

REQUEST FOR PROPOSAL



REGIONAL CONSOLIDATION OF SEWER SYSTEM ASSETS STUDY

PDC-RFP-2012-01

MAY 16, 2012

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Section I: GENERAL INFORMATION

Purpose of Proposal:

The Hampton Roads Planning District Commission (HRPDC) is seeking proposals from qualified firms to conduct a study of the benefits and impacts of consolidation of all sanitary sewer assets and operations within Hampton Roads.

Number of pages allowed:

25 pages (one sided, exclusive of individual resumes of key staff, but inclusive of tabs, tables, graphics, or other items).

Electronic copy limited to 5 MB, in .pdf format.

Date Proposal submission is due:

June 18, 2012 by 3:00 PM.

Name and Address to send submissions:

Printed copies to:

Nancy K. Collins
CFO, Procurement Officer
Hampton Roads Planning District Commission
723 Woodlake Drive
Chesapeake, VA 23320

Electronic copy to:

ncollins@hrpdcva.gov

Listing of dates, times, and places for:

Pre-proposal Conference:

May 30, 2012, from 9:30 – 12:00

Questions to be addressed:

June 1, 2012

Answers to be posted:

June 7, 2012

(Answers will be posted on www.hrpdcva.gov and www.hrsd.com websites)

Potential interviews:

July 10, 2012 from 9:00 – 2:00

Potential Date of Award:

July 23, 2012

Proprietary Information:

“Proposers are advised that Title 2.2 Subtitle II Part B Chapter 43 (specifically Section 2.2-4342) of the Code of Virginia, 1950, as amended, shall govern public inspection of all records submitted by Proposer. Furthermore, **proprietary information shall be submitted with the RFP printed packages under separate cover, or in a separate email attachment on the electronic submission, and both marked ‘proprietary’**. Information not submitted under separate cover and not labeled proprietary shall be Public Information in accordance with State Statutes.”

Authorized Contract Users:

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

Disadvantaged Business Enterprises and Disadvantaged Minority Business Enterprises:

The recipient in accordance with *Title VI of the Civil Rights Act of 1964, 78 stat. 252 US C 2000d-2004d-4* and *Title 49 CFR Department of Transportation, Subtitle A, Office of the Secretary Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation*, issued pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation, and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

It is the policy of the HRPDC that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Minority Business Enterprise certified DBE firms is maintained on their web site (<http://www.dmb.e.state.va.us/>) under the DBE Directory of Certified Vendors. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBEs as potential sub-consultants. The consultant is encouraged to contact DBEs to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE whereby the DBE promises not to provide services to other consultants is prohibited. HRPDC believe that these services support 10% DBE participation. If a DBE is not certified, the DBE must become certified (with the Virginia Department of Minority Business Enterprise) prior to your response being submitted. If a DBE is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE sub-consultants. DBE prime consultants are encouraged to make the same outreach efforts as other consultants. DBE credit will be awarded only for work actually being performed by the DBE themselves. When a DBE prime consultant or sub-consultant subcontracts work to another firm, the work counts toward DBE goals only if the other firm is itself a DBE. A DBE must perform or exercise responsibility for at least 30% of the total cost of the contract with its own force.

Certification of Eligibility: A signed statement on your letterhead stating that: "The firm is not ineligible to receive award of a contract due to the firm's inclusion on any Federal or Virginia State lists of debarred contractors, or otherwise ineligible to be awarded a contract using Federal or State funds."

Section II: INSTRUCTIONS TO PROPOSERS

Receipt of Proposals:

Proposals will be accepted by the receptionist (hand delivered or mailed) at the Hampton Roads Planning District Commission's Regional Office Building, 723 Woodlake Drive, Chesapeake, Virginia 23320 until 3:00 PM Eastern Standard Time (EST) on June 18, 2012, in accordance with the specifications attached and the other terms and conditions set forth herein. Proposals will also need to be e-mailed to: ncollins@hrpdcva.gov by the same date and time established above.

Intent of Contract:

Summary of purpose of RFP.

Consolidation of governmental services has been a topic of interest for decades in Hampton Roads. Inherent inefficiencies would appear to exist with duplication of identical functions by multiple local governmental units. Although challenging to specifically quantify, combining similar functions regionally may result in savings through reduced overhead, equipment, facilities and even personnel.

