Program of All-Inclusive Care for the Elderly

November 12, 2019

Dear Prospective PACE Provider:

The Department of Medical Assistance Services (DMAS), pursuant to regulatory authority 12VAC30-50-355, and CMS standards is hereby giving notice of the issuance of this Request for Applications (RFA) for a Program of All-Inclusive Care for the Elderly (PACE) site in the Northern Virginia area (NOVA).

This expansion of PACE shall be on a schedule and within an area that has been determined solely at the discretion of DMAS through this RFA process. No organization shall begin any new PACE program without going through the RFA process as outlined by DMAS.

This solicitation is an RFA for a project that will result in a PACE program designed to serve older adults in the NOVA area and increase the number of persons receiving PACE services within the Commonwealth of Virginia, herein referred to as the Commonwealth.

DMAS is soliciting applications from qualified organizations for the purpose of determining eligibility to establish a PACE program in the NOVA area. To be eligible for consideration, organizations must have submitted the required documentation, as outlined, to DMAS no later than 2:00 pm, Eastern Time **Friday, January 17, 2020.** Specific details about this solicitation are in the enclosed RFA 2020-02. Contractors must check the DMAS website at https://www.dmas.virginia.gov/#/procurement.for any addendums or notices regarding this RFA.

Providers will be responsible for all costs incurred during the RFA process and after the application has been approved and the contract awarded. The PACE program will not be approved until the PACE Program Agreement between the Centers for Medicare and Medicaid Services (CMS) and the State Administering Agency – Department of Medical Assistance Services (DMAS) have signed the Agreement, agreeing to the terms outlined in the contract.

DMAS will not reimburse any Offeror for any costs associated with preparing this application and reserves the right to reject any and all applications received.

Providers are requested not to call the DMAS office. All issues and questions related to this RFA should be sent in writing to: Sue Whiteside, Department of Medical Assistance Services, Division for Aging and Disability Services, 600 East Broad Street, Richmond, Virginia 23219 or by email at: Sue.whiteside@dmas.virginia.gov

Providers who wish to submit an application are required to submit a Letter of Intent, which must be received by the Department no later than **2:00 PM** Eastern Time on **Friday, December 13, 2019.** The prior submission of a Letter of Intent is a prerequisite for submitting an application; applications shall not be accepted from providers who have not submitted a Letter of Intent by the deadline specified above. Letters of Intent may be emailed to the email address listed above with original hard copy to follow. All Letters of Intent shall be addressed to:

Sue Whiteside
Department of Medical Assistance Services
Division for Aging and Disability Services
RFA-2020-02
600 East Broad Street
Richmond, VA 23219

REQUEST FOR APPLICATIONS
RFA 2020-02

ISSUE DATE: November 12, 2019

Title: Program of All-Inclusive Care for the Elderly (PACE) in the NOVA area

Period of RFA: **November 12, 2019- January 17, 2020**

Commodity Code: 95856

Contact Person: All inquiries should be addressed via email to Sue.whiteside@dmas.virginia.gov or in writing and mailed to the address below:

Sue Whiteside
Department of Medical Assistance Services
Division for Aging and Disability Services
600 East Broad Street
Richmond, VA 23219

Deadline for submitting a letter of intent and questions is 2:00pm, Eastern Time, December 13, 2019.

DMAS' responses to questions will be emailed/posted by 2:00pm, Eastern Time, December 20, 2019.

Application Due Date: Applications must be submitted to the address below and will be accepted until 2:00pm, Eastern Time, Friday, January 17, 2020.

Sue Whiteside
Department of Medical Assistance Services
Division for Aging and Disability Services
RFA 2020-02
600 E. Broad Street
Richmond, Virginia 23219

Facsimile Transmission is not acceptable

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

In compliance with this Request for Application and to all conditions imposed therein and hereby incorporated by reference, the undersigned proposes and agrees to furnish the services contained in their application.

Firm Name (Print)	F.I. or S.S. Number
Address	Print Name
Address	Title
City, State, Zip Code	Signature (Signed in Ink)
Telephone	Date Signed
Fax Number	

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
DIVISION FOR AGING AND DISABILITY SERVICES

REQUEST FOR APPLICATIONS (RFA) FOR DETERMINING ELIGIBILITY FOR PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE) PROGRAM IN THE NORTHERN VIRGINIA AREA

RFA 2020-02

November 12, 2019

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Section I – Purpose

The purpose for this Request for Applications (RFA) is for the Department of Medical Assistance Services (DMAS) to solicit applications from qualified potential PACE providers to develop and implement a Program of All-Inclusive Care of the Elderly (PACE) in the Northern Virginia area, which may include the zip codes of and surrounding the counties of Arlington, Fairfax, Loudoun, and Prince William, as well as the independent cities of Alexandria**,** Fairfax, Falls Church, Manassas, and Manassas Park.

Eligible Service Areas. In the review cycle established in the RFA, the review committee will consider applications for PACE sites whose coverage may include the geographic service areas, including zip codes, of and surrounding the counties of Arlington, Fairfax, Loudoun, and Prince William, as well as the independent cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Please note that more than one service provider may be selected for service provision in the NOVA area due to its size and density. Therefore, DMAS reserves the right to determine final service area specificity for any given provider.

According to federal regulations, DMAS is responsible for determining whether an overlap in a service area is economically feasible for the Commonwealth and potential PACE providers. DMAS has been determined that no overlap of service area will be permitted in the Northern Virginia area.

Section II – Background

Special Session I, 2006 Virginia Acts of Assembly, Chapter 3, set in motion a major reform of the Virginia Medicaid funded long-term services and supports programs, which focuses on care coordination and integration of acute and long-term care services and supports for our most vulnerable citizens - older adults and individuals with disabilities. The legislation directed DMAS, in consultation with the appropriate stakeholders, to develop a long-range blueprint for the development and implementation of an integrated acute and long-term care system. The Department was directed to move forward with two different models for the integration of acute and long-term services and supports: a community model and a regional model. The community model is the Program of All-Inclusive Care for the Elderly (PACE).

