



# REQUEST FOR PROPOSALS

**City of Hampton**  
ISSUING OFFICE:

**DATE: December 8, 2015**

Consolidated Procurement Div.  
1 Franklin Street, Suite 345  
HAMPTON, VA 23669  
TELEPHONE: (757) 727-2200  
FAX: (757)727-2207

Attention of Offeror is Directed To  
Section 2.2-4367 to 2.2-4377 Code of  
Virginia  
(Ethics In Public Contracting)

<b>RFP ITEM NO.</b> 16-356253/DM
<b>PROCUREMENT OFFICER</b>  <b>Buyer Name</b> <b>Doris McRae, WAE Senior Buyer</b>
<b>CLOSING DATE</b> December 28, 2015
<b>CLOSING TIME</b> 3:00 P.M. EST

**SEALED PROPOSALS** will be received in the Issuing Office above until Closing Date and Closing Time as specified in this solicitation including any addenda issued by this office. HCS of Hampton is not responsible for late delivery by U.S. Postal mail or other couriers. All inquiries for information regarding this Request for Proposal are to be directed to the Issuing Office as defined herein.

**COMMODITY: Insurance Services NIGP CODE: 962-47**

**PLEASE FILL IN OFFEROR'S NAME & ADDRESS IN THE SPACES PROVIDED BELOW:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THIS IS NOT AN ORDER**

In order to receive a complete copy of the RFP (including attachments), e-mail Hampton City Schools Consolidated Procurement Office and Wells Fargo Insurance Services on Behalf of Hampton City Schools at:  
dmcrae@hampton.gov and Dawniece.Trumbo@wellsfargo.com

THE SCHOOL BOARD OF THE CITY OF HAMPTON, HEREAFTER REFERRED TO AS "HCS", RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL PROPOSALS IN WHOLE OR IN PART AND WAIVE ANY INFORMALITIES IN THE COMPETITIVE NEGOTIATIONS PROCESS. FURTHER, HCS RESERVES THE RIGHT TO ENTER INTO ANY CONTRACT DEEMED TO BE IN ITS BEST INTEREST. THE ENTIRE CONTENTS OF THE REQUEST FOR PROPOSALS, ANY ADDENDA, OFFEROR'S PROPOSAL AND NEGOTIATED CHANGES SHALL BE INCORPORATED BY REFERENCE INTO ANY RESULTING CONTRACT.

**THE SCHOOL BOARD OF THE CITY OF HAMPTON DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.**

The School Board of the City of Hampton is seeking proposals from qualified Offerors to provide administrative services for Flexible Spending Accounts, COBRA Administration, Retiree Billing, Private Insurance Reimbursement Accounts and Premium Conversion Services to Hampton City Schools' employees.

**ACKNOWLEDGE RECEIPT OF ADDENDUM: #1\_\_\_ #2\_\_\_ #3\_\_\_ #4\_\_\_ (Please Initial)**

THE SCHOOL BOARD OF THE CITY OF HAMPTON CANNOT LEGALLY AGREE TO ANY CLAUSE INDEMNIFYING THE CONTRACTOR FROM ANY DAMAGES ARISING OUT OF THE CONTRACT/AGREEMENT/LEASE OR HOLDING THE CONTRACTOR HARMLESS. THE SUBMISSION OF A BID OR A PROPOSAL CONSTITUTES AN AGREEMENT BY THE CONTRACTOR NOT TO REQUEST SUCH LANGUAGE IN THE RESULTING CONTRACT. IN COMPLIANCE WITH THIS SOLICITATION AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED AGREES TO PERFORM ANY CONTRACT AWARDED AS A RESULT OF THIS SOLICITATION. THE FOLLOWING SECTION SHALL BE SIGNED BY AN AGENT AUTHORIZED TO BIND THE COMPANY. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN PROPOSAL REJECTION.

**Authorized Agent:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Email Address  
ENCLOSURES

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Company FEI/FIN#



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## Section 1: Letter of Instruction

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It is the intent of this Request for Proposal (RFP) to solicit sealed proposals from qualified sources to establish a contract to provide flexible spending account administration, COBRA administration, retiree billing and premium conversion administration for employees of Hampton City Schools.

Currently, administration of COBRA continuation, retiree billing & flexible spending accounts is performed by Discovery Benefits.

With regard to COBRA coverage, HCS' medical plan is partially self-insured and is administered through Anthem. Employees are offered three medical plan options. In addition, HCS offers a two option dental program administered through MetLife. Under Section 125, HCS' employees have access to health and dependent care flexible spending accounts, as well as private insurance FSA. Both full-time and part-time employees are eligible to participate in these programs.

The primary objectives of this market study for HCS are to:

1. Solicit competitive bids for administration of COBRA, flexible spending accounts, retiree billing and premium conversion;
2. Provide consistent, compliant benefits for all benefit-eligible employees;
3. Update existing plan documents, SPDs and communications materials;
4. Provide COBRA beneficiaries, retirees, and flexible benefit plan account participants with the highest possible level of service;
5. Responsibly manage taxpayer dollars

Offerors are encouraged to recommend additional options as the most viable and feasible means to achieve the objectives of HCS (as stated above).

Employee census data are included in the Appendices.

## Section 2: General Information

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<b>Employer:</b>	Hampton City Schools
<b>Address:</b>	1 Franklin Street Hampton, VA 23669
<b>Number of Employees:</b>	2,542 eligible
<b>Eligibility:</b>	Permanent Full-Time employees.
<b>Industry:</b>	Schools System
<b>Coverage to be Quoted:</b>	Flexible Spending Account Administration (Medical/Dependent/Private Insurance) COBRA Administration Retiree Billing Premium Conversion Administration
<b>Current Administrator:</b>	Discovery Benefits
<b>Renewal Date:</b>	October 1, 2016
<b>Proposed Effective Date:</b>	October 1, 2016
<b>Deviations:</b>	If there are any deviations in the specifications, please detail the differences in writing.
<b>Current Funding:</b>	Administrative Services Only
<b>Proposed Funding:</b>	Administrative Services Only
<b>Current Plan Benefits:</b>	See Attached Benefit Summary
<b>Employer Contributions:</b>	100% employee paid Annual elections for FSA accounts are deducted on a 10-month basis (in 2016, they will be taken over 20 semi-monthly deductions)

## Section 2: General Information

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<b>Employee Census:</b>	See Attached excel file
<b>Commissions:</b>	0% commissions
<b>No Loss, No Gain:</b>	Coverage should be written on a no loss, no gain basis. Confirm in writing that no current covered participants will lose coverage and that actively-at-work requirement will be waived. Please also confirm you will cover any employee who is currently disabled but does not meet waiver of premium under the current carrier.
<b>Rate Guarantees:</b>	All rates and/or fees must be guaranteed for at least three years. Multi-year rate guarantees are an important component Hampton City Schools' decision-making process and are preferable.

