



SPECIAL TERMS AND CONDITIONS FOR REQUEST FOR BEST VALUE PROPOSALS (RFP) #852G002

Issue Date: May 18, 2017
Title: VFHY Graphic Art and/or Design
Issuing Agency: Virginia Foundation for Healthy Youth (VFHY)

- 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 non-renewable.

- 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. MAXIMUM COSTS:
All costs associated with the Offeror's rates and estimates must be reasonable and necessary and required to ensure successful projects. VFHY reserves the right to set a maximum cost for certain projects.

I. METHOD OF PAYMENT:
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 VFHY. Failure of the Contractor to submit invoice(s) within the prescribed time frame may forfeit the Contractor's right to payment from the VFHY.

J. 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.

K. 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. The contractor warrants that all materials provided shall not infringe the rights of any third parties.

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.

L. 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 forth the reasons for the decision 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*).