The PACE program provides the entire spectrum of acute and long-term services and supports, without limit as to duration or dollars. PACE provides all health and long-term services and supports to individuals 55 years of age and older, who meet nursing facility level of care criteria, and reside in their own communities. PACE is a voluntary program, centered on an adult day health care model, and combines Medicaid and Medicare funding. Of note, Virginia Medicaid now operates on a Medicaid Managed Care Model. Hence several insurance providers participate in the provision of care to Medicaid members, including PACE members.

PACE was developed to provide the integration of acute and long-term care services and supports, providing older adults the opportunity to remain in their community, versus a nursing facility. PACE programs assist participants to avoid costly and often preventable nursing facility and hospital stays by expanding the range and intensity of services provided within a community setting. PACE uses an interdisciplinary team, with participant/caregiver input, to determine what services will best meet the needs of their condition and achieve their goals. Some of the services provided include, and are not limited to: adult day care that offers nursing, physical, occupational, speech and recreational therapies, meals,

nutritional counseling, social services, personal care, medical care provided by a PACE physician, home health care, all necessary prescription drugs, medical specialists such as dentistry, optometry and podiatry services, respite care, hospital and nursing facility care (when necessary), and transportation. The PACE team is responsible for authorizing services, as well as for the provision of those services.

Currently there are eleven PACE sites, including two rural sites, operating in Virginia. Listed in alphabetic order they are:

AllCare PACE…….Cedar Bluff, Virginia
Centra PACE…….…… Farmville, Virginia
Centra PACE……...Gretna, Virginia
Centra PACE……Lynchburg, Virginia
InnovAge PACE……..Charlottesville, Virginia
InnovAge PACE……..Newport News, Virginia
InnovAge PACE……..Roanoke, Virginia
InnovAge PACE……..Richmond, Virginia
Mountain Empire PACE……..Big Stone Gap, Virginia
Sentara Senior Community Care…….Norfolk, Virginia
Sentara Senior Community Care…….Portsmouth, Virginia

Specific Application Award Requirements:

Submissions should be comprehensive and include sufficient detail to allow DMAS to evaluate a provider's capabilities to provide the required services. The RFA requirements for each individual item will be thoroughly reviewed. All potential providers are required to submit information as specified in the RFA.

Section III - Statement of Need

PACE programs respond to the unique needs of older adults and their families to provide services to enhance quality of life. PACE programs enable an individual to live in their community as long as medically and socially feasible, while preserving and supporting the individual's family unit. The PACE requirements for Medicare and Medicaid capitated funding are regulated by federal and state laws.

The PACE program is limited to individuals ages 55 or older who live in a designated service area. Eligible participants may be Medicare, Medicaid, or private pay, and must meet the nursing facility level of care criteria established by state and federal requirements.

This RFA is for the Northern Virginia area (NOVA) geographic area.

Section IV - Application Preparation and Submission Requirements

All data, materials, and documentation originated and prepared for the Commonwealth pursuant to this RFA belong exclusively to the Commonwealth and shall be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Confidential information shall be clearly marked in the proposal and reasons the information should be confidential shall be clearly stated.

The provider assures that information and data obtained as to personal facts and circumstances related to participants shall 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. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify

particular individuals. Providers and their employees working on this project shall be required to sign the confidentiality statement in this solicitation.

Trade secrets or proprietary information submitted by an applicant shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the provider must invoke the protections of §2.2-4342F of the *Code of Virginia*, in writing, either before, or at the time, the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary.

The proprietary or trade secret materials submitted must be identified by some distinct method, such as highlighting or underlining, and shall indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. An electronic redacted copy of the application shall have the proprietary and confidential information removed or blocked out in its entirety so the content is not visible. The classification of an entire application, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and, at the sole discretion of DMAS, may result in rejection and return of the proposal. Attachment I of this RFA shall be used for the identification of proprietary or confidential information and submitted with the application.

Submission and Acceptance of Applications:

Applicants shall submit one (1) original and five (5) hard copies of requested requirements by the response date and time specified in the RFA. Each copy of the application shall be bound separately. The applicant shall also submit one electronic copy of their application in MS Word format (Microsoft Word 2016 or compatible format). In addition, the applicant shall submit a redacted (proprietary and confidential information removed) electronic copy in PDF format of their application.

Applications, whether mailed or hand delivered shall arrive at DMAS **no later than 2pm Eastern Time on January 17, 2020.** DMAS shall be the sole determining party in establishing the time and arrival of applications. Late applications will not be accepted and will be automatically rejected from further consideration. The address for delivery is:

Sue Whiteside
Department of Medical Assistance Services
Division for Aging and Disability Services
RFA 2020-02
600 E. Broad Street
Richmond, Virginia 23219

Request preparation:

An authorized representative of the potential PACE provider shall sign the submitted information. All RFA information requested shall be submitted. Failure to submit all information requested may result in DMAS requiring prompt submission of missing information and/or giving a lower evaluation of the application request. Application requests that are substantially incomplete, or lack key information, may be rejected by DMAS.

The application requests should be complete and provide concise descriptions of the PACE provider's capabilities to satisfy the requirements. The application requests should provide clarity of content. Application requests should be typed with at least one-inch margins. The application requests should be organized in the order in which the requirements are presented in the RFA. The requirements should be clearly referenced in the document to the corresponding section.

Cover Sheet:

The cover sheet must be returned, signed and completed as required. Failure to submit an application with the official cover sheet may be a cause for rejecting the request for application.