## Section 2: General Information

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### SCOPE OF SERVICES

#### A. Minimum Services To Be Performed by the Offeror

This is intended to establish minimum services and specific conditions the Offeror should meet in order to fulfill Hampton City Schools' objectives as stated in Section 1 of this RFP. The Offeror must outline in writing how these minimum services and specific conditions will be met. Offerors are encouraged to provide additional services which will enhance their ability to meet Hampton City Schools' objectives.

1. Provide and/or make available necessary, appropriate, and high quality benefits to each member and plan participant.
2. For COBRA continuation coverage:
  - a. Provide a full-service COBRA administration contract
  - b. Prepare and issue all appropriate documentation and notices
  - c. Administer and monitor all new and current COBRA accounts
3. For Retiree Billing:
  - a. Maintain membership files for each covered retiree
  - b. Prepare and issue all appropriate documentation and notices
  - c. Provide monthly billing services
  - d. Provide open enrollment services annually
4. For FSA accounts, provide high quality, efficient program administration and services including but not limited to:
  - a. Maintaining central claims and membership files for each covered member.
  - b. Maintaining claims payment records.
  - c. Provide state-of-the-art data tracking and claims payment services.
  - d. Furnishing periodic (minimum quarterly) statements and detailed list of transactions and account balances.

4. For Premium Conversion:
  - a. Provide plan document and periodically update for compliance
  - b. Perform annual discrimination testing
  - c. Provide support and guidance to entities with questions
  - d. Salary reduction agreement forms and change forms
5. Allow HCS to pay monthly fees as reflected in HCS' records, (HCS will not pay as billed). HCS will audit bills and eligibility records quarterly and allow the offeror to audit records as necessary.
6. Provide administrative support services that simplify the work input, and administrative time of HCS' human resource personnel.
7. Meet with HCS within fifteen (15) days after the contract award date to review the offeror's service program and fees, to present the proposed communication material, and to jointly establish a preliminary implementation plan and schedule.
8. Furnish each eligible employee with communications materials defining all covered expenses, limitations and exclusions, procedures for filing claims, and reimbursement procedures. The initial proofs must be provided to HCS on a timely basis but no later than the contract effective date (October 1, 2016). HCS shall review and approve the material prior to distribution. Materials must be reprinted at offeror's expense, should changes be required.
9. Provide a notice of any rate change a minimum of four months prior to effective date (or earlier, if requested by HCS).
10. Provide a single point of contact responsible for customer service, account management, resolving problems, and expediting services related to the overall performance of the contract.
11. For FSA accounts, provide high quality, efficient program administration and services including but not limited to:
  - toll-free customer service number for covered members.
- XV. Agree to a one-year contract term, with option for up to six (6) additional one (1) year renewals for a total contract length not to exceed (7) years. Renewals shall not be automatic unless confirmed in writing thirty (30) days prior to the effective date.

**B. Additional Specific Conditions**

**Transfer of data and records:** The offeror must agree that at termination or expiration of the contract, all data and records shall be transferred to the new contractor within thirty (30) days of HCS’ request. Such transfer may be accomplished by file transfer, the layout will be based upon the mutual agreement between the outgoing contractor and HCS.

**C. Program Specifications**

The offeror is requested to submit a proposal for the current plan design. Additionally, offerors are encouraged to provide “other options” the offeror believes will best meet HCS’ objectives. Descriptions of all services must be included in TAB II of your proposal.

**Please quote the following:**

- Full service administration of COBRA continuation coverage for all eligible employees and qualified beneficiaries
- Full service administration of Health Care and Dependent Care Flexible Spending Accounts benefits and Premium Conversion services
- Full service administration of Private Insurance Reimbursement accounts

**Current Plan Structure:**

Reimbursement Frequency:	Weekly
Reimbursement Method:	Direct Deposit and Debit Card
Health Care Spending Account:	Maximum: \$2,550 per year
Dependent Care Spending Account:	Maximum: \$5,000 per year
Private Insurance Reimbursement Account:	Cost of individual health and/or dental insurance

**Current Plan Additional Information:**

Current eligibility includes full-time, part-time and job share employees

Annual turnover is estimated to be 15% (not all are benefits eligible employees)

Estimated monthly COBRA qualifying events range from a couple hundred in the summer to less than 100 throughout the school year

Currently there are **128 retirees** included on the monthly billing (medical, dental and/or vision).

HCS' payroll is currently on a 10-month cycle, which means annual deductions are divided in 10 equal payments, as opposed to 12. In 2016, a new payroll system will be implemented that will change the deduction schedule to semi-monthly (to 20 equal payments).

**D. GENERAL INFORMATION AND REQUIREMENTS**

The Price Quotations should be based upon the current COBRA continues and current flexible spending accounts for the 2015/2016 plan year (effective 10/1/2015).

Please provide Price Quotations in accordance with each of the following:

1. Multi-year guarantees are recommended and will be an important consideration in the evaluation process. All guarantees should be explained on the Deviations exhibit.
2. Do not add commissions to costs or rates. If commission is automatically included in your cost/rate structure, the commission is payable to Wells Fargo Insurance Services. Identify commissions included in your proposal.

**Deviations Exhibit**

A Deviations Exhibit should be submitted to document any assumptions, special criteria or requirements, variances from the requested plan and funding, etc. Please submit a separate Deviations Exhibit with each price quotation, if necessary. If the information is the same for all quotations, please provide one Deviations Exhibit and specify that it applies to all price quotations.

