



Williamsburg Area Transit Authority
7239 Pocahontas Trail
Williamsburg, VA 23185
Phone: (757) 220-5493
Fax: (757) 220-6268
Email: barbarac@james-city.va.us

WILLIAMSBURG AREA TRANSIT AUTHORITY
REQUEST FOR PROPOSALS
10-004

Title: **Banking Services and Line of Credit**

Issue Date: **March 5, 2010**

Pre-Proposal Conference: **March 17, 2010, 10AM**

Due Date: **April 5, 2010, 2PM, local time at the Williamsburg Area Transit Authority Office**

Submit: **Original and four (4) copies; Return this signed Cover**

Inquiries: **Barbara Creel**
Budget and Grants Administrator, ph (757) 220-5574,
barbarac@james-city.va.us
Questions must be submitted in writing via email or fax
(757-220-6268) NO LATER THAN 2:00 PM March 24, 2010
ATTN: Barbara Creel

This public body does not discriminate against faith-based organizations.

In compliance with this Request for Proposal and subject to all the conditions thereof, the undersigned offers to furnish the goods/services requested and certifies he/she has read, understands, and agrees to all terms, conditions and requirements of this proposal and is authorized to contract on behalf of the firm named below. By my signature on this solicitation, I certify that this firm/individual is properly licensed for providing the goods/services specified.

The Undersigned certifies that he (they) are the only person (persons) interested in the project and that it is made without connection with other persons submitting a proposal on the same scope of services; that the proposal is made without collusion, fraud, or reservation; that no official or employee of the Owner is directly or indirectly interested in said proposal, or any portion thereof.

PROPRIETARY INFORMATION YES () NO ()

Trade secrets or proprietary information is hereby submitted and identified. Reasons for protection and exclusion from the Virginia Freedom of Information Act (2.1-340 et seq.) are set forth below. (Additional sheet may be added if necessary.)

10-004 Request for Proposals—Banking Services and Line of Credit

Company Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____ FAX: _____

Email Address: _____

Federal Tax ID: _____

Print Name: _____

Title: _____

Signature: _____ Date: _____

This form must be signed. All signatures must be original.

Acknowledgement of Addendums: (Initial to verify receipt)

Addendum #1 Dated: _____ Initial _____

Addendum #2 Dated: _____ Initial _____

This form with original signatures must be included with your proposal.

**WILLIAMSBURG AREA TRANSIT AUTHORITY
REQUEST FOR PROPOSALS 10-004
BANKING SERVICES AND LINE OF CREDIT**

I. INTRODUCTION, BACKGROUND, AND SCOPE OF SERVICES

Introduction

Williamsburg Area Transit Authority (WATA) is requesting proposals for banking services and a line of credit in the amount of \$500,000 for the Williamsburg Area Transit Authority. The resulting banking contract will be for five (5) years with five (5) additional one (1) year renewals for a total of ten (10) years. WATA is requesting a credit line of maturity of three (3) years, but will entertain a shorter term. Financial institutions are invited to make proposals of services and pricing to meet WATA's banking needs.

Responses should address not only the institution's ability to provide the services WATA currently uses, but also other services that would be beneficial to WATA. Acceptance of an institution's proposal, and the subsequent signed contract, will lock in the institution's bank services pricing for the **initial five (5) year** term of the contract. Price escalations after the initial five (5) year term and any subsequent annual renewals shall not exceed the percentage change from the previous 12 months based on the most recent available data for the Consumer Price Index (CPI-U), Table 10, Selected Local Areas, Washington, DC-MD-VA.

The financial institution must be a Federal or Virginia chartered corporation that maintains at least one (1) full service branch office within the Williamsburg/James City County and York County area. The corporation must maintain sufficient cash and/or portfolios of approved securities for collateralization of WATA deposits or investments as required under the Virginia Security for Public Deposits Act, Code of Virginia § 2.2-4400 et seq.