Application Considerations:

The potential PACE provider must clearly and concisely describe why they are submitting an application to develop a PACE program for the aforementioned underserved geographic areas.

Description of Potential PACE Provider:

This section must include information on: (1) the purpose and goals of the potential PACE provider: (2) the number and type of potential enrollees expected to be enrolled; (3) the geographic area served; (4) organizational structure, including number and type of staff; (5) all-inclusive services; (6) adult day health center experience/accomplishments; and (7) effective use of existing community resources.

Needs Statement:

The potential PACE provider will explain the need for the service in Northern Virginia (NOVA) and surrounding areas of Virginia. Information such as statistics, characteristics of the community, lack of similar resources, participant needs, and the expected impact of the proposed service should be included. The request should state what attempts have been made to secure funding sources. The following information shall be included in the proposal submitted: (1) the estimated number of individuals to be served and cost per participant; (2) impact on the community; (3) a description of the service area target population; (4) the geographic area, including zip codes to be served; and (5) a listing of the major socioeconomic, health, and cultural characteristics of the target population(s). These projections should relate directly to the proposed budget that is submitted to include projected start-up and annual operational costs. Budget projections must include startup and at least 3 years of operation.

Plan for Providing PACE Services:

This section of the application must provide a detailed description of the services/activities to be provided by the potential PACE provider, identification of how the provider will deliver these services/activities, and a clearly defined implementation timeline with measurable goals and objectives. Describe the activities necessary to achieve the objectives and explain the procedures that will be used to deliver the services, including the necessary planning.

The application should indicate an estimate of the number and type of participants to be served and how the participants will be assessed and selected. In the explanation list any equipment and resources that will be needed to provide the services.

Provide a clear description of the geographic boundaries (counties and cities) of service provision and include a map. Zip codes the potential PACE provider plans to serve should be identified and represented on the map. Provide explanations of how the PACE program will have the support and cooperation of other providers in the community, to include:

1. Completion of a market assessment that demonstrates sufficient potential PACE participants to develop a PACE program.

    - Complete a current (no earlier than 2017) financial feasibility study, which includes financial viability for the next 5 years;
    - Complete a current market assessment;
    - Develop a complete business plan (to include a marketing plan, implementation plan, staffing plan, operational plan, and exit strategy);
    - Complete an organizational assessment to determine if demographics and organizational resources and services will support development of a PACE program; and
    - Submit a budget including projected start-up and annual operational costs.

    The market assessment will describe the needs of the potential PACE provider's community and the potential PACE provider program. The narrative will include the following information: (1) activities and steps needed to achieve a PACE program outlining start-up and development, with a timeline; (2) an explanation as to when the services/activities will be implemented; and (3) an implementation plan listing feasible target dates for the beginning and end of each activity. The assessment should include a description identifying budget justification that will address activities related to the start-up and development of the PACE program. Describe the market assessment for the region and explain the feasibility specific to the service area.

    The market assessment will describe the history of serving the target population, total enrollment expectations, community-based alternatives, and supportive referral sources. Describe how the PACE program will fill an unmet need for community based long-term care. Explain how the PACE program will provide a good fit with the sponsoring organization's current mission, direction, and services. Explain how the PACE organization is financially viable and offers a return on investment.

    The financial projections in the business plan must include: (1) realistic and attainable financial projections and demonstrate the range of financial performance;(2) demonstration the management team is capable of achieving the desired financial and operating results;(3) that the potential PACE provider can manage the identified risk, but that there is a developed exit plan in the event circumstances arise that require it. The business plan shall include an executive summary that should request board approval to establish a new PACE organization and the necessary start-up funds (including start-up capital and working capital). If external financing is needed, the business plan should address this issue. The budget should define the total expenditures, show the source of funding for those expenditures, and provide statements of assurances for the availability of funding to complete the development and implementation of the PACE program.

    The business plan should also include: resources for consulting, acquisition of space, development of space, acquisition of equipment, vans, working capital, and solvency reserves. The potential

PACE provider's costs should demonstrate an understanding of the PACE program situation and unique market factors.

2. Demonstration of partnerships with acute care hospitals, nursing facilities, and other potential partners.

    - Define service areas, including zip codes;
    - Identify locations of hospitals, nursing facilities, and other potential partners to ensure all required covered services are provided;
    - Identify contracted medical services;
    - Submit job descriptions for medical and program directors;
    - Provide an organizational chart;
    - Identify a governing board that includes community representation; and
    - A plan which safeguards against conflict of interest.

Discuss community involvement and provide background on which community partners have been involved in the development of the proposed PACE program. Identify and confirm agencies in which it will be critical for the PACE provider to have a partnership. Explain how the PACE provider will establish contracts for services. An example for this: The PACE provider's "parent" company is a health system with which the PACE provider can contract for acute care services. Describe how the PACE provider will determine which services will be provided by contract employees. Describe how the PACE provider will establish contracts for all necessary services. Explain the process for which the PACE provider will provide the delivery of services and manage the financial risk. Describe how the PACE provider will address critical factors for assessing risk sharing; specifically, existing partnerships, staffing, informal care giving, technology, and access to long-term services and supports. Describe any performance standards that will be applied to personnel. Indicate the details of any provisions for subcontracting. Identify the staff responsible for service provision and of the supervision to be provided. Provide the numbers, positions, position descriptions, and qualifications of personnel that will be involved in the development and implementation of the PACE program.

3. Designation of an adult day care center from which to operate a PACE program.

    - Identify experience as an adult day care provider;
    - Identify the location of the adult day care center;
    - Provide the capacity for the adult day care center.

Discuss the designation of the adult day care center or the proposed location. State whether the center will be licensed, and, if so, provide a timeline for how and when the proposed license will be obtained. Discuss how the PACE provider will ensure licensing pertaining to the clinic, food service, building and fire safety will be obtained prior to service provision and any foreseeable issues surrounding obtaining required licensures.

