February 1, 2017 through January 31, 2020 with three one-year renewal options.

7.5.2 This contract may be renewed by the Commonwealth for 3 successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

- A. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the service category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
- B. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the service category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

7.6 BID ACCEPTANCE PERIOD: Any bid in response to this solicitation shall be valid for 30 days. At the end of the days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

7.7 CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT: By my signature on this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the services specified.

Contractor Name: _____

License # _____ Type _____

Subcontractor Name: _____

License # _____ Type _____

7.8 IDENTIFICATION OF PROPOSAL ENVELOPE: If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____ Name of Offeror _____

Due Date _____ Time _____

Street or Box Number _____

City, State, Zip Code _____

RFP No. WCS15-01

RFP Title

DSBSD-certified Micro Business or Small Business No. _____

Name of Contract/Purchase Officer or Buyer

7.9 INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless 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 contractor/any

services of any kind or nature furnished by the contractor, 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 contractor on the materials, goods or equipment delivered.

7.10 SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:

7.10.1 It is the goal of the Commonwealth that 42% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a DSBSD-certified small business and where it is not practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall include DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. No offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

7.10.2 Each prime contractor who wins an award in which a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a _____ (insert monthly, quarterly, or other frequency) _____ basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. Upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

7.11 NEGOTIATION WITH THE LOWEST BIDDER: Unless all bids are cancelled or rejected, the Commonwealth reserves the right granted by § 2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.

7.12 PREPROPOSAL CONFERENCE - OPTIONAL:

A. OPTIONAL PREPROPOSAL CONFERENCE: An optional preproposal conference will be held at 10:00AM and July 19, 2016 at the James Monroe Building, Conference Room B on the 1st Floor. The purpose of this conference is to allow potential offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a proposal, offerors who intend to submit a proposal are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

7.13 REFERENCES: Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

ORGANIZATION	ADDRESS	CONTACT PERSON	TELEPHONE
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

7.14 SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

7.15 CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION: The contractor 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 unless disclosure is required pursuant to court order, subpoena or other regulatory authority, 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. Contractors 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. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

7.16 CONTINUITY OF SERVICES:

7.16.1 The Contractor recognizes that the services under this contract are vital to the Agency

and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:

- A. To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
- B. To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
- C. That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.

7.16.2 The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.

7.16.3 The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

7.17 STATE CORPORATION COMMISSION IDENTIFICATION NUMBER: Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

7.18 E-VERIFY PROGRAM: EFFECTIVE 12/1/13. Pursuant to Code of Virginia, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

EXHIBITS

ONE: SMALL BUSINESS AND BUSINESS OWNED BY WOMEN AND MINORITIES

TWO: ORGANIZATIONAL QUESTIONNAIRE

THREE: BUSINESS ASSOCIATE AGREEMENT

FOUR: COMMONWEALTH DATA SECURITY STANDARD

EXHIBIT ONE

Small Business Subcontracting Plan

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential bidders are required to submit a Small Business Subcontracting Plan.

Small Business: "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for bids. This shall also include DSBSD-certified women- and minority-owned businesses when they also hold a DSBSD certification as a small business on the bid due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify.

Certification applications are available through DSBSD online at www.DSBSD.virginia.gov (Customer Service).

Bidder Name: _____

Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form. This includes DSBSD-certified women-owned and minority-owned businesses when they have also received DSBSD small business certification.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the bid to be considered and the bidder to be declared responsive, the bidder shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period in relation to the bidder's total price for the initial contract period. in Section B.

Section A

If your firm is certified by the DSBSD provide your certification number and the date of certification.

Certification number: _____ Certification Date: _____

Section B

Populate the table below to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract for the initial contract period in relation to the bidder's total price for the initial contract period. Certified small businesses include but are not limited to DSBSD-certified women-owned and minority-owned businesses that have also received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that these proposed participation will be incorporated into the subsequent contract and will be a requirement of the contract. Failure to obtain the proposed participation percentages may result in breach of the contract.

B. Plans for Utilization of DSBSD-Certified Small Businesses for this Procurement

Micro/Small Business Name & Address DSBSD Certificate #	Status if Micro/Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract (\$ or %)
Totals \$					

EXHIBIT TWO

ORGANIZATIONAL QUESTIONNAIRE

General

The RFP describes Tasks, including the Benefit Specifications, (Section 2.0 Items) and Deliverables (Section 3.0). Under the appropriate evaluation section below, you will be requested to affirm that you will fully comply and meet these specifications as stated. Be advised that failure to identify any deviation in response to the appropriate question constitutes a representation on the offeror's part that the specifications will be met precisely as written. **Your response must also contain any exceptions** and the reasons thereof. **The absence of exceptions shall constitute a representation that the offeror will provide services and reports exactly as requested by the Department. The absence of an implementation plan constitutes a representation that the offeror is capable of providing the services and reports exactly as requested as of the day the proposal is submitted.** In the space below, please acknowledge that you understand and have complied with this requirement.