James City County currently serves as WATA's fiscal agent and line of credit. The successful Offeror(s) shall assist James City County's Treasurer and staff in making an orderly and seamless transition of services.

Background

In 2006, the Virginia General Assembly approved legislation pursuant to Chapter 68, Title 15.2 of the Code of Virginia, 1950, as amended allowing Williamsburg Area Transport to create a Regional Authority with local jurisdictions it serves. On August 28, 2008, an Authority was approved that includes the Counties of James City and York, the City of Williamsburg, and the Colonial Williamsburg Foundation. Prior to the creation of the Authority (WATA), the former Williamsburg Area Transit was a division of James City County.

WATA's daily cash flow is provided primarily by fare box collections. These funds comprise approximately 11% of WATA's revenues each fiscal year. Other revenue is drawn through contractual obligations and Federal, State, and Local grants. These revenue payments occur at various times throughout the fiscal year, and in most cases, are on a reimbursement basis.

Scope of Services

WATA is seeking the following services:

Treasury management services, example:

- Daily deposit acceptance
- ACH debit and credit file origination
- ACH fraud protection

- Internet account access
- Automated wire transfers
- Positive Pay
- Full bank reconciliation
- Automated stop payments
- Download of cleared check information in flat file format
- Cleared checks returned on CD
- Branch banking

Credit

- Line of credit [minimum \$500,000]
- Automated monitoring of account balances
- Monthly billing of interest expense

Activity Levels for Current Fund Balances and Anticipated Average Monthly Transactions

See Attachment A.

Security

The Successful Offeror shall, during the term of the Agreement resulting from this RFP, provide commercially reasonable security procedures considering the type of files processed and security procedures used by customers and banks similarly situated.

Estimated Quantities

During the period of the contract, the Successful Offeror will furnish all items or services described in the specifications. The Successful Offeror understands and agrees that this is a requirement contract and WATA will have no obligation to the Successful Offeror if no items or services are required. The quantities indicated are the present expectations of WATA for the period of the contract; the amount is only an estimate and the Successful Offeror understands and agrees that WATA is under no obligation to the Successful Offeror to buy any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirements in the past. WATA reserves the right to place WATA funds in any financial institution that has been qualified by the Treasurer of the Commonwealth of Virginia as meeting the requirements of the Virginia Security for Public Deposits Act, Code of Virginia § 2.2-4400 et seq.

Additional Services

WATA and the Treasurer of James City County reserve the right to evaluate additional or new banking services that may be in the best interest of WATA from time to time and may negotiate the price of these services with the Successful Offeror or another financial institution, whichever is determined to be the most advantageous to WATA.

Investment Policy

WATA follows The Treasurer’s Office James City County Statement of Investment Policy and Procedures manual. All services provided shall conform to the Treasurer’s Office James City County Investment Policy and Procedures included herein as Attachment B.

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 WATA, whichever is sooner. WATA, its authorized agents, and/or auditors shall have full access to and the right to examine any of said materials during said period.

II. DEFINITIONS

1. The term "Owner" used in this solicitation refers to Williamsburg Area Transit Authority (WATA).
2. The term "Offeror" refers to the person, firm or company submitting a proposal.
3. The term "Contractor" refers to the person or firm to whom an award is made to perform the work under the contract.
4. The term "Successful Offeror" means the proposer to whom the Owner (on the basis of the Owner's evaluation as herein provided) makes an award.
5. The term "Contract Documents" refers to all components of this RFP, including any Addenda, the Successful Offeror's proposal, the contract agreement, including any attachments, and any negotiated terms and conditions written in the contract.
6. The term "Project" refers to the scope of banking services and line of credit as outlined in this RFP.
7. The term "Project Manager" refers to person to whom Offerors may contact during the RFP process.

