

REQUEST FOR PROPOSALS*

Issue Date: October 31, 2011, RFP No. VSBFA – 2011 - 01

Title: Monitoring of Asset Based **Loans and Lines** of Credit & Accounts Receivable Financing

Issuing Agency: Virginia Department of Business Assistance
Virginia Small Business Financing
Authority
Jefferson Building
1220 Bank Street, 3rd Floor
Richmond, Virginia 23219
ATTN: Mr. Scott Parsons

Period of Contract: One (1) year from the date of award with three (3) one-year renewals.

SEALED PROPOSALS WILL BE RECEIVED UNTIL 3:00 PM ON NOVEMBER 18, 2011 FOR FURNISHING THE SERVICES DESCRIBED HEREIN.

All inquiries for information should be directed to: Mr. Scott Parsons, Executive Director, VSBFA at 804-371-8256; scott.parsons@vdba.virginia.gov or Ms. Patty Thorne, Sr. Project Finance Manager, VSBFA at 804-371-8208; patty.thorne@vdba.virginia.gov.

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY AT ADDRESS SHOWN ABOVE. IF PROPOSALS ARE HAND DELIVERED, THEN DELIVER TO: Virginia Department of Business Assistance, Virginia Small Business Financing Authority, Jefferson Building, 1220 Bank Street, 3rd Floor, Richmond, VA 23219, ATTN: Mr. Scott Parsons. All proposals must be received by the VSBFA no later than 3:00pm, November 18, 2011 in order to be considered. No electronic submissions will be accepted.

To be considered, all proposals must be received at this address, on or before the date and hour stipulated. Vendors should pay particular attention to ensure that the proposal is properly addressed. The state is not responsible if the proposal does not reach the specific destination by the appointed time. Proposals received after the date and hour designated are automatically disqualified and will not be considered.

In compliance with this Request for Proposal (“RFP”) and all conditions imposed in this RFP, the undersigned firm hereby offers and agrees to furnish all services in accordance with the attached proposal or as mutually agreed upon by subsequent negotiation and the undersigned firm hereby certifies that all information provided below and in any schedule attached hereto is true, correct and complete.

Name and Address of Firm:

_____ Date: _____

_____ By: _____
(Signature in Ink)

_____ Name: _____
(Please Print)

_____ Zip Code: _____ Title: _____

eVa Vendor ID or DUNS No.: _____ Phone: _____

E-mail: _____ Fax: _____

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

***Attach an executed copy of this form to the front of the proposal submitted.**

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I. PURPOSE:

The purpose of this Request for Proposal (“RFP”) is to solicit sealed proposals to establish a contract through competitive negotiations from qualified, full-service asset based lending firms serving Virginia to serve as the VSBFA’s partner to provide back office support, monitoring of accounts receivable lines of credit, and performing initial and recurring collateral exams for a new portfolio of asset-based loans for small business clients. The VSBFA is anticipating developing a new asset-based working capital line of credit and loan program for Virginia’s small businesses and this new partner will be instrumental in the success of this program.

II. BACKGROUND:

The VSBFA was created in 1984 with the passage of the Virginia Small Business Financing Act. The VSBFA’s purpose is to provide financial assistance to small businesses and non-profit organizations by providing loans, guarantees, loan loss reserve insurance, private activity bond financing, and other assistance. The VSBFA targets the financing needs of businesses in Virginia that are not being met by other public or private sector programs.

The focus of the VSBFA is on small businesses. The *Code of Virginia* § 2.2 – 2279, defines an eligible business within the “Small Business Financing Act “ as any person engaged in one or more business enterprises in the Commonwealth that satisfies one or more of the following requirements: (i) is a for-profit enterprise that (a) has received \$10 million or less in annual gross income under generally accepted accounting principles for each of its last three fiscal years or lesser time period if it has been in existence less than three years, (b) has fewer than 250 employees, (c) has a net worth of \$2 million or less, (d) exists for the sole purpose of developing or operating a qualified transportation facility under the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.), or (e) meets such other satisfactory requirements as the Board shall determine from time to time if it finds and determines such person is in need of its assistance or (ii) is a not-for-profit entity granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating in the Commonwealth.”

The Contractor will be expected to focus its services on Virginia small businesses as defined in the *Code of Virginia* § 2.2 – 2279 above.

III. STATEMENT OF NEEDS:

The VSBFA is seeking a Contractor (or Contractors) to provide asset-based lending and monitoring expertise on an as needed basis to the VSBFA and its business clients.