**Please submit your response in hardcopy and electronically.**

**E. Proposed Schedule**

Questions due	12/16/15
Proposals due	12/28/15
Evaluation of proposals and selection process	1/2016
Oral presentations by finalists	2/2016
Negotiations	2/2016
Award of contract	3/2016
Communication development and training implementation team	4/2016 – 5/2016
Open enrollment planning begins	6/2016
Open enrollment	8/2016
Applications to vendor	9/2016
Effective date of program	10/1/2016

## **SECTION 3. GENERAL CONDITIONS**

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### **1 GENERAL INFORMATION**

**1.1 Proposal Due Date.** Sealed proposals will be received no later than the date and time indicated on page one of this RFP. Proposals will not be accepted after this time.

**1.2 Addendum and Amendment to RFP.** If it becomes necessary to revise or amend any part of this RFP, WFI will provide notification of the Addendum to all prospective Proposers who received an original RFP from WFI. Hampton City Schools will not accept incomplete proposals. It will be the responsibility of the Proposer to contact WFI prior to submitting a proposal to ascertain if any addenda have been issued, to obtain all such addenda, and to return the executed addenda with the proposal.

### **2 QUESTIONS REGARDING SPECIFICATIONS OR PROPOSAL PROCESS**

**2.1** To ensure fair consideration for all Proposers, Hampton City Schools prohibits prospective Proposers' communication with any department or employee during the submission process. Questions relative to the interpretation of specifications or the proposal process shall be in writing and submitted directly to [dmcrae@hampton.gov](mailto:dmcrae@hampton.gov) and WFI, **no later than December 16, 2015.**

Dawniece Trumbo  
Employee Benefits Representative  
Wells Fargo Insurance Services  
9020 Stony Point Parkway, Suite 200  
Richmond, VA 23235  
(804) 267-3149  
(877) 827-0725-Fax  
Email: Dawnice.Trumbo@wellsfargo.com

**2.2** Additionally, Hampton City Schools prohibits communications initiated by a Proposer with any Hampton City Schools official or employee evaluating or considering the proposals prior to the time an award decision has been made, except as initiated by the appropriate Hampton City Schools or WFI official or employee in order to obtain information or clarification needed to develop a proper, accurate evaluation of the proposal. Communications so initiated by a Proposer may be grounds for disqualifying the Proposer from consideration for award of the proposal and/or any future proposal.

### **3 CONTENT OF PROPOSALS**

**3.1** Proposals should be prepared simply and economically, providing a straightforward, concise description of the Proposer's ability to fulfill the requirements of the proposal. **Failure to follow these instructions could result in your proposal being disqualified.**

**3.2** Provide one original proposal marked “original,” one original proposal marked “copy” and one electronic version for the Evaluation Committee. Hampton City Schools requires documents to be contained in hardcover, three-ring binders. Spiral-bound documents are acceptable.

**3.3 In order to ensure a uniform review process and to obtain the maximum degree of comparability, it is required that proposals be organized and fastened or bound in the following manner and identified with tabs:**

- **Title Page.** Type the name of the Proposer’s agency/firm, address, telephone number, name of contact person, date, and the title of the RFP
- **Table of Contents.** Include a clear identification of the written material by section and by page number.
- **Tab 1. Addenda.** Include a copy of the addendum, or addenda associated with the RFP, if applicable. Incomplete proposals will not be considered.
- **Tab 2. Response to Proposal.** Specifically state the Proposer’s understanding of the work to be accomplished and make a positive commitment to perform the work in Section I. Scope of Services. Price quotations & provider disruption reports should be included in this tab as well.
- **Tab 3. Scope of Services.** Include all the requirements and/or documentation requested under Section I. Scope of Services. Proposer should provide detailed answers related to questions included.
- **Tab 4. Proposer Qualifications.**
- **Tab 5. Proposal Signature Form.** Complete the Proposal Signature form provided in the RFP Package. This form must be signed by an authorized representative of the firm.

Submit the original and two (2) copies of the proposal to HCS. An electronic version should be submitted to the Schools’ consultant as outlined in this document.

**Original + 2 copies to:**

Office of Doris McRae  
Consolidated Procurement Office of  
Hampton City Schools  
School Administrative Center  
One Franklin Street  
Hampton, Virginia 23669

**Electronic version to:**

Dawniece Trumbo  
Employee Benefits Representative  
Wells Fargo Insurance Services  
9020 Stony Point Parkway  
Suite 200  
Richmond, VA 23235  
804-267-3100  
Dawnice.Trumbo@wellsfargo.com

## 4. CONTRACT REQUIREMENTS

**4.1 Basis of Contract.** A contract may be awarded to the most responsible and responsive Proposer whose proposal best meets the needs of Hampton City Schools.

**4.2 Contract Term.** The period of the contract shall be for a three-year period from the effective date of the award, and may, by mutual written agreement, be renewed at the same terms and conditions for three additional one-year periods.

**4.3 Compensation.** The original proposal prices shall be firm for the initial contract term. For service charge adjustments beyond the initial contract term, the successful Proposer may request, in writing, a change in pricing based on the following

- A) Pricing index deemed appropriate to the particular product(s) detailed herein.
- B) The request shall be considered by Hampton City Schools and may be accepted or rejected. Failure to submit a price increase request at least 60 days prior to the service order(s) mature date will result in a continuation of all existing pricing on the service order until the next service order date. The decision to any price increase will be a the sole discretion of Hampton City Schools
- C) Hampton City Schools at its discretion may exempt the requirements for extraordinary conditions that could not have been known by either party at the time of this proposal or for other circumstances beyond the control of both parties.

**4.4 Non-Appropriation of Funds.** In the event no funds or insufficient funds are appropriated for expenditures under this award, Hampton City Schools will notify the successful Proposer in writing of such occurrence and the award shall terminate without penalty or expense to Hampton City Schools on the last day of the fiscal year in which sufficient funds have been appropriated.