III. FAMILIARITY WITH PROPOSED WORK

It is the responsibility of the Contractor to satisfy himself as to the location of the work, worksite conditions, and the quality and quantity of the materials which will be required. The Contractor shall examine carefully the proposed Contract Documents and all other documents and data pertaining to the Project. Failure to do so shall not relieve a Successful Offeror of his obligation to perform as per the provisions of the contract. The Contractor shall not at any time after the execution of the contract, make any claims whatsoever alleging insufficient data or incorrectly assumed conditions, nor shall he claim any misunderstanding with regard to the nature, conditions or character of the work to be done under the Contract Documents.

IV. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS

Proposed Schedule of Events:

| | |
|----------------|---|
| March 5, 2010 | RFP Issued |
| March 17, 2010 | Non-Mandatory Pre-proposal conference 10 a.m. |
| March 24, 2010 | Questions due to WATA Office by 2:00 p.m. |
| April 5, 2010 | Original and four (4) copies of Proposals due to WATA Transit Office by 2:00 p.m., local time |
| July 1, 2010 | Implementation Completion Date |

The proposal should include the following, at a minimum:

1. Statement by the financial institution of an understanding of the work to be done with a description of the approach to be taken and illustrations of procedures to be employed.

2. Provide the name, title, address, telephone number, fax number and email address of the primary contact person(s) assigned to this account and office location(s) that will service the account.
3. Provide biographical information on the Offeror's officers that will be directly involved in management of the Owner's account(s) and what, if any, experience these employees have in working with public institutions and agencies. For each person, show the number of years of experience in this field and the number of years with the Offeror. Describe the proposed role of each with regard to the Owner's account(s).
4. Size of bank, to include the number of branches and percentage of local monies deposited.
5. Credit Rating.
6. Examples of local community support and CRA activities.
7. Proposed funds availability schedule.
8. Sample reports, including monthly account statement and details of charges.
9. Describe the Offeror's ability to provide the general banking services described in Scope of Services.
10. Provide information on the Offeror's ability to provide Positive Pay services. For Example: What types of medium can the Offeror accept? What is the deadline for the transmission of check issuance files to the Offeror? What options are available for notifying the Owner of rejected items? How much time will the Owner have to review discrepancies and notify the Offeror to reject? Is Teller Positive Pay available? If so, please describe the Offeror's ability to provide this service.
11. How will the Owner initiate wire transfers? What is the cut-off time for same-day wire transfers? If wire transfers can be initiated online, describe the system's security features. Can varying degrees of authorization be set (multiple authorizers, maximum dollar amounts, etc.)?
12. How will the Owner set stop payments? What is the deadline for same day action? How long will the stops remain in effect?
13. Provide a complete fee schedule for all services described in your proposal. Include any one-time or set-up charges, research fees, minimum fees, and all other fees that will be charged. The schedule should clearly define if the fees are per item, monthly, one-time only, or if assessed in some other manner. Include any incentives or price breaks offered based on volume, timeliness of payment, rebates, or other measures.
14. Briefly describe new services or ideas that will enhance the Owner's utilization of banking services. Provide the cost of any additional service proposed.
15. Describe the Offeror's ability and procedures to prevent unauthorized access to the Owner's funds. Can the Offeror block unauthorized ACH debits?

16. Describe the electronic and/or manual system used to provide the proposed services along with backup and recovery capabilities.
17. Describe the Offeror's security procedures for its information reporting system, both for access and information protection.
18. Describe the types of insurance and bonding carried.
19. Provide a timeline detailing actions necessary in order to begin full service delivery as of July 1, 2010.
20. Provide a statement describing how the Offeror will make as orderly, seamless and error free a transfer as possible of accounts/services currently provided under WATA's services with James City County's contract. Include any lead-time needed before the conversion and the plans for educating and training the Owner's employees in the use of the Offeror's systems.
21. Provide names, addresses, and telephone numbers of five references (public agency references, if possible), which are currently using the services for which you are proposing. Select a mix of long-standing and recent customers.
22. Provide a list of all institutional clients who have terminated these services in the last three years.
23. Provide any additional information that the Offeror believes to be pertinent but not specifically requested elsewhere in the RFP.

