



COMMONWEALTH OF VIRGINIA

**COUNTY OF HENRICO**

**RFP #18-1773-10CHS**

DEPARTMENT OF FINANCE  
CECELIA H. STOWE, CPPO, C.P.M.  
PURCHASING DIRECTOR

October 26, 2018

**REQUEST FOR PROPOSAL  
ANNUAL CONTRACT FOR  
CONSULTING SERVICES-EMPLOYEE BENEFITS PROGRAM  
COUNTY OF HENRICO, VIRGINIA**

Your firm is invited to submit a proposal to provide consulting services for the County's employee benefit program in accordance with the enclosed specifications. The submittal, consisting of the **original proposal and nine (9) additional copies, one electronic copy and one redacted electronic copy** marked, "**CONSULTING SERVICES-EMPLOYEE BENEFITS PROGRAM**", will be received no later than **3:00 p.m., November 16, 2018**, by:

<p>IN PERSON OR SPECIAL COURIER County of Henrico Department of Finance Purchasing Division <b>8600 Staples Mill Road - NEW LOCATION</b> Henrico, Virginia 23228</p>	OR	<p>U.S. POSTAL SERVICE County of Henrico Department of Finance Purchasing Division P O Box 90775 Henrico, Virginia 23273-0775</p>
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**This RFP and any addenda are available on the County of Henrico Purchasing website at <https://henrico.us/finance/divisions/purchasing/>**  
To receive an email copy of this document, please send a request to: [sto05@henrico.us](mailto:sto05@henrico.us)

Time is of the essence and any proposal received after **3:00 p.m., November 16, 2018**, whether by mail or otherwise, will be returned unopened. The time of receipt shall be determined by the time clock stamp in the Purchasing Division, Department of Finance. Proposals shall be placed in a sealed, opaque envelope, marked in the lower left-hand corner with the RFP number, title, and date and hour proposals are scheduled to be received. Offerors are responsible for insuring that their proposal is stamped by Purchasing Division personnel by the deadline indicated.

Nothing herein is intended to exclude any responsible firm or in any way restrain or restrict competition. On the contrary, all responsible firms are encouraged to submit proposals. The County of Henrico reserves the right to accept or reject any or all proposals submitted.

The awarding authority for this contract is Henrico County Virginia Board of Supervisors.

**Technical questions concerning this Request for Proposal should be submitted to Cecelia H. Stowe at [sto05@henrico.us](mailto:sto05@henrico.us) no later than 12:00 noon November 5, 2018.**

Very truly yours,

Cecelia H. Stowe, CPPO, C.P.M.  
Purchasing Director  
804-501-5685  
[Sto05@henrico.us](mailto:Sto05@henrico.us)

8600 STAPLES MILL ROAD/P O BOX 90775/HENRICO VA 23273-0775  
(804) 501-5660 FAX (804) 501-5693

NON PROFESSIONAL

**REQUEST FOR PROPOSAL  
CONSULTING SERVICES-EMPLOYEE BENEFITS PROGRAM  
COUNTY OF HENRICO, VIRGINIA**

**I. INTRODUCTION:**

The intent and purpose of this Request for Proposal (RFP) is to solicit competitive proposals for consulting services on an annual basis necessary to assist County staff in the selection and monitoring of benefit programs that are currently offered, or may be offered in the future, to County and School Board employees and retirees and employees of the Economic Development Authority. The benefit programs currently available to employees and retirees include, but are not necessarily limited to:

A. Health Benefits:

1. Health Insurance: The County currently has a self-funded administrative services agreement in place for Group Health Benefits, with Anthem Blue Cross and Blue Shield for the period of January 1, 2018 through December 31, 2020. Those contracts contain an option to renew for two additional one-year terms. The Reinsurance and Stop Loss Carrier is Anthem Blue Cross and Blue Shield. Medicare eligible retirees are provided Medicare Exchange Services with Towers Watson.
2. Long-Term Disability Insurance: The LTD Program is a fully-insured plan administered by Metropolitan Life. The plan is structured to provide a disabled employee a maximum of 60% of their pre-disability salary at no cost to the employee. Employees may purchase additional coverage to protect their salaries in excess of \$50,000.
3. Short-Term Disability Insurance: The STD plan is fully insured for VRS Plan 1 and Plan 2 currently underwritten by Metropolitan Life. Employees pay for coverage through payroll deductions. VRS Hybrid participants are enrolled in a self-insured program with The Standard.
4. Dental Insurance: The County currently offers voluntary dental plans through Delta Dental. Employees pay for coverage through payroll deductions.
5. Voluntary Benefits: The County will offer voluntary benefits effective March 1, 2019 with Pierce Insurance Agency, Inc as the third-party administrator.

B. Post Retirement Earnings Plan (PREP) for school employees.

C. Flexible benefit plans (Flexible Spending Accounts).

D. Employee Assistance Program.

**Cooperative Procurement:** This procurement is being conducted by Henrico County, Virginia on behalf of all other public bodies of the Commonwealth of Virginia in accordance with the provisions of 2.2-4304 of the *Code of Virginia*, as amended. If agreed to by the Successful Offeror(s), other public bodies of the Commonwealth of Virginia may make purchases under the resulting contract(s) at the prices set forth herein and in accordance with its terms, conditions and specifications, subject to any modifications necessary to comply with local policy or practice to which the Successful Offeror(s) agrees. The Successful Offeror(s) shall deal directly with any public body it authorizes to use the resulting contract. Henrico County, Virginia, its officials and its staff are not responsible for placement of orders, invoicing,

payments, contractual disputes, or any other transactions between the Successful Offeror(s) and any other public bodies, and in no event shall the County, its officials or staff be responsible for any costs, damages or injury resulting to any party from use of a Henrico County contract. Henrico County assumes no responsibility for any notification of the availability of the resulting contract(s) for use by other public bodies, but the Successful Offeror(s) may conduct such notification.

## II. **BACKGROUND:**

The County of Henrico moved to a self-funded health insurance plan on January 1, 2008 and strives to offer outstanding benefits to all eligible employees, early and post-65 retirees.

As referenced above, the current third-party administrator for group health benefits is Anthem Blue Cross and Blue Shield. The plan has approximately 9,800 employees and early retirees enrolled and approximately 18,700 members.

The current provider to the County for Consulting Services for Employee Benefits is US Insurance Services National, Inc. The annual retainer fee is \$53,800 and is based on 200 hours per year. Fees for additional services are negotiated and paid from retainer or on a project specific basis.