I. Organization and Financial Stability (20 points)

This section asks offerors to provide a brief background of your organization.

1. Describe in detail the processes that you propose to fulfill the requirements of this RFP..
2. Briefly describe the history of your organization and identify any parent organizational ties, if applicable. Identify the office(s) or division that would be used to service this contract and its address.
3. Identify the number of customers serviced in the Commonwealth of Virginia as of January 1, 2015
4. Submit evidence of appropriate liability insurance protection.
5. Has your firm ever been the subject of a complaint concerning your MEDS or related products that was filed with the State Corporation Commission of any state? Describe the nature of each complaint and the present status.
6. Please submit a copy of your most recent audited financial statements (balance sheet, income statement and flow of funds) in Tab 3 of your response.
7. Please indicate any recent or anticipated changes in the offeror's corporate structure, such as mergers, acquisition, new venture capital, stock issue, etc.
8. Per Section 9.15, please include three current client references for whom you provide similar services to those requested in this RFP, preferably public entities, as well as two former client references for whom you previously provided similar services. (The latter should not represent lost clients due to merger or other neutral causes.) Include the name of a contact person, phone number, address, and indication of the services currently (or previously provided) and the number of employees (or members) currently covered under the contract.
9. If applicable, please indicate the number of years your organization has been operational in providing MEDS and related services in the Commonwealth.

If any of the above material is lengthy, you may provide it as a clearly referenced attachment. However, you must respond here to each item.

II. Communication Materials and Services (20 points)

1. Provide samples of all communication and educational materials that you will be using to administer services required by this RFP.
2. Provide a document detailing the implementation schedule between the date of award and the effective date of all required programs. This document should provide the critical steps (with completion dates) and requirements on the part of the contractor and/or the Department.
3. Will an 800 number be provided for use of beneficiaries and employer representatives? If so, when would it be available?

III. Innovation and Administrative Capabilities (20 points)

This section asks offerors to identify the staff personnel and qualifications for the personnel who will be assigned to this account.

Identify the accountable senior person (including title, office location, phone number, and number of years of experience in this position) who will be responsible for managing the relationship with the contractor, including these negotiations.

Submit an organizational chart that will identify key management personnel (i.e., those who will directly support this contract), their dedicated time allocation to this contract, the office locations responsible for managing the various duties associated with fulfilling all of the provisions of this contract, and the number of years of experience in handling contracts similar in scope to the Commonwealth's.

- a. If in the foreseeable future there is a reasonable chance that any of these individuals will be reassigned, retire, or otherwise be unavailable to fulfill the duties described herein, please identify the replacement(s). Also, provide all of the requested information about any such individual.
- b. Provide, as an attachment to your chart, resumes for these individuals. Resumes should clearly identify the number of years performing directly-related activities and reference current, similarly-situated customers.

This section asks offerors to describe their administrative/systems capabilities and to affirm standards of performance identified in RFP Section 2.

Affirm that you can meet the entire task requirements identified in Section 2.0: Deliverables in Section 3.0; and the *Special Terms and Conditions*. For each paragraph in section 2, provide a brief description of how your firm will perform each required task.

Provide a brief summary below, and complete descriptions as supplemental exhibits, of the following administrative processes and systems. Carefully annotate which processes are automated and which are manual and where the systems/people interfaces occur:

- a. **Member Services:** Describe your processes and controls in providing member services (by phone, letter, in person and/or on-line). Include the functions of (1) inquiries on benefits; and (2) handling administrative/service issues, and/or claim appeals.

- b. **Systems Development:** Provide the implementation date of the most recent substantive changes to your administration systems. If a future change is contemplated between during the contract period, please identify.
- c. **Innovation.** Provide specific innovations you are proposing that could improve results and operations.

IV. Cost (20 points)

This section asks offerors to identify the cost associated with their firm performing the required tasks. A potential breakdown of costs is provided below. Provide the costs that apply to each line for year one and year two of the contract. Add any categories that have not been provided.

- Total implementation costs
- Cost per participant for identification of current Medicare-eligibles
- Cost per participant for identification of Medicare-eligibles on an on-going basis
- Costs for recovery of primary claim payments made in error
- Costs per participant for Medicare Part B or D enrollments, including Disability Special Enrollments
- Cost per request for processing of Data Match inquiries
- Cost per participant for processing of Medicare Secondary Payer Demand Letters, Department of Treasury demands, and collection agency payment coupons
- Cost to administer ESRD eligibility tracking
- Cost to administer monthly report of deceased participants
- Cost to administer program to identify potential Social Security Disability beneficiaries and track resulting Medicare eligibility.
- Other applicable administrative costs

EXHIBIT THREE

Group Health Plan Business Associate Agreement

This agreement (“Agreement”) is effective as of (insert date) and is made among (insert vendor name) (“Claims Administrator”), and the Commonwealth of Virginia Group Health Plan, administered by the Office of Health Benefits Programs (“Plan”) for the Department of Human Resource Management.

