



**James City County Purchasing Office**  
**101-F Mounts Bay Road, Suite 300**  
**Williamsburg, VA 23185**  
**Phone: (757) 253-6644/6646**  
**Fax: (757) 253-6753**  
**Email: khall@james-city.va.us**  
<https://www.jccegov.com/purchasing/index.html>

**JAMES CITY COUNTY, VIRGINIA**  
**REQUEST FOR PROPOSALS**  
**12-4928**

**Title: BOND COUNSEL SERVICES**

**Issue Date: January 3, 2012**

**Non-Mandatory Pre-Proposal Meeting**  
**January 24, 2012, 2:00 pm at the James City County Government Center**  
**Bld. F. FMS Conference Room**

**Due Date: March 9, 2012, 2PM, local time in the Purchasing Office**

**Submit: SEALED PROPOSALS, Six (6) Bound, One (1) Original and Five (5) copies**

**Inquiries: Kitty Hall, VCO**  
**Purchasing Director, ph (757) 253-6644/6646**

**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 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.) is set forth below. (Additional sheet may be added if necessary.)

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**12-4928 Request for Proposal**

**Company Name:** \_\_\_\_\_

**Contractor License#** \_\_\_\_\_ **Type:** \_\_\_\_\_

**State Corporation Commission ID #** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Federal Tax ID:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Acknowledgement of Addendums: #1** \_\_\_\_\_ **#2** \_\_\_\_\_

**JAMES CITY COUNTY  
REQUEST FOR PROPOSAL 12-4928  
BOND COUNSEL SERVICES**

- I. PURPOSE:** The intent and purpose of this Request for Proposal (RFP) is to establish a term contract through competitive negotiation with a qualified firm to retain the services of bond counsel and to advise in connection with general obligation and lease revenue bond financings and other related projects. Issuance may include a full range of available financing techniques, including the following: instruments which may be sold in the taxable bond markets, the tax-exempt bond markets, or the commercial paper markets; instruments which may be secured by letters of credit, pledges of various sources of revenue, bond insurance, or other credit enhancement; equipment financing; and other instruments for which markets may develop during the term of the contract. Offerors awarded a contract under this RFP will work closely with the staff members of the County, the County Attorney's Office, the County's financial advisor, the bond underwriting teams and their counsel, and other parties necessary to issue and sell the bonds, including bond rating agencies, trustees, and financial institutions. The services will be on behalf of the County of James City, Virginia, the Williamsburg James City County School Board (Schools), the James City Service Authority (JCSA), and the James City County Economic Development Authority (EDA), all of which shall herein after be referred to as "County."

**SERVICES:** Offerors awarded a Contract under this RFP will not be responsible for advice with respect to any bond issues which are in progress unless the Offeror is existing bond counsel to the County, and at the request of the County. The Contractor for the County will be expected to familiarize itself, at its own cost, with a limited number of prior project financings of the County. All legal services are to be provided only at the request of the County Administrator or designee. Contractors are not authorized generally to enter into discussions directly with the County's personnel or its customers, clients or other advisors.

**II. STATEMENT OF NEED**

**A. Work to be Performed:**

1. Negotiating, preparing, reviewing and delivering any documents related to financings, including but not limited to project financing agreements, participation agreements, trust indentures, bond purchase agreements and tax regulatory agreements.
2. Preparing and reviewing preliminary official statements, official statements, remarketing circulars, and other disclosure documents necessary or appropriate to the authorization, issuance, sale or delivery of bonds.
3. Rendering an objective opinion with respect to any authorization and issuance of or conversion of the interest rate on bonds; the delivery of new or revised letters of credit and other liquidity and credit facilities; refinancing; appointment or substitution of remarketing agents, market agents, trustees, auction agents, and other parties to a bond issue; and amendment of related documents, including required bond counsel opinions on the exclusion of interest paid on the bonds from gross income for Federal income tax purposes and for State and local income tax purposes, as appropriate.
4. Advising on federal and state tax and securities law matters and changes thereto, the investment and expenditure of bond proceeds, and the collection, investment, and application of monies used to pay debt service on bonds.
5. Preparing, reviewing or advising the County with regard to resolutions, notices, and other documents or procedures required in connection with financings.

6. Drafting, analyzing, advising, or commenting on Federal and State legislation, regulations and rules, County guidelines and other matters which may have an impact on the financing program.
7. Participating in meetings with the County's financial advisor, rating agencies, underwriters, elected officials and other parties as necessary or appropriate.