**4.5 Contract Termination.** When deemed to be in the best interest of Hampton City Schools, this contract may be terminated immediately upon the occurrence of any of the following events:

- A) 30-day written notice with cause; or
- B) 60-day written notice without cause

**4.6 Additions/Deletions.** Hampton City Schools reserves the right to add to or delete any service/item from this proposal or resulting in agreements when deemed to be in the best interest of Hampton City Schools.

**4.7 Proposal Prices.** Prices quoted in the proposal shall include any and all shipping costs or to the facility location specified by the requestor or the purchase order.

**4.8 Payment Method and Schedule.** Payments will be made by Hampton City Schools to the successful Proposer after receipt and acceptance of properly received invoices and processing time for payment shall be 45-60 days. Hampton City Schools does not pay service charges or interest on late payments except in accordance with the law.

**4.9 Finalist Presentations.** Based on the initial evaluation, HCS may request the selected Offerors to make oral presentations. Thereafter, HCS will conduct negotiations with each of the selected short-listed Offerors. Individuals representing the Offeror during negotiations shall have the authority to negotiate and contractually bind the company to a contract.

**4.10 Contract Award.** After negotiations are completed, HCS will select the Offeror who, in HCS' opinion, has made the best proposal and shall award the contract to that Offeror (referred to in this RFP as the Successful Offeror). Should HCS 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.

**4.11** HCS is not required to furnish a statement of the reason(s) why a proposal was not deemed to be the most advantageous.

## SECTION 4. GENERAL CONTRACT TERMS

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### **Contract Document:**

This RFP, its addenda, Successful Offeror's proposal, any additional information requested, and negotiated changes and will constitute the final contract hereafter referred to as this "contract". These documents will be incorporated by reference into the HCS purchase order awarding this contract. This contract shall be governed by the contract documents in the following order of precedence:

This RFP document;

Any negotiated changes to the foregoing documents; and

Offeror's proposal

### **Proposal Binding For One-hundred Twenty (120) Days:**

Offeror agrees that its Proposal shall be binding and may not be withdrawn for a period of one-hundred (120) calendar days after the scheduled closing date of this Request For Proposals.

### **Proprietary Information/Non-Disclosure:**

Offeror is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Offeror. Specifically, if Offeror seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, Offeror shall:

1. Invoke the protections of this section prior to or upon submission of the data or other materials,
2. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
3. Submit trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked "**PROPRIETARY**".
4. Information submitted that does not meet the above requirements will be considered public information in accordance with State statutes.
5. HCS reserves the right to submit such information to the HCS attorney for concurrence of the Offeror's claim that it is in fact proprietary.
6. References to the proprietary information may be made within the body of the Proposal; however, all information contained within the body of the Proposal shall be public information in accordance with State statutes.
7. Trade secrets or proprietary information submitted by an Offeror in conjunction with this RFP is not subject to public disclosure under the Virginia Freedom of Information Act (VFOIA).
8. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.
9. An all-inclusive statement that the entire Proposal is proprietary is unacceptable. A statement that Offeror's costs and/or Proposal pricing are to be protected is unacceptable. Offeror will be requested to remove any such statement(s) in order to be eligible for further consideration.

**Contract Modification(s):**

After award, any and all modifications to this contract shall be mutually agreed to by both parties, in writing, and authorized by the City Purchasing Agent or his designee via issuance of a change order (purchase order).

**Offeror Obligation:**

Offeror shall carefully examine the contents of this Request for Proposals and any subsequent addenda. Failure to do so shall not relieve the Successful Offeror of its obligation to fulfill the requirements of any contract awarded as a result of this RFP.

**Conditions of Work:**

Offeror shall inform itself fully of the conditions relating to services required herein. Failure to do so will not relieve a Successful Offeror of the obligation to furnish all goods and/or services necessary to carry out the provisions of this contract

**Prime Contractor:**

If in its performance of this contract, Successful Offeror supplies goods or services by or through another party or subcontractor, Successful Offeror agrees that:

1. Successful Offeror shall act as the prime contractor for the goods and services to be provided under contract and shall be the sole point of contact with regard to all obligations under this contract.
2. Successful Offeror represents and warrants that Successful Offeror has made third parties or subcontractors aware of the proposed use and disposition of the other party's products or services, and that such other party has agreed in writing that it has no objection and that the City is not liable to such third parties or subcontractors for any work performed under this contract.
3. The use of subcontractors and the work they perform must receive the prior written approval of HCS. HCS will designate a Contract Administrator to approve such work.
4. Successful Offeror shall be solely responsible for all work performed and materials provided by subcontractors.
5. Successful Offeror shall be responsible for the liability of subcontractors for the types and limits required of the Successful Offeror under this contract.

**Subcontractors:**

Contractor's use of subcontractors and the work they are to perform must receive written approval from the Contract Administrator at least ten (10) calendar days prior to the work being performed. Contractor shall be solely responsible for all work performed and materials provided by subcontractors. Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor.

**Non-Assignment:**

Successful Offeror shall not assign its rights and duties under this Agreement without the prior written consent of the HCS Contract Administrator.

**Antitrust:**

Any perceived anti-trust violation will be reported to the State Attorney General for possible enforcement of anti-trust laws.

**Anticollusion/Nondiscrimination Requirements Form:**

The attached “Anticollusion/Nondiscrimination Requirements” form shall be executed by Offeror and is to be submitted with Offeror’s Proposal. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this RFP. A contract will not be awarded to an Offeror who has not signed the anticollusion/nondiscrimination statement.

**Hold Harmless/Indemnification:**

It is understood and agreed that Successful Offeror hereby assumes the entire responsibility and liability for any and all material damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Successful Offeror, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any work required by this Contract. Successful Offeror agrees to indemnify and hold harmless HCS and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the work by Successful Offeror or those for whom Successful Offeror is legally liable. Upon written demand by the City, Successful Offeror shall assume and defend at Successful Offeror's sole expense any and all such suits or defense of claims made against HCS, its agents, volunteers, servants, employees or officials.

**Notices:**

All notices, requests, demands, and elections under this contract, other than routine operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) HCS business days after the date of mailing when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

To HCS: HCS Contract Administrator as designated in this RFP.

To Successful Offeror: Successful Offeror’s Contract Administrator as defined in Successful Offeror’s Proposal.