Regionalization of sewer collection systems has been of interest recently as the region works to meet the requirements of the Special Order by Consent (SOC) and Federal Consent Decree. As condition assessment work wraps up and rehabilitation planning becomes more detailed, the significant future liabilities facing each collection system owner and HRSD (the regional wastewater treatment and conveyance system operator) are becoming better defined. It has been recognized that there is a need to significantly change the way the sewer systems in the region operate. This is most prevalent in the need to reduce and/or control flows that discharge to the regional system. Addressing these requirements on a jurisdictional basis may not be the most cost effective way to accomplish this.

The concept of consolidation of regional sanitary sewer assets has been discussed as a possible solution as the region has wrestled with meeting the requirements of the SOC and what is in the best interest of the mutual customer. The basic premise of the SOC is that localities will remove inflow and infiltration where it is cost effective and feasible to do and that HRSD will expand the regional conveyance and treatment facilities to handle the remaining flows. Individual locality system investments in addition to investments within the regional system, however, have the potential to result in a regional solution that while equitable among the residents of each participating jurisdiction may not be the most cost effective approach for the regional ratepayer as a whole.

With this background, the governing bodies of the 14 localities with sanitary sewer systems connected to the HRSD regional system have passed resolutions to participate in a study of further regionalization of sanitary sewer assets.

Proposer's Responsibility:

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

Contract Amount:

The budget available for this award is \$500,000 - \$1,000,000.

Contract Length:

The project timeline shall be July 23, 2012 – July 1, 2013. The study shall be complete and ready for consideration by governing bodies and regulators no later than July 1, 2013. A detailed schedule shall be developed with data needs, staff interview requirements, planning workshops, access to facilities, etc. to provide as much notice as possible to local governments and HRSD.

Subcontracts:

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

Interpretations and Requests for Substitution:

Any proposer in doubt as to the true meaning of any part of this request for proposal may submit a written request to John Carlock, HRPDC (jcarlock@hrpdcva.gov) for an interpretation. Proposers are requested not to contact the localities. The proposer submitting a request will be responsible for its prompt and actual delivery. Any interpretation or approval will be made by addendum duly issued. A copy of such addendum will be posted on the HRPDC's and HRSD's websites (www.hrpdcva.gov and www.hrsd.com). HRPDC will not be responsible for any other explanations or interpretations of such documents which anyone presumes to make. Only questions answered by formal written addenda will be binding; oral and other interpretations or clarifications will be without legal effect.

Proposers must submit every request for interpretation or clarification regarding the services to be provided in writing; by email to jcarlock@hrpdcva.gov or by facsimile transmission to (757) 523-4881, to the attention of John Carlock. To be given consideration at the Pre-Proposal Conference, such requests must be received by 4:30 on Wednesday, May 23, 2012. Any additional questions received by 4:30 PM, on Friday, June 1, 2012, interpretations, clarifications, and any supplemental instructions will be issued in the form of written addenda posted on both the HRPDC and HRSD websites by June 7, 2012. Failure to receive such addenda shall not relieve proposers from any obligation under this proposal as submitted.

When inquiring, replying or forwarding, please list the RFP number (i.e., PDC-RFP-2012-01) in the subject line. This is used to direct the email or fax to the appropriate person so the HRPDC may provide prompt service to your request when staff are away from their desk.

Irregular Proposals:

Proposals shall be considered irregular and may be rejected for any of the following reasons unless otherwise provided by law:

If there are unauthorized additions or conditional proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.

If the proposer adds any provisions reserving the right to accept or reject any award, or to enter into a contract pursuant to an award.

If the proposer fails to meet the proposal specifications or is unresponsive to proposal specifications, questions, and/or terms.

If the proposal fails to include an authorized proposer representative's signature on company letterhead.

Withdrawal or Revision of Proposals:

A proposer may, without prejudice, withdraw a proposal submitted prior to the date and time specified for receipt of proposals by requesting such withdrawal in writing before the time set for receiving proposals. Telephonic communications for withdrawal shall not be accepted.

Any proposer may modify his/her proposal by facsimile communication at any time, provided such communication is received by HRPDC prior to the due date of proposals. The communication should not reveal the proposal price, but should provide the addition or subtraction or other modification. If written confirmation is not received within two days after the fax, no consideration will be given to the facsimile modification.

HRPDC reserves the right to discontinue this RFP before selection process is complete for any reason, including, but not limited to, lack of funding.

Insurance:

Prior to starting work, proposers will furnish the HRPDC a certificate of insurance as evidence of the existence of the following insurance coverage in amounts not less than the amounts specified below:

Comprehensive General Liability: \$1,000,000 per occurrence.

Workmen's Compensation: As required by Federal and State Worker's Compensation and occupational statutes.

