



TERMS AND CONDITIONS FOR REQUEST FOR BEST VALUE PROPOSALS (RFP) #852P012

Issue Date: January 22, 2010
Title: Tobacco Use Prevention & Cessation Programs with Youth in Virginia
Issuing Agency: Virginia Foundation for Healthy Youth (VFHY)

I. GENERAL TERMS AND CONDITIONS:

- A. VPPA: This solicitation is subject to the provisions of the Virginia Public Procurement Act (VPPA), Sections 2.2-4300 through 2.2-4377, *Code of Virginia*, as amended.
- 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 Contractor shall comply with applicable federal, state and local laws and regulations.
- C. ANTI-DISCRIMINATION: By submitting and signing this proposal, the Offeror certifies to the Commonwealth that it 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 Section 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. 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 laws, rules or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.

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 bid or 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 or 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 submitting their proposals, the Offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of 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 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 VFHY all rights, title and interest in and to all causes of the 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 VFHY under said contract.
- H. MANDATORY TERMS AND CONDITIONS: Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the VFHY 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 solicitations 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 services rendered and accepted shall be submitted by the Contractor directly to the VFHY Grants Program Administrator in the Contractor's region, using a format provided by VFHY.
- 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.

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 Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s) in writing of the 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 for 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 Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier 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 Commonwealth.

K. PRECEDENCE OF TERMS: Paragraphs A-J of these General Terms and Conditions 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 VFHY may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the work/furnish the item(s) and the Offeror shall furnish to the VFHY all such information and data for this purpose as may be requested. The VFHY reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The VFHY further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the VFHY that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.
- M. TESTING AND INSPECTION: The VFHY reserves the right to conduct any test/inspection it may deem advisable to assure that goods and/or services conform to the specification.
- N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the VFHY.
- O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any one of the following ways:
1. 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 VFHY with all vouchers and records of expenses incurred and savings realized. The VFHY 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 VFHY within thirty (30) days from receipt of the written order from the VFHY. 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 provision

of the VPPA. 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 VFHY or with the performance of the contract generally.

2. 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.

P. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the VFHY, 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 VFHY may have.

Q. INSURANCE: By signing and submitting this proposal the Offeror certifies that if awarded the contract, the Offeror and all subcontractors will have at the time the contract is awarded and will maintain throughout the period of the contract the following insurance coverage and limits required.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's compensation - Statutory requirements and benefits.

2. Employers Liability - \$100,000.

3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury, property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

4. Automobile Liability - \$1,000,000.

R. DRUG FREE WORKPLACE: By signing and submitting a proposal the Offeror 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.

- S. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the VFHY will publicly post such notice at the VFHY's public bulletin board located at the 701 E. Franklin St., 5th Floor, for a minimum of 10 days. The announcement may be viewed during the hours of 8:30a.m. to 5:00p.m.
- T. NONDISCRIMINATION OF CONTRACTORS: An 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, or any other basis prohibited by state law relating to discrimination in employment. 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 this objection, access to equivalent goods, services, or disbursements from an alternative provider.

VII. SPECIAL TERMS AND CONDITIONS

- A. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the VFHY shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement, and as determined at the sole discretion of the VFHY Board of Trustees.
- B. AUDIT: The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the VFHY or 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.
- C. CANCELLATION OF CONTRACT: The VFHY reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 30 days written notice to the Contractor. 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.
- D. INDEPENDENT CONTRACTOR: When providing the services specified under this contract the Contractor shall not be deemed an "employee" or "agent" of the VFHY. The Contractor shall act as an independent Contractor and is responsible for obtaining and maintaining appropriate liability insurance, payment of all FICA, State and Federal taxes, and complying with other similar requirements, which are customary in the industry. In addition, the Contractor certifies that it is not an employee, nor does it currently employ employees of the VFHY.
- E. INDEMNIFICATION: Contractor agrees to indemnify, defend, and hold harmless the Commonwealth of Virginia and the VFHY, its officers, agents, and employees from any claims, damages, and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of the materials, goods, or equipment furnished of any kind or nature furnished by the contractor, or any services of any kind or nature furnished by the

Contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods, or equipment delivered.

