

**REQUEST FOR PROPOSAL (RFP)**

Issue Date: March 15, 2011

RFP# 851-11-01

Title: Establishing/Managing EB-5 Regional Center

Commodity Code: 95816 Business Management Services

Issuing Agency: Tobacco Indemnification and  
Community Revitalization Commission  
701 E. Franklin Street, Suite 501  
Richmond, VA 23219

Using Agency and/or location  
Where work will be performed: Same as Issuing Agency

Initial period of contract: from date of award (estimated May 15, 2011) through the earlier of (a) receipt by the Commission of evidence of \$10 million in I-526 petitions approved by the U.S. Citizen and Immigration Services (“USCIS”), or (b) two years after date of award.

Sealed proposals will be received until **April 18, 2011, at 3:00 p.m. (local time)** for furnishing the goods/services described herein. *(It is the sole responsibility of the Offeror to ensure its proposal is received by the Issuing Agency by the date and time specified. Proposals received late or unsealed shall not be accepted or considered.)*

All inquiries for information shall be directed in writing by April 11, 2011 to: Stephanie Kim, Fax: 804-786-3210 or e-mail: stephanie.kim@tic.virginia.gov. Any response given will be available to all inquirers.

**PROPOSALS MAY BE MAILED OR HAND DELIVERED TO ISSUING AGENCY SHOWN ABOVE.**

In compliance with this RFP and all the conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the goods/services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

State Corporation Commission ID Number: \_\_\_\_\_ (See Special Terms and Conditions)

Name and Address of Offering Firm: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
(Signature in Ink)

\_\_\_\_\_  
Zip Code: \_\_\_\_\_ Name: \_\_\_\_\_  
(Please Print)

EVA Vendor ID or \_\_\_\_\_ Title: \_\_\_\_\_

DUNS number \_\_\_\_\_ 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.**

TABLE OF CONTENTS FOR RFP #851-11-01

	PAGE
I. <u>PURPOSE</u>	3
II. <u>BACKGROUND</u>	3
III. <u>STATEMENT OF NEEDS</u>	3
IV. <u>PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS</u>	5
V. <u>EVALUATION AND AWARD CRITERIA</u>	6
VI. <u>REPORTING AND DELIVERY INSTRUCTIONS</u>	7
VII. <u>PREPROPOSAL CONFERENCE</u>	8
VIII. <u>GENERAL TERMS AND CONDITIONS</u>	8
IX. <u>SPECIAL TERMS AND CONDITIONS</u>	14
X. <u>METHOD OF PAYMENT</u>	16
XI. <u>PRICING SCHEDULE</u>	16
XII. <u>ATTACHMENT</u>	16

I. PURPOSE:

The purpose of this RFP is for the Tobacco Indemnification and Community Revitalization Commission (the "Commission") to solicit sealed proposals to establish a contract ("Contract") through competitive negotiation for the purchase of business management services to create, operate, manage, and promote an Employment-Based Immigration: Fifth Preference (EB-5) Regional Center ("Center") as defined by the Immigration and Nationality Act (INA) § 203(b)(5); 8 U.S.C. § 1153(b)(5) and Pub. L. No. 105-119 (Nov. 26, 1997) for the tobacco region of Virginia as defined by the Commission (the "Region").

II. BACKGROUND:

The Commission was established in 1999 by the Virginia General Assembly in response to the Master Settlement Agreement between tobacco companies and 46 states. One of the purposes of the Commission is to revitalize tobacco dependent communities of the Commonwealth. The Commission is interested in attracting foreign investment into the Region as one economic development tool to help revitalize the Region.

III. STATEMENT OF NEEDS:

The Contractor shall provide all services relating to, and be solely responsible for, the creation, designation, operation, management, promotion, and compliance of a Center. All investments made through the Center shall be limited to the Region. All services shall be on a firm, fixed-price contract and shall include the following:

Creation – Contractor shall be responsible for all research and documentation necessary to create a Center, including final approval from the Department of Homeland Security (DHS).

