



**TERMS AND CONDITIONS FOR
REQUEST FOR BEST VALUE PROPOSALS (RFP) #852P021**

Issue Date: August 13, 2019
Title: Healthy Communities Action Teams to Prevention Childhood Obesity
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. 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.

- C. 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.

- D. ANTI-DISCRIMINATION: 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.

- 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. 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.
- G. PAYMENT:

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.

H. 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.

I. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the VFHY.

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

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 program design and service delivery. 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:

1. By mutual agreement between the parties in writing; or
2. 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

K. 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.

- L. 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.

- M. 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 on the VFHY agency website (www.vfhy.org) for a minimum of 10 days.
- N. 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. 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.
- G. 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 \$30,000 for each year of the contract and shall not exceed a total of \$60,000 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 assigned regional VFHY office as. Failure of the Contractor to submit invoice(s) within the prescribed time frame may forfeit the Contractor's right to payment. Failure of the contractor to submit quarterly and final reports within the prescribed time frames, may result in delay of payment.

All vendors/contractors are required to register in the Commonwealth of VA electronic procurement system (eVA): <https://eva.virginia.gov/index.html>. Awarded contractors will also be required to submit a proper COV W-9 form.

- H. CONTRACTUAL DISPUTES: Contractual claims, whether for money or other relief, shall be resolved pursuant to the processes spelled out in §2.2-4364 of the *Code of Virginia*.

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. Funding may be included in its budget for up to two people to attend the orientation.
- 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. The Offeror agrees to participate in sustainability training provided by VFHY.
- g. If requested, the Offeror agrees to participate in the school-based Virginia Youth Survey and/or assist in gaining school participation if the Offeror is implementing a program in a school system.
- h. 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.