## III. **SCOPE OF SERVICES:** The Successful Offeror shall provide all equipment, labor and supervision necessary to provide the following:

- A. **Group Health Benefit Program-** The Offeror should provide details in its responses to this RFP as to how the following services would be accomplished:
1. Review and become completely knowledgeable of the existing self-funded health care benefit.
  2. Assist in the development of reports that analyze current and historical claims activity and identify utilization patterns. Make recommendations to County on areas of potential cost savings.
  3. Assist in the development of alternatives to the existing benefit structure to achieve greater financial control over the program. Propose benefit, wellness, disease management and other programs as needed.
  4. Assist in the development of renewal rates as requested (typically six months prior to renewal effective date).
  5. Assist the County in communication of existing and future benefit plans to all employees by providing qualified legal and compliance staff. Documents include enrollment materials, HIPAA Privacy Notices, Notices of Creditable Coverage (Part D), Plan Document, Evidence of Coverage and other communications as required for compliance.
  6. Assist the County with other legal compliance needs such as HIPAA training and procedures.
  7. Assist the County to be compliant with the Patient Protection and Affordable Act (PPACA) and with strategic planning related to PPACA compliance.
  8. Assist the County as needed with legal review of contract documents and our plan document with emphasis on compliance with all applicable laws.
  9. Legal expertise related to benefits compliance.

10. Assist the County with RFP development, competitive reviews and analysis of responses as needed for the review of benefit providers.
11. Keep the County informed of health benefit practices among peer groups within the immediate geographic area, as well as any innovative benefit, wellness, disease management and other programs in place elsewhere.
12. Assist the County in preparing projections on the impact of a changing employee/retiree population mix on County healthcare expenditures.
13. Provide regular GASB/OPEB reports as needed for compliance. Advise as needed regarding GASB/OPEB from an actuarial and compliance perspective.
14. Model contribution scenario analyses as needed to demonstrate the financial impact of various levels of employee, retiree, and/or family plan participation and healthcare coverage subsidies.
15. In addition, the Offeror should outline in its response any other duties that the Offeror feels are necessary to assure the County is fully informed as to the operation of its existing healthcare benefit program.
16. Assigned staff shall promptly respond to requests, offer reasonable turn-around times and deliver projects on time.

B. Other Required Services- While the majority of the work associated with this contract will relate to group health benefit issues, the County desires that the Offeror be able to provide assistance in the following areas when requested:

1. Post Retirement Earning Plans (PREP) for school employees.
2. Flexible benefit plans, and their tax implications.
3. Dental benefits.
4. Use of actuary to prepare incurred but not reported (IBNR) claim reserves and other analysis as needed.

C. Offeror Requirements:

1. The Offeror and Principal in Charge of this project shall be experienced in the analysis of governmental entities as related to employee benefits in general and with group health benefit programs specifically.
2. The Offeror shall be able to demonstrate an ability to complete projects within specified time frames and within agreed costs.
3. The Offeror shall not be presently engaged in the sale or underwriting of insurance. In addition, if your firm currently has consulting contracts in place with benefit providers that information should be noted in your response to this RFP. If your firm is awarded this contract and during the term of your contract you begin work for benefit providers, the County will require notification of that arrangement.

D. HIPAA Requirements:

The Successful Offeror will be required to execute a HIPAA Business Associate Agreement. (Attachment G)

V. **ANTICIPATED SCHEDULE:**

The following represents a tentative outline of the process currently anticipated by the County:

- Request for Proposals distributed                      October 26, 2018
- Advertised in newspaper                                      October 28, 2018
- Questions due no later than                                      November 5, 2018, 12:00 noon
- Receive written proposals                                      3:00 p.m., November 16, 2018
- Conduct oral interviews with Offerors                      November/December 2018
- Negotiations completed                                      December 2018
- Award by Board of Supervisors                                      December 2018
- Contract Effective Date                                      January 1, 2019

VI. **GENERAL CONTRACT TERMS AND CONDITIONS:**

A. **Annual Appropriations**

It is understood and agreed that the contract resulting from this procurement (“Contract”) shall be subject to annual appropriations by the County of Henrico, Board of Supervisors. Should the Board fail to appropriate funds for this Contract, the Contract shall be terminated when existing funds are exhausted. The Successful Offeror (“Successful Offeror” or “contractor”) shall not be entitled to seek redress from the County or its elected officials, officers, agents, employees, or volunteers should the Board of Supervisors fail to make annual appropriations for the Contract.

B. **Award of the Contract**

1. The County reserves the right to reject any or all proposals and to waive any informalities.
2. The Successful Offeror shall, within fifteen (15) calendar days after Contract documents are presented for signature, execute and deliver to the Purchasing office the Contract documents and any other forms or bonds required by the RFP.
3. The Contract resulting from this RFP is not assignable.
4. Notice of award or intent to award may also appear on the Purchasing Office website: <https://henrico.us/finance/divisions/purchasing/>

**C. Collusion**

By submitting a proposal in response to this 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, Offeror or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. § 1 et seq.) or Section 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.

**D. Compensation**

The Successful Offeror shall submit a complete itemized invoice on each delivery or service that is performed under the Contract. Payment shall be rendered to the Successful Offeror for satisfactory compliance with the Contract within forty-five (45) days after receipt of a proper invoice.

**E. Controlling Law and Venue**

The Contract will be made, entered into, and shall be performed in the County of Henrico, Virginia, and shall be governed by the applicable laws of the Commonwealth of Virginia without regard to its conflicts of law principles. Any dispute arising out of the Contract, its interpretations, or its performance shall be litigated only in the Henrico County General District Court or the Circuit Court of the County of Henrico, Virginia.

**F. Default**

1. If the Successful Offeror is wholly responsible for a failure to perform the Contract (including, but not limited to, failure to make delivery of goods, failure to complete implementation and installation, and/or if the goods and/or services fail in any way to perform as specified herein), the County may consider the Successful Offeror to be in default. In the event of default, the County will provide the Successful Offeror with written notice of default, and the Successful Offeror shall provide a plan to correct said default within 20 calendar days of the County's notice of default.
2. If the Successful Offeror fails to cure said default within 20 days, the County, among other actions, may complete the Contract work through a third party, and the Successful Offeror shall be responsible for any amount in excess of the Contract price incurred by the County in completing the work to a capability equal to that specified in the Contract.

**G. Exceptions to the RFP or Contract:**

For architectural or engineering services, the County shall not request or require Offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to Code of Virginia §2.2-1132, until after the qualified Offerors are ranked for negotiations. Exceptions to the RFP requirements will be required of the top ranked Offeror and will be resolved to the satisfaction of the County before any contract negotiations.