Professional Liability: \$1,000,000 per claim.

The Certificate of Insurance will provide for thirty days (30) written notice to the HRPDC by the Insurance Company prior to cancellation or material change in policy coverage.

Proposal Evaluation:

The proposal will be evaluated using the following criteria:

- Responsiveness to Scope of Work and Proposal Requirements.
- Professional competence of the firm, including qualifications and competence of key personnel and joint venture or association participants related to the specific areas (utility/municipal service consolidation studies) for which the firm is proposing.
- Experience on projects involving multiple local jurisdictions and agencies.
- Record of the firm in accomplishing work on similar projects with respect to such factors as the quality and adequacy of the work, resource allocation, ability to meet schedules, innovative approaches and cost control.
- Accessibility of the firm and the ability of key personnel to visit the project area.
- Knowledge of the Hampton Roads area.
- Ownership of firm by Small, Woman-owned, and Minority-owned (SWaM) business and/or participation of SWaM personnel or subcontractors on the project.
- Specific experience related to utility/municipal service consolidation studies.
- Specific relevant experience of the key individuals proposed to work on this project.
- Composition of project team to include range of disciplines covered and previous demonstrated experience working together
- Understanding of the project.

After the Evaluation Panel's (EP) initial review of the proposals, the EP (or its designees) may, if necessary, hold interviews with the top ranked proposers. Proposers selected for an interview will be contacted by June 26, 2012. Each interview will be no more than 60-minutes, with the consultant's presentation limited to not more than 20-minutes. Any area of specific concern will be identified before the interview. The HRPDC reserves the right to select a consultant based solely on written proposals and not convene oral interviews. If interviews are required, they will be held on July 10, 2012.

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

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

Section III: SCOPE OF WORK

Detailed explanation of Background, Objectives, Primary Scope of Work, including expected deliverable(s), timeframe of activities and deliverables, and Reporting Requirements.

Study Areas

The study will include, but not be limited to, the following major areas:

1. **Asset valuation:** Conduct a valuation of the assets owned and operated by HRSD and each local government. The valuation will consider current conditions, projected service life, identified liabilities, outstanding debt etc. Valuation will be based on existing system documentation provided by each locality, and determined appropriate by the selected consultant. Identification of previous joint ventures for installations of regional sewer facilities (“lease purchase” or “interest participation”) shall also be identified.
2. **Personnel Impacts:** Evaluate the impact on personnel currently employed by HRSD and localities dedicated to working on sanitary sewer assets and operations. Number of personnel, salaries, benefits, etc., will be compiled for each locality. Additional duty impact will be examined and quantified where possible to include water system O&M, disaster recovery, snow removal, etc. Total staffing recommendation for regional consolidated entity shall be developed with a recommended transition plan and schedule.
3. **Operations and Maintenance:** Gather and analyze data from each locality on operation and maintenance costs, volume of work, levels of services, estimated work response schedules etc., for each locality and the HRSD system. Include a review of SCADA and Information Technology system capacities and compatibilities. Current and proposed levels of service and O&M investment will be compared with recommended regionally applied best practices. This will include a ten (10) year projection of rates for individual utilities compared to a regional consolidated entity.
4. **Rolling Stock and Equipment:** Inventories of all rolling stock and equipment dedicated to O&M of sanitary sewer assets including leased equipment will be compiled and shall include age, condition and expected service life. Current inventory will be compared with recommended regionally applied best practices.
5. **Operational Support Facilities:** Inventories of all physical space (buildings, parking, storage) dedicated to sanitary sewer operations including leased facilities will be compiled. The study will evaluate use of these spaces to support regional approaches as well as alternative use if excess space is identified. If space is inadequate or not available for transfer then consideration will be given to new facilities.
6. **Revenue and Rates:** Use of revenue generated by sanitary sewer charges and other revenue sources dedicated to support sanitary sewer shall be determined for each locality. Contributions, returns, or cost of service allocations to local government general funds shall be specifically identified. An analysis of individual collection system O&M rates shall be included to compare current costs with regionally applied best practice approaches. Study shall evaluate the various regional revenue generation alternatives (uniform rates, locality

based rates, treatment only rates, collection O&M rates) as well as appropriate transition periods to move from local rates to regional rates. Study shall include an affordability analysis to gauge impact of:

- a. Current and projected effect of local rates plus HRSD treatment and conveyance rates on each locality median household income as well as on families living at or below the Federal poverty guidelines.
 - b. Projected effect of regional rates on each locality median household income as well as on families living at or below the Federal poverty guidelines.
7. **Utility Tax/Payment in Lieu of Taxes (PILOT):** Evaluate the use and impact of these and similar revenue transfer mechanisms between the regional entity and all local governments served.
 8. **Debt:** An analysis of all outstanding sanitary sewer debt shall be conducted to determine allowable and appropriate action (assumption, assignment, defeasance, etc.) to remove the localities sanitary sewer system debt obligations and provide an overview of the regional effect of the combined debt.
 9. **Legal Review:** Review local government charters, HRSD enabling legislation, federal and state law, and any grant, loan or debt restrictions applicable to transfer of assets, personnel benefits, contracted personnel, contracted operations, rate setting and other legal issues related to regional consolidation of assets, personnel and provision of services by a regional entity. Identify and evaluate other contracts currently in force which may impact the feasibility of consolidation of the sewer assets.
 10. **Economic Development:** Evaluate how economic development initiatives are supported by local government sanitary sewer assets and develop regional alternatives and recommendations to providing similar support from a regional entity.
 11. **Extension of Sanitary Sewer Service to Un-served Areas:** Review policies and practices for extension of sewer collection system within areas already designated by local Comprehensive Plans to be sewerred and develop alternatives to accomplish this need through a regional sanitary sewer entity. Review shall include:
 - a. Un-served areas within or adjacent to existing collection system basins.
 - b. Areas without current sewer assets (i.e., new development).
 - c. Satellite systems.
 12. **Coordination with Local Governments:** Identify and evaluate best practices for communication and coordination of activities performed by a regional consolidated sewer entity with local governments.
 13. **Governance:** Identify and evaluate options for governance of an expanded regional entity responsible for all sanitary sewer assets and operations in Hampton Roads.

14. **Federal/State Funding Opportunities:** Identify and evaluate potential available funding opportunities to assist with the consolidation of the Hampton Roads sanitation systems.
15. **Customer Service, Billing, Payments:** Review customer service policies and practices including “one stop” service to the development sector, integration with 311 call centers, accounts receivable collection efforts, etc. , and compare with regionally applied best practices.

Study Elements

Communications Plan:

Briefings to governing bodies, regulators and the HRPDC will be required periodically. The consultant shall develop and submit a communications plan that will be incorporated into the final negotiated study cost. In addition, the consultant may be requested to gather public input through appropriate public meetings, surveys, etc. upon completion of the study and briefings to governing bodies.

Schedule:

The study shall be complete and ready for consideration by governing bodies and regulators no later than July 1, 2013. A detailed schedule shall be developed with data needs, staff interview requirements, planned workshops, access to facilities, etc., to provide as much notice as possible to local governments, HRPDC and HRSD.

Conclusion and Recommendations:

Based on information collected and analyzed, the study shall include a final recommendation regarding regionalization of sanitary sewer assets in Hampton Roads which will, as a minimum, address each of the areas identified above.

Executive Summary:

Study results as well as conclusions and recommendations shall be summarized in an executive summary of no more than two (2) pages.

Section IV: REQUIRED SUBMITTALS

Proposal Format

Transmittal Letter

Title Page

Overview and Summary

Detailed Work Plan

Qualification, Experience and References

Resumes of key individuals that will be working directly on this study.

Office Location.

Experience of firms and individuals proposed to work on this study on projects of similar nature and scope.

Existing contractual relationships with any of the Hampton Roads localities or HRSD.

Narrative of consultant's proposed approach to study including potential to meet schedule as outlined herein.

List of references for similar projects.

Licenses' Requirements.

Financial Stability.

Affirmative Action and DBE Participation

This section is Company specific, not specific to individual employees within the company.

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

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

Basis for Selection

Statement of Compliance

Please note any deviation in compliance with the RFP, as requested by HRPDC.

General:

Response shall be limited to no more than 25 pages (one sided, exclusive of individual resumes of key staff, but inclusive of tabs, tables, graphics, or other items). Proposal shall be on standard margin 8.5" x 11" pages with font no smaller than 12 point. 25 copies of the printed proposal shall be submitted and an electronic copy emailed to Nancy Collins, Chief Financial Officer, Hampton Roads Planning District Commission (ncollins@hrpdcva.gov). Emailed version is

limited to no more than 5 MB. The electronic version may include additional supplemental information in files separate from the file of the printed version of the proposal. All proprietary information must be under separate cover, and so labeled. Information not submitted under separate cover and not labeled proprietary shall be Public Information in accordance with State Statutes.