Structuring of the Center - Contractor shall be responsible for the formation and organization of the appropriate legal/business entity(ies) comprising the Center, which shall be registered with the Virginia State Corporation Commission. The resulting articles of incorporation, articles of organization, bylaws, partnership agreements, operating agreements, or membership agreements (as the case may be) shall (a) provide for a 100 percent refund of all disbursements made to the Contractor by the Commission in the event that the Center submits to USCIS any I-526 petition for any investment located outside of the Region, (b) be irrevocable in perpetuity without the consent of the Commission, and (c) be subject to approval by the Commission as a condition precedent to all disbursements under the Contract after the Initial Payment (see Section X: Method of Payment).

Designation - Contractor shall be responsible for the preparation of and submission to the USCIS all documentation necessary to successfully obtain Center approval and designation, including but not limited to the following:

- I-924 application form
- Proof of Targeted Employment Area (TEA) designation from the responsible Commonwealth of Virginia governmental agency
- "Matter of Ho" compliant business plan
- All required econometric/job creation studies
- All required legal documentation, including:
  - Private Placement Offering Memorandum
  - Limited Partnership Agreement with investors
  - Limited Liability Company organizational documents
  - Loan and Security Agreements for project borrowers
  - Escrow Agreement
  - Finder's Agreement(s) for investor sourcing
- Detailed marketing plan
- Center management plan

- Amendments to Center plan as required
- Annual I-924A Supplements as required

All documentation must be prepared in accordance with USCIS and Securities and Exchange Commission (SEC) requirements. The Center shall respond to any USCIS requests for information/evidence including the preparation of additional supporting documents or inquiries.

Management of the Center - Contractor shall be responsible for the management of all activities of the Center, including but not limited to:

- Developing and establishing professional relationships necessary to ensure compliance with respect to:
  - Banking
  - Escrow
  - Economic Analysis
  - Accounting
  - Legal
- Creating and managing all “back office” functions, such as:
  - Investment tracking, including creation of timelines and site visits to monitor progress of investments
  - Jobs tracking system implemented on a project-by-project basis
  - Allocation of jobs to individual investors
  - Payments to investors, vendors, and service providers
  - System for screening potential investment projects
- Managing investor relations
  - Investor vetting system
  - Quarterly reports to investors
  - Supporting documents for individual investor’s I-526 petition and I-829 change of immigration filings
  - Tax documents
- Communications
  - Reporting to the Commission and other designated government officials on a quarterly basis
  - Relationship management with Economic Development Authorities (EDAs) and localities within the Center’s Region
- Prepare and file all required reports to USCIS
- Create and implement project tracking protocols to monitor status of projects
- Prepare and execute investment project exit strategies and releases

Promotion of the Center—Contractor shall be responsible for all promotion and marketing of the Center’s potential investment projects.

- Virginia Promotion—education and project origination (non-exclusive to enable other partners to participate)
  - Education—Create and implement a systematic program to educate EDA directors and community officials concerning the EB-5 program and the types of projects that are appropriate for EB-5 investments. Such educational programs will include a minimum of three seminars in various locations within the Region and will be presented to the officials and staff of local government and economic development organizations located in the Region.
  - Project origination—create an application/vetting procedure to identify eligible projects for the Center. These procedures will comply with the requirements of USCIS and SEC and will include strict due diligence and underwriting policies to evaluate economically viable projects for the Center.
- Marketing of the Center (non-exclusive to enable other partners to participate)
  - Establish and manage international marketing network of finders to facilitate the marketing of Center projects
  - Create and enforce a monitoring process to control the marketing activities of finders
  - Prepare and update all marketing materials in multiple languages
  - Create and instigate marketing campaigns for each potential investment project

IV. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS:

A. GENERAL INSTRUCTIONS

1. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and four (4) copies of each proposal must be submitted to the issuing agency. No other distribution of the proposal shall be made by the offeror.
2. Proposal Preparation:
  - a. 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 Commission requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the Commission. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
  - b. 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.
  - c. 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.
  - d. 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.
  - e. 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.
  - f. Ownership of all data, materials, and documentation originated and prepared for the Commission pursuant to the RFP shall belong exclusively to the Commission and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. 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 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.