Offerors taking exception to any part or section of these specifications shall indicate such exception(s) on their proposals. Failure to indicate any exceptions shall be interpreted as the Offeror's intent to fully comply with the specifications as written. Conditions or qualified proposals are subject to rejection in whole or in part.

One (1) original and four (4) copies of the proposal are due at the Williamsburg Area Transit Authority Office, 7239 Pocahontas Trail, Williamsburg, VA 23185 prior to 2:00 PM local time on April 5, 2010. Emailed or faxed responses are not acceptable. Proposals received after the date and time prescribed shall not be considered for contract award and shall be returned to the Offeror.

It is the Offeror's responsibility to clearly identify and to describe the products and services being offered in response to the RFP. Offerors are cautioned that organization of their response, as well as thoroughness is critical to WATA's evaluation process. Proposals should be in 8 ½" x 11" format and should be prepared simply and economically, providing a straightforward, organized, and concise description of the Offeror's ability to meet the requirements of the RFP. The number of pages should be kept to a minimum. Fancy bindings, colored displays, promotional material, etc. are not desired. Emphasis should be on completeness and clarity of content.

V. EVALUATION AND AWARD CRITERIA

The selection criteria for evaluation of proposals shall include the following:

- A. Responsiveness to RFP: (20 points)
 - 1. WATA will consider all the material submitted to determine whether the financial institution's proposal is in compliance with the RFP documents.

- B. Experience and Qualifications: (20 points)
 - 1. Prior experience in providing similar services to localities elsewhere in the Commonwealth of Virginia.
 - 2. References may be contacted as part of the evaluation process.

- C. Proposed Pricing Structure: (25 points)
 - 1. The cost of services with special emphasis on the line of credit terms.
 - 2. The period for which the fee schedule would apply with a longer-term schedule being more desirable.

- D. Offeror's Approach To Provide Services: (25 points)
 - 1. The Offeror's demonstrated understanding of the services to be provided.

- E. Location: (10 points)
 - 1. Full-service branch location(s) and proximity to the James City County Treasurer's Office located at 101 B Mounts Bay Road Williamsburg, VA 23185.

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 factors involved in the RFP, including price if so stated in the RFP. Negotiations shall then be conducted with each of 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 public body shall select the Offeror which, in its opinion, has made the best proposal, and shall award the contract to that Offeror. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one Offeror. Should the public body 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 Notice of Award shall be posted on the bulletin board for public notices in WATA's Office.

VI. PROPRIETARY INFORMATION

Ownership of all data, materials, and documentation originated and prepared for WATA pursuant to this RFP shall belong exclusively to the Owner and be subject to public inspection in accordance with the Virginia Freedom of Information Act (FOIA). Trade secrets or proprietary information submitted by an Offeror shall not be publicly disclosed under the FOIA; however, the Offeror shall invoke the protection of this section prior to or upon submission of the data or other materials and must identify the data or other materials to be protected and state the reasons why protection is necessary. Disposition of material after award is made should be stated by the Offeror. Offerors should indicate on the Cover Sheet the portions of their proposal that are proprietary. Please list the page numbers and the reason(s). **Do not mark the entire proposal proprietary.**

VII. POLICY REGARDING CONTACT AFTER PROPOSAL SUBMITTAL

After the date and time established for receipt of proposals by WATA, any contact, in regard to the proposal initiated by any Offeror with any WATA official, other than the assigned Project Manager or the WATA Office is expressly prohibited. Any unauthorized contact may be deemed grounds for disqualification of any Offeror from further review.

Questions regarding this Request for Proposals may be directed to Barbara Creel, at fax number (757) 220-6268, or email: barbarac@james-city.va.us. All questions that are pertinent to the Project will be answered in the form of an addendum mailed, faxed, or provided by E-Mail to all recorded holders of the RFP.

