

GENERAL TERMS AND CONDITIONS

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 the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto. The VPPA is hereby incorporated into this contract in its entirety.

APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provision, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures pursuant to *Code of Virginia* § 2.2-4366. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

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

In every contract over \$10,000 the provisions in 1. and 2. 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, or 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.

- d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Virginia Foundation for Healthy Youth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
- e. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
- e. 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.
- 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.

ETHICS IN PUBLIC CONTRACTING: By submitting their bids or proposals, Bidders/Offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder/Offeror, supplier, manufacturer or subcontractor in connection with their bid/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.

IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their bids or proposals, Bidders/Offerors certify that they do not and will not during their performance of this contract employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

DEBARMENT STATUS: By submitting their bids or proposals, Bidders/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.

ANTITRUST: By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Virginia Foundation for Healthy Youth 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 Virginia Foundation for Healthy Youth under said contract.

CLARIFICATION OF TERMS: If any prospective Bidder or Offeror has questions about the specifications or other solicitation documents, the prospective Bidder or Offeror should contact the Virginia Foundation for Healthy Youth 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.

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. 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 the offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 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 when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- f. 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 resolved in accordance with Code of Virginia, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Virginia Foundation for Healthy Youth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in Code of Virginia, § 2.2-4351. 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. Within seven (7) days of the contractor's receipt of payment from the Virginia Foundation for Healthy Youth, a contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) 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 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 Virginia Foundation for Healthy Youth, 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 Virginia Foundation for Healthy Youth.
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 Virginia Foundation for Healthy Youth encourages contractors and subcontractors to accept electronic and credit card payments.

PRECEDENCE OF TERMS: The following Terms and Conditions set forth herein shall apply in all instances: 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. 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.

QUALIFICATIONS OF BIDDERS/OFFERORS: The Virginia Foundation for Healthy Youth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder or Offeror to perform the services/furnish the goods and the Bidder/Offeror shall furnish to the Virginia Foundation for Healthy Youth all such information and data for this purpose as may be requested. The Virginia Foundation for Healthy Youth reserves the right to inspect the Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The Virginia Foundation for Healthy Youth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

TESTING AND INSPECTION: The Virginia Foundation for Healthy Youth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Virginia Foundation for Healthy Youth.

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 Virginia Foundation for Healthy Youth 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, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Virginia Foundation for Healthy Youth of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Virginia Foundation of Healthy Youth's written decision affirming, modifying, or revoking the prior written notice. If the Virginia Foundation for Healthy Youth decides to issue a notice that requires an adjustment to compensation, 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 Virginia Foundation for Healthy Youths 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 Virginia Foundation for Healthy Youth with all vouchers and records of expenses incurred and savings realized. The Virginia Foundation for Healthy Youth shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Virginia Foundation for Healthy Youth within thirty (30) days from receipt of the written order from the Virginia Foundation for Healthy Youth. 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 Virginia Foundation for Healthy Youth or with the performance of the contract generally.

DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Virginia Foundation for Healthy Youth, 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 that the Virginia Foundation for Healthy Youth may have.

TAXES: Sales to the Virginia Foundation for Healthy Youth are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

INSURANCE: By signing and submitting a bid or proposal under this solicitation, the Bidder or Offeror certifies that if awarded the contract it will have the following insurance coverage at the time the contract is awarded.

The Bidder or Offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Virginia Foundation for Healthy Youth 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. Employers Liability - \$100,000
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The Virginia Foundation for Healthy Youth is to be named as an additional insured with respect to the services being procured. This coverage is to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability, Professional Liability Insurance and Personal Injury Liability.
4. Automobile Liability - \$1,000,000

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.

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.

eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS: The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors providing goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration.

AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

BID PRICE CURRENCY: Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.

CONTRACTOR/SUBCONTRACTOR PARTICIPATION IN E-VERIFY: In compliance with *Code of Virginia* § 2.2-4308.2, registration and use of federal employment eligibility verification program is required as set forth below:

- A. For purposes of this section, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).
- B. Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract.
- C. Any such employer who fails to comply with the provisions of subsection B shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program.

AUTHORITY TO TRANSACT BUSINESS: 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 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. A Contractor shall not allow its existence as a partnership or corporation to lapse or its certificate of authority or registration to transact business in the Commonwealth, to be revoked or cancelled at any time during the term of the Contract. The Commonwealth may void this Contract, in whole or in part, if the Contractor fails to remain in compliance with these provisions.

COMPLIANCE WITH SECTION 32.1-361 OF THE CODE OF VIRGINIA: The contractor 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 contractor 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.

FORCE MAJEURE: Neither party hereto will be liable for defaults or delays due to Acts of God, or the public enemy, acts or demands of any government or governmental agency, fires, floods, accidents, pandemics, epidemics, declaration that the country or the Commonwealth is under a state of emergency, or other unforeseeable causes beyond its control and not due to its fault or negligence.

ADVERTISING: In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the Virginia Foundation for Healthy Youth will be used in product literature or advertising. The Contractor shall not state in any of the advertising or product literature that the Virginia Foundation for Healthy Youth has purchased or uses its products or services without prior written approval from Virginia Foundation for Healthy Youth.

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 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.

AWARD OF CONTRACT: The Virginia Foundation for Healthy Youth will make the award(s) which will be posted at the entrance to the offices of the Virginia Foundation for Healthy Youth and on the website of the Virginia Foundation for Healthy Youth for a minimum of ten days. The Virginia Foundation for Healthy Youth reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

CANCELLATION OF CONTRACT: The Virginia Foundation for Healthy Youth 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.

INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Virginia Foundation for Healthy Youth, 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 any materials, goods, or equipment of any kind or nature furnished by the Contractor/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. (NOTE: This clause does not apply to entities of the Commonwealth of Virginia)

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.

Virginia Foundation for Healthy Youth 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.

PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

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 their 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 of the contract.

REQUIRED STATEMENTS

- a. The Offeror agrees to attend the Virginia Youth Tobacco Project Coalition meetings. The Offeror agrees that funding may be included in its budget to attend such events that will ordinarily be conducted in Richmond, Virginia for a two-day period, once per year. Additionally, the Offeror agrees to attend a two-day research conference once in the three-year funding cycle in Richmond, Virginia and may include funding in its budget for this purpose.
- b. 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.
- c. 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.
- d. 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.