## **H. Drug-Free Workplace to be Maintained by the Contractor (Va. Code § 2.2-4312)**

1. 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.
2. 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 in accordance with the Virginia Public Procurement Act, 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.

## **I. Employment Discrimination by Contractor Prohibited**

1. During the performance of this Contract, the contractor agrees as follows (Va. Code § 2.2-4311):
  - (a) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 the requirements of this section.
2. The contractor will include the provisions of the foregoing subparagraphs (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.

**J. Employment of Unauthorized Aliens Prohibited**

Any contract that results from this Request for Proposal shall include the following language: "As required by Virginia Code §2.2-4311.1, the contactor does not, and shall not during the performance of this agreement, in the Commonwealth of Virginia knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986."

**K. Indemnification**

The Successful Offeror agrees to indemnify, defend and hold harmless the County of Henrico (including Henrico County Public Schools), the County's officers, agents and employees, from any claims, damages, suits, actions, liabilities and costs of any kind or nature, including attorneys' fees, arising from or caused by the provision of any services, the failure to provide any services or the use of any services or materials furnished (or made available) by the Successful Offeror, provided that such liability is not attributable to the County's sole negligence.

**L. Insurance Requirements**

The Successful Offeror shall maintain insurance to protect itself and Henrico and Henrico's elected officials, officers, agents, volunteers and employees from claims under the Workers' Compensation Act, and from any other claim for damages for personal injury, including death, and for damages to property which may arise from the provision of goods and/or services under the Contract, whether such goods and/or services are provided by the Successful Offeror or by any subcontractor or anyone directly employed by either of them. Such insurance shall conform to the Insurance Specifications. **(Attachment A)**.

**M. No Discrimination against Faith-Based Organizations**

The County does not discriminate against faith-based organizations as that term is defined in Va. Code § 2.2-4343.1.

**N. Offeror's Performance**

1. The Successful Offeror agrees and covenants that its agents and employees shall comply with all County, State and Federal laws, rules and regulations applicable to the business to be conducted under the Contract.
2. The Successful Offeror shall ensure that its employees shall observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds.
3. The Successful Offeror shall cooperate with Henrico officials in performing the Contract work so that interference with normal operations will be held to a minimum.
4. The Successful Offeror shall be an independent contractor and shall not be an employee of the County.

**O. Ownership of Deliverable and Related Products**

1. The County shall have all rights, title, and interest in or to all specified or unspecified interim and final products, work plans, project reports and/or presentations, data, documentation, computer programs and/or applications, and documentation developed or generated during the completion of this project, including, without limitation, unlimited rights to use, duplicate, modify, or disclose any part thereof, in any manner and for any purpose, and the right to permit or prohibit any other person, including the Successful Offeror, from doing so. To the extent that the Successful Offeror may be deemed at any time to have any of the foregoing rights, the Successful Offeror agrees to irrevocably assign and does hereby irrevocably assign such rights to the County.
2. The Successful Offeror is expressly prohibited from receiving additional payments or profit from the items referred to in this paragraph, other than that which is provided for in the general terms and conditions of the Contract.
3. This shall not preclude Offerors from submitting proposals, which may include innovative ownership approaches, in the best interest of the County.

**P. Record Retention and Audits**

1. The Successful Offeror shall retain, during the performance of the Contract and for a period of five years from the completion of the Contract, all records pertaining to the Successful Offeror's proposal and any Contract awarded pursuant to this Request for Proposal. Such records shall include but not be limited to all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Successful Offeror's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; Contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the County on demand and without advance notice during the Successful Offeror's normal working hours.
2. County personnel may perform in-progress and post-audits of the Successful Offeror's records as a result of a Contract awarded pursuant to this Request for Proposals. Files would be available on demand and without notice during normal working hours.

**Q. Severability**

Each paragraph and provision of the Contract is severable from the entire agreement and if any provision is declared invalid the remaining provisions shall nevertheless remain in effect.

**R. Minority-, Woman-, Service Disabled Veteran-Owned, Small Businesses and Employment Services Organizations**

It is the policy of the County of Henrico to actively seek out and provide contracting opportunities to minority-, woman-, service disabled veteran-owned, small businesses and employment services organizations in procurement transactions made by the County.

The County strongly encourages all suppliers to respond to Invitations for Bids and Request for Proposals and supports the use of minority, woman-, service disabled veteran-owned, small businesses and employment services organizations for sub-contracting opportunities.

All formal solicitations are posted on the Commonwealth of Virginia eVA the County's internet site at <https://henrico.us/finance/divisions/purchasing/> and may be viewed under the Bids and Proposals link. Construction related solicitations are located on eVA and County internet sites and on eBid at [www.ebidexchange.com/henrico](http://www.ebidexchange.com/henrico)

**S. Subcontracts**

No portion of the work shall be subcontracted without prior written consent of the County. In the event that the Successful Bidder desires to subcontract some part of the work specified in the contract, the Successful Bidder shall furnish the County the names, qualifications, and experience of the proposed subcontractors. The Successful Bidder shall, however, remain fully liable and responsible for the work to be done by his/her subcontractor(s) and shall assure compliance with all the requirements of the Contract.

**T. Taxes**

1. The Successful Offeror shall pay all county, city, state and federal taxes required by law and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the Contract price between Henrico and the Successful Offeror, as the taxes shall be solely an obligation of the Successful Offeror and not of Henrico, and Henrico shall be held harmless for same by the Successful Offeror.
2. Henrico is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption certificates will be furnished upon request.

**U. Termination of Contract**

1. The County reserves the right to terminate the Contract immediately in the event that the Successful Offeror discontinues or abandons operations; is adjudged bankrupt, or is reorganized under any bankruptcy law; or fails to keep in force any required insurance policies or bonds.
2. Failure of the Successful Offeror to comply with any section or part of the Contract will be considered grounds for immediate termination of the Contract by the County.

3. Notwithstanding anything to the contrary contained in the Contract between the County and the Successful Offeror, the County may, without prejudice to any other rights it may have, terminate the Contract for convenience and without cause, by giving 30 days' written notice to the Successful Offeror.
4. If the County terminates the Contract, the Successful Offeror will be paid by the County for all scheduled work completed satisfactorily by the Successful Offeror up to the termination date.

**V. County License Requirement**

If a business is located in Henrico County, it is unlawful to conduct or engage in that business without obtaining a business license. If your business is located in the County, include a copy of your current business license with your proposal submission. If your business is not located in the County, include a copy of your current business license with your proposal submission. If you have any questions, contact the Business Section, Department of Finance, County of Henrico, telephone (804) 501-4310.