The asset based lender(s) awarded the opportunity to partner with the VSBFA will assist the VSBFA staff in connection with the development of a new asset-based [loan and](#) line of credit program and then serve as the asset-based subject matter expert in working with the business borrower to monitor the collateral, provide reporting to the VSBFA, and ensure that the established borrowing base is not exceeded. The services provided to the VSBFA will include, but may not be limited to, product development to include: the development of documentation that will fully describe the product to prospective business borrowers, loan application and loan closing documentation templates; extensive marketing of the program to include the distribution of program marketing materials, advertising of the program on the asset based lender's web site, and presentations to Virginia businesses; counseling to the VSBFA on the front-end underwriting of qualifying applicants; counseling to the VSBFA on the construction of the commitment letter and other necessary loan documentation as needed; and required monitoring of the client's collateral through initial and recurring collateral exams as required by the VSBFA from time to time. All work product prepared hereunder shall constitute confidential work product of the VSBFA and shall not be publicly disseminated or otherwise released without the express, written approval of the Executive Director of the VSBFA.

Interested organizations shall submit a proposal, which shall include pricing and a detailed description of the services provided, inclusive of responses to the following:

- Types of account monitoring services provided
- Levels of account monitoring and the requirements at each level (i.e., frequency, reports submitted, internal processes, cost, etc.)
- Number of staff and experience
- Sample account monitoring reports
- Explanation of the organization's standard scope for an initial exam
- Explanation of the organization's standard scope for a recurring exam
- Number of examiners on staff broken down by level of experience
- Average turn around time on a field exam
- Sample initial exam and recurring exam reports

This RFP is issued pursuant to a determination by the VSBFA that it is impracticable or uneconomical for the VSBFA to render the services required in

this program without the assistance of a subject matter expert in this specialized lending field.

IV. QUALIFICATIONS OF OFFEROR:

IV.1 Primary Contact & Assigned Personnel – Give the name of the offeror (business), address and telephone number, and name and title of the one individual who would be primarily responsible for this engagement. Identify individuals who would perform the work in this engagement and describe how their responsibilities will be assigned and managed. Please provide resumes for each person, including background and experience relevant to this engagement.

IV.2 Information on Offeror – Please provide the following information:

- Length of time in business
- Number of employees showing both professional and clerical separately
- Number of years your business has offered contract audit services to lenders
- Number of full-time employees who are in your contract audit services unit
- Please provide a breakdown of the full-time employees in your contract audit services unit who are managers, supervisors, senior auditors, junior auditors, clerical
- What is the average turnover of your contract audit services employees?
- Do you use subcontractors to supplement your internal asset-based lending audit staff?
- What is your staff's average tenure of experience in the asset-based lending industry?
- Please list all geographical locations where your business physically operates.
- What do you consider to be your firm's core competencies in performing examinations?
- What are your limitations in service?
- Please list your top 5 asset-based lending clients, the services you have been providing them, and for how long on each
- What percentage of your total annual asset-based lending billable hours falls into the following exam categories? Must equal 100%.
 - Preloan/new business _____%
 - Fundings _____%
 - Recurring Exams _____%
 - Special _____%
 - Other (such as workouts, etc.) _____%

- What is the impact of the book overdraft on the components used in the calculation of the accounts payable turnover?
- What alternative steps could be taken when the shipping test results include documentation exceptions (e.g., bills of lading signed not dated or neither signed nor dated)?
- During routine monitoring, do you do independent accounts receivable verifications with a sample of the obligors listed on the agings – by phone, written, how often? If not in routine monitoring, do you do verification samples when completing a field exam?
- What is your maximum turnaround time on a field exam, once the on-site is complete?
- Please provide three references at banks whom you currently work with and one whom you've previously worked for but whom you are not currently monitoring anyone.
- How many banks do you currently monitor for? In Virginia? Outside of Virginia?
- Please provide a breakdown showing number of active accounts and average dollars outstanding of each for Borrowing Base Certificates you are currently monitoring at the following time intervals:
 - Daily
 - Weekly
 - Monthly
 - Quarterly
- How many field exams did your business complete in 2010?
- Please provide the borrower industry concentrations for the top 5 industries you monitor (as a percentage of your funded portfolio):
 - Distributors _____ %
 - Manufacturers _____ %
 - Retailers _____ %
 - Service _____ %
 - Wholesalers _____ %
- Describe your monthly billing – how detailed is it? Provide a redacted example of a typical, actual bill/statement.
- Once a relationship is active and on-going, and you have done an initial and follow up field exam with acceptable results, what is your typical cost for further routine follow up exams, assuming no red flags arise?
- Do you provide on-line monitoring services? If so, what is the cost to a participating bank for hands-on training in using your on-line monitoring services? How many employees may we send at what cost and where? How many employees may access your system simultaneously? How many employees may be licensed regardless of simultaneous access?
- Has a lender or a monitored client ever brought suit or legal complaint against your business? If yes, please provide dates, details, and resolution.

- Do you have a signed confidentiality agreement with all your vendors who might come into possession (physically, electronically, or otherwise) with confidential Bank customer or corporate data?