Discuss how the PACE program will operate a PACE center with space for: a primary care clinic, interdisciplinary team meetings, treatments, activities, therapies, socialization, personal care, and dining. Describe the PACE center location in terms of it being located in an identified area of the community familiar to those who will be served. The center location should be based on the analysis of the intended service area, the number of individuals eligible for PACE, and where these individuals reside. The PACE

program must consider the size and diversity of the service areas; if the PACE center encompasses many neighborhoods, the PACE organization will need to integrate various populations within the service area. Provide an explanation that demonstrates other health care providers in the area are accepting of the new PACE center. Describe how the PACE program will obtain acceptance from the community. The center should be in a safe area, easily accessible to community-based providers, hospitals, nursing facilities, and other complimentary services the PACE program has identified. Describe whether the center will be leased or purchased.

4. Identification of funding partners to sustain a PACE project.

    - Identify all partnerships or co owners of the proposed PACE Program
    - Identify existing relationships with hospitals, health care providers and physicians; and
    - Identify supports of the potential PACE program, which will have favorable contract rates for services, assist with contracting, and/or provide other in-kind support to defray start-up/ongoing costs and assist in reaching breakeven as soon as possible.

Describe how the PACE program will establish long-term financial viability. Describe how the potential PACE program will sustain older adults in the community. Explain the potential provider's experience in providing care in the following areas: acute care, long-term care, community-based care, existing service delivery systems, and its relationship to PACE. Explain the potential PACE provider's experience serving the dually eligible population. Discuss how the following quality indicators will be monitored and reported and how you expect them and perhaps others from CMS, etc. to impact improvement to quality of care.

- #/% of Involuntary Dis-enrollments
- #/% Grievances: 1) Due to Customer Service, 2) Due to Transportation, and 3) Due to Service provider
- #/% Hospital Admissions
- #/% Readmissions within 30 days
- #/% Living in the Community
- #/% Pressure Ulcers
- #/% receiving Flu vaccination
- #/% Falls
- #/% of recipients taking High Dose Opioids without Cancer
- #/% Recipients completing Advance Planning

Identify sources of capital available and how these sources will be assessed. Discuss risk management and mitigation strategies, as well as the potential PACE provider's experience with bearing financial risk. Explain who will sustain the development of the program. Discuss the timeframes expected to implement and develop a PACE program.

Discuss financial projections, providing realistic and attainable goals. Discuss the provider's ability to achieve financial and operating results. Explain how the PACE provider can manage financial and operational risks, including financial sustainability and/or withdrawal from PACE development. Explain how the PACE provider will address participants' needs in all care settings, 24-hours a day, 365 days a year. Explain how participants will receive services at the PACE center, at home, and at inpatient facilities.

Small Business Subcontracting Plan:

It is the goal of the Commonwealth that more than 42% of its purchases be made from small businesses. All potential providers are required to submit a Small Business Subcontracting Plan, using the template provided in Attachment II of this RFA.

Section V - Evaluation and Award Criteria

The potential PACE provider will be evaluated by a committee selected by DMAS.

Evaluation Criteria and Weights

The potential PACE provider shall be evaluated by the committee using criteria included in this document. Evaluation will be made and points awarded based solely on the information contained in the application. DMAS reserves the right of final approval and to reject any and all applications.

Criteria:	**Points Available**
Completion of a market assessment demonstrating there is a sufficient number of individuals eligible for PACE to support the development of a PACE program in the given area.	**20**
Specific information related to the organization's plan to provide quality PACE services in a metropolitan area where traffic congestion is prevalent	**20**
Designation of an adult day health care center from which to operate a PACE program.	**15**
Demonstration of partnerships with acute care hospitals, nursing facilities, and other potential partners	**15**
Identification of funding partners to sustain a PACE project.	**15**
Completeness of response to this RFA	**10**
Small, women, and/or minority-owned (SWAM) businesses	**5**

The application award will be made based upon the potential PACE provider deemed to be fully qualified and best suited among those submitting application requests on the basis of the evaluation and criteria factors included in the requirements for application award. DMAS shall select the provider who has submitted the best application and shall award the contract based on evaluation results and qualifications of the provider. Should DMAS determine, in writing and in its sole discretion, that only one potential PACE provider is fully qualified, or that one potential PACE provider is clearly more qualified than other applicants under consideration, a contract may be negotiated and awarded to that PACE provider. The award document will be a contract incorporating, by reference, all the requirements, terms, and conditions of this solicitation.

Important Dates:

Deadline for receipt of questions and letters of intent: **2:00pm**, Eastern Time **Friday, December 13, 2019.**

Section VI - GENERAL TERMS AND CONDITIONS

6.1 APPLICABLE LAWS AND COURTS: This RFA and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. DMAS and the Provider are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The Provider shall comply with all applicable federal, state and local laws, rules and regulations.

6.2 ANTI-DISCRIMINATION: By submitting their applications, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over $10,000 the provisions in number one (1) and number two (2) below apply:

1. During the performance of this contract, the Provider agrees as follows:

   a. The Provider will not discriminate against any employee or applicant for employment because of race, religion, color, sexual orientation, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the provider. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

   b. The Provider in all solicitations or advertisements for employees placed by or on behalf of the provider, will state that such Provider is an equal opportunity employer.

   c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

2. The Provider shall include the provisions of number one (1) above in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

6.3 ETHICS IN PUBLIC CONTRACTING: By submitting their applications, Offerors certify that their applications are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in

connection with their application, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

6.4 IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into a written contract with the Commonwealth of Virginia (COV), the Provider certifies that the Provider does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

6.5 DEBARMENT STATUS: By submitting their applications, the Offeror certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.
If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

6.6 ANTITRUST: By entering into a contract, the Provider conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

6.7 MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS: Failure to submit an application on the official state form, in this case the completed and signed RFA Cover Sheet may be a cause for rejection of the application. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the application; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such an application.