Prospective Offerors are encouraged to attend the Non-Mandatory Pre-Proposal Conference scheduled for 10:00 am, March 17, 2010 at Building F Board Work Session Room James City County Government Center 101-F Mounts Bay Road Williamsburg, VA 23185 to present their questions at that conference. Questions received prior to and at the Pre-Proposal Conference that pertain to the Project will be answered in the form of an addendum that will be faxed or provided by E-Mail to all recorded holders of the RFP after the conference.

QUESTIONS MUST BE RECEIVED NO LATER THAN 2:00PM, March 24, 2010. See Cover Sheet for more information.

VIII. CONTRACTUAL AGREEMENT

A contract shall be issued to the Successful Offeror. The Contract Documents shall include this RFP, the Successful Offeror's proposal, and any negotiated terms and conditions. Termination of the contract shall be as described in the General Terms and Conditions (Attachment C).

X. GENERAL TERMS AND CONDITIONS

See Attachment C.

XI. LEGISLATION ALLOWING THE FORMATION OF WATA and WATA Cooperative Service Agreement

See Attachments D and E.

XII. SPECIAL TERMS AND CONDITIONS

The following Special Terms and Conditions apply to this RFP, and by submitting its proposal, the Offeror agrees to them without exception.

- A. Neither this RFP nor WATA's consideration of any proposal shall create any contract, express or implied or any contractual obligation by WATA to any Offeror, or any other obligation by WATA to any Offeror. WATA makes no promise, express or implied, regarding whether it will enter into a Comprehensive Agreement with any Offeror or regarding the manner in which it will consider proposals. WATA will only be bound by the terms of any contract or agreement into which it enters should it choose to enter into any such contract or agreements.

- B. WATA will not be responsible for any expenses incurred by an Offeror in preparing and submitting a proposal, or in engaging in oral presentations, discussions, or negotiations with WATA.
- C. Offerors who submit a proposal in response to this RFP may be required to make an oral presentation or oral presentations of their proposal to WATA at their own expense. WATA may request the presence of Offerors' representatives from their staff at these presentations. WATA will schedule the time and location for these presentations. By submitting its proposal, the Offeror agrees to make these representatives reasonably available for such presentations.
- D. WATA reserves the right to waive any informality with respect to any proposal submitted in response to this RFP.
- E. Generally, proposal documents submitted to public bodies, such as ones submitted to WATA, by private entities are subject to the Virginia Freedom of Information Act ("FOIA"). In accordance with Va. Code §2.2-3705 A 56, such documents are releasable if requested, except to the extent that they relate to confidential proprietary information submitted to the responsible public entity under a promise of confidentiality or (ii) memoranda, working papers or other records related to proposals if making public such records would adversely affect the financial interest of the public or private entity or the bargaining position of either party. **In order for Offerors to exclude confidential proprietary information from public release, Offerors must (1) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (2) identify the data or other materials for which protection is sought, and (3) state the reasons why protection is necessary. Offerors must also mark each page of information for which protection is sought with the legend - "Confidential Proprietary Information-Exempt from FOIA Release."**
- F. WATA reserves the right to reject any and all proposals without explanation.
- G. The provisions of Va. Code § 2.2-4310 are applicable to this RFP. WATA will not discriminate 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.
- H. This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, Section 2.2-4343.1.
- I. All firms and personnel providing goods/services as a result of this solicitation shall be properly licensed by the Commonwealth of Virginia.
- J. The Offeror shall retain all books, records and other documents relative to this project for five (5) years after final payment or until audited by WATA, whichever is sooner. WATA auditors and its authorized agents shall have full access to and the right to examine the books and records for this project.
- K. **Prime Offeror Responsibilities**

The Offeror awarded the resulting contract is required to assume sole responsibility for the complete delivery of the services required by the RFP and Contract Documents. The said Offeror shall be the sole point of contact with regard to contractual matters.