**W. Environmental Management**

The Successful Offeror shall comply with all applicable federal, state, and local environmental regulations. The Successful Offeror is required to abide by the County's Environmental Policy Statement:

[https://henrico.us/pdfs/hr/risk/env\\_policy.pdf](https://henrico.us/pdfs/hr/risk/env_policy.pdf) which emphasizes environmental compliance, pollution prevention, continual improvement, and conservation. The Successful Offeror shall be properly trained and have any necessary certifications to carry out environmental responsibilities. The Successful Offeror shall immediately communicate any environmental concerns or incidents to the appropriate County staff.

**X. Safety**

1. The Successful Offeror shall comply with and ensure that the Successful Offeror's personnel comply with all current applicable local, state and federal policies, regulations and standards relating to safety and health, including, by way of illustration and not limitation, the standards of the Virginia Occupational Safety and Health Administration for the industry. The provisions of all rules and regulations governing safety as adopted by the Safety and Health Codes Board of the Commonwealth of Virginia and issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under the Contract. The Successful Offeror shall provide or cause to be provided all technical expertise, qualified personnel, equipment, tools and material to safely accomplish the work specified and performed by the Successful Offeror.
2. Each job site shall have a supervisor who is competent, qualified, or authorized on the worksite, who is familiar with policies, regulations and standards applicable to the work being performed. The supervisor must be capable of identifying existing and predictable hazards in the surroundings or working conditions which are hazardous or dangerous to employees or the public, and is capable of ensuring that applicable safety regulations are complied with, and shall have the authority and responsibility to take prompt corrective measures,

which may include removal of the Successful Offeror's personnel from the work site.

3. In the event the County determines any operations of the Successful Offeror to be hazardous, the Successful Offeror shall immediately discontinue such operations upon receipt of either written or oral notice by the County to discontinue such practice.

**Y. Authorization to Transact Business in the Commonwealth**

1. 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 or other business form 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.
2. An Offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia must include in its proposal the identification number issued to it by the State Corporation Commission. (Attachment D) 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 of the Code of Virginia or as otherwise required by law shall include in its proposal a statement describing why the Offeror is not required to be so authorized.
3. An Offeror described in subsection 2 that fails to provide the required information shall not receive an award unless a waiver is granted by the Purchasing Director, his designee, or the County Manager.
4. Any falsification or misrepresentation contained in the statement submitted by the Offeror pursuant to Title 13.1 or Title 50 of the Code of Virginia may be cause for debarment.
5. Any business entity described in subsection 1 that enters into a contract with a public body shall not allow its existence to lapse or allow its certificate of authority or registration to transact business in the Commonwealth if so required by Title 13.1 or Title 50 of the Code of Virginia to be revoked or cancelled at any time during the term of the contract.

## **Z. Payment Clauses Required by Va. Code § 2.2-4354**

Pursuant to Virginia Code § 2.2-4354:

1. The Successful Offeror shall take one of the two following actions within seven days after receipt of amounts paid to the Successful Offeror by the County for all or portions of the goods and/or services provided by a subcontractor: (a) pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under that contract; or (b) notify the County and subcontractor, in writing, of the Successful Offeror's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. Pursuant to Virginia Code § 2.2-4354, the Successful Offeror that is a proprietor, partnership, or corporation shall provide its federal employer identification number to the County. Pursuant to Virginia Code § 2.2-4354, the Successful Offeror who is an individual contractor shall provide his/her social security numbers to the County.
3. The Successful Offeror shall pay interest to its subcontractors on all amounts owed by the Successful Offeror that remain unpaid after seven days following receipt by the Successful Offeror of payment from the County for all or portions of goods and/or services performed by the subcontractors, except for amounts withheld as allowed in Subparagraph 1. above.
4. Pursuant to Virginia Code § 2.2-4354, unless otherwise provided under the terms of the Contract interest shall accrue at the rate of one percent per month.
5. The Successful Offeror shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
6. The Successful Offeror's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in Virginia Code § 2.2-4354 shall not be construed to be an obligation of the County. A Contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

### **AA. CONTRACT PERIOD:**

1. The contract period shall be from January 1, 2019 through December 31, 2020. Contract prices shall remain firm for the initial two-year contract period
2. The contract may be renewed for three additional one-year periods upon the sole discretion of the County at a price not to exceed 3% above the previous year's prices.

3. The resulting contract should require the Successful Offeror to give at least a ninety (90) day written notice if they do not intend to renew the contract at any annual renewal.
4. The contract shall not exceed a maximum of five (5) years.

**BB. Contact with Students**

Offerors shall certify that any of their employees who will provide services under the Contract resulting from this procurement and will be in direct contact with Henrico County Public School students: (1) has not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and (2) such person has not been convicted of a crime of moral turpitude. Offerors shall cause any of their subcontractors to provide the same certification described herein with regard to the subcontractors' employees.

**Henrico County cannot award a contract to an Offeror that does not complete the Attachment E as part of their proposal/submission.**

**CC. Conduct**

1. Fraternization between supplier and teachers or students is strictly prohibited.
2. Use, consumption, and/or possession of any controlled substance, substances considered to be illegal, and alcohol are strictly prohibited on school grounds.
3. Cigarette smoking is prohibited on school grounds.
4. Use of vulgar, suggestive or abusive language or gestures is strictly prohibited on school grounds.
5. Use of radios/stereos or other noise producing equipment shall not be used. No weapons of any kind are allowed on school grounds.

**VII. PROPOSAL SUBMISSION REQUIREMENTS:**

- A.** The Purchasing Division will not accept oral proposals, nor proposals received by telephone, FAX machine, or other electronic means.
- B.** All erasures, interpolations, and other changes in the proposal shall be signed or initialed by the Offeror.
- C.** The Proposal Signature Sheet (***Attachment B***) must accompany any proposal(s) submitted and be signed by an authorized representative of the Offeror. If the Offeror is a firm or corporation, the Offeror must print the name and title of the individual executing the proposal. All information requested should be submitted. Failure to submit all information requested may result in the Purchasing Division requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal.