IV.3 Conflicts of Interest –

- If any member, director, officer, or employee of your business serves on any board, commission, committee or other organization related in any way to the VSBFA of the Virginia Department of Business Assistance, identify each such affiliation or membership.
- Please indicate whether any member of or associate in your firm currently serves as a member of the Virginia General Assembly.

V. PROPOSAL PREPARATION & SUBMISSION INSTRUCTIONS:

V.1 RFP Response - In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and three (3) copies of each proposal must be submitted to the issuing agency by the deadline indicated. No other distribution of the proposal shall be made by the offeror. Proposals may be mailed to the following address:

Virginia Department of Business Assistance
Virginia Small Business Financing Authority
Jefferson Building
1220 Bank Street, 3rd Floor
Richmond, Virginia 23219
ATTN: Mr. Scott Parsons

Proposals may be hand-delivered to the following address:

Virginia Department of Business Assistance
Virginia Small Business Financing Authority
Jefferson Building
1220 Bank Street, 3rd Floor
Richmond, Virginia 23219
ATTN: Mr. Scott Parsons

Late responses will not be accepted. All proposals must be received, in hand, by the VSBFA prior to the deadline. Having a proposal postmarked prior to the deadline is not sufficient to meet the deadline.

V.2 Proposal Preparation –

- Proposals should be as thorough and detailed as possible so that the VSBFA may properly evaluate offeror's capabilities to provide the required services.
- Offerors are required to return the RFP cover sheet and all addenda acknowledgments, if any, signed and filled out as required.
- Responses should be provided to each question asked in Section IV.2 of this RFP.
- Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lower evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross-references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- As used in this RFP, the terms "must", "shall", "should" and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offerors' proposal.

- Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- Ownership of all data, materials, and documentation originated and prepared for VSBFA pursuant to the RFP shall belong exclusively to DBA and be subject to public inspection in accordance with the Virginia Freedom of Information Act; 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 and state 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 indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.

V.3 Oral Presentation – Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the agency. This provides an opportunity for the offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The issuing agency will schedule a time and location of these presentations. Oral presentations are an option of the purchasing agency and may or may not be conducted.

VI. PRICING PROPOSALS:

Indicate the fee to be charged for monitoring in a fee schedule included in the offeror's response to the RFP. The offeror shall propose a cost-effective solution in its proposal. Fees should be shown in terms of hourly rates and reflect an average amount of time to deliver the services as proposed on a per account basis. Provide some indication of the average billing time per audit. In all cases, payment of the fee will be the responsibility of the borrower and the borrower will be directed to pay the offeror directly. The VSBFA will bear no responsibility for the payment of the fee.

VII. EVALUATION OF PROPOSALS:

The VSBFA will review all proposals received by the stated deadline. No interviews are planned at this time. It may, however, be necessary that interviews should be held with certain offerors, or that additional information may be requested of certain offerors for evaluation. Proposals will be evaluated on the basis of the offeror's qualifications and responses to the questions under Section

IV.2, other germane work experience listed, and the proposal itself. Proposals shall be evaluated using the following criteria:

No.	Criteria	Points
1	Specific plan or methodology to be used to perform the services including responses to questions listed in Section IV.2.	35
2	Experience and qualifications of management and the personnel assigned to perform the services.	25
3	Plan to include Small, Women, and Minority-Owned Participation in providing the service	20
4	References from bank lenders	10
5	Fee	10
	Total	100

VIII. AWARD OF CONTRACT:

Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the RFP, including price, if so stated in the RFP. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, VSBFA shall select the offeror, which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this RFP or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia, §2.2-4359D*). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Contractor’s proposal as negotiated.

IX. PLACE OF PERFORMANCE:

The VSBFA serves business clients throughout the Commonwealth of Virginia; therefore, the offeror is expected to be able to provide monitoring services to the VSBFA’s clients anywhere in the Commonwealth of Virginia and to be able to be on-site at the client’s place of business wherever the business is located in Virginia.

X. GENERAL TERMS & CONDITIONS:

X.1 Vendors Manual – This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under “Vendors Manual” on the “Vendor” tab.

X.2 Applicable Laws & Courts – This solicitation and any resulting contracts shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

X.3 Anti-Discrimination – By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient’s religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, §2.2-4343.1E)

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

- 1) During the performance of this contract, the Contractor agrees as follows:
 - (a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where

there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- (b) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- (c) Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

- 2) The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

X.4 Ethics in Public Contracting – By submitting their proposals, offerors certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid, 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.

X.5 Immigration Reform & Control Act of 1986 – By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

X.6 Debarment Status – By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or bids on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

X.7 Antitrust – By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in 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.

X.8 Mandatory Use of State Form & Terms & Conditions – Failure to submit a bid on the official state form provided for that purpose may be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provision of the contract shall be effective unless reduced to writing and signed by the parties.