WITNESSETH AS FOLLOWS:

WHEREAS, the Commonwealth of Virginia has established and maintains the Plan as a program that provides health care coverage for employees pursuant to § 2.2-2818 of the Code of Virginia. The Plan meets the definition of a “health plan” under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64);

WHEREAS, the Plan has retained Claims Administrator to provide certain administrative services with respect to the Plan which are described and set forth in a separate Administrative Services Agreement among those parties procured under RFP numbered OHB06-1 (“ASO Agreement”) which is in effect on the effective date of this Agreement, as amended or replaced from time to time;

WHEREAS, the parties to this Agreement desire to establish the terms under which Claims Administrator may use or disclose Protected Health Information (as defined herein) such that the Plan may comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64) (“HIPAA Privacy Regulations”);

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, the Plan, and Claims Administrator hereby agree as follows:

PART 1—CLAIMS ADMINISTRATOR’S RESPONSIBILITIES

I. PRIVACY OF PROTECTED HEALTH INFORMATION

A. Confidentiality of Protected Health Information

Except as permitted or required by this Agreement, Claims Administrator will not use or disclose Protected Health Information without the authorization of the Covered Person who is the subject of such information or as required by law.

B. Prohibition on Non-Permitted Use or Disclosure

Claims Administrator will neither use nor disclose Covered Persons’ Protected Health Information except (1) as permitted or required by this Agreement, or any other agreement between the parties, (2) as permitted in writing by the Plan, (3) as authorized by Covered Persons, or (4) as required by law.

C. Permitted Uses and Disclosures

Claims Administrator is permitted to use or disclose Covered Persons’ Protected Health Information as follows:

1. Functions and Activities on Health Plan’s Behalf

Claims Administrator will be permitted to use and disclose Covered Persons’ Protected Health Information (a) for the management, operation and administration of the Plan, (b) for the services set forth in the ASO Agreement, which include (but are not limited to) Treatment, Payment activities, and/or Health Care Operations as these terms are defined in this Agreement and 45 Code of Federal Regulations § 164.501, and (c) as otherwise required to perform its obligations under this Agreement and the ASO

Agreement, or any other agreement between the parties provided such use or disclosure would not violate the HIPAA Privacy Regulations if done by the Plan.

2. Claims Administrator's Own Management and Administration

a. Protected Health Information Use

Claims Administrator may use Covered Persons' Protected Health Information as necessary for Claims Administrator's proper management and administration or to carry out Claims Administrator's legal responsibilities.

b. Protected Health Information Disclosure

Claims Administrator may disclose Covered Persons' Protected Health Information as necessary for Claims Administrator's proper management and administration or to carry out Claims Administrator's legal responsibilities only (i) if the disclosure is required by law, or (ii) if before the disclosure, Claims Administrator obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written contract, that the entity will (x) hold Covered Persons' Protected Health Information in confidence, (y) use or further disclose Covered Persons' Protected Health Information only for the purposes for which Claims Administrator disclosed it to the entity or as required by law; and (z) notify Claims Administrator of any instance of which the entity becomes aware in which the confidentiality of any Covered Persons' Protected Health Information was breached.

3. Miscellaneous Functions and Activities

a. Protected Health Information Use

Claims Administrator may use Covered Persons' Protected Health Information as necessary for Claims Administrator to perform Data Aggregation services, and to create Deidentified Information, Summary Health Information and/or Limited Data Sets.

b. Protected Health Information Disclosure

Claims Administrator may disclose, in conformance with the HIPAA Privacy Regulations, Covered Persons' Protected Health Information to make disclosures of Deidentified Information, Limited Data Set Information, and Summary Health Information, and to make Incidental Disclosures.

4. Minimum Necessary

Claims Administrator will make reasonable efforts to use, disclose, or request only the minimum necessary amount of Covered Persons' Protected Health Information to accomplish the intended purpose.

D. Disclosure to Plan and the Commonwealth (and their Subcontractors)

Other than disclosures permitted by Section I.C above, Claims Administrator will not disclose Covered Persons' Protected Health Information to the Plan, the Commonwealth, or any business associate or subcontractor of such parties except as set forth in Section VIII.

E. Disclosure to Claims Administrator's Subcontractors and Agents

Claims Administrator will require each subcontractor and agent to provide reasonable assurance, evidenced by written contract, that such other entity will comply with the same privacy and security obligations with respect to Covered Persons' Protected Health Information as this Agreement applies to Claims Administrator.

F. Reporting Non-Permitted Use or Disclosure

Claims Administrator will report to the Plan within 5 business days any use or disclosure of Covered Persons' Protected Health Information (whether by itself or by its subcontractors) not permitted by this Agreement or in writing by the Plan of which Claims Administrator becomes aware.

G. Termination for Breach of Privacy Obligations

Without limiting the rights of the parties set forth in the ASO Agreement, the Plan will have the right to terminate the ASO Agreement if Claims Administrator has engaged in a pattern of activity or practice that constitutes a material breach or violation of Claims Administrator's obligations regarding Protected Health Information under this Agreement and, on notice of such material breach or violation from the Plan, fails to take reasonable steps to cure the breach or end the violation. The Plan will follow the notice of termination procedures as set forth in the ASO Agreement.