- D. The proposal, the proposal security, if any, and any other documents required, shall be enclosed in a sealed opaque envelope. The envelope containing the proposal shall be sealed and marked in the lower left-hand corner with the number, title, hour, and due date of the proposal.
- E. The time proposals are received shall be determined by the time clock stamp in the Purchasing Division. Offerors are responsible for insuring that their proposals are stamped by Purchasing Division personnel by the deadline indicated.
- F. By submitting a proposal in response to this Request for Proposal, the Offeror represents it has read and understand the Scope of Services and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the Contract work.
- G. The failure or omission of any Offeror to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with conditions existing at the site, shall in no way relieve any Offeror from any obligations with respect to its proposal or to the Contract.
- H. **Trade secrets or proprietary information submitted by an Offeror in response to this Request for Proposal shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of this section prior to or upon submission of data or materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary (Va. Code § 2.2-4342.F). (Attachment C)**
- I. A proposal may be modified or withdrawn by the Offeror anytime prior to the time and date set for the receipt of proposals. The Offeror shall notify the Purchasing Division in writing of its intentions.
1. If a change in the proposal is requested, the modification must be so worded by the Offeror as to not reveal the original amount of the proposal.
  2. Modified and withdrawn proposals may be resubmitted to the Purchasing Division up to the time and date set for the receipt of proposals.
  3. No proposal can be withdrawn after the time set for the receipt of proposals and for one-hundred twenty (120) days thereafter.
- J. The County welcomes comments regarding how the proposal documents, scope of services, or drawings may be improved. Offerors requesting clarification, interpretation of, or improvements to the proposal general terms, conditions, scope of services or drawings **shall submit technical questions concerning the Request for Proposal no later than 12:00 noon, November 5, 2018 in writing to [sto05@henrico.us](mailto:sto05@henrico.us)** Any changes to the proposal shall be in the form of a written addendum issued by the Purchasing Division and it shall be signed by the Purchasing Director or a duly authorized representative. **Each Offeror is responsible for determining that it has received all addenda issued by the Purchasing Division before submitting a proposal.**

- K. All proposals received in the Purchasing Division on time shall be accepted. All late proposals received by the Purchasing Division shall be returned to the Offeror unopened. Proposals shall be open to public inspection only after award of the Contract.

**VIII. PROPOSAL RESPONSE FORMAT:**

- A. Offerors shall submit a written proposal that present the Offeror's qualifications and understanding of the work to be performed. Offerors are asked to address each evaluation criterion and to be specific in presenting their qualifications. Your proposal should provide all the information considered pertinent to your qualifications for this project.

- B. The Offeror should include in their proposal the following:

1. Table of Contents – All pages are to be numbered

2. Introduction

Cover letter - on company letterhead, signed by a person with the corporate authority to enter into contracts in the amount of the proposal

Proposal Signature Sheet – **Attachment B**

Proprietary/Confidential Information – **Attachment C**

Virginia State Corporation Commission Identification Number Requirement – **Attachment D**

Contact with Students – **Attachment E**

3. Executive Summary

Response to Scope of Services –The Offeror should address each section of the Scope of Services with an indication of the response. The Offeror shall identify any exceptions, referenced to the paragraph number, in a sub section titled "Exceptions".

Company Profile – Offerors are to present a Company profile that shows the ability, capacity and skill of the Offeror, their staff, and their employees to perform the services required within the specified time.

Provide evidence of financial stability.

Provide detailed response to **Attachment F**. Questionnaire.

4. Fee – Provide detailed information on fee's proposed for annual retainer. In addition, provide information on compensation method to be utilized for assistance with other assigned tasks.

5. Exceptions: List any exceptions to the Scope of Services in a separate section of the Offeror's proposal response and mark section as "Exceptions".
6. Assumptions: List any assumptions made when responding to the Scope of Services requirements.
7. Appendices – are optional for Offerors who wish to submit additional material that will clarify their response.

**IX. PROPOSAL EVALUATION/SELECTION PROCESS:**

- A. Offerors are to make written proposals, which present the Offeror's qualifications and understanding of the work to be performed. Offerors are asked to address each evaluation criteria and to be specific in presenting their qualifications. Proposals should be as thorough and detailed as possible so that the County may properly evaluate your capabilities to provide the required goods/services.
- B. Selection of the Successful Offeror will be based upon submission of proposals meeting the selection criteria. The minimum selection criteria will include:

EVALUATION CRITERIA	WEIGHT
Functional Requirements <ul style="list-style-type: none"> <li>• Extent to which the proposed solutions satisfies the RFP functional requirements outlined in the Scope of Services</li> <li>• Clearly demonstrated understanding of the services to be performed</li> <li>• Reporting capability and quality of available reports</li> </ul>	30
Implementation Services <ul style="list-style-type: none"> <li>• Offeror's approach for accomplishing the Scope of Services</li> <li>• Project Management</li> <li>• Project Team</li> <li>• Current workload and ability to complete required work within County schedule</li> </ul>	20
Experience and Qualifications <ul style="list-style-type: none"> <li>• Professional competence</li> <li>• Previous experience in providing services for governmental entities of similar size</li> <li>• Financial Stability of Firm</li> <li>• References</li> <li>• Resumes of proposed staff</li> </ul>	25
Fee's	20
Quality of proposal submission/oral presentations	5
<b>TOTAL</b>	<b>100</b>

- C. For goods, nonprofessional services, and insurance, selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as defined in Va. Code § 2.2-2006, the County shall not require an Offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the Offerors so selected. The Offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each Offeror so selected, the County shall select the Offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that Offeror. Should the County 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

**ATTACHMENT A  
INSURANCE SPECIFICATIONS  
Page 1 of 3**

**The following insurance coverages and limits are required in order to provide goods, services, construction, professional and non-professional services to Henrico County general government agencies and Henrico County Public Schools. These requirements are specific to this procurement and may or may not be the same for future requests.**

**Please be sure and review the Additional Requirements Section**

The Successful Offeror shall carry Public Liability Insurance in the amount specified below, including contractual liability assumed by the Successful Offeror, and shall deliver a Certificate of Insurance from carriers licensed to do business in the Commonwealth of Virginia and that is representative of the insurance policies. The Certificate shall show that the policy has been endorsed to add the County of Henrico and Henrico County Public Schools named as an additional insured for the Commercial General Liability coverage. The coverage shall be provided by a carrier(s) rated not less than "A-" with a financial rating of at least VII by A.M. Best or a rating acceptable to the County. In addition, the Successful Offeror shall agree to give the County a minimum of 30 days prior notice of any cancellation or material reduction in coverage.