6.8 CLARIFICATION OF TERMS: If any prospective Offerors have questions about the specifications or other solicitation documents, the prospective Offeror should contact the individual whose name appears on the face of the solicitation no later than **2:00 pm, December 13, 2019**. Any revisions to the solicitation will be made only by an addendum issued by the contact person. Offerors must check the DMAS website at https://www.dmas.virginia.gov/#/procurement for any addendums or notices regarding this RFA. Questions regarding the RFA may be submitted along with the Letter of Intent.

6.9 PAYMENT:

1. To the Selected Provider:

A. Invoices for items ordered, delivered and accepted shall be submitted by the Provider directly to the payment address shown on the purchase order/contract. All invoices shall show the state provider number and/or purchase order number; social security number (for individual

contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

B. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days however.

C. All goods or services provided under this contract or purchase order, that are to be paid with public funds, shall be billed by the provider at the contract price, regardless of which public agency is being billed.

D. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

E. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, providers should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the provider, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Provider may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia,* § 2.2-4363).

2. <u>To Subcontractors</u>:

A. Provider awarded a contract under this RFA is hereby obligated:

(1) To pay the subcontractor(s) within seven (7) days of the Provider's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

(2) To notify the agency and the subcontractor(s), in writing, of the Provider's intention to withhold payment and the reason.

B. The provider is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the provider that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier provider performing under the primary contract. A Provider's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each provider who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution on or before request

for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

6.10 PRECEDENCE OF TERMS: The following General Terms and Conditions: *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, and PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

6.11 QUALIFICATIONS OF PROVIDERS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the provider to perform the services/furnish the goods and the provider shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect the provider's physical facilities prior to award to satisfy questions regarding the provider's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such provider fails to satisfy the Commonwealth that such provider is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

6.12 TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

6.13 ASSIGNMENT OF CONTRACT: A contract shall not be assigned by the Provider in whole or in part without the written consent of the Commonwealth. Any assignment made in violation of this section will be void

6.14 CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract. **In any such change to the resulting contract, no increase to the contract price shall be permitted without adequate consideration, and no waiver of any contract requirement that results in savings to the Provider shall be permitted without adequate consideration. Pursuant to *Code of Virginia* § 2.2-4309, the value of any fixed-price contract shall not be increased via modification by more than 25% without the prior approval of the Division of Purchases and Supply of the Virginia Department of General Services.**

2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the provider. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The provider shall comply with the notice upon receipt, unless the provider intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the provider shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the provider shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

A. By mutual agreement between the parties in writing; or

B. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Provider accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the provider's records and/or to determine the correct number of units independently; or

C. By ordering the Provider to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Provider shall present the Department with all vouchers and records of expenses incurred and savings realized. The Department shall have the right to audit the records of the Provider as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Department within thirty (30) days from the date of receipt of the written order from the Department. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Provider from promptly complying with the changes ordered by the Department or with the performance of the contract generally.

6.15 DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the provider responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

6.16 INSURANCE: By signing and submitting an application under this RFA, the applicant certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of

the *Code of Virginia*. The provider further certifies that the provider and any subcontractors will maintain insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation: Statutory requirements and benefits: Coverage is compulsory for employers of three or more employees, to include the employer. Providers who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability: $100,000.
3. Commercial General Liability: $1,000,000 per occurrence and $2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability: $1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Provider must assure that the required coverage is maintained by the Provider (or third party owner of such motor vehicle.)

6.17 ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a grant over $50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DMAS website at www.dmas.virginia.gov/Content_pgs/ltc-pace.aspx for a minimum of 10 days.

6.18 DRUG-FREE WORKPLACE: During the performance of this contract, the provider agrees to (i) provide a drug-free workplace for the provider's employees; (ii) post a statement regarding a drug free work place 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 provider'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 provider that the provider maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or Vendor.

For the purposes of this section, "*drug-free workplace"* means a site for the performance of work done in connection with a specific contract awarded to a provider, the employees of who 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.

6.19 NONDISCRIMINATION OF PROVIDERS: A bidder, offeror, or provider shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this

contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

6.20 AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

6.21 AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: The Provider organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Section VII - SPECIAL TERMS AND CONDITIONS

7.1 ACCESS TO PREMISES*:* The provider shall allow duly authorized agents or representatives of the State or Federal Government, during normal business hours, access to provider's and subcontractors' premises, to inspect, audit, monitor or otherwise evaluate the performance of the provider's and subcontractor's contractual activities and shall forthwith produce all records requested as part of such review or audit. In the event right of access is requested under this section, the provider and subcontractor shall, upon request, provide and make available staff to assist in the audit or inspection effort, and provide adequate space on the premises to reasonably accommodate the State or Federal personnel conducting the audit or inspection effort. All inspections or audits shall be conducted in a manner as will not unduly interfere with the performance of the provider or subcontractor's activities. The provider will be given thirty (30) calendar days to respond to any preliminary findings of an audit before the Department shall finalize its findings. All information so obtained will be accorded confidential treatment as provided under applicable law.

The Department, the Office of the Attorney General of the Commonwealth of Virginia (including the Medicaid Fraud Control Unit or MFCU), the Auditor of Public Accounts of the Commonwealth of Virginia, the U.S. Department of Health and Human Services, and/or their duly authorized representatives shall be allowed access to evaluate through inspection or other means, the quality, appropriateness, and timeliness of services performed under this Contract.