Either party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other party written notice as provided above.

**Non-Performance:**

1. **Delivery Delays:** HCS reserves the right to procure goods and/or services to be provided under this contract from other sources in the event Successful Offeror fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract.
2. **Unacceptable Deliveries (Rejections):** Upon notification by HCS that goods and/or service deliverables provided by the Successful Offeror under this contract are damaged and/or not of the quality specified by HCS, such goods and/or service deliverables will be rejected. Successful Offeror shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by HCS.
3. Successful Offeror shall remove all rejected materials, equipment or supplies from the premises of HCS within ten (10) days of notification. Rejected goods and/or service deliverables not removed from HCS' premises within ten (10) days will be regarded as abandoned, shall become the property of HCS, and HCS shall have the right to dispose of such items.
4. HCS reserves the right to authorize immediate purchase from other sources against rejections.
5. **Liability:** Successful Offeror shall be liable to HCS for all costs incurred by HCS as a result of Successful Offeror's failure to perform in accordance with the contract. Successful Offeror's liability shall include, but not be limited to:
  - a. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
  - b. Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Successful Offeror and/or rejections of Successful Offeror's goods and/or service deliverables.
  - c. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by HCS due to non-responsive performance of Successful Offeror.

**Termination Without Cause:**

HCS may at any time, and for any reason, terminate this Contract by written notice to Successful Offeror specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to Successful Offeror by certified mail/return receipt requested, addressed to the Successful Offeror's Contract Administrator. In the event of such termination, Successful Offeror shall be paid such amount as shall compensate Successful Offeror for the work satisfactorily completed, and accepted by HCS, at the time of termination. If the event HCS terminates this Contract, Successful Offeror shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over to HCS any work completed or in process for which payment has been made.

**Termination With Cause/Breach:**

In the event that Contractor shall for any reason or through any cause be in default of the terms of this Contract, HCS may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Contract. Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, HCS may immediately cancel and terminate this Contract as of the mailing date of the default notice. Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to HCS any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by HCS and provisions herein with respect to opportunity to cure default shall not be applicable. This contract may be terminated by either party in the event that the other party has failed to perform a material obligation or has otherwise breached a material term of this contract, if that other party has failed to cure that failure or breach within ten (10) days after receipt of written notice thereof from the other party.

**Breach of Contract:**

Successful Offeror shall be deemed in breach of this contract if the Successful Offeror:

Fails to comply with any terms of this contract;

Fails to cure such noncompliance within ten (10) calendar days from the date of the HCS written notice or such other time frame, greater than ten (10) calendar days, specified by the HCS Contract Administrator in the notice.

Fails to submit a written response to HCS' notification of noncompliance within ten (10) calendar days after the date of the CITY notice.

All notices under this contract shall be submitted, either by fax or certified mail, return-receipt requested, to the respective contract administrator. Successful Offeror shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Successful Offeror and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the City in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

**Applicable Law:**

This Contract shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

**Compliance With All Laws:**

Successful Offeror shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of this contract. Successful Offeror represents that it possesses all necessary licenses and permits required to conduct its business and/or will acquire any additional licenses and permits necessary for performance of this contract prior to the initiation of work. If the Successful Offeror is a corporation, Successful Offeror further expressly represents that it is a corporation of good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the contract and any extensions. All City of Hampton business license, personal property, real estate and other applicable tax requirements shall be met by Successful Offeror.

**Venue:**

Venue shall be in the Circuit Court of the City of Hampton, Virginia, and the United States District Court for the Eastern District of Virginia, Norfolk Division, compliant with applicable laws and regulations, as deemed appropriate by the City of Hampton.

**Severability:**

If any provision of this contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this contract, and all other provisions of this contract shall remain in full force and effect.

**Non-Appropriation of Funds:**

It is understood and agreed between the parties herein that HCS shall be bound hereunder only to the extent that the funds shall have been appropriated. In the event no funds or insufficient funds are appropriated, HCS shall immediately notify the Successful Offeror of such occurrence and this Contract shall terminate on the last day funds are available without penalty or expense to HCS of any kind whatsoever.

**Tax Exemption:**

HCS is exempt from federal excise tax and from all State and local taxes. Successful Offeror shall not include such taxes in any invoices under this agreement. Upon request, HCS will furnish the Successful Offeror with tax exemption certificates or HCS tax exempt number.

**Vendor's Invoices:**

Successful Offeror shall submit to HCS all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the Products and Services required under this contract. Invoices shall not include any costs other than those identified in the executed HCS purchase order awarding this contract or any subsequent change orders issued by the Consolidated Purchasing Division. All shipping costs are the Successful Offeror's responsibility, except to the extent such charges are identified in the executed HCS purchase order or change orders. Successful Offeror's invoices shall provide at a minimum:

- Type and description of the Product or Service installed, delivered and accepted;
- Serial numbers, if any;
- Quantity delivered;

Charge for each item;  
Extended total (unit costs x quantity);  
This RFP number and the HCS Purchase Order Number.

**Contractual Disputes:**

Any dispute concerning a question of fact as a result of a contract with HCS which is not disposed of by agreement shall be decided by the HCS Purchasing Agent or designee, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within thirty (30) days. The decision of the HCS Purchasing Agent or designee shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

**Warranty/Guarantee:**

Successful Offeror guarantees against defective or faulty material or workmanship for at least one (1) year or for the manufacturer's standard warranty period, whichever is greater, from date of acceptance by HCS. To furnish adequate protection from damage for all work and to repair damages of any kind for which Successful Offeror or Successful Offeror's workmen are responsible, to the building or equipment, to Successful Offeror's own work, or to the work of others. Any merchandise or service provided under the contract which is or becomes defective during the warranty period shall be replaced by the Successful Offeror free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment or service (one year or manufacturer's standard warranty period, whichever is greater, from the date of acceptance of the replacement). Successful Offeror shall make any such replacement immediately upon receiving notice from HCS.