**Workers' Compensation**

Statutory Virginia Limits

Employers' Liability Insurance - \$100,000 for each Accident by employee  
\$100,000 for each Disease by employee  
\$500,000 policy limit by Disease

**Commercial General Liability**

\$1,000,000 each occurrence including contractual liability for specified agreement  
\$2,000,000 General Aggregate (other than Products/Completed Operations)  
\$2,000,000 General Liability-Products/Completed Operations  
\$1,000,000 Personal and Advertising injury  
\$ 100,000 Fire Damage Legal Liability

**Business Automobile Liability** – including owned, non-owned and hired car coverage

Combined Single Limit - \$1,000,000 each accident

**Umbrella Liability**

\$5,000,000 Per Occurrence and in the aggregate

**ATTACHMENT A**  
**INSURANCE SPECIFICATIONS**  
Page 2 of 3

**Additional Requirements**

In addition to the requirements above, the Successful Offeror shall thoroughly review the scope of work that is included and if any of the following are included in the services that will be provided, the following additional insurance will be required:

- Bankers Professional Liability - \$15,000,000 Per Occurrence or Claim**  
Required if the Scope includes providing advice or consultation including but not limited to; lawyers, bankers, physicians, programming, design (including construction design), architects & engineers and others who require extensive education and/or licensing to perform their duties.
- Cyber Liability - \$2,000,000 Per Occurrence**  
Required if the Scope includes the collection and electronic transmittal of Personal Health Insurance (PHI), or any other demographic data on individuals including but not limited to Name, Address, Social Security Numbers or any other sort of personally identifying information.
- Abuse and Molestation Coverage - \$1,000,000 Per Occurrence**  
Required if the scope of work includes the offering of professional or non-professional services to any child or student where one on one contact or consultation is to be provided.
- Pollution Liability - \$1,000,000 Per Occurrence**  
Required if the scope of work involves the use (other than in a motor vehicle) or removal of a substance or energy introduced into the environment that potentially has an undesired effect or affects the usefulness of a resource. These include, but are not limited to Asbestos, PCB's, Lead, Mold, and Fuels.
- Explosion, Collapse & Underground Coverage (XCU)**  
Required of a Contractor in limits equal to the General Liability Limit when the Scope includes any operations involving Blasting, any work underground level including but not limited to wires, conduit, pipes, mains, sewers, tanks, tunnels, or any excavation, drilling, or similar work.
- Builders Risk Coverage**  
Required if the scope of work includes the ground up construction of a structure. Limit of insurance shall be 100% of the completed value of the structure. For projects for the renovation of an existing structure, The County shall insure the Builder's Risk with the Contractor being responsible for the first \$10,000 of any claim.
- Bankers Blanket Bond - \$10,000,000 per occurrence or claim**
- Financial Institution Bond, included as required by Regulation**

**NOTE 1:** The commercial general liability insurance shall include contractual liability. The contract documents include an indemnification provision(s). The County makes no representation or warranty as to how the Bidder/Offeror's insurance coverage responds or does not respond. Insurance coverages that are unresponsive to the indemnification provision(s) do not limit the Bidder/Offeror's responsibilities outlined in the contract documents.

**NOTE 2:** The intent of this insurance specification is to provide the coverage required and the limits expected for each type of coverage. With regard to the Business Automobile Liability and Commercial General Liability, the total amount of coverage can be accomplished through any combination of primary and excess/umbrella insurance. This insurance shall apply as primary insurance and non-contributory with respect to any other insurance or self-insurance programs afforded the County of Henrico and Henrico County Public Schools. This policy shall be endorsed to be primary with respect to the additional insured.

**NOTE 3:** Title 65.2 of the Code of Virginia requires every employer who regularly employs three or more full-time or part-time employees to purchase and maintain workers' compensation insurance. If you do not purchase a workers' compensation policy, a signed statement is required documenting that you are in compliance with Title 65.2 of the Code of Virginia.

**NOTE 4:** The Certificate Holder Box shall read as follows:  
*County of Henrico*  
*Risk Management*  
*PO Box 90775*  
*Henrico, VA 23273*

**ATTACHMENT B  
PROPOSAL SIGNATURE SHEET  
Page 1 of 2**

My signature certifies that the proposal as submitted complies with all requirements specified in this Request for Proposal ("RFP").

My signature also certifies that by submitting a proposal in response to this RFP, the Offeror represents that in the preparation and submission of this proposal, the Offeror did not, either directly or indirectly, enter into any combination or arrangement with any person or business entity, or enter into any agreement, participate in any collusion, or otherwise take any action in the restraining of free, competitive bidding in violation of the Sherman 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.

I hereby certify that I am authorized to sign as a legal representative for the business entity submitting this proposal.

LEGAL NAME OF OFFEROR (DO <u>NOT</u> USE TRADE NAME):
ADDRESS:
SIGNATURE:
NAME OF PERSON SIGNING (print):
TITLE:
TELEPHONE:
FAX:
E-MAIL ADDRESS:
DATE:

**ATTACHMENT B  
PROPOSAL SIGNATURE SHEET  
Page 2 of 2**

Company Legal Name: \_\_\_\_\_

This form completed by: Signature: \_\_\_\_\_ Title: \_\_\_\_\_

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

**PLEASE SPECIFY YOUR BUSINESS CATEGORY BY CHECKING THE APPROPRIATE BOX(ES) BELOW.**

**(Check all that apply.)**

- SMALL BUSINESS
- WOMEN-OWNED BUSINESS
- MINORITY-OWNED BUSINESS
- SERVICE-DISABLED VETERAN
- EMPLOYMENT SERVICES ORGANIZATION
- NON-SWaM (Not Small, Women-owned or Minority-owned)

**SUPPLIER REGISTRATION** – The County of Henrico encourages all suppliers interested in doing business with the County to register with eVA, the Commonwealth of Virginia’s electronic procurement portal. <https://eva.virginia.gov>.

eVA Registered?  Yes  No

If certified by the Virginia Minority Business Enterprises (DMBE), provide DMBE certification number and expiration date.  
\_\_\_\_\_ NUMBER \_\_\_\_\_ DATE

**DEFINITIONS**

For the purpose of determining the appropriate business category, the following definitions apply:

**"Small business"** means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

**"Women-owned business"** means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

**"Minority-owned business"** means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

**"Minority individual"** means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

**"Service disabled veteran business"** means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

**"Service disabled veteran"** means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

**"Employment services organization"** means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department of Aging and Rehabilitative Services.



**ATTACHMENT D**

**VIRGINIA STATE CORPORATION COMMISSION (SCC)**  
**REGISTRATION INFORMATION**

**The Bidder or Offeror:**

is a corporation or other business entity with the following SCC identification number:

\_\_\_\_\_ **-OR-**

- is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**
- is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Bidder/Offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from offer or's out-of-state location) **-OR-**
- is an out-of-state business entity that is including with this bid/proposal an opinion of legal counsel which accurately and completely discloses the undersigned Bidder's/Offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check the following box if you have not checked any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids/proposals:

**ATTACHMENT E**  
**DIRECT CONTACT WITH STUDENTS**  
**BID/PROPOSAL RESPONSE**

Name of Bidder/Offeror: \_\_\_\_\_

Pursuant to Va. Code § [22.1-296.1](#), prior to awarding a contract for the provision of services that require the contractor, his employees (or subcontractors) to have **direct contact with students**, the school board shall require the contractor and any employee who will have direct contact with students, to provide certification that (i) he has not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and (ii) whether he has been convicted of a crime of moral turpitude.

Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the Contract to provide such services and, when relevant, the revocation of any license required to provide such services.

**As part of this submission, I certify that the employees of, or subcontractors to, the above mentioned contractor that will be providing services to the School Board under the resulting Contract (i) will have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and/or (ii) will not have been convicted of a crime of moral turpitude. Furthermore, I understand that the duty to certify is ongoing and extends to future employees and employees of subcontractors for the duration of the Contract.**

\_\_\_\_\_  
*Signature of Authorized Representative*

\_\_\_\_\_  
*Printed Name of Authorized Representative*

\_\_\_\_\_  
*Printed Name of Vendor (if different than Representative)*

\_\_\_\_\_  
*Date*

**SUBMIT THIS FORM WITH PROPOSAL**

## **ATTACHMENT F**

### **QUESTIONNAIRE**

The following questionnaire will assist the Selection Committee in evaluating the quality of benefits being offered to employees as well as assist in the evaluation of the financial and contractual information requested of the Offeror

#### **GENERAL INFORMATION**

1. Provide background information and a brief description of your organization. Include any pertinent information relative to the size and organization structure of your company.
2. Please identify any subcontractors (including consultants, advisors and suppliers) to be used and describe specific responsibilities, qualifications and background experience of all key personnel.
3. Report any restraining or disciplinary action taken against your firm by any regulatory body within the last three (3) years.
4. Provide a minimum of three (3) references for groups of similar size, industry and location. Please provide group name, contact person, telephone number, effective date and termination date if applicable and reason for termination.
5. Please describe the proposed project team including the names and titles of individuals and their functions, which would support the Plan.
6. How many years has your firm provided consulting services for employee benefits under current name or previous name.

**ATTACHMENT G**  
**HIPAA BUSINESS ASSOCIATE ADDENDUM**

**WHEREAS**, the County of Henrico (the “County”) and \_\_\_\_\_ (“Business Associate”) entered into a contract on \_\_\_\_\_ for the performance of consulting services to assist the County in the selection and monitoring of benefits programs (the “Contract”); and

**WHEREAS**, the County is a hybrid entity including covered health care components and internal business associates under the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the American Recovery and Reinvestment Act of 2009 (“ARRA”), Title XIII of ARRA, the Health Information Technology for Economic and Clinical Health Act (“HITECH”) Subtitle D; and

**WHEREAS**, HIPAA, HITECH, and the implementing regulations have established Privacy and Security Standards (the Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. §§ 160 and 164); and

**WHEREAS**, Business Associate is directly subject to HIPAA provisions the ARRA, Title XIII of ARRA, and amendments thereto, and HITECH, and all related rules and regulations in effect and any amendments thereto; and

**WHEREAS**, Business Associate may receive from the County and use and/or disclose records that include information that 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 that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual (Protected Health Information, “PHI”); and

**WHEREAS**, the Privacy and Security Standards require a Business Associate Addendum to ensure that PHI is adequately safeguarded as part of the Contract provisions.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Business Associate Addendum (“Addendum”) and in the Contract and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the County and Business Associate agree as follows:

**I. DEFINITIONS**

The following terms used in this Addendum shall have the same meaning as those terms in the Privacy and Security Standards: Breach, Business Associate, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Subcontractor, and Use.

**II. OBLIGATIONS OF THE BUSINESS ASSOCIATE**

1. Permitted Uses and Disclosure of PHI. Business Associate provides auditing services for and/or on behalf of the County that may involve the use and/or disclosure of PHI. Business Associate will use and/or disclose PHI only to the extent necessary to perform its duties and obligations to the County or as otherwise required by law. Business Associate may permit the use of PHI by third parties, including its employees, contractors, agents, or other representatives, only to the extent directly related to and

necessary for the performance of its duties and obligations to the County as required by the Contract or as otherwise permitted by law. Business Associate and its agents or subcontractors will only request, use and disclose the minimum PHI necessary to perform its duties and obligations in accordance with HIPAA, the HIPAA Regulations, and HITECH.

2. Safeguards Against Misuse of Information.

- a. Business Associate will use appropriate and reasonable safeguards to maintain the security of and prevent the improper use or disclosure of PHI.
- b. Business Associate agrees that it will comply with 45 C.F.R. §§ 160.302 *et seq.* and implement administrative, physical and technical safeguards that reasonable and appropriately protect the confidentiality, integrity, and availability of electronic PHI, as that term is defined in 45 C.F.R. § 160.103, that it creates, receives, maintains or transmits on behalf of the County.
- c. Business Associate will train employees in information security, designating a security officer, conducting an information risk analysis, and developing a risk management remediation plan.
- d. Business Associate agrees to abide by the prohibitions under the ARRA regarding the sale and marketing of PHI.
- e. Business Associate agrees with any other conditions that the Secretary of the Department Health and Human Services may require with respect to electronic PHI.

3. Reporting Breaches and Other Security Incidents and Mitigation of Effect.

- a. Business Associate agrees to promptly report to the County: (1) any use or disclosure of PHI not authorized by the Contract of which it becomes aware; and (2) any "security incident," as defined by 45 C.F.R. § 164.304, of which it becomes aware. Business Associate shall take reasonable steps to cure any such security incident and implement procedures for mitigating the harmful effects from any such security compromise. Business Associate shall report the measures it took to mitigate any security compromise that may have occurred and shall report any data loss or other information system compromise as a result of the incident.
- b. In the event of a breach of unsecured PHI as defined in 45 C.F.R. § 164.410, Business Associate will comply with the breach notification requirements of 45 C.F.R. § 164.410 and notify the County without reasonable delay, and in no case, later than two (2) business days of when Business Associate becomes aware of a breach. Notification of security incidents shall include the identity of each individual whose unsecured PHI has been or is reasonably believed to have been accessed, acquired, or disclosed inappropriately during such breach. Notifications shall contain any other such information as Business Associate reasonably believes is required for the County to further investigate. Business Associate will also provide such assistance and further information as reasonably requested by the County in meeting its responsibility to notify all individuals affected, as detailed in 45 C.F.R. § 164.404.