REQUIRED FORMS

COMMONWEALTH OF VIRGINIA

SALES AND USE TAX CERTIFICATE OF EXEMPTION

(For use by the Commonwealth of Virginia, a political subdivision of the Commonwealth of Virginia, or the United States)

To:

Date

(Name of Dealer)

(Number and street or rural route)

(City, town, or post office)

(State and ZIP Code)

The Virginia Retail Sales and Use Tax Act provides that the Virginia sales and use tax shall not apply to tangible personal property for use or consumption by this State, any political subdivision of this State, or the United States. (This exemption does not apply to sales or leases to privately owned financial and other privately owned corporations chartered by the United States.)

The undersigned, for and on behalf of the governmental agency named below, hereby certifies that all tangible personal property purchased or leased from the above dealer on and after this date will be for use or consumption by a governmental agency, that each such purchase or lease will be supported by the required official purchase order, and that such tangible personal property will be paid for out of public funds: (Check proper box below.)

1. Tangible personal property for use or consumption by the Commonwealth of Virginia.
2. Tangible personal property for use or consumption by a political subdivision of the Commonwealth of Virginia.
3. Tangible personal property for use or consumption by the United States.

Hampton Roads Planning
District Commission

723 Woodlake Drive

(Number and street or rural route)

Chesapeake

(City, town, or post office)

VA

(State)

23320

(ZIP Code)

I certify that I am authorized to sign this Certificate of Exemption and that, to the best of my knowledge and belief, it is true and correct, made in good faith, pursuant to the Virginia Retail Sales and Use Tax Act.

BY Nancy K. Collins

(Signature)

CFO

(Title)

Information for dealer. -A dealer is required to have on file only one Certificate of Exemption properly executed

Purpose of Form

person who is required to file an information return with the RS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, r
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

Note. *If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.*

For federal tax purposes you are considered a person if you re:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

Cat. No. 10231X

Form **W-9** (Rev. 1-2005)

**VENDOR CERTIFICATION
VERIFICATION FORM**

Vendor Name: _____
Vendor Address: _____

Contact Person: _____ Title: _____
E-mail Address: _____ Phone: _____
Vendor Fax: _____

CERTIFICATIONS

DBE CERTIFICATION CERTIFICATION #: _____
CERTIFYING AGENCY: _____
NAICS CODE: _____ DESCRIPTION: _____

SWaM CERTIFICATION CERTIFICATION #: _____ SWaM TYPE _____

SERVICE DISABLED VET CERTIFICATION #: _____ DATE _____
EXP DATE: _____ CERTIFYING AGENCY: _____

MINORITY INDICATOR

- | | | |
|---|--|--|
| <input type="checkbox"/> African American | <input type="checkbox"/> Asian Indian | <input type="checkbox"/> Asian Pacific |
| <input type="checkbox"/> Hispanic American | <input type="checkbox"/> Native American | |
| <input type="checkbox"/> Non-Minority Woman | | |

Submit to: Nancy Collins, CFO * Fax: (757) 523-4881 * E-mail: ncollins@hrpdcva.gov

DBE PARTICIPATION STATEMENT

Note: The Consultant is required to complete the following information and submit this form with the technical proposal.

RFP #: _____ Project Description: _____

Consultant Name: _____

This consultant (is ___) (is not ___) a certified Disadvantaged Business Enterprise (DBE).

Expected percentage of contract fees to be subcontracted to DBE(s): _____%.

If the intention is to subcontract a portion of the contract fees to DBE(s), the proposed DBE sub-consultants are as follows:

DBE Sub-Consultant	Type of Work/Commodity
_____	_____
_____	_____
_____	_____
_____	_____

By: _____

Title: _____

Date: _____

Section V: TERMS AND CONDITIONS

Commonwealth of Virginia Public Procurement Act:

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

Employment Discrimination by Contractor Prohibited:

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

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

Purchase Order/Contract:

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

Kickback:

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

Proposal Terms:

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

Additional Users:

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

Section VI: HRPDC CONTRACT TEMPLATE

CONTRACT

HAMPTON ROADS PLANNING DISTRICT COMMISSION

CONTRACT WITH

NAME OF VENDOR

CONTRACT #: _____

This Contract is made **this _____ day of _____ 201X**, by and between the Hampton Roads Planning District Commission (hereinafter referred to as the "HRPDC") and _____ (hereinafter referred to as the "Consultant"). The parties to this Contract, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