- F. RENEWAL OF CONTRACT: This contract is nonrenewable.
- G. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of its proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements to the contract. Contractors described and approved in the proposal are exempt from this provision.
- H. METHOD OF PAYMENT: If awarded a contract, the Contractor may request start-up funds up to 25% of their award amount. Thereafter, the Contractor shall be paid the remaining contract amount on the basis of invoices submitted for actual expenditures as a result of services performed under the terms of the contract based on the budget submitted by the Contractor and approved by the VFHY. Compensation shall not exceed \$75,000 for the term of the contract. The Contractor shall invoice the VFHY on a monthly basis with supporting documentation, as required. Billing shall be due no later than 30 days following the end of each month in which expenditures are incurred.

Invoices shall cite the contract number assigned to the contract and be submitted to a regional VFHY office as assigned. Failure of the Contractor to submit invoice(s) within the prescribed time frame may forfeit the Contractor's right to payment from the VFHY.

- I. NON-DISCRIMINATION: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, Section 2.2-4343.1, or against an Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
- J. OWNERSHIP OF INTELLECTUAL PROPERTY/PRESENTATION: All copyright and patent rights and all other intellectual property rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the contractor shall promptly provide an acknowledgement or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

VFHY reserves the right to review and comment on all abstracts, publications, reports and presentations about any and all of the interactive effectors, processes and outcomes, prior to distribution.

Offeror also agrees that if awarded a contract and it enters into any agreement with other parties in order to perform any part of the work required under this contract, Contractor shall include the ownership of intellectual property/presentation clauses listed above in all of this subcontracts and shall also require all sub-tier agreements to include the intellectual property/presentation clauses listed above, thereby obligating

acknowledgement by subcontractors of the Commonwealth's property rights in all work performed under the Contract and requiring subcontractors to provide assignments evidencing the Commonwealth's ownership.

- K. CONTRACTUAL DISPUTES: Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment. Written notice of the Contractor's intention to file such claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. The contract may require submission of an invoice for final payment within a certain time after completion and acceptance of the work. Pendency of claims shall not delay payment amounts agreed due in the final payment.

The claim shall be filed with the VFHY setting forth the factual basis for the claim. The VFHY shall review the claim and notify the Contractor of the decision by certified mail within sixty (60) days of receipt. The notification shall set forth the reasons for the decision and inform the Contractor that it may request a review of the decision by the VFHY by filing such request within ten (10) days of receipt of the initial decision. The VFHY shall render a final decision setting for the reasons for the decisions within thirty (30) days of receipt of the request for review.

The Contractor may not institute legal action prior to receipt of the VFHY's decision on the claim as provided in §2.2-4364 of the *Code of Virginia*, unless the VFHY fails to render the decision within thirty (30) days of receipt of the claim.

Failure of the VFHY to render a decision within the time frames specified shall not have the effect of affirming or denying the claim, but shall only permit the Contractor to proceed to the next step in the process (§2.2-4363 of the *Code of Virginia*).

VIII. REQUIRED STATEMENTS

- a. The Offeror will participate fully with a VFHY evaluation contractor that will be evaluating and reporting on VFHY-funded programs throughout the state.
- b. The Offeror agrees to attend the VFHY regional orientation training and the VFHY statewide training conference. The Offeror agrees that funding may be included in its budget for up to two people to attend such events.
- c. The Offeror's primary mission, the primary mission of collaborating agencies, and/or the primary mission of other agencies funding a portion of the proposed program do not conflict with VFHY's mission.
- d. The Offeror will obtain any and all parental permission to work with youth, using methods set forth in the policy of its respective agency or that of a collaborating organization. This includes obtaining all necessary releases for photographic images of program participants.
- e. The Offeror will read and adhere to the VFHY Grants Administration Manual, which will be provided to each Contractor after execution of a contract.
- f. If requested, the Offeror agrees to participate in the school-based Youth Tobacco Survey and/or assist in gaining school participation if the Offeror is implementing a program in a school system.

- g. The Offeror certifies it will comply with Section 32.1-361 of the *Code of Virginia* that requires contractors to establish and maintain policies restricting or preventing tobacco use by minors. The Offeror expressly acknowledges that Virginia law requires the establishment and maintenance of such policies by each Contractor as a condition precedent to the release of payment of any money from the Virginia Tobacco Settlement Fund to such Contractor.