L. **Independent Offeror**

The Offeror shall be an independent, duly licensed and/or certified Offeror and possess the staff, experience, equipment, and abilities to successfully provide all needed services. The Offeror and all employees and agents of the Offeror, shall fully comply with all Local, State and Federal laws and/or mandates applicable to the Services to be provided under this RFP.

M. **Availability of Funds**

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

N. **Audit**

The Offeror shall retain all books, records, and other documents relative to this contract for five (5) years after final payment. WATA, its authorized agents and/or Federal and State Auditors shall have full access to and the right to examine any of said materials during said period.

O. **Assignment of Contractor or Contract Funds**

The Successful Offeror may not assign, transfer, convey or otherwise dispose of any or all its rights, title or interest in the contract, without the prior written consent of WATA or its authorized representative.

P. **Trade Secrets and Proprietary Information**

Ownership of all data, materials and documentation originated and prepared for WATA pursuant to the RFP will belong exclusively to WATA, and be subject to public inspection in accordance with the Virginia Freedom of Information Act (FOIA). Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia FOIA; however, the Offeror must invoke the protections of Section 11-52D 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. WATA reserves the right to ask for additional clarification prior to establishing protection. See paragraph XIV. Special Terms and Conditions, subparagraph E for additional information regarding FOIA. Please sign the acknowledgment on the RFP Cover page.

Q. **Applicable Law and Courts**

See WATA General Terms and Conditions (Attachment C).

R. **Insurance**

Contractor insurance requirements as follows:

1. The Contractor shall purchase and maintain during the life of this contract such Comprehensive General Liability Insurance, including product and completed operations liability insurance as will provide protection from Contractor's performance of the Work and Contractor's other obligations under the contract documents, whether such performance is by Contractor, or by subcontractor, by

anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and shall otherwise bear responsibility therefore. The Contractor further agrees that all limits will be made available which are excess of the amounts below:

a. **Workers Compensation and Employers Liability**

Coverage A - Statutory

Coverage B - \$100,000/\$500,000/\$100,000

A broad form of all states endorsement should be attached.

b. **Commercial General Liability Including Contractual and Completed Operations**

Limit of Liability \$1,000,000 per occurrence

c. **Commercial Auto Liability Including Hired and Non-Owned Car Liability Coverage**

Limit of Liability \$1,000,000 per occurrence

d. **Product Liability**

Limit Amount \$1,000,000 per occurrence

e. **Professional Liability – Liability for Errors and Omissions in the Performance of the Contract**

Limit of Liability \$5,000,000 per Occurrence

f. **Excess Liability**

Contractors have the option of meeting the insurance requirements above with a single primary policy or by providing evidence of an excess policy that, in addition to the primary policy, provides the coverage and meets the limit requirements of the coverage as specified in a., b., and c.), and so states in the excess policy.

g. **Self Insured Retentions, Deductibles and Aggregate Limits:**

All self insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the James City County Risk Management Director of Operations.

2. The Contractor shall file with the Owner, as herein before required, satisfactory proof of acceptable insurance coverage. Such proof shall, unless otherwise required by the Owner, consist of the following:

a. Certificates of insurance on the insurance carrier's standard form indicating all policies required by law and the Contract documents. Certificates of insurance shall be furnished in a number of copies equal to the number of counterparts of the Contract documents executed. Contractor shall notify Owner immediately if Contractor receives

notification of non-renewal or cancellation.

3. Williamsburg Area Transit Authority and James City County shall be named as an Additional Insured on the Commercial General Liability per ISO 2010 on a primary basis. WATA's Commercial General Liability shall not contribute in any loss payment insured under the Contractor's Commercial General Liability policy.