H. Disposition of Protected Health Information

1. Return or Destruction Upon ASO Agreement End

The parties agree that upon cancellation, termination, expiration or other conclusion of the ASO Agreement, destruction or return of all Protected Health Information, in whatever form or medium (including in any electronic medium under Claims Administrator's custody or control) is not feasible given the regulatory requirements to maintain and produce such information for extended periods of time after such termination. In addition, Claims Administrator is required to maintain such records to support its contractual obligations with its vendors and network providers. Claims Administrator shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those consistent with applicable law for so long as Claims Administrator, or its subcontractors, maintains such Protected Health Information. Claims Administrator may destroy such records in accordance with its record retention policy that it applies to similar records, except to the extent a longer period of time is specified by the ASO Agreement or the law.

2. Exception When Claims Administrator Becomes Plan's Health Insurance Issuer

If upon cancellation, termination, expiration or other conclusion of the ASO Agreement, Claims Administrator (or an affiliate of Claim Administrator) becomes the Plan's health insurance underwriter, then Claims Administrator shall transfer any Protected Health Information that Claims Administrator created or received for or from the Plan to that part of Claims Administrator (or affiliate of Claims Administrator) responsible for health insurance functions.

3. Survival of Termination

The provisions of this Section I.H. shall survive cancellation, termination, expiration, or other conclusion of the ASO Agreement.

II. ACCESS, AMENDMENT AND DISCLOSURE ACCOUNTING FOR PROTECTED HEALTH INFORMATION

A. Access

1. Non-HIPAA requests

Claims Administrator will continue to respond to Covered Persons' routine requests for access to their Protected Health Information as part of Claims Administrator's normal customer service functions, if those requests do not qualify as a formal HIPAA request. In order to be deemed a "formal HIPAA request" the Covered Person must submit the request directly to the Plan, and follow all of the procedural requirements set forth in the Plan's Privacy Notice. All requests submitted directly to the Claims Administrator will be handled as a non-HIPAA request.

2. HIPAA requests

Claims Administrator will assist the Plan in responding to Covered Persons' formal HIPAA requests by performing the following functions:

Upon receipt of written notice (includes faxed and emailed notice) from the Plan, Claims Administrator will make available for inspection and obtaining copies by the Plan, or at the Plan's direction by the Covered Person (or the Covered Person's personal representative), any Protected Health Information about the Covered Person created or received for or from the Plan in Claims Administrator's custody or control, so that the Plan may meet its access obligations under 45 Code of Federal Regulations § 164.524.

Claims Administrator will not respond directly to Covered Persons' formal HIPAA requests. Claims Administrator will refer the Covered Person to the Plan so that the Plan can coordinate and prepare a timely response to the Covered Person.

B. Amendment

1. Non-HIPAA requests

Claims Administrator will continue to respond to Covered Persons' routine requests to amend their Protected Health Information as part of Claims Administrator's normal customer service functions, if those requests do not qualify as a formal HIPAA request. In order to be deemed a "formal HIPAA request" the Covered Person must submit the request directly to the Plan, and follow all of the procedural requirements set forth in the Plan's Privacy Notice. All requests submitted directly to the Claims Administrator will be handled as a non-HIPAA request.

2. HIPAA requests

Claims Administrator will assist the Plan in responding to Covered Persons' formal HIPAA requests by performing the following functions:

Upon receipt of written notice (includes faxed and e-mailed notice) from the Plan, Claims Administrator will amend any portion of the Protected Health Information created or received for or from the Plan in Claims Administrator's custody or control, so that the Plan may meet its amendment obligations under 45 Code of Federal Regulations § 164.526.

Claims Administrator will not respond directly to Covered Persons' formal HIPAA requests. Claims Administrator will refer the Covered Person to the Plan so that the Plan can coordinate and prepare a timely response to the Covered Person.

C. **Disclosure Accounting**

1. **Non-HIPAA requests**

Claims Administrator will continue to respond to Covered Persons' routine requests for an accounting of disclosures of their Protected Health Information as part of Claims Administrator's normal customer service functions, if those requests do not qualify as a formal HIPAA request. In order to be deemed a "formal HIPAA request" the Covered Person must submit the request directly to the Plan, and follow all of the procedural requirements set forth in the Plan's Privacy Notice. All requests submitted directly to the Claims Administrator will be handled as a non-HIPAA request.

2. **HIPAA requests**

Claims Administrator will assist the Plan in responding to Covered Persons' formal HIPAA requests by performing the following functions:

So the Plan may meet its disclosure accounting obligations under 45 Code of Federal Regulations § 164.528, Claims Administrator will do the following:

a. **Disclosure Tracking**

Claims Administrator will record each disclosure that Claims Administrator makes of Covered Persons' Protected Health Information, which is not excepted from disclosure accounting under Section II.C.2.b.