1. **PROJECT.** The Consultant shall carry out the project as set forth in Attachment A: RFP No. PDC-RFP-2012-01 and the Consultant's Technical Proposal dated June 18, 2012, known as the "Scope of Services" for the *Hampton Roads Planning District Commission (HRPDC)*, subject to and in accordance with the terms and conditions listed within this contract.
2. **TIME OF PERFORMANCE.** The project shall commence upon signing of Award document, potentially July 23, 2012 and shall terminate no later than July 1, 2013. All work will be accomplished in accordance with **the schedule outlined in Attachment XX, Section XX, XX.**

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

3. **RENEWAL OF CONTRACT.** This contract may be renewed by the HRPDC upon written agreement of both parties for one year and up to four {4} successive one year periods, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
4. **SUBCONTRACTS.** No portion of the work shall be subcontracted without prior written consent of the HRPDC and HRSD. In the event that the Consultant desires to subcontract some part of the work specified herein, the Consultant shall furnish the HRPDC the names, qualifications and experience of their proposed subcontractors.
5. **PAYMENT.** The HRPDC shall pay the Consultant as services are rendered satisfactorily complete. Maximum payment by the HRPDC to the Consultant will not be greater than \$xxxxxxx without prior authorization by the HRPDC and HRSD. **Requests for payment must be accompanied by appropriate financial and work progress documentation to support the request for payment.** Such reports and invoices shall be detailed in accordance with Attachment A to show what tasks have been completed and to compare the time of completion with the proposed time of completion. Subject to receipt of funds by the HRPDC as provided in Paragraph 6, payment by

the HRPDC shall be made to the Consultant within thirty (30) days of receipt of an invoice in satisfactory form in accordance with the requirements of this contract and in accordance with HRPDC procedures. Payments due the Consultant shall be subject to a service charge of one and one-half (1.5) percent per month for invoices not paid when due.

- a. Invoices for items ordered, delivered and accepted shall be submitted by the Consultant directly to Nancy Collins, CFO at the Hampton Roads Planning District Commission (HRPDC), 723 Woodlake Dr. Chesapeake, VA 23320. Or by email to: ncollins@hrpdcva.gov. All invoices shall show the HRPDC contract number/Purchase Order Number; social security number (for individual consultants), or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Consultant at the contract price.
6. SOURCE OF FUNDS. Funds to support the work effort provided for in this Contract are being provided to the HRPDC by HRSD. Payment of invoices under this Contract by the HRPDC is subject to receipt of funds drawn down from HRSD.
 7. COMMONWEALTH OF VIRGINIA PUBLIC PROCUREMENT ACT. This contract is subject to the provisions of the Commonwealth of Virginia Public Procurement Act, and any revisions thereto in effect at the time of this contract.
 8. PURCHASE ORDER/CONTRACT. This resulting purchase order/contract shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Virginia.
 9. KICKBACK. By signing this contract, the Consultant certifies that he/she has not offered or received any kickback from any other proposer, supplier, manufacturer, or subcontractor in connection with this proposal. A kickback is defined as an inducement for the award of the contract, subcontract, or order through any payment, loan, subscription, advance, deposit of money, services, or anything of value in return for an agreement not to compete on a public contract.

10. LIABILITY. The Consultant will maintain appropriate liability insurance coverage throughout the term of this Agreement, as follows:

- a. Name the HRPDC as an additional insured and provide certificates or other evidence that the required insurance is in force.
- b. Worker's compensation and employer's liability insurance as required by the Commonwealth of Virginia.
- c. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, and owned, non-owned or hired vehicles with \$1,000,000 combined single limits.
- d. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the Consultant or of any of its employees, agents, or subcontractors, with \$1,000,000 per occurrence and in the aggregate.

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

Consultant's liability for the HRPDC's damages, not otherwise covered by required insurances, will, in the aggregate, not exceed \$500,000. This provision takes precedence over any conflicting Article of this Contract or any document incorporated into it referenced by it. This limitation of liability will apply whether Consultant's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, and shall include Consultant's officers, affiliated corporations, employees, and subcontractors.

11. NONDISCRIMINATION.

Disadvantaged Minority Business Enterprises: It is the policy of the HRPDC that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list, of Virginia Department of Minority Business Enterprise certified DBE firms, is maintained on their web site (<http://www.dmbe.state.va.us/>) under the DBE Directory of Certified Vendors. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBEs as potential sub-consultants. The consultant is encouraged to contact DBEs to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE whereby the DBE promises not to provide services to other consultants is prohibited. HRPDC believes that these services support 10% DBE participation. If a DBE is not certified, the DBE must become certified (with the Virginia Department of Minority Business Enterprise) prior to your response being submitted. If a DBE is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE

sub-consultants. DBE prime consultants are encouraged to make the same outreach efforts as other consultants. DBE credit will be awarded only for work actually being performed by the DBE themselves. When a DBE prime consultant or sub-consultant subcontracts work to another firm, the work counts toward DBE goals only if the other firm is itself a DBE. A DBE must perform or exercise responsibility for at least 30% of the total cost of the contract with its own force.