X.9 Clarification of Terms - If any prospective Bidder has questions about the specifications or other solicitation documents, the prospective Bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

X.10 Payment - In all cases, payment of the fee will be the responsibility of the borrower and the borrower will be directed to pay the offeror directly. The VSBFA will bear no responsibility for the payment of the fee.

X.11 Precedence of Terms - The following General Terms and Conditions: VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986. DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

X.12 Qualifications of Offeror - The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such Offeror fails to satisfy the Commonwealth that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

X.13 Testing & Inspection - The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

X.14 Assignment of Contract - A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

X.15 Changes to the Contract - Changes can be made to the contract in any of the following ways:

The parties may agree in writing to modify the scope of the contract. An 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.

The Virginia Department of Business Assistance may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order. Said compensation shall be determined by one of the following methods:

By mutual agreement between the parties in writing; or

By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Department of Business Assistance's right to audit the Contractor's records and/or to determine the correct number of units independently; or

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

Virginia Department of Business Assistance or with the performance of the contract generally.

X.16 Default - In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the Commonwealth may have.

X.17 Insurance - By submitting their proposals, Offerors under this solicitation, the Offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The Offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

Worker's Compensation – Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.

Employers Liability - \$100,000.

Commercial General Liability - \$1,000,000 per occurrence. 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.

Automobile Liability - \$1,000,000 per occurrence.

X.18 Announcement of Award - Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the Purchasing Agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.

X.19 Drug Free Workplace - During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's

employees, (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance, marijuana or alcohol is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

X.20 Nondiscrimination of Contractors - A Bidder, Offeror, or Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the 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.

X.21 eVa Business – to – Government Vendor Registration - The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eprocurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Effective July 1, 2011, vendor registration and registration-renewal fees have been discontinued.

Registration options are as follows:

a. eVA Basic Vendor Registration Service: eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.

b. eVA Premium Vendor Registration Service: eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

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

a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.

b. For orders issued August 16, 2006 thru June 30, 2011, the Vendor Transaction Fee is:

(i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.

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

c. For orders issued July 1, 2011 thru June 30, 2012, the Vendor Transaction Fee is:

(i) DMBE-certified Small Businesses: 0.75%, capped at \$500 per order.

(ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, capped at \$1,500 per order.

d. For orders issued July 1, 2012 and after, the Vendor Transaction Fee is:

(i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.

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

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

XI. SPECIAL TERMS & CONDITIONS

XI.1 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.

XI.2 Set Aside - This solicitation is set-aside for DMBE-certified small business participation only when designated “SET-ASIDE FOR SMALL BUSINESSES” in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. For purposes of award, Offerors shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of bids/proposals.

XI.3 Bid Price Currency - Unless stated otherwise in the solicitation, Offerors shall state offer prices in US dollars.

XI.4 Authorization to Conduct Business in the Commonwealth - A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

XI.5 Audit - The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

XI.6 Cancellation of Contract - The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

XI.7 Identification of Bid/Proposal Envelope - If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____

Name of Bidder/Offeror Due Date Time

Street or Box Number IFB No./RFP No.

City, State, Zip Code IFB/RFP Title

Name of Contract/Purchase Officer or Buyer _____

The envelope should be addressed as directed on Page 1 of the solicitation. If a bid/proposal not contained in the special envelope is mailed, the bidder or offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Bids/proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids/proposals should be placed in the envelope.

XI.8 Confidentiality of Personally Identifiable Information - The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia.

Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

XI.9 State Corporation Commission Identification Number - Pursuant to Code of Virginia, §2.2- 4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is

streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

XI.10 Small Business Subcontracting and Evidence of Compliance - It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential bidders/offerors are required to submit a Small Business Subcontracting Plan. Unless the bidder/offeror is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No bidder/offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

XI.11 Renewal of Contract - This contract may be renewed by the Commonwealth upon written agreement of both parties for three (3) successive one year periods, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

Annex 7-G

Small Business Subcontracting Plan

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: This shall not exclude DMBE-certified women- and minority-owned businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbv.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____

Date:

Instructions

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.

- B. If you are not a DMBE-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 DMBE-certified small business in this section. Points will be assigned based on each offeror’s proposed subcontracting expenditures with DMBE 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 Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

- Small Business

- Small and Women-owned Business

- Small and Minority-owned Business

Certification number: _____ Certification

Date: _____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

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

Small Business Name & Address DMBE Certificate #	Status if 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

Totals \$					

Annex 7-I

State Corporation Commission Form

Virginia State Corporation Commission (SCC) registration information. The offeror:

is a corporation or other business entity with the following SCC identification number:
 _____ **-OR-**

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from offeror's out-of-state location) **-OR-**

is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):

PIM 98-028