The information about each disclosure that Claims Administrator must record ("Disclosure Information") is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Claims Administrator made the disclosure, (c) a brief description of the Protected Health Information disclosed, and (d) a brief statement of the purpose of the disclosure or a copy of any written request for disclosure under 45 Code of Federal Regulations §164.502(a)(2)(ii) or §164.512.

For repetitive disclosures of Covered Persons' Protected Health Information that Claims Administrator makes for a single purpose to the same person or entity, Claims Administrator may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

b. **Exceptions from Disclosure Tracking**

Claims Administrator will not be required to record Disclosure Information or otherwise account for disclosures of Covered Persons' Protected Health Information (a) for Treatment, Payment or Health Care Operations, (b) to the Covered Person who is the subject of the Protected Health Information, to that Covered Person's personal representative, or to another person or entity authorized by the Covered Person (c) to persons involved in that Covered Person's health care or payment for health care as provided by 45 Code of Federal Regulations § 164.510, (d) for notification for disaster relief purposes as provided by 45 Code of Federal Regulations § 164.510, (e) for national security or intelligence purposes, (f) to law enforcement officials or correctional institutions regarding inmates, (g) that are incidental to a use or disclosure that is permitted by this Agreement or the ASO Agreement, (h) as part of a limited data set in accordance with 45 Code of Federal Regulations § 164.514(e), or (i) that occurred prior to the Plan's compliance date.

c. **Disclosure Tracking Time Periods**

Claims Administrator will have available for the Plan the Disclosure Information required by Section II.C.2.a above for the six (6) years immediately preceding the date of the Plan's request for the Disclosure Information (except Claims Administrator will not be required to have Disclosure Information for disclosures occurring before April 14, 3003).

d. Provision of Disclosure Accounting

Upon receipt of written notice (includes faxed and e-mailed notice) from the Plan, Claims Administrator will make available to the Plan, or at the Plan's direction to the Covered Person (or the Covered Person's personal representative), the Disclosure Information regarding the Covered Person, so the Plan may meet its disclosure accounting obligations under 45 Code of Federal Regulations § 164.528.

Claims Administrator will not respond directly to Covered Persons' formal HIPAA requests for an accounting of disclosures. Claims Administrator will refer the Covered Person to the Plan so that the Plan can coordinate and prepare a timely accounting to the Covered Person.

D. Confidential Communications

Claims Administrator will promptly, upon receipt of notice from the Plan, begin to send all communications of Protected Health Information directed to the Covered Person to the identified alternate address.

Claims Administrator will respond directly to Covered Persons' requests for a confidential communication. If a Covered Person's request, made to Claims Administrator, extends beyond information held by Claims Administrator or Claims Administrator's affiliates or agents, Claims Administrator will inform the Covered Person to direct the request to the Plan, so that the Plan may coordinate the request. Claims Administrator assumes no obligation to coordinate any request for a confidential communication of Protected Health Information maintained by other business associates of Plan.

E. Restrictions

The Plan understands that Claims Administrator administers a variety of different complex health benefit arrangements, both insured and self-insured, and that Claims Administrator has limited capacity to agree to special privacy restrictions requested by Covered Persons. Accordingly, the Plan and the agrees that it will not commit Claims Administrator to any restriction on the use or disclosure of Covered Persons' Protected Health Information for Treatment, Payment or Health Care Operations without Claims Administrator's prior written approval.

Claims Administrator will promptly, upon receipt of notice from the Plan, restrict the use or disclosure of Covered Persons' Protected Health Information, provided the Claims Administrator has agreed to such a restriction.

Claims Administrator will not respond directly to Covered Persons' requests to restrict the use or disclosure of Protected Health Information for Treatment, Payment or Health Care Operations. Claims Administrator will refer the Covered Person to the Plan so that the Plan can coordinate and prepare a timely response to the Covered Person.

III. PLAN'S NOTICE OF PRIVACY PRACTICES

The Plan will be solely responsible for the content of any Notice of Privacy Practices that is created, including that its content accurately reflects the Plan's privacy policies, procedures and practices and complies with all the requirements of 45 Code of Federal Regulations § 164.520. The Plan shall not create any Notice of Privacy Practices that imposes privacy obligations on the Claims Administrator that have not been accepted in writing in advance by the Claims Administrator.

IV. SAFEGUARD OF PROTECTED HEALTH INFORMATION

Claims Administrator will develop and maintain reasonable and appropriate administrative, technical and physical safeguards, as required by Social Security Act § 1173(d) and 45 Code of Federal Regulation § 164.530(c), to ensure and to protect against reasonably anticipated threats or hazards to the security or integrity of health information, to protect against reasonably anticipated unauthorized use or disclosure of health information, and to reasonably safeguard Protected Health Information from any intentional or unintentional use or disclosure in violation of this Agreement.

Claims Administrator will also develop and use appropriate administrative, physical and technical safeguards to preserve the availability of electronic Protected Health Information, in addition to preserving the integrity and confidentiality of such Protected Health Information. "Availability" means the electronic protected health information is accessible and useable upon demand by an authorized person. The "appropriate safeguards" Claims Administrator uses in furtherance of 45 Code of Federal Regulation § 164.530(c), will also meet the requirements contemplated by 45 Code of Federal Regulation Parts 160, 162 and 164, as amended from time to time.