Certification of Eligibility: A signed statement on your letterhead stating that: "The firm is not ineligible to receive award of a contract due to the firm's inclusion on any Federal or Virginia State lists of debarred contractors, or otherwise ineligible to be awarded a contract using Federal or State funds."

In its performance of work activities under this Contract, the Consultant warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, national origin or handicapped status. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

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

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

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

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

of any kind following termination and final payment to the Consultant, specifically including claims for anticipated profit. Any damages of the HRPDC associated with a termination for cause shall be compensated for or recovered by the HRPDC through separate agreement.

14. TERMINATION FOR CONVENIENCE. The HRPDC may terminate the Contract, in whole or in part, if the HRPDC determines that the continuation of the Contract supported activities will not produce beneficial results commensurate with further expenditure of funds. The Consultant shall not incur new obligations for the terminated portion after termination notice and shall cancel as many outstanding obligations as possible. In the case of a termination for convenience, the HRPDC shall pay for contracted services, rendered by the Consultant through the effective date of the termination. The HRPDC will not be liable for damages or costs of any kind following termination and final payment to the Consultant, specifically including claims for anticipated profit.
15. MAINTENANCE OF RECORDS. The Consultant shall maintain all required records and provide the HRPDC an audit in accordance with applicable state and federal laws and Generally Accepted Accounting Procedures. That audit will be reviewed by the HRPDC for compliance with state and federal laws and regulations. The Consultant will ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with state and federal laws and regulations.

The Consultant agrees to retain all books, records and other documents relative to this Contract for three (3) years after final payment, or until the Project is audited by the Commission, whichever is later. The HRPDC, its authorized agents and/or auditors shall have full access to and right to examine any of said materials during said period.
16. COLLATERAL CONTRACTS. Where there exists any inconsistency between this Contract and other provisions of collateral contractual agreements which are made a part of this Contract by reference or otherwise, the provisions of this Contract shall control.
17. PRIME CONSULTANT RESPONSIBILITIES. The Consultant shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime consultant. The Consultant agrees that he is as fully responsible for the acts and omissions of his subcontractors, and of persons employed by them, as he is for the acts and omissions of his own employees.
18. INTEGRATION AND MODIFICATION. This Contract constitutes the entire Contract between the Commission and the Consultant. No alteration, amendment, or modification in the provisions of the Contract shall be effective unless it is reduced to writing, signed by the parties and attached hereto.
19. SEVERABILITY. Each paragraph and provision of this Contract is severable from the entire Contract; and, if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect, at the option of the HRPDC.
20. INDEMNIFICATION. Consultant agrees to indemnify, defend and hold harmless the HRPDC and the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages

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

21. INVENTIONS AND COPYRIGHTS. As, and only as, requested by the *HRPDC*, the Consultant shall apply, or promptly and willingly assist (including without limitation by executing and delivering documents) the *HRPDC* in applying, for patent, copyright, and/or other intellectual-property protection of any inventions, discoveries, documents, designs, drawings, papers, notes, forms, interim reports, final reports, graphics, images, computer programs and data, other works of authorship, and other information and/or materials, whether in electronic, magnetic/optical-media, or printed form, (collectively, "Materials") prepared by the Consultant in the performance of its obligations under this Contract. The provisions of this paragraph are further subject to the provisions of Paragraphs 23 and 24 of this Contract.
22. OWNERSHIP OF MATERIALS. The Consultant acknowledges and agrees that the *HRPDC* has and shall have ownership of any and all Materials prepared by the Consultant in the performance of its obligations under this Contract. The Consultant shall promptly disclose to the *HRPDC* any and all Materials and, at the *HRPDC*'s request, shall provide the *HRPDC* with one or, if so requested by the *HRPDC*, more electronic, magnetic/optical-media, and/or printed copies of each of the Materials. The Consultant may retain electronic, magnetic/optical-media, and/or printed copies of the Materials and with the *HRPDC*'s prior written consent on a case-by-case basis, use such copies, but only in the course of the Consultant's business and provided that the Consultant includes on any and all such Materials, regardless of form, any and all appropriate notices of the *HRPDC*'s rights, including without limitation its intellectual property rights, in and to the Materials. The provisions of this paragraph are further subject to the provisions of Paragraph 22 of this Contract.
23. CREATION OF INTELLECTUAL PROPERTY. The Consultant acknowledges and agrees that the *HRPDC* owns and shall own any and all patent rights, copyrights, other intellectual property rights, and any and all other proprietary rights in and to the Materials prepared by the Consultant in the performance of its obligations under this Contract. The Consultant agrees to assign, and hereby does assign, to the *HRPDC* any and all rights, including without limitation copyrights and any other rights arising under Title 17 of the United States Code, that the Consultant would, except for such assignment, have in and to the Materials. With the *HRPDC*'s prior written consent, the Consultant may create and use, but only in the course of the Consultant's business, derivative works based on the Materials. The preceding does not apply to any background materials which Consultant supplies to complete the task which is subject to preexisting copyright protections.
24. CONFIDENTIALITY. The Consultant expressly acknowledges and agrees that all reports, documents and communications of every kind, whether written or oral, concerning specific contractual matters, planning or assumptions received in the performance of the work from the *HRPDC*, its staff, Board, legal counsel, or other agents or advisors (collectively "Confidential Information") shall be held in strictest confidence and maintained as strictly confidential. Confidential Information shall include information that, when taking into consideration the circumstances surrounding disclosure of the same, a reasonable person would consider being