### **III. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS**

#### **A. General Requirements:**

1. RFP Response: In order to be considered for selection, Offerors must submit a complete response to this RFP. One (1) original and five (5) copies of each proposal must be submitted to:

James City County Purchasing  
101F Mounts Bay Road  
P.O. Box 8784  
Williamsburg, Virginia 23187

Identify on outside of envelope: **Sealed RFP No.: 12-4928**

RFP Due date/Opening date and hour: **March 9, 2012, 2:00 P.M.**

The Offeror shall make no other distribution of the proposal.

2. Proposal Preparations:
  - a. Proposal shall be signed by an authorized representative of the Offeror. All information requested should be submitted. The Purchasing Director will review all proposals to ensure required information is included. Failure to submit all information requested may result in a request to submit the missing information. Proposals which are substantially incomplete or lack key information may be rejected as incomplete. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
  - b. Proposals will be reviewed and evaluated by a Committee as designated by the County.
  - c. Proposal should be prepared simply and economically, providing a straight forward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
  - d. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirements as it appears in the RFP. If a response covers more than one page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to

find where the RFP requirements are specifically addressed.

- e. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- f. Ownership of all data, materials, and documentation originated and prepared for the County pursuant to the RFP shall belong exclusively to the County and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protections of Section 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data or other materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.

**B. Specific Requirements:** Proposals should be as thorough and as detailed as possible so that the County may properly evaluate the Offeror's capabilities to provide the required services. Offerors are required to submit the following information/items as a complete proposal:

1. The return of the RFP general information form and addenda, if any, signed and completed as required.
2. Please provide four (4) recent references, similar to the County, for whom the Offeror has provided the type of services described herein. Include the date(s) services were furnished, the client name, address and the name and phone number of the individual the County has permission to contact. Include references where the individuals assigned to us have worked.
3. History of the firm, including number of years in business and size of firm. Identify headquarters and nearest office and identify the office which will serve as the managing office for the project. Include a list of services offered.
4. Biographies, including experience, of the individuals who will be assigned to the engagement, relevant experience of each in local governments, and recent continuing professional education of each. Include at least one principal in this list.
5. Identify any material litigations, administrative proceedings or investigations in which the Offeror is currently involved or which may be threatened. Please indicate the current status or disposition of such litigation, administrative proceedings or investigations.

6. Provide a statement of assurance that the Offeror is not currently in violation of any regulatory agency rule or, if in violation, and explanation as to why the violations would not have material adverse impact on the Offeror's ability to perform under this contract.
7. Provide a statement of assurance that there are no known conflicts of interest that would prohibit the firm from entering into a Contract with the County for the provision of bond counsel and related services. In addition, provide a statement of commitment to disclose future actual or potential conflicts of interest. Please identify how any such future conflicts would be identified and how the Offeror would resolve any such conflicts.
8. Provide a statement of assurance that neither the Offeror firm nor any subcontractor or partner is currently debarred from providing to any local government or other public entity, division or agency of or within the Commonwealth of Virginia.
9. Describe examples of the firm's innovative responses to challenges or opportunities encountered while serving as bond counsel to an organization similar to the County.
10. Describe at least one example of creative or innovative techniques or solutions to legal or financing problems the offeror has developed or used.
11. Demonstrate expertise working with localities, particularly those having similar organization, size and growth patterns as the County.
12. Describe the method the Offeror would implement to ensure consistency of tax advice provided to the County.
13. The County has issued both General obligation and Lease Revenue Bonds. Please discuss the Offeror's view on issuing Lease Revenue Bonds for situations where either there may be no collateral or the collateral used to secure the Lease Revenue Bond is not the item the bond proceeds will be used to build (i.e. substitute collateral).

#### **IV. EVALUATION AND AWARD OF CONTRACT**

- A. Award of Contract:** The County shall engage in individual discussions and interviews with two or more proposers deemed fully qualified, responsible and suitable on the basis of initial responses, and with emphasis on professional competence to provide the required services. Repetitive informal interviews are permitted. Proposers shall be encouraged to elaborate on their qualifications, performance data, and staff expertise relevant to the proposed contract. Proposers may also propose alternate concepts or methodology. At the discussion stage, the Owner may discuss non-binding estimates of price for services. Proprietary information from competing proposers (including any data on estimated man-hours or rates and the plan for accomplishing the scope of work) will not be disclosed to the public or to competitors, provided such information is duly marked as "Proprietary Information" by the Proposer and the designation is justified as required by Section 2.2-4342F, Code of Virginia, as revised. At the conclusion of the informal interviews and on the basis of evaluation factors set forth in Section VI.B. and the information provided and developed in the selection process to this point, the County shall rank, in the order of preference, the interviewed proposers whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted with the Proposer ranked first. If a contract satisfactory and advantageous to the County and the Proposer can be negotiated at a fee considered fair and reasonable, the award shall be made

to that Proposer. Otherwise, negotiations with the Proposer ranked first shall be formally terminated and negotiations conducted with the Proposer ranked second, and so on, until such a contract can be negotiated at a fair and reasonable fee. Should the County determine in writing and in its sole discretion that only one Proposer is fully qualified, or that one offer is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that Proposer.