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 Commission. 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 Commission will schedule the time and location of these presentations. Oral presentations are an option of the Commission and may or may not be conducted.

**B. SPECIFIC PROPOSAL INSTRUCTIONS**

Proposals should be as thorough and detailed as possible so that the Commission may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal:

1. Return the RFP cover sheet and all addenda acknowledgments, if any, signed and filled out as required.
2. A written narrative statement to include:
  - a. Copy of DHS approval letter from other Center(s) created by the Offeror, if applicable.
  - b. Experience in providing the services described herein.
  - c. Names, qualifications and experience of personnel to be assigned to the project and roles in prior approved EB-5 Center projects.
  - d. Resumes of staff to be assigned to the project.
3. Specific plans for providing the proposed services including:
  - a. List of proposed affiliates/alliance partners who will be providing services (legal, accounting, due diligence, marketing, etc.) as part of the Offeror’s team.
  - b. What, when and how the service will be performed.
  - c. Time frame for completion of each deliverable.
4. Proposed price.
5. Small Business Subcontracting Plan – Summarize the planned utilization of DMBE-certified small businesses, which include businesses owned by women and minorities, when they have received DMBE small business certification under the contract to be awarded as a result of this solicitation. This is a requirement for all prime contracts in excess of \$100,000 unless the solicitation has been set-aside for small businesses or no subcontracting opportunities exist (see Special Terms and Condition). Complete Appendix A.

**V. EVALUATION AND AWARD CRITERIA**

**A. EVALUATION CRITERIA:**

Proposals shall be evaluated by the Commission using the following criteria:

	<u>FOR SERVICES</u>	<u>POINT VALUE</u>
1.	Experience and qualifications of personnel assigned to perform the services	30
2.	Price	25

3.	Small Business Subcontracting Plan	20
4.	Specific plans or methodology to be used to perform the services	15
5.	References from other clients	10
	TOTAL	<u>100</u>

**B. 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 criteria included 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, the Commission shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commission 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 Commission determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. 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.

**VI. REPORTING AND DELIVERY INSTRUCTIONS**

A. The Contractor shall provide the following documentation to the Commission, which shall be subject to its approval:

- All articles of incorporation, articles of organization, bylaws, partnership agreements, operating agreements, or membership agreements (as the case may be) pertaining to the Center
- All marketing and promotional materials bearing the Commission's logo or name

B. The Contractor shall provide a quarterly progress report to the Commission outlining the following:

1. The specific accomplishments achieved during the reporting period.
2. The specific tasks completed pursuant to the provisions of the contract and the completion dates of such tasks.
3. The projected completion dates for the remaining specific tasks required by the contract.

C. Within thirty (30) calendar days after the award date of the contract, the Contractor shall furnish a preliminary outline of the organizational structure of the final report to the Commission's Executive Director.

1. The preliminary outline shall delineate the main topics and subtopics that will later be described in detail in the final report.
2. Beneath each topic and subtopic, the Contractor shall furnish a brief narrative description of the subject matter encompassed by the topic or subtopic.
3. The Commission shall have the right to edit, modify and/or rearrange the organizational structure, topics, and subtopics as it deems necessary to insure the inclusion of all work required by the contract.

- D. At least two (2) weeks prior to the submission of the final report, the Contractor shall present a preliminary draft of the final report to the Commission's Executive Director. The Executive Director shall have the right to modify and/or to require additional elaboration as he deems necessary to insure a comprehensive and thorough written study of all work required by the contract.
- E. On or before the date specified in the contract, a final report shall be delivered to the Commission. The Contractor shall furnish thirty-five (35) copies of the final report.
- F. The Contractor shall make at least one (1) oral presentation of the final report to persons or organizations as deemed necessary by the Commission.