In addition to reporting to the Plan any use or disclosure of Protected Health Information not permitted by the Agreement, Claims Administrator will also report any security incidents of which Claims Administrator becomes aware. A security incident is an attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system, and involves only electronic Protected Health Information that is created, received maintained or transmitted by or on behalf of Claims Administrator, that is in electronic form

V. NOTICE OF BREACH - OBLIGATIONS AND ACTIVITIES OF CLAIMS ADMINISTRATOR

In the event of any "breach" of "unsecured PHI" in Claims Administrator's control, as both terms are defined in Sec. 13402 of the American Reinvestment and Recovery Act of 2009 ("ARRA") and as clarified pursuant to any regulations adopted pursuant thereto, Claims Administrator shall, in accordance with such section and any applicable regulations thereunder: (a) notify the Plan of such breach; (b) notify each affected individual of such breach; and (c) provide any other notice, on behalf of the Plan, that is required under ARRA Sec.13402. This notice obligation shall take effect as of the effective date of the notice provisions of ARRA Sec. 13402.

VI. COMPLIANCE WITH STANDARD TRANSACTIONS

On and after October 16, 2003, Claims Administrator will comply with each applicable requirement for Standard Transactions established in 45 Code of Federal Regulations Part 162 when conducting all or any part of a Standard Transaction electronically for, on behalf of, or with the Plan.

VII. INSPECTION OF BOOKS AND RECORDS

Claims Administrator will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information created or received for or from the Plan available to the U.S. Department of Health and Human Services to determine Plan's compliance with 45 Code of Federal Regulations Parts 160-64 or this Agreement.

VIII. MITIGATION FOR NON-PERMITTED USE OR DISCLOSURE

Claims Administrator agrees to mitigate, to the extent practicable, any harmful effect that is known to Claims Administrator of a use or disclosure of Protected Health Information by Claims Administrator or its subcontractors in violation of the requirements of the Agreement.

PART 2—DISCLOSURE OF PROTECTED HEALTH INFORMATION TO THE PLAN, AND OTHER BUSINESS ASSOCIATES

IX. DISCLOSURE OF PROTECTED HEALTH INFORMATION

The following provisions apply to disclosures of Protected Health Information to the Plan, the Office of Health Benefits Programs for the Department of Human Resource Management in its role as plan sponsor and plan administrator, and other business associates of the Plan on behalf of the Plan. Ownership of Protected Health Information is governed by the ASO Agreement and applicable law.

A. Disclosure to Health Plan

Unless otherwise provided by this Section VII, all communications of Protected Health Information by

the Claims Administrator shall be directed to the Office of Health Benefits Programs in its role as plan administrator.

B. Disclosure to the Commonwealth in its Role of Plan Sponsor

Claims Administrator may provide Protected Health Information regarding the Covered Persons in the Plan to the Commonwealth upon the Commonwealth's written request for the purpose either (a) to obtain premium bids for providing health insurance coverage for the Plan, or (b) to modify, amend or terminate the Plan. Claims Administrator may provide information to the Commonwealth in its role of plan sponsor on whether an individual is participating in the Plan or is enrolled in or has disenrolled from any insurance coverage offered by the Plan

C. Disclosure to Other Business Associates and Subcontractors

Claims Administrator may disclose Covered Persons' Protected Health Information to other entities or business associates of the Plan if the Plan authorizes Claims Administrator in writing to disclose Covered Persons' Protected Health Information to such entity or business associate. The Plan shall be solely responsible for ensuring that any contractual relationships with these entities or business associates and subcontractors comply with the requirements of 45 Code of Federal Regulations § 164.504(e) and § 164.504(f).

PART 3—MISCELLANEOUS

X. AGREEMENT TERM

This Agreement will continue in full force and effect for as long as the ASO Agreement remains in full force and effect. This Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the ASO Agreement.

XI. AUTOMATIC AMENDMENT TO CONFORM TO APPLICABLE LAW

Upon the effective date of any final regulation or amendment to final regulations with respect to Protected Health Information, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Agreement or to the ASO Agreement, this Agreement will automatically amend such that the obligations imposed on the Plan, and Claims Administrator remain in compliance with such regulations, unless Claims Administrator elects to terminate the ASO Agreement by providing the Plan notice of termination in accordance with the ASO Agreement at least thirty (30) days before the effective date of such final regulation or amendment to final regulations.

XII. CONFLICTS

The provisions of this Agreement will override and control any conflicting provision of the ASO Agreement or other agreement. All other provisions of the ASO Agreement or other agreement remain unchanged by this Agreement and in full force and effect.

XIII. INTENT

The parties agree that there are no intended third party beneficiaries under this Agreement.

XIV. INTERPRETATION

Any ambiguity in this Agreement or the ASO Agreement or in operation of the Plan shall be resolved to maintain compliance with the rules enacted pursuant to HIPAA Administrative Simplification.