4. **INDEMNIFICATION:**

The Contractor hereby binds himself and his successors to indemnify, defend, and save harmless WATA, its officers, agents or employees, from all suits and actions of every name and description brought against it or them, and all costs or damages to which it or they may be put, on account of, or by reason of any injury or alleged injury to the person or property of another, resulting from or on account of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor or his agents in the performance of the contract; and that the whole or so much of the moneys due to the contractor under and by virtue of this Contract, as such or may be considered necessary by WATA, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of WATA. The said Contractor further agrees to indemnify and save harmless WATA against any and all claims, suits or demands that may accrue to, be suffered by, or adjudicated against it by reason of any injury sustained by any of the Contractor's employees in and about the said work, under and pursuant to the provisions of the Workman's Compensation Law or any amendments thereto, and the Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.

5. All Insurance policies must be written on an occurrence basis and maintained for the entire contract period.
6. The Contractor shall notify WATA and James City County, in writing, at least thirty (30) days prior to the cancellation, renewal, amendment, or alteration of any insurance policy.

S. **PRIVACY ACT 5 U.S.C. 552**

Contracts involving Federal Privacy Requirements. The following requirements apply to the Contractor and its employees that administer any system records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5, U.S.C. section 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act,

apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by the FTA.

T. CIVIL RIGHTS REQUIREMENTS

1. Nondiscrimination

In accordance with Title VI of the Civil Rights, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 121132, and Federal Transit law at 49 U.S.C. §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or suability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

a. Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 41 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U. S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C. F. R. Parts 60 et seq., (which implement Executive Order No. 11246, equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 200e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to employ with any implementing requirements FTA may issue.

b. Age

In accordance with section 4 of the Age Discrimination Act of 1967, as

amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c. **Disabilities**

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will employ with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (1) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- (2) In accordance with the Code of Virginia, the Contractor agrees to not discriminate against any employee or applicant because of race, religion, color, sex or national origin, except where religion, sex or national origin 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. 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. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purposes of meeting the requirement of this section.

U. **Nondiscrimination Under Federal Grants**

No otherwise qualified handicapped individual in the United States, as defined in Section 7(6), shall solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

V. **False or Fraudulent Statements**

1. The Contractor acknowledges that the provision of the Program Fraud Civil Remedies Act of 1986, as amended, 31, U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F. R. Part 31, apply to its actions pertaining to this contract. Upon execution, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it

may make or causes to be made, pertaining to this contract. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n) (1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two paragraphs in subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

W. Access to Records

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than five (5) years after final payment, and the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

X. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies,

procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Y. **No Obligation by the Federal Government**

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Z. **Termination for Convenience (Professional or Transit Service Contracts)**

WATA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, WATA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

AA. **Termination by Convenience or Default**

WATA may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of WATA or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from WATA, or property supplied to the Contractor by WATA if the termination is for default, WATA may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to WATA and the parties shall negotiate the termination settlement to be paid to the Contractor.

If the termination is for the convenience of WATA, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, WATA determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, WATA, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

BB. Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, WATA may terminate this contract for default. WATA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

CC. Legal Requirements

The Contractor shall comply with all applicable Federal, state and local regulations. These shall include, but not be limited to Federal ADA as well as state and local accessibility, safety and security requirements. Local regulations are defined as those below the state level.

In the event of any conflict between the requirements of this Specification and any applicable legal requirements, the legal requirements shall prevail. Technical requirements that exceed the legal requirements are not considered to conflict.

DD. Changes in Federal Laws Regulations

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between the Procuring Agency and FTA that funds any part of the Contract, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

EE. Incorporation of FTA Terms

"Special Terms and Conditions," includes, in part, certain standard terms and conditions required by US DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by US DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms and shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Procuring Agency requests which would cause Procuring Agency to be in violation of the FTA terms and conditions.

FF. Contracts Involving Federal Privacy Act Requirements

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the

Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

GG. **Disputes**

Any contractual disputes shall be made in accordance with the WATA General Terms and Conditions (Attachment C). Item Number 67. Disputes, page 8.

HH. **Disadvantaged Business Enterprise (DBE)**

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%.
2. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as WATA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).