**Payment Terms:**

To be eligible for payment, all labor, equipment and materials covered under Successful Offeror's invoice must be completed and accepted by HCS. HCS agrees to make payments under this contract within thirty (30) days after receipt of a correct invoice for such payment. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due HCS under the terms of this or any other agreement may be applied against Successful Offeror's invoices with documentation for the basis of the adjustment attached. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between HCS and Successful Offeror regarding the quantity, quality, time of delivery, or other noncompliance with the contract requirements for any Product or Service or the accuracy or correctness of any invoice. Payment terms offering a "prompt payment discount" of 20 days or greater will

be considered in the evaluation of Proposals. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Offeror shall be Net 45 days.

#### Special Educational or Promotional Discounts

Successful Offeror shall extend any special educational or promotional sale prices or discounts immediately to HCS during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

#### **Audits:**

HCS shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Successful Offeror, including, but not limited to those kept by Successful Offeror, its employees, agents, assigns, successors and subcontractors. Successful Offeror shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least three years following the completion of this Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City, through its employees, agents, representatives, contractors or other designees, during normal business hours at Successful Offeror's office or place of business in Hampton, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton, Virginia, which is convenient for HCS. This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which HCS may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

#### **Notice of Award:**

Any contract resulting from this RFP will be publicly posted for inspection in the Consolidated Procurement Division, 1 Franklin Street, Suite 345, Hampton, Virginia.

#### **Award:**

HCS intends to award a contract to a fully qualified Offeror submitting the best proposal based on the criteria set forth herein and as determined by HCS in its sole discretion. At HCS' sole discretion, HCS may reject any or all proposals in whole or in part if such action is determined to be in HCS best interest. HCS reserves the right to enter into any contract deemed to be in its best interest, including the award of this contract to more than one contractor.

**Disposition of Proposals:**

All materials submitted in response to this RFP will become the property of HCS. One (1) copy of each proposal will be retained for official files, will become a matter of public record after award of the contract, and will be open to public inspection subject to the *Proprietary Information/Disclosure* section of this RFP.

**Exclusivity: (Select appropriate clause)**

Any contract resulting from this RFP shall be exclusive with the following exceptions: HCS reserves the right to procure goods/services under this contract from a third party in the event of the following:

Contractor is unable to provide goods or required services within the required delivery time.

Contract is unable to provide the required quantities of goods requested.

HCS volume demands exceed original intent of the contract.

## **SECTION 5. SPECIAL TERMS AND CONDITIONS**

### **Contract Term:**

This contract term shall be for one (1) year, commencing on October 1, 2016.

### **Contract Extension:**

This contract may be extended upon mutual agreement of both parties for six (6) additional, one-year periods, upon the same prices, terms, and conditions set forth in the negotiated contract resulting from this RFP.

### **Time is of the Essence:**

Time is of the essence in this Contract. Successful Offeror expressly acknowledges that in the performance of its obligations, HCS is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Successful Offeror and may sustain substantial losses by reason of untimely performance.

### **Insurance:**

Contractor shall submit to HCS Contract Administrator Certificates of Insurance, prior to beginning work under this contract and no later than ten (10) days after award of the contract.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to HCS, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to HCS. The certificates of insurance shall list the School Board of HCS of Hampton, 1 Franklin Street, Suite 345, Hampton, Virginia 23669, as the additional insured for the specified project as outlined in this RFP. Insurance shall be maintained during the entire term of the contract and any extensions and shall be of the following forms and limits:

#### Forms

#### Limits

Workers' Compensation	Statutory
Automobile Liability	\$1,000,000 combined Single Limit
Commercial General Liability, including Contractual Liability and Products and Completed Operations Coverage	\$1,000,000 Combined Single Limit
Umbrella/Excess Liability	\$2,000,000

The establishment of minimum limits of insurance by the School Board of HCS of Hampton does not reduce or limit the liability or responsibilities of the Contractor.

The establishment of minimum limits of insurance by the HCS does not reduce or limit the liability or responsibilities of the Contractor.

The endorsement would be that which is attached to the policy that acknowledges the HCS as an also insured on all policies we have required to be endorsed.

This will be either a direct endorsement that actually names the HCS or a blanket endorsement that contract states that the HCS will be named as an also insured on the insurance policy.

**Unauthorized Disclosure of Information:**

Successful Offeror shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Successful Offeror, its subcontractors, agents or employees under or in connection with this contract. The Successful Offeror shall save harmless and indemnify the School Board of the City of Hampton and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. The Successful Offeror shall, upon written demand by the City of Hampton, assume and defend, at the Successful Offeror's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.

Any negligent or willful unauthorized disclosure of confidential information on the part of the Successful Offeror, its subcontractors, agents or employees under or in connection with this contract shall constitute a breach of the terms of this contract. HCS may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Successful Offeror shall save harmless and indemnify HCS for court costs, litigation expenses and attorney's fees that it may pay or incur as the result of seeking to prevent or stop any and all unauthorized disclosures of confidential information.

**Copyright/Patent Indemnity:**

Successful Offeror shall pay all royalty and license fees relating to the items covered by this contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this contract constitute an infringement of any copyright, trademark, or patent, the Successful Offeror shall indemnify HCS and hold HCS harmless from any cost, expense, damage or loss incurred in any manner by HCS on account of any such alleged or actual infringement.

**Cooperative Procurement**

Section 2.2-4304 Code of Virginia (VPPA) will apply to this solicitation. Other Public Bodies may utilize any contract(s) issued pursuant to this solicitation by placing its own order(s) directly with the successful offeror(s). The City of Hampton acts only as the issuing agent and is not responsible for placement of orders, payment or discrepancies of other participating Public Bodies.