XV. DEFINITIONS

The following terms when used in this Agreement have the following meanings:

- A. “Covered Employee” means the person to whom coverage under the Plan has been extended by the Health Plan and to whom Claims Administrator has directly or indirectly issued an identification card bearing the Plan group number.
- B. “Covered Person” means the Covered Employee and the Covered Employee’s legal spouse and/or unmarried dependent children as specified in the plan document.
- C. “Data Aggregation” means the combining of Protected Health Information that Claims Administrator creates or receives for or from the Plan and for or from other health plans or health care providers for which Claims Administrator is acting as a business associate or a covered entity to permit data analyses that relate to the Health Care Operations of the Plan and those other health plans or providers. (See 45 Code of Federal Regulations § 164.501.)
- D. “De-Identified Information” has the same meaning as that term is defined in the HIPAA Privacy Regulations (See 45 Code of Federal Regulations § 164.514(b).)
- E. “Health Care Operations” mean any of the following activities of a health plan, such as the Plan, as relate to the functions that make it a health plan (see 45 Code of Federal Regulations § 164.501):
 - 1. Quality Improvement and Control
 - a. Conducting quality assessment and improvement activities, including outcome evaluation and development of clinical guidelines (except research or other studies or activities that have as their primary purpose obtaining generalized knowledge);
 - b. Conducting population-based activities relating to improving health or reducing health care costs;
 - c. Conducting protocol development, case management or care coordination;
 - d. Contacting health care providers and enrollees (such as Covered Persons) with information about treatment alternatives; and
 - e. Conducting other related functions that do not include treatment.
 - 2. Credentialing and Training
 - a. Reviewing the competence or qualifications of health care professionals;
 - b. Evaluating health care provider performance;
 - c. Evaluating health plan performance;
 - d. Conducting training programs in which students, trainees or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers;
 - e. Conducting training of non-health care professionals; and
 - f. Conducting accreditation, certification, licensing or credentialing activities.
 - 3. Insuring Functions
 - a. Engaging in underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits; and
 - b. Ceding, securing, or placing a contract of reinsurance of risk relating to claims for health care (including stop-loss insurance), subject to any applicable limitations of 45 Code of Federal Regulations § 164.514(g).
 - 4. Audit and Legal Activities
 - a. Conducting or arranging for medical review;
 - b. Conducting or arranging for legal services;
 - c. Conducting or arranging for audit functions; and
 - d. Conducting activities involving fraud and abuse detection or compliance programs.
 - 5. Business Strategy
 - a. Engaging in business planning and development;
 - b. Conducting cost-management and planning-related analyses related to managing and operating the health plan;

- c. **Developing and administering a formulary; and**
- d. **Developing or improving methods of payment or policies of coverage.**

6. Business Management and Administration

- a. **Engaging in business management and general administrative activities of the health plan;**
- b. **Managing activities relating to implementation of and compliance with the requirements for the information privacy, security, transaction standards and other provisions of 45 Code of Federal Regulation Subtitle A, Subchapter C;**
- c. **Managing customer service, including provision of data analyses for policy holders, plan sponsors, or other customers (provided that no Protected Health Information is disclosed to the policy holders, plan sponsors, or other customers, except as otherwise provided for herein);**
- d. **Resolving internal grievances;**
- e. **Creating de-identified health information (consistent with the requirements of 45 Code of Federal Regulations §§ 164.514(a)-(c));**
- f. **Creating limited data set health information (consistent with the requirements of 45 Code of Federal Regulations § 164.514(e); and**
- g. **Conducting activities in connection with the sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity.**

7. Wellness and Other Health-Related Communication

Provided that these activities are not performed under conditions that would cause the activity to constitute “marketing” as defined in 45 Code of Federal Regulations § 164.501:

- a. **Communicating with health plan enrollees about health-related products or services (or payment for such products or services) that are provided by or included in the health plan or that are available only to a health plan enrollee that add value to, but are not part of, a health plan;**
- b. **Communicating with health plan enrollees about health care providers in the health plan’s networks;**
- c. **Communicating with health plan enrollees about the health plan’s coverage or benefits, or the replacement of, or enhancements to a health plan;**
- d. **Communicating with health plan enrollees concerning products or services of nominal value;**
- e. **Communicating with health plan enrollees face-to-face about any products or services;**
- f. **Communicating with health plan enrollees by newsletter or similar type of general communication device distributed to a broad cross-section of enrollees or other broad group of individuals; and**
- g. **Communicating with health plan enrollees for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.**

F. **“Incidental Use or Disclosure” means a secondary use or disclosure that can not reasonably be prevented, is limited in nature, and that occurs as a by-product of an otherwise permitted use or disclosure under the HIPAA Privacy Regulations. Such a secondary use or disclosure shall only be considered an incidental use or disclosure if reasonable safeguards have been put in place to prevent such use or disclosure.**

