



Williamsburg Area Transit Authority
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Williamsburg, VA 23185
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WILLIAMSBURG AREA TRANSIT AUTHORITY
SEALED REQUEST FOR PROPOSAL
10-003

Title: DESIGN AND PRODUCTION OF TWO MARKETING BROCHURES

Issue Date: November 2, 2009

Due Date: December 7, 2009, 2:00 PM, local time at the WATA Office
Directions, Attachment D

Submit: One Original and four (4) copies

Inquiries: Richard Drumwright, Director of Planning and Development
Phone (757) 220-5547

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

In compliance with this Sealed 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/she (they) are the only person (persons) interested in said 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.)

**WILLIAMSBURG AREA TRANSIT AUTHORITY
REQUEST FOR PROPOSAL 10-003
DESIGN AND PRODUCTION OF MARKETING BROCHURES**

Company Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____ FAX: _____

Email Address: _____

Federal Tax ID: _____

Print Name: _____ Title: _____

Authorized Signature: _____ Date: _____

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

Initial to verify receipt:

Addendum #1 Dated _____ Initial _____

Addendum #2 Dated _____ Initial _____

Addendum #3 Dated _____ Initial _____

**WILLIAMSBURG AREA TRANSIT AUTHORITY
SEALED REQUEST FOR PROPOSAL 10-003
DESIGN AND PRODUCTION OF MARKETING BROCHURES**

I. PURPOSE

The purpose of this Request for Proposals is for Williamsburg Area Transit Authority (WATA) to obtain proposals from qualified and experienced marketing design companies to design, produce and print two marketing brochures. Brochure One will feature color-coded bus routes, points of interest, time schedules and maps of routes. Brochure Two will feature The Williamsburg Trolley: its route, points of interest and general information. Both brochures are useful tools for local citizens, students and visitors in helping them utilize bus and trolley transportation within the Greater Williamsburg Area. The resulting contract from this Request for Proposal shall be for a period of three years with an option to extend the contract three additional years, one year at a time.

Questions should be in writing addressed to Richard Drumwright, Director of Planning and Development, via facsimile at 757-220-6268 or e-mail to richardd@james-city.va.us

II. BACKGROUND

Williamsburg Area Transit Authority (WATA) currently provides public transportation for James City and York Counties, the City of Williamsburg, the College of William and Mary, and the Historic Triangle Campus of Thomas Nelson Community College. WATA is a regional authority with the above jurisdictions and Colonial Williamsburg Foundation as partners. One goal of the regional authority is to improve marketing to increase utilization by all user groups, particularly visitors and the college community. One component to increasing public awareness is the availability of marketing brochures including maps that are informational and user-friendly to encourage increased ridership on the local public bus system. WATA's vision is to "become the transportation option of choice for people who live, work, and visit in the Williamsburg Area."

III. PRE-PROPOSAL CONFERENCE

A non-mandatory Pre-Proposal Conference will be held at 10:00 a.m., on Friday, November 20, 2009, at the James City County Government Center, Building C, Conference Room (1st floor), 101-C Mounts Bay Road, Williamsburg, Virginia 23185, at which time prospective Offerors may discuss the project with representatives of WATA. See Attachment D for directions.

IV. DEFINITIONS

- A. The term "Owner" used in this solicitation refers to Williamsburg Area Transit Authority (WATA).
- B. The term "Offeror" refers to the person, firm or company submitting a proposal.
- C. The term "Contractor" refers to the person, firm or company to whom an award is made to perform the work under the contract.
- D. 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.

V. INTERPRETATIONS AND ADDENDA

No oral explanation in regard to the meaning of the RFP documents will be made, and no oral instructions will be given before the award of the work. Discrepancies, omissions or doubts as to the meaning of the

RFP Documents shall be communicated in writing to the Owner for interpretation. Offerors should act promptly and allow sufficient time for a reply to reach them before the submission of their Proposals. Any interpretation made will be in the form of an Addendum to the RFP, which will be forwarded to all holders of record and its receipt shall be acknowledged in the Offeror's proposal on the RFP Cover Sheet in the space provided. Failure of any Offeror to receive such addendum or interpretation shall not relieve any Offeror from his/her obligation under the Proposal as submitted. **All questions shall be received NO LATER THAN 4:00 p.m. local time on November 23, 2009.**

VI. FAMILIARITY WITH PROPOSED WORK

It is the responsibility of the Contractor, by careful personal examination of the RFP Documents and the Scope of Services, to visit the area of the work to be performed, if that is required; and to satisfy the full scope of services requested. The Contractor should study and carefully correlate the Contractor's knowledge and observations of the RFP Documents and such other related data and to promptly notify the Owner of all conflicts, errors, ambiguities, or discrepancies which the Contractor has discovered in or between the RFP Documents and such other related documents or conditions. Failure to do so shall not relieve the Successful Offeror of his/her obligation to perform as per the provisions of the resulting 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/she claim any misunderstanding with regard to the nature, conditions or character of the work or services to be provided under the contract.

VII. PROPOSAL SUBMISSION REQUIREMENTS

One original and four (4) bound copies of the proposal are due at the Williamsburg Area Transit Authority Office, 7239 Pocahontas Trail, Williamsburg, Virginia 23185, prior to 2:00 p.m. local time on December 7, 2009. 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 sealed RFP. Proposals shall be signed by an authorized representative of the Offeror. Failure to submit all of the information requested may result in the WATA office requiring prompt submission of missing information and/or giving a lower evaluation of the proposal. Proposals that are substantially incomplete or lack key information may be rejected by WATA.

Offerors are cautioned that organization of their response, as well as thoroughness is critical to the WATA evaluation process. Proposals should be in 8 1/2" x 11" format and should be prepared simply and economically, providing a straight forward, organized, and concise description of the Offeror's ability to meet the requirements of the sealed 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.