## **SECTION 6. Attachments and Appendices**

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**Attachment A: Proposal Signature Sheet**

**Attachment B: Anti-Collusion Statement**

**Attachment C: Ethics in Public Contracting**

**Attachment D: Minority & Women Owned Business Program**

**Attachment E: Services Offered**

**Attachment F: Deviations Exhibit**

**Attachment G: Performance Guarantees**

**Attachment H: Questionnaire**

**Appendix I, Census**

## Attachment A: Proposal Signature Sheet

In compliance with this RFP and to all the conditions imposed herein, the undersigned offers and agrees to provide **Voluntary Short-Term and Long-Term Disability Insurance**, in accordance with the attached signed proposal, or as mutually agreed upon by subsequent negotiation. This completed Proposal Signature form must be submitted with the Proposer's written proposal and will become part of any agreement that may be awarded. **If the Proposal Signature Form is not signed by an authorized representative or submitted with the proposal is considered non-responsive.**

My signature also certifies that by submitting a proposal in response to the Request for Proposal, the offeror represents that in the preparation and submission of this proposal, said offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Anti-Trust Act (15 U.S.C. Section 1 ) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

Name of Firm:

Address:

City:

State:

Zip:

Contact Person:

Telephone Number:

Fax Number:

Email Address:

Type of Organization:

Individual     Partnership     Small Business     Corporation     Non-Profit     Joint Venture

**Attach copies of all such licenses, permits, or certificates issued to the business entity.**

**Business is licensed, (unless exempt by applicable law) permitted or certified to do business in the State of Virginia:**

Yes     No                      License # \_\_\_\_\_

**Federal I.D. #:** \_\_\_\_\_

## **Attachment B: ANTI-COLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE REQUIREMENTS**

### **ANTI-COLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS PROPOSAL, SAID OFFEROR DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED OFFEROR HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, CITY HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS PROPOSAL; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS PROPOSAL.

### **DRUG-FREE WORKPLACE:**

DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL OFFEROR AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE SUCCESSFUL OFFEROR'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 SUCCESSFUL OFFEROR'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 SUCCESSFUL OFFEROR THAT THE SUCCESSFUL OFFEROR 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 SUSUCCESSFUL OFFEROR OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A SUCCESSFUL OFFEROR IN ACCORDANCE WITH FEDERAL LAW, 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.

### **EMPLOYMENT DISCRIMINATION BY THE SUCESSFUL OFFEROR SHALL BE PROHIBITED:**

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL OFFEROR AGREES AS FOLLOWS:

- a. THE OFFEROR, SHALL 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 SUCCESSFUL OFFEROR. THE SUCCESSFUL OFFEROR AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
  
- b. THE SUCCESSFUL OFFEROR, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL OFFEROR, SHALL STATE THAT SUCH SUCCESSFUL OFFEROR 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 THE REQUIREMENTS OF THIS SECTION.

2. THE SUCCESSFUL OFFEROR WILL INCLUDE THE PROVISIONS OF THE FOREGOING PARAGRAPHS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

**Name and Address of OFFEROR:**

Date: \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Federal Tax Identification Number/Social Security Number:**

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Is Offeror a "minority" business?  Yes  No

If yes, please indicate the "minority" classification below:

- African American
- Asian American
- Hispanic American
- Aleut
- American Indian
- Eskimo
- Other; Please Explain:

Is Offeror Woman Owned?  Yes  No

Is Offeror a Small Business?  Yes  No

Is Offeror a Faith-Based Organization?  Yes  No

Is Offeror a Service Disabled Veteran Owned Business  Yes  No

## **Attachment C – Ethics in Public Contracting**

### **Sec. 22-151. Purpose**

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (Section 2.1-639. et seq. of the Code of Virginia), the Virginia Governmental Frauds Act (Section 18.2-498.1 et seq. of the Code of Virginia) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia (Section 18.2-438 et seq.). The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

### **Sec. 22-152. Definitions**

The words defined in this section shall have the meanings set forth below throughout this article:

*Immediate family* shall mean a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

*Official responsibility* shall mean administrative or operating authority, whether immediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

*Pecuniary interest arising from the procurement* shall mean a personal interest in a contract as defined in the State and Local Government Conflict of Interest Act (Section 2.1-639.1 et seq. of the Code of Virginia, 1950, as amended).

*Procurement transaction* shall mean all functions that pertain to the obtaining of any goods, services, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

*Public employee* shall mean any person employed by the Council, including elected officials or appointed members of the Council.

### **Sec. 22-153. Proscribed participation by public employees in procurement transaction.**

Except as may be specifically allowed by subdivisions A2 and A3 of VA Code Ann. 2.1-639.11, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of HCS when the employee knows that:

- (1) The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction, or
- (2) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner, or the like or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5) percent; or

- (3) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- (4) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

**Sec. 22-154. Solicitation or acceptance of gifts.**

No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. HCS may recover the value of anything conveyed in violation of this section.

**Sec. 22-155. Disclosure of subsequent employment.**

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with a bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by HCS unless the employee, or former employee, provides written notification to the School Board prior to commencement of employment by the bidder, offeror or contractor.

**Sec. 22-156. Gifts by bidders, offerors, contractors or subcontractors.**

No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a 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 is exchanged.

**Sec. 22-157. Kickbacks.**

- (a) No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- (b) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- (c) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- (d) If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by HCS and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

**Sec. 22-157.1. Participation in bid preparation; limitation on submitting bid for same procurement.**

- (a) No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of HCS shall submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning

- the procurement which is not available to the public. However, the School Board may permit such person to submit a bid or proposal of the procurement or any portion thereof if HCS determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interest of HCS. This determination will be stated in writing and kept as part of the procurement's records.
- (b) For the purpose of this section only, preparers shall include but not limited to, serving as a director or deputy director of the agency which has initiated the procurement, serving as the Chief of the Purchasing and Real Estate Bureau after the Bureau has received information on an agency's intent to procure, serving as the procurement manager for the agency which has initiated the procurement, serving as the Purchasing Bureau officer in charge of the procurement assisting in the development of specifications for invitations for bids or request for proposals, attending an evaluation committee meeting that is closed to the public, voting or scoring on a bid or proposal, or any other participation in the procurement process which could lead to unfair advantage.
  - (c) The determination of disqualification under this Section shall be made by the School Board.
  - (d) A contractor submitting a bid or proposal may appeal a determination of disqualification under this Section by following the administrative appeals procedure as provided in Section 22-122 or, in the alternative, institute legal action as provided in Section 22-113.