VII. PREPROPOSAL CONFERENCE: A preproposal conference is not anticipated.

VIII. GENERAL TERMS AND CONDITIONS

- A. 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](http://www.eva.virginia.gov) under "Vendors Manual" on the vendors tab.
- B. APPLICABLE LAWS AND COURTS: This solicitation 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. The Commission 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.
- C. ANTI-DISCRIMINATION: By submitting their proposals, offerors certify to the Commission 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 1. and 2. below 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.
- D. ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, offerors certify that their proposals 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 proposal, 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.
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into a written contract with the Commission, 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.
- F. DEBARMENT STATUS: By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals 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.
- G. ANTITRUST: By entering into a contract, the Contractor 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.
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commission reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. CLARIFICATION OF TERMS: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror 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.
- J. PAYMENT:
  1. To Prime Contractor:
    - a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract 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 for with public funds, shall be billed by the Contractor 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, Contractors 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 Commission shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor 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. To Subcontractors:

- a. A Contractor awarded a contract under this solicitation is hereby obligated:
    - (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commission for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
    - (2) To notify the Commission and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
  - b. The Contractor 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 Contractor that remain unpaid seven (7) days following receipt of payment from the Commission, 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 Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commission.
3. Each prime Contractor 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.
4. The Commission encourages contractors and subcontractors to accept electronic and credit card payments.

K. 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.

- L. QUALIFICATIONS OF OFFERORS: The Commission may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services and the offeror shall furnish to the Commission all such information and data for this purpose as may be requested. The Commission reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commission further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commission that such offeror is properly qualified to carry out the obligations of the contract and to provide the services contemplated therein.
- M. TESTING AND INSPECTION: The Commission reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commission.
- O. 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 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.
  - 2. The Purchasing Agency 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 method of packing or shipment, and the place of delivery or installation. 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 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 Contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the Contractor's records and/or to determine the correct number of units independently; or
    - c. 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 Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency 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 Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. 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 Purchasing Agency or with the performance of the contract generally.

- P. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commission, 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 Commission may have.
- Q. INSURANCE: By signing and submitting a proposal 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 this 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. Contractors 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. 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.
- R. 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 Commission will publicly post such notice on the DGS/DPS eVA web site ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.
- S. 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 or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- T. 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.

- U. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION: The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://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 e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.
- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. 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: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. 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.
  - c. For orders issued August 16, 2006 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 eVA transaction fee will be invoiced 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.

- V. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the Commission shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- W. SET-ASIDES. 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 proposals.
- X. BID PRICE CURRENCY: Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.
- Y. 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



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.

2. Each prime Contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a quarterly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
  3. Each prime Contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.
- E. 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 Commission'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 Commission of any breach or suspected breach in the security of such information. Contractors shall allow the Commission 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.
- F. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER: Pursuant to Code of Virginia, §2.2-4311.2 subsection B, an 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 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 offeror is not required to be so authorized.
- G. 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 Commission, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- H. 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.

- X. METHOD OF PAYMENT: The Contractor shall be paid as follows:
- A. \$20,000 (the “Initial Payment”) within 10 business days after the Commission receives a ratified Contract.
  - B. Twenty percent (20%) of the balance remaining after the Initial Payment shall be paid 30 days after the Commission receives evidence of DHS final approval of the Center.
  - C. Thirty percent (30%) of the balance remaining after the Initial Payment shall be paid 30 days after the Commission receives from the Contractor the deliverable in item B above AND a list of investment opportunities that are (a) recommended by the Contractor, (b) located within the Region, and (c) described in detail including, but not limited to, the name and address of the entity, the name of its chief executive officer, the business plan for the project, a project sources and uses statement, and employment projections.
  - D. Fifty percent (50%) of the balance remaining after the Initial Payment shall be paid 30 days after the Commission receives evidence of \$10 million in USCIS-approved I-526 petitions.
- XI. PRICING SCHEDULE: Each Offeror shall provide the lump sum total cost necessary to complete the requirements outlined in the Statement of Needs.
- XII. ATTACHMENT: Appendix – Small Business Subcontracting Plan

## Appendix

### 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](http://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
<b>Totals \$</b>					