confidential or proprietary. This provision shall not apply to information which (1) has been published and is in the public domain, (2) has been provided to Consultant by third parties who have the legal right to possess and disclose the information, (3) was in the possession of Consultant prior to the disclosure of such information to Consultant by the HRPDC, (4) is required by law or any governmental agency to be disclosed, or (5) would require disclosure to comply with the ethical obligations of Consultant to protect the public.

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

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

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

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

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

The Consultant acknowledges and agrees that a violation of the provisions of this confidentiality requirement may cause irreparable damage to the HRPDC, and these confidentiality provisions are made for the express benefit of and shall be enforceable by any of the Affected Parties. Consultant agrees that these provisions may be specifically enforced in any court of law having jurisdiction. In addition to and not in limitation of any other rights or remedies the Affected

Party may have for a breach of the provisions of this confidentiality requirement, the Affected Party may recover money damages, subject to the limitations in Section 14; and in addition to money damages, the Affected Party shall be entitled to obtain equitable relief for any such breach (without requirement of bond or corporate surety) so that Consultant shall be required to cease and desist immediately from breaching such provision (it being agreed that damages alone would be inadequate to compensate the Affected Parties and would be an inadequate remedy for such breach).

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

25. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION. The Consultant assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Consultants who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Consultants shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Consultants and their employees working on this project may be required to sign a confidentiality statement.
26. CONTINGENT FEE WARRANTY. The Consultant warrants that it has not employed or retained any person or persons for the purpose of soliciting or securing this Contract. The Consultant further warrants that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon the award or making of this Contract. For breach of one or both of the foregoing warranties, the Commission/Organization shall have the right to terminate this Contract without liability, or in its discretion, to deduct from the agreed fee, amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.
27. CONFLICT OF INTEREST. The Consultant warrants that it has fully complied with the State and Local Government Conflict of Interests Act.
28. DISCLAIMER. Nothing in this Contract shall be construed as authority for either party to make commitments, which will bind the other party beyond the project contained herein.
29. USE OF FUNDS. Funds, paid by the HRPDC, shall only be used for the purposes and activities covered in Attachment A.
30. FISCAL CONTROL. The Consultant shall establish fiscal control and fund accounting procedures which assure proper disbursement of, and accounting for, project funds, including any required matching funds.
31. STANDARD OF CARE. The standard of care applicable to the Consultant's services will be the degree of skill and diligence normally employed by professional consultants performing the same or similar services at the time said services are performed. The Consultant will re-

perform, without additional compensation, any services not meeting this standard.

- 32. FORCE MAJEURE. If performance of the Services is affected by causes beyond the Consultant's reasonable control, project schedule and compensation shall be equitably adjusted.
- 33. DISPUTE RESOLUTION. The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options.
- 34. NOTICE TO PROCEED. Execution of the contract by both parties will constitute a Notice to Proceed. A separate Notice to Proceed will be required prior to beginning any additional services as may be directed by the HRPDC.

HAMPTON ROADS
PLANNING
DISTRICT COMMISSION

(Vendor Name)

Dwight L Farmer
Executive Director/Secretary

(Printed Name)
(Title)

Date

Date

Contract authorized by the HRPDC on:
April 19, 2012