Oral proposals, those transmitted by telephone for facsimile, or those received after the submission date shall not be accepted. Proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on completeness and clarity of content. Proposals should be no more than 30 pages, excluding title page, letter of transmittal and table of contents.

Proposals should be organized in the same sequence order of the RFP and should refer to the RFP section by section. All pages of the proposal should be numbered. Each paragraph of the proposal should reference the paragraph number of the corresponding section of the RFP.

Proposals should contain a Table of Contents which cross references the RFP requirements. Proposals not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed in the proposal.

Fancy bindings, colored displays, promotional materials, etc. are not desired. Proposals should be bound together without loose pages and contained in a single volume where practical and submitted clearly marked as response to **Request for Proposal (RFP) 10-003 Design and Production of Marketing Brochures.**

A. Experience of the Firm and Assigned Personnel

Offeror should provide a brief description of the firm's experience with particular emphasis on similar projects as those outlined in this Request for Proposals. Experience claimed should be current and relevant. Offeror should not include claims of firm experience accomplished by persons no longer associated with the firm. Offeror should list name, telephone number and email address for contact person(s) for each project.

B. Qualifications of Personnel to be Assigned to the Project

This section should clearly identify all disciplines (including sub-consultants/contractors) and personnel to be assigned to the project. The proposal should contain names and brief resumes outlining technical qualifications and recent completion of current relevant training, and what each person will do on the project and the specific experience for that role. Provide the name and experience of the Project Manager.

Sub-consultants/contractors proposed as part of the project team shall be active participants in all phases of work related to their discipline from beginning to end. The Principal firm shall be responsible to the Owner for the work of all associates, and sub-consultants/contractors, whether or not they are employees of the Consultant.

C. Proposed Project Work Plan

A brief narrative of the firm's approach to the project should be included. This proposed work plan should indicate the methods to be used for exchange of information and include a tentative schedule of possible progress meetings. Proposals should contain statements regarding the Offeror's philosophy in regard to client services.

D. Current Firm Workload

The proposal should contain information explaining the Offeror's current workload and ability to absorb the work of this project simultaneous with other commitments.

VIII. POLICY REGARDING CONTACT AFTER PROPOSAL SUBMISSION

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 WATA Project Manager is expressly prohibited. Any unauthorized contact may be deemed grounds for disqualification of any Offeror from further review.

All questions regarding this Request for Proposals and other matters may be directed to Richard Drumwright, Director of Planning and Development for WATA, by faxing to: (757) 220-6268 or e-mail:

richardd@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.

IX. EVALUATION CRITERIA AND SELECTION PROCESS

An evaluation committee shall review the proposals and assign a rating based on the criteria listed below. Once each member of the WATA Evaluation Committee has rated each proposal and completed a proposal evaluation matrix form, a composite rating is developed which indicates the group's collective ranking of the highest rated proposals in a descending order. Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. The committee may conduct interviews with the top ranked firms. Offerors so selected will be given an opportunity to orally present their qualifications and project technical approaches, and to respond to questions posed by WATA Evaluation Committee members.

The following criteria will be used to evaluate proposals:

- A. Qualifications and experience of staff to be assigned to project (25 points)
- B. Sufficient resources to perform the work capably (25 points)
- C. Understanding of the work to be performed, determined by evaluating the time estimates for performing each step in the total services proposed (20 points)
- D. Proposed pricing structure (15 points)
- E. Contractor's approach to project (10 points)
- F. Depth and breadth of experience of principal firm and sub-consultants/contractors including personnel assigned to the project. Inclusion of work performed by Disadvantaged Business Enterprise (DBE) as defined by the Federal Transit Authority (5 points)

Negotiations shall be conducted with the selected Offerors. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, WATA shall select the Offeror which, in its opinion, has made the best proposal, and shall award the contract to that Offeror.

WATA may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason(s) why a particular proposal was not deemed to be the most advantageous. Should WATA 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 award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Contractor's proposal as negotiated.

X. CONTRACTUAL AGREEMENT

The resulting contract from this RFP shall be for the life of this project as outlined in the Scope of Services (Attachment E). Termination of the contract shall be as described in the General Terms and Conditions (Attachment A).

The negotiated fee schedule based on the Scope of Services, and the specifications, terms and conditions herein and other terms and conditions mutually agreeable to the parties, along with the Request for Proposals and all modifications thereto, shall be incorporated into the Standard Contract (Attachment C), along with the Request for Proposals and all modifications thereto by reference. Any concerns regarding the Standard Contract shall be addressed within the proposal response.

The Offeror shall inform itself in full of the conditions relating to the performance of the contract. Failure to do so shall not relieve the successful Offeror of his obligation to carry out the provisions of this RFP and resulting contract and to complete the Scope of Services outlined therein.

XII. CHANGES TO THE CONTRACT

Changes can be made to the contract in any one of the following ways:

- A. WATA may order changes within the general scope of the contract at any time by written notice (via Contract Change Order) to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, etc. The Contractor shall comply with the Contract Change Order upon receipt. The Contractor shall be compensated for any additional costs incurred as a result of such order and shall give WATA a credit for any savings. Said compensation shall be determined by mutual agreement between the parties in writing.
- B. 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 part of their written agreement to modify the scope of the contract. See General Terms and Conditions Attachment A item number 45, Page 6.

XIII. GENERAL TERMS AND CONDITIONS

See Attachment A.

XIV. SPECIAL TERMS AND CONDITIONS

Precedence in Terms: In the event of a conflict, the Special Terms and Conditions shall take precedence. 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 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 A).

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 \$1,000,000 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 (WATA) 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.

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.

3. 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.
4. 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 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 A). 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)).