G. **“Individually Identifiable Health Information” means information, including demographic information collected from an individual, that (1) is created or received by a health plan, health care provider, employer, or health care clearinghouse, (2) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and (3) either identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. (See 45 Code of Federal Regulations § 164.103.)**

- H. “Limited Data Set” means **Protected Health Information** that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:
1. Names;
 2. Postal address information, other than town or city, State, and zip code;
 3. Telephone numbers;
 4. Fax numbers;
 5. Electronic mail addresses;
 6. Social security numbers;
 7. Medical record numbers;
 8. Health plan beneficiary numbers;
 9. Account numbers;
 10. Certificate/license numbers;
 11. Vehicle identifiers and serial numbers, including license plate numbers;
 12. Device identifiers and serial numbers;
 13. Web Universal Resource Locators (URLs); Internet Protocol (IP) address numbers;
 14. Biometric identifiers, including finger and voice prints; and
 15. Full face photographic images and any comparable images (*See* 45 Code of Federal Regulations § 164.514(e).)
- I. “Payment” means any of the following activities of a health plan, such as the Plan (*see* 45 Code of Federal Regulations § 164.501):
1. Obtaining premium payments or reimbursement for the provision of health care;
 2. Determining or fulfilling responsibility for coverage and provision of benefits under the health plan;
 3. Determining an enrollee’s eligibility or coverage;
 4. Coordinating benefits, determining cost sharing amounts, adjudicating or subrogating health benefit claims;
 5. Adjusting risk amounts due based on enrollee health status or demographic characteristics;
 6. Engaging in billing, claims management, issuance of explanations of benefits, collection activities, and related health care data processing;
 7. Obtaining payment under a contract of reinsurance (including stop-loss insurance and excess loss insurance);
 8. Reviewing health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;
 9. Conducting utilization review, precertification and preauthorization of services, and concurrent and retrospective review of services; and
 10. Disclosure to consumer reporting agencies not more than the demographic data permitted by 45 Code of Federal Regulations § 164.501 (“Payment” ¶ 2(vi)).
- J. “Plan Administration Functions” means **administrative functions** performed by a plan sponsor on behalf of a group health plan and excludes functions performed by the plan sponsor in connection with (1) obtaining premium bids for providing health insurance coverage for the group health plan or for modifying, amending or terminating the group health plan, or (2) functions performed by the plan sponsor in connection with any other benefit or benefit plan of the plan sponsor.
- K. “Protected Health Information” means **Individually Identifiable Health Information** that is transmitted or maintained electronically, on paper, orally or in any other form or medium.
- Education records covered by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); records described in Section 1232g(a)(4)(B)(iv) of Title 20 of the United State Code; and employment records held by a covered entity in its role as an employer are excluded from Protected Health Information. (*See* 45 Code of Federal Regulations § 164.501.)
- L. “Summary Health Information” means **information**, which may be **Individually Identifiable Health Information**, (1) that summarizes the claims history, claims expenses, or types of claims experienced by enrollees for whom a plan sponsor has provided health care benefits under a group health plan, and (2) from which the identifiers specified in 45 Code of Federal Regulations § 164.514(b)(2)(i) have been

deleted (except that the zip code information described in 45 Code of Federal Regulations § 164.514(b)(2)(i)(B) need only be aggregated to the level of a five (5) digit zip code). (See 45 Code of Federal Regulations § 164.504(a).)

M. "Standard Transactions" mean health care financial or administrative transactions conducted electronically for which standard data elements, code sets and formats have been adopted in 45 Code of Federal Regulations Part 162.

N. "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another. (see 45 Code of Federal Regulations § 164.501)

XVI. REFERENCES

References herein to statutes and regulations shall be deemed to be references to those statutes and regulations as amended or recodified.

SIGNATURES

PLAN: COMMONWEALTH OF VIRGINIA EMPLOYEE GROUP HEALTH PLAN

By: _____
Title: _____
Date: _____

CLAIMS ADMINISTRATOR:

By: _____
Title: _____
Date: _____

EXHIBIT 4

The Commonwealth of Virginia's data security standard is SEC-501. It can be viewed at the following address:

http://www.vita.virginia.gov/uploadedFiles/VITA_Main_Public/Library/PSGs/Information_Security_Standard_SEC501.pdf

Appendix 1

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

STANDARD CONTRACT

This contract is entered into this _____, 2017, by _____, hereinafter called "Contractor" and the Commonwealth of Virginia, Department of Human Resource Management, hereinafter called "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide the services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF CONTRACT:

COMPENSATION AND METHOD OF PAYMENT: The Contractor shall be paid monthly according to the terms of its accepted proposal.

CONTRACT DOCUMENTS: The Contract Documents shall consist of this signed Contract; the Request for Proposals: proposal submitted by the Contractor dated _____, _____; the general conditions, special conditions, specifications, and other data contained in the Request for Proposals.

Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in the Request for Proposals.

In witness whereof, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

PURCHASING AGENCY:

By: _____

By: _____

Print Name

Print Name

Title: _____

Title: _____

Date: _____

Date: _____