7.2 ACCESS TO AND RETENTION OF RECORDS: In addition to the requirements outlined below, the Provider shall comply, and shall require compliance by its subcontractors with the

security and confidentiality of records standards with respect to the Department's confidential records.

7.2.1 ACCESS TO RECORDS: The Department, the Office of the Attorney General of the Commonwealth of Virginia (including the Medicaid Fraud Control Unit or MFCU), the Auditor of Public Accounts of the Commonwealth of Virginia, the Centers for Medicare and Medicaid Services (CMS), state and federal auditors, or any of their duly authorized representatives shall have access to any books, fee schedules, documents, papers, and records of the Provider and any of its subcontractors.

The Department, the Office of the Attorney General of the Commonwealth of Virginia (including the Medicaid Fraud Control Unit or MFCU), the Auditor of Public Accounts of the Commonwealth of Virginia, the Centers for Medicare and Medicaid Services, state and federal auditors, or any of their duly authorized representatives, shall be allowed to inspect, copy, and audit any of the above documents, including, medical and/or financial records of the Provider and its subcontractors.

7.2.2 RETENTION OF RECORDS: The Provider shall retain all records and reports relating to this Application for a period of six (6) years after final payment is made under this Application or in the event that this Application is renewed six (6) years after the renewal date. When an audit, litigation, or other action involving records is initiated prior to the end of said period, however, records shall be maintained for a period of six (6) years following resolution of such action or longer if such action is still ongoing. Copies on electronic media or other appropriate media of the documents contemplated herein may be substituted for the originals provided that the media or other duplicating procedures are reliable and are supported by an effective retrieval system which meets legal requirements to support litigation, and to be admissible into evidence in any court of law. The records, regardless of format, remain the property of DMAS.

7.3 CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION: The Provider assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Providers 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. Providers shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Providers and their employees working on this project may be required to sign a confidentiality statement.

7.4 AUDIT: The Provider shall retain all books, records, and other documents relative to this contract for six (6) years after final payment, or longer if audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

7.5 CANCELLATION OF CONTRACT: The Department reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 30 days written notice

to the provider. Any contract cancellation notice shall not relieve the provider of the obligation to deliver and/or perform on all outstanding services issued prior to the effective date of cancellation.

7.6 TERMINATION: This Contract may be terminated in whole or in part:

a. By the Department, for convenience with not less than thirty (30) days prior written notice, which notice shall specify the effective date of the termination;
b. By the Department, in whole or in part, if funding from Federal, State, or other sources is withdrawn, reduced, or limited;
c. By the Department if the Department determines that the instability of the provider's financial condition threatens delivery of services and continued performance of the Provider's responsibilities; or
d. By the Department if the Department determines that the provider has failed to satisfactorily perform its contracted duties and responsibilities.

The Provider shall not terminate this contract in part.

Each of these conditions for contract termination is described in the following paragraphs.

A. <u>TERMINATION FOR CONVENIENCE</u>

1. The Department may terminate this contract at any time without cause, in whole or in part, upon giving the provider notice of such termination. Upon such termination, the provider shall immediately cease work and remove from the project site all of its labor forces and such of its materials as owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the provider shall take such steps as owner may require assigning to the owner the provider's interest in all subcontracts and purchase orders designated by owner. After all such steps have been taken to owner's satisfaction; the provider shall receive as full compensation for termination and assignment the following:
    a. All amounts then otherwise due under the terms of this contract,
    b. Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,
    c. Reasonable compensation for the actual cost of demobilization incurred by the provider as a direct result of such termination. The provider shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, owner shall have no further obligations to the provider of any nature.
2. In no event shall termination for the convenience of DMAS terminate the obligations of the provider's surety on its payment and performance bonds.

B. TERMINATION FOR AVAILABLE FUNDS: The Provider understands and agrees that the Department shall be bound only to the extent of the funds available or which may become available for the purpose of this resulting Contract. When the Department makes a written determination that funds are not adequately appropriated or otherwise unavailable to support continuance of performance of this Contract, the Department shall, in whole or in part, cancel or terminate this Contract.

The Department's payment of funds for purposes of this Contract is subject to and conditioned upon the availability of funds for such purposes, whether Federal and/or State funds. The Department may terminate this Contract upon written notice to the provider at any time prior to

the completion of this Contract, if, in the sole opinion of the Department, funding becomes unavailable for these services or such funds are restricted or reduced. In the event that funds are restricted or reduced, it is agreed by both parties that, at the sole discretion of the Department, this Contract may be amended. If the provider shall be unable or unwilling to provide covered services at reduced rates, the Contract shall be terminated.

No damages, losses, or expenses may be sought by the provider against the Department, if, in the sole determination of the Department, funds become unavailable before or after this Contract between the parties is executed. A determination by the Department that funds are not appropriated or is otherwise inadequate or unavailable to support the continuance of this Contract shall be final and conclusive.

C. TERMINATION BECAUSE OF FINANCIAL INSTABILITY: In the event DMAS determines that the provider has become financially unstable to the point of threatening the ability of the Department to obtain the services provided for under the Contract, ceases to conduct business in the normal course, makes a general assignment for the benefit of creditors, or suffers or permits the appointment of a receiver for its business or assets, the Department may, at its option, immediately terminate this Contract effective at the close of business on a date specified by the Department. In the event the Department elects to terminate the Contract under this provision, the provider shall be notified in writing, by either certified or registered mail, specifying the date of termination. The provider shall submit a written waiver of the licensee's rights under the Federal bankruptcy laws.

In the event of the filing of a petition in bankruptcy by a principal network provider or subcontractor, the Provider shall immediately advise the Department. The provider shall ensure that all tasks that have been delegated to its subcontractor(s) are performed in accordance with the terms of this Contract.