4. Use and Disclosure of PHI by Subcontractors and Agents.
  - a. Business Associate will require any subcontractor or agent that is authorized to review, use or disclose PHI obtained by Business Associate from the County, to agree in writing to adhere to the same restrictions, conditions, and requirements regarding the use and disclosure of PHI and safeguarding of PHI that apply to Business Associate.
  - b. Business Associate will ensure that any subcontractor or agent to whom it provides electronic PHI that was created, received, maintained or transmitted on behalf of the County agrees in writing to implement reasonable and appropriate safeguards to protect the confidentiality, security, and integrity of the electronic PHI.
5. Access to Information. Throughout the term of this Addendum, Business Associate shall make available to the County all PHI provided to Business Associate by the County for so long as such information is maintained. Upon written request from the County, Business Associate shall make an individual's PHI available to the County within fifteen (15) days of an individual's request for such information as notified by the County. In the event that the requesting individual's PHI is neither maintained nor accessible on site by the County or the Business Associate, the extended timeframe set forth in 45 C.F.R. § 164.504(3)(2)(iii)(C) will be available for Business Associate to respond to the County's request. In the event any individual requests access to County-provided PHI directly from Business Associate, Business Associate shall forward such request to the County. Any denials of access to PHI requested shall be the responsibility of the County. Business Associate shall further conform with and meet all the requirements of 45 C.F.R. § 164.524.
6. Availability of PHI for Amendment. Upon receipt of a request from the County to update PHI for an individual, Business Associate will incorporate any such amendment into its records within thirty (30) days of the request or as may be required by 45 C.F.R. § 164.526. If Business Associate receives a request from an individual for an amendment to County-provided PHI, Business Associate shall forward such request directly to the County. Any review and consideration of a requested amendment shall be the responsibility of the County.
7. Accounting of Disclosures. Upon request from the County, Business Associate will make available to the County such information as is in Business Associate's possession and is required for the County to make an accounting as required by 45 C.F.R. § 164.528. In the event the request for an accounting is delivered directly to Business Associate, Business Associate will forward such request to the County as soon as practicable. It shall be the County's responsibility to prepare and deliver any such accounting requested. Business Associate will maintain an appropriate record keeping process to enable it to comply with the requirements of this Section.
8. Use and Disclosures for Business Associate's Purposes.
  - a. Business Associate will only use or disclose PHI to the minimum necessary to carry out its duties and obligations under the Contract or as required by law. Business Associate may not use or disclose PHI in a manner that would violate 45 C.F.R. § 164.500 *et seq.*

- b. Business Associate may disclosure PHI for its own proper management and administration or to carry out its legal responsibilities, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will remain confidential and be sued or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
9. Availability of Books and Records. Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of the County available to the County and the Secretary of the Department of Health and Human Services for purposes of monitoring compliance with the Privacy and Security Standards.
10. Indemnification. Business Associate will indemnify and defend the County, its agents, representatives, and employees from any claims, demands, losses, or liabilities including attorney's fees arising out of or related to Business Associate's breach or alleged breach of the terms of this Addendum by Business Associate or any agent or subcontractor of Business Associate.
11. Compliance with Requirements. To the extent the Business Associate is to carry out one or more of the obligations of the County under 45 C.F.R. § 164.500 *et seq.*, Business Associate will comply with the requirements that apply to the County in the performance of such obligations.

### **III. OBLIGATIONS OF THE COUNTY**

1. Notice of Privacy Practices. The County will notify Business Associate of any limitation in its Notice of Privacy Practices, which the County, or any of its departments, provides or makes available to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
2. Restrictions on Disclosures. If applicable to Business Associate, the County will notify Business Associate as soon as practicable of any request for restrictions by an individual of the use or disclosure of the individual's PHI that the County has agreed to accept. The County will also notify Business Associate, if applicable, of any changes in, withdrawal, or revocation of any authorization or other permissions(s) granted the County by an individual for the use and disclosure of the individual's PHI.
3. Impermissible Requests. The County will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Standards if done by the County. Nothing in this section shall preclude Business Associate from using or disclosing PHI for its management and administrative activities as provided in Section II.8 above.

### **IV. MISCELLANEOUS**

1. Term. This Addendum will remain in effect for the term of the Contract between the County and the Business Associate, including any extensions or renewals thereof.

2. Termination for Cause. Upon the County's knowledge of a material breach by Business Associate, the County will provide Business Associate an opportunity to cure the breach or end the violation. The County may terminate the Contract: (a) immediately if Business Associate has breached a material term and cure is not possible; or (b) upon Business Associate's failure to cure the breach or end the violation within the time specified by the County.
3. Effect of Termination.
  - a. Except as provided in paragraph b of this section, upon termination of this Addendum for any reason, Business Associate will return or destroy all PHI received from the County, or created or received by Business Associate on behalf of the County. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will not retain copies, including electronic copies, of the PHI.
  - b. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate will provide the County notification of the conditions that make return or destruction infeasible and extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
4. Amendments. This Addendum, and any provision thereof, may be amended, modified or deleted by written agreement of the parties. The parties may amend this Addendum from time to time as necessary for the County and Business Associate to comply with the Privacy or Security Standards and all other applicable laws or regulations.
5. Survival. The respective rights and obligations of Business Associate survive termination of this Addendum and any underlying Contract.
6. Interpretation. This Addendum will be interpreted as broadly as necessary to implement and comply with the Privacy and Security Standards. Any ambiguities in this Addendum will be resolved in favor of a meaning that complies with the Privacy and Security Standards.
7. Governing Law and Venue. This Addendum is governed by federal law and the laws of the Commonwealth of Virginia without regard to laws relating to choice of law or conflicts of law. Exclusive venue for any dispute arising hereunder shall be resolved in the Circuit Court of the County of Henrico, Virginia.
8. Coordination of Documents. In the event of a conflict between a provision of this Addendum and the Contract, the provisions of this Addendum will control.
9. Notices. All notices, requests, demands and other communications required or permitted to be given or made under this Addendum shall be in writing, shall be effective upon receipt, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; (c) overnight delivery services

with proof of delivery; or (d) facsimile with return facsimile acknowledging receipt.  
Notices will be sent to the address below:

To Covered Entity:                    Brandon Hinton, Privacy Officer  
    County of Henrico  
    4301 E. Parham Road  
    P.O. Box 90775  
    Henrico, Virginia 23273-0775  
    Facsimile: (804) 501-4162

To Business Associate:                **Insert info**

**IN WITNESS WHEREOF**, the parties hereto have signed this Addendum.

(insert name of company)

County of Henrico

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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