**Sec. 22.158. Purchase of building Materials, etc., from architect or engineer prohibited.**

- (a) No building materials, supplies or equipment for any building or structure constructed by or for HCS shall be sold by or purchased from any person employed as an independent contractor by HCS to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in Section 2.1-639.2 of the Code of Virginia (1950, as amended).
- (b) No building materials, supplies or equipment for any building or structure constructed by or for HCS shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by HCS to furnish architectural or engineering services in which such person has a personal interest as defined in Section 2.1-639.2 of the Code of Virginia (1950, as amended).
- (c) The provisions of subsections **a** and **b** shall not apply in cases of emergency.

**Sec. 22-159. Certification of compliance required; penalty for false statements.**

- (a) HCS may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.
- (b) Any public employee required to submit a certification as provided in subsection (a) of this section that knowingly makes a false statement in such certification shall be punished as provided in Section 22-161 of the Code of Virginia (1950, as amended).

**Sec. 22-160. Misrepresentations prohibited.**

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

**Sec. 22-161. Penalty for violation.**

Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his/her employment.

## **Attachment D: MINORITY AND WOMAN-OWNED BUSINESS PROGRAM**

The City of Hampton is implementing new strategies to solicit and utilize minority and woman-owned businesses. To encourage and sustain utilization of minority and woman owned businesses, subcontracting goals have been established for City contracts of \$100,000 and above. The minority and woman-owned subcontracting goals are established by business categories.

The subcontracting goals established for this contract include:

Minorities (MBE) 2.4 % Non-minority women (WBE) 4.7 %

Solicitation meetings will be held on contracts \$100,000 and above to assist in attaining the contract minority and woman owned business goals.

The City requires that each minority and woman-owned business become a certified Small, Woman and Minority owned business (SWAM) by the State Department of Minority Business Enterprises (DMBE).

Any minority or woman-owned business that is not a certified SWAM vendor will not be considered for meeting the contract goals as established or included in the City utilization data.

Prime Contract solicitations require bidders to include, as part of their proposal or bid, a subcontracting plan to include certified minority and woman-owned vendors during the course of the contract work.

- A listing of all certified minority and woman-owned subcontractor vendors
- The dollar value of each subcontract
- A description of type of work to be performed under each contract
- SWAM certification number and contact information for each minority and woman-owned firm

Prime Contractor subcontractor/supplier solicitation information will be submitted to document firms contacted for quotes.

Prime Contractor solicitations and resulting contracts will require each successful bidder to report actual subcontract payments quarterly to the City Procurement Department to ensure accurate utilization records.

All bids submitted must include a subcontracting plan to be considered when determining the lowest responsible and responsive bidders by the City.

Changes to the subcontracting plan will require approval from the Procurement Office and Minority Business Program Office during the life of the contract.

Failure of a contractor to adhere to its subcontracting plan may under certain circumstances, result in future loss of contracts and/or debarment from bidding by the City of Hampton. In these cases contractors will be requested to submit documentation of good faith efforts used to

meet their subcontracting plan. Determination of efforts will be made on an individual contract basis. It is recommended that contractors pre-qualify or determine the subcontractors' capabilities prior to subletting work.

Good Faith efforts are documented reasonable steps taken to achieve a contract goal. These efforts are those taken by a bidder actively and aggressively trying to obtain the established goal. Mere pro forma efforts are not good faith efforts. The following is a list of types of actions which are considered good faith efforts. It is not intended to be a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through reasonable and available means (pre-bid meetings, advertisements, phone calls, community organizations, etc.)
- Selecting portions of the work to be subcontracted out to increase the likelihood that a contract goal can be achieved.
- Providing interested firms with information necessary to respond in a timely manner to a request for solicitation
- Effectively using the services of available minority and woman-owned organizations, local, state and federal small business assistance offices, etc.

Documentation of such efforts can include a listing of M/WBE firm names, contact information, description of information provided and dates received quotes, etc.

(Please note: this requirement should not be construed as authorizing or directing the exclusion of non-SWAM owned businesses; rather, the purpose is to include as many qualified businesses as possible).

Any Prime Contractor that is a DMBE certified minority or woman-owned vendor that is awarded a contract of \$100,000 and above is not required to submit the above information as the Prime Contractor is itself such a certified business. This does not, however, relieve such a Prime Contractor from the obligation to achieve both contract goals during the life of the contract. The City of Hampton reserves the right to review subcontracting plans and good faith efforts to ensure that both goals are achieved.

The City of Hampton will utilize a performance evaluation process that will include documenting the quality of work and business practices of all vendors used on City contracts of \$100,000 and above.

The suggested forms are attached for use by bidders to ensure consistent submission of required data.

**CITY OF HAMPTON  
DEPARTMENTAL MINORITY AND WOMAN-OWNED BUSINESS SOLICITATION  
TELEPHONE RECORD FOR GOODS AND SERVICES**

Date	Department	Bidder #1	Bidder #2	Bidder #3
Firm name				
Address				
Phone no.				
Fax no.				
Email address				
Quantity	Item description	Unit Price/Total Price	Unit Price/Total Price	Unit Price/Total Price

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

Department Director: \_\_\_\_\_

**CITY OF HAMPTON**

**SUBCONTRACTOR/SUPPLIER UTILIZATION FORM  
POTENTIAL MINORITY AND WOMAN-OWNED BUSINESS  
PARTICIPATION**

**Project no.** \_\_\_\_\_ **Date submitted:** \_\_\_\_\_

Firm name	Certification no.	Type (M/W)	Percent bid	Dollar value	Type of work

I/We propose that the certified DMBE businesses will be used on this contract as stated herein and assure that during the life of the contract. I/We will meet the goal established by the City of Hampton.

Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_



**CITY OF HAMPTON  
MINORITY AND WOMAN-OWNED BUSINESS PAYMENT REPORT**

Contractor \_\_\_\_\_ Date \_\_\_\_\_

Project no. \_\_\_\_\_ Reporting period \_\_\_\_\_ to \_\_\_\_\_

Firm name	Certification no.	SWAM type (M/WBE)	This quarter	To date	Type of work
Total dollar value amount paid to date to SWAM vendor					

I/We certify that the information provided is accurate, current and complete to the best of my/our knowledge.

Company \_\_\_\_\_

Print name \_\_\_\_\_

Title \_\_\_\_\_