D. TERMINATION FOR DEFAULT: The Department may terminate the Contract, in whole or in part, if the Department determines that the provider has failed to satisfactorily perform its duties and responsibilities under this Contract and is unable to resolve such failure within a reasonable period of time as specified in writing by the Department, taking into consideration the gravity and nature of the default. Such termination shall be referred to herein as "Termination for Default."

Upon determination by the Department that the provider has failed to satisfactorily perform its duties and responsibilities under this Contract, the provider shall be notified in writing, by either certified or registered mail, of the failure and of the time period which has been established to cure such failure. If the provider is unable to resolve the failure within the specified time period, the Department will notify the provider in writing within thirty (30) calendar days of the last day of the specified time period that the Contract, has been terminated in full or in part, for default. This written notice will identify all of the provider's responsibilities in the case of the termination, including responsibilities related to enrollee notification, network provider notification, refunds of advance payments, return or destruction of Department data and liability for medical claims.

In the event that DMAS determines that the provider's failure to perform its duties and responsibilities under this contract results in a substantial risk to the health and safety of Medicaid recipients, DMAS may terminate this contract immediately without notice.

If, after notice of termination for default, it is determined by the Department or by a court of law that the provider was not in default or that the provider's failure to perform or make progress in performance was due to causes beyond the control of and without error or negligence on the part of the provider or any of its subcontractors, the notice of termination shall be deemed to have been issued as a termination for the convenience of the Department, and the rights and obligations of the parties shall be governed accordingly.

In the event of termination for default, in full or in part, as provided for under this clause, the Department may procure from other sources, upon such terms and in such manner as is deemed appropriate by the Department, supplies or services similar to those terminated, and the provider shall be liable for any costs for such similar supplies and services and all other damages allowed by law. In addition, the provider shall be liable to the Department for administrative costs incurred to procure such similar supplies or services as are needed to continue operations. In the event of a termination for default prior to the start of operations, any claim the provider may assert shall be governed by the procedures defined by the Department for handling contract termination. Nothing herein shall be construed as limiting any other remedies that may be available to the Department.

In the event of a termination for default during ongoing operations, the provider shall be paid for any outstanding payments due less any assessed damages.

7.7 REMEDIES FOR VIOLATION, BREACH, OR NON-PERFORMANCE OF CONTRACT: Upon receipt by the Department of evidence of substantial non-compliance by the provider with any of the provisions of this Contract or with State or federal laws or regulations the following remedies may be imposed.

1. Procedure for Provider Noncompliance Notification

In the event that the Department identifies or learns of noncompliance with the terms of this contract, the Department will notify the Provider in writing of the nature of the noncompliance. The Provider must remedy the noncompliance within a time period established by the Department and the Department will designate a period of time, not less than ten (10) calendar days, in which the Provider must provide a written response to the notification. The Department may develop or may require the Provider to develop procedures with which the Provider must comply to eliminate or prevent the imposition of specific remedies.

2. Remedies Available To the Department

The Department reserves the right to employ, at the Department's sole discretion, any and all remedies available at law or equity including but not limited to, payment withholds and/or termination of the contract.

7.8 PAYMENT: The provider shall be prepared to provide the full range of services requested under this RFA and resultant contract, on site and operationally ready to begin work by the implementation date established by DMAS. DMAS will provide adequate prior notice of the implementation date. Upon approval of the provider's operational readiness and a determined start date, DMAS shall make payments as described in the PACE Program Agreement.

7.9 IDENTIFICATION OF APPLICATION ENVELOPE: The signed application should be returned in a separate envelope or package sealed and identified as follows:

From:

Name of Provider:
Street or Box Number:
City, State, Zip Code:
Due Date/ Time:
RFA Number:

Name of Contract/Purchase Officer:

The envelope should be addressed as directed on page three (3) of the solicitation.

If an application is not mailed to DMAS in the application envelope, the provider assumes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the application to be disqualified. Applications may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other applications should be placed in the envelope.

7.10 INDEMNIFICATION: The provider agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the provider/any services of any kind or nature furnished by the provider, 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 Provider on the materials, goods or equipment delivered.

7.11 SWAM BUSINESSES SUBCONTRACTING AND EVIDENCE OF COMPLIANCE: Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the provider is encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses.

7.12 PRIME PROVIDER RESPONSIBLITIES: The prime provider shall be responsible for completely supervising and directing the work under this contract and all subcontractors that may be utilized, using skill and attention to the work performed. Subcontractors who perform work under this contract shall be responsible to the prime provider. The provider agrees to full responsibility for the acts and omissions of subcontractors and of persons employed by the subcontractor.

7.13 CONFIDENTIALITY INFORMATION: By submitting an application, the provider agrees that information or data obtained by the provider from DMAS during the course of determining and/or preparing the application may not be used for any other purpose than determining and/or preparing the provider's application. Such information or data may not be disseminated or discussed for any

reasons not directly related to the determination or preparation of the application. This paragraph does not apply to public records that would be required to be disclosed in response to a request pursuant to the Virginia Freedom of Information Act.

7.14 BUSINESS ASSOCIATE AGREEMENT (BAA): The Provider shall be required to enter into a DMAS-supplied Business Associate Agreement (BAA) with DMAS to comply with regulations concerning the safeguarding of protected health information (PHI) and electronic protected health information (ePHI). The Provider shall comply, and shall ensure that any and all subcontractors comply, with all state and federal laws and regulations with regards to handling, processing, or using the Department's PHI and ePHI. This includes but is not limited to 45 C.F.R. Parts 160 and 164 Modification to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule, January 25, 2013 and related regulations as they pertain to this agreement. The Provider shall keep abreast of any future changes to the regulations. The Provider shall comply with all current and future HIPAA regulations at no additional cost to DMAS. The current DMAS BAA template is available on the DMAS website at http://www.dmas.virginia.gov/Content_pgs/rfp.aspx .

7.15 OBLIGATION OF PROVIDER: By submitting an application, the provider covenants and agrees that it has satisfied itself of the conditions to be met, and fully understands its obligations, and that it will have no right to cancel this application or to relief of any other nature because of its misunderstanding or lack of information.

7.16 INDEPENDENT PROVIDER: Any provider awarded a contract under this RFA will not be considered an independent provider, and the provider, nor personnel employed by the provider is to be considered an employee or agent of DMAS.

7.17 OWNERSHIP OF INTELLECTUAL PROPERITY: All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the provider shall promptly provide an acknowledgement or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

7.18 SUBSIDIARY-PARENT RELATIONSHIP: In the event the Provider is a subsidiary or division of a parent organization, the Provider must include in the application, a signed statement by the chief executive officer of the parent organization pledging the full resources of the parent organization to meet the responsibilities of the subsidiary organization under contract to the Department. DMAS must be notified within ten (10) calendar days of any change in ownership as well as a letter explaining how the changes affect the Provider's relationship with the Department. Any change in ownership will not relieve the original parent of its obligation of pledging its full resources to meet the obligations of the contract with DMAS without the expressed written consent of the DMAS Director.

7.19 COMPLIANCE WITH VIRGINIA INFORMATION TECHNOLOGY ACCESSIBILITY STANDARD: The provider will comply with all State laws and Regulations with regards to accessibility to information technology equipment, software, networks, and websites used by blind and visually impaired individuals. This accessibility standards are State

law see § 2.2-3502 and § 2.2-3503 of The Code of Virginia. Since this is a State law and the regulations apply to accessibility to information technology equipment, software, networks, and websites used by blind and visually impaired individuals, the provider will comply with the Accessibility Standards at no additional cost to DMAS. The provider must also keep abreast of any future changes to The Virginia Code as well as any subsequent revisions to the Virginia Information Technology Standards. The current Virginia Information Technology Accessibility Standards are published on the Internet at:
http://www.vita.virginia.gov/library/default.aspx?id=663

7.20 CONTINUITY OF SERVICES

a. The Provider recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another provider, may continue them. The Provider agrees:

(i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;

(ii) To make all Agency owned facilities, equipment and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and

(iii) That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Provider to its successor.

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

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

7.21 SEVERABILITY: Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. DMAS and Provider further agree that in the event any provision is deemed an invalid part of this Contract, they shall immediately begin negotiations for a suitable replacement provision to this RFP.

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

7.23 BUSINESS TRANSACTION REPORTING: The Provider shall also notify the Department within ten (10) calendar days after any publicly announced acquisition agreement, pre-merger agreement, or pre-sale agreement impacting the Providers ownership. Business transactions to be disclosed include, but are not limited to:

a. Any sale, exchange, or lease of any property between the Provider and a Party in Interest;
b. Any lending of money or other extension of credit between the Provider and a Party in Interest; and
c. Any furnishing for consideration of goods, services (including management services) or facilities between the Provider and a Party in Interest. Business transactions for purposes of this section do not include salaries paid to employees for services provided in the normal course of employment by the Provider

The Provider shall advise the Department, in writing, within five (5) business days of any organizational change or major decision affecting its Medicaid business in Virginia or other states. This includes, but is not limited to, sale of existing business to other entities or a complete exit from the Medicaid market in another state or jurisdiction.

Section VIII - Schedule for Review

- Applications filed in response to this RFA shall be in accordance with the provisions of 12VAC30-50-320 - 12VAC30-50-360 and 42 CFR 460. The review schedule below will apply. Letters of intent and applications must be received by the Virginia Department of Medical Assistance Services, Division of Aging and Disability Services by the dates shown below in order to qualify for consideration.

- Letter of Intent and questions must be received by **2:00pm, local prevailing time, December 13, 2019.**

- Application must be received by **2:00pm, local prevailing time, January 17, 2020.** Review of applications will begin on January 20**,** 2020**.**

ATTACHMENT I

PROPRIETARY/CONFIDENTIAL INFORMATION IDENTIFICATION FORM

To Be Completed by Offeror and Returned with Technical Proposal

Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protections of §2.2-4342F of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected including the section of the proposal in which it is contained and the page numbers, and states the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must include only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. In addition, a summary of such information shall be submitted on this form. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the Offeror refuses to withdraw such a classification designation, the proposal may be scored lower or eliminated from further consideration.

Name of Firm/Offeror:_____, invokes the protections of § 2.2-4342F of the *Code of Virginia* for the following portions of my proposal submitted on _____.
Date

Signature:_____ Title:_____

DATA/MATERIAL TO BE PROTECTED	SECTION NO., & PAGE NO.	REASON WHY PROTECTION IS NECESSARY

ATTACHMENT II

Small Business Subcontracting Plan

To Be Completed by Offeror and Returned with Cost Proposal

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

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

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

Offeror Name: _____

Preparer Name: _____Date: _____

Instructions

A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form. This includes but is not limited to DSBSD-certified women-owned and minority-owned businesses when they have also received DSBSD small business certification.

B. If you are not a DSBSD-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period in Section B.

Offerors which are small businesses themselves will receive the maximum available points for the small business participation plan evaluation criterion, and do not have any further subcontracting requirements.

Offerors which are not certified small businesses will be assigned points based on proposed expenditures with DSBSD-certified small businesses for the initial contract period in relation to the offeror's total price for the initial contract period.

Points will be assigned based on each offeror's proposed subcontracting expenditures with DSBSD certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

If your firm is certified by the Department of Small Business and Supplier Diversity (DSBSD), provide your certification number and the date of certification):

Certification number: _____ Certification Date: _____

Section B

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

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

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