**B. Evaluation Criteria:** Proposals shall be evaluated by the County using the following criteria:

Each proposal will be evaluated on the following criteria:

<u>EVALUATION CRITERIA</u>	<u>WEIGHT</u>
1. Quality and depth of the firm's experience and its prior capability in providing similar services, including, but not limited to, past performances on projects and programs in Virginia of magnitude or complexity comparable to or greater than County's. For those firms who have worked as counsel in any capacity with the County, the quality of work on those transactions will be considered.	35
2. The firm selected for bond counsel must be nationally recognized bond counsel experienced in the subject areas of public finance and tax laws and regulations.	25
3. Commitment of time, resources, and ideas to County and availability to and facility for working with the County attorney and financing program staff.	25
4. Information provided by client references.	5
5. Involvement of the proposing firm in financings with innovative legal issues, which demonstrates any unique qualifications as bond counsel.	5
6. Overall organization and quality of proposal, including cohesiveness, conciseness, and clarity of response.	5

**V. NON-MANDATORY PRE-PROPOSAL MEETING:**

A non-mandatory pre-proposal conference will be held in the FMS Conference Room, January 24, 2012, at 2:00 p.m., 101F Mounts Bay Road, Williamsburg. The purpose of this conference is to allow potential Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a proposal, offerors who intend to submit a proposal are encouraged to attend. A copy of the solicitation should be brought to the pre-proposal meeting. Any changes resulting from this conference will be issued in the form of a written addendum to this solicitation.

**VI. CONTRACT ADMINISTRATION**

John McDonald, Manager of Financial and Management Services, or his designee, shall be identified as the Contract Administrator and shall use all powers under the contract to enforce its faithful performance. The Contract Administrator, or his designee, shall determine the amount, quantity, acceptability, fitness of all aspects of the services and shall decide all other questions in connection with the services. The Contract Administrator, or his designee, shall not have the authority to approve changes in the services which alter the concept or which call for an extension of time for this contract. Any modifications made must be authorized by James City County Purchasing through a written amendment to the contract.

**VII. PAYMENT PROCEDURES**

The County will authorize payment to the Contractor after receipt of Contractor's correct invoice for services rendered. Invoices shall be sent to:

James City County Financial and Management Services  
Attention: John McDonald  
P.O. Box 8784  
Williamsburg, VA 23187

**VIII. CONTRACT PERIOD**

The term of this contract is for three (3) years or as negotiated. There will be an option for two (2) additional three-year renewals or as negotiated.

**JAMES CITY COUNTY**

**ATTACHMENT A--GENERAL TERMS & CONDITIONS and INSTRUCTIONS TO BIDDERS**

Vendor. These CONDITIONS AND INSTRUCTIONS TO BIDDERS shall be binding on all bidders or offerors and are incorporated by reference in all contracts resulting from any written Request for Quotes, Invitation to Bid or Request for Proposals issued, collectively the (“Request”), to which they are attached. Use of the term “bid” in these General Terms & Conditions and Instructions to Bidders is not intended to be restricted to an Invitation to Bid and shall also affect written Request for Quotes, Invitation to Bid or Request for Proposals. The Purchasing Office is responsible for the purchasing activity of James City County, a political subdivision of the Commonwealth of Virginia, and the James City Service Authority, herein referred to collectively as “James City County” or “County”. Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder’s/offeror’s own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation including the County Purchasing Policy and the County Purchasing Manual, bids/proposals on all solicitations issued by the Purchasing Office will bind bidders/ offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

**Cooperative Purchasing**--James City County issues this solicitation in accordance with Section 2.2-4304 of the Virginia Public Procurement Act and Chapter 1, Section 5 of the James City County Purchasing Policy, and on behalf of the members of the Southeastern Virginia Governmental Purchasing Cooperative (SVGPC), as well as other public bodies, governmental jurisdictions and school divisions.

Bidders/Offerors are advised that all resultant contracts will be extended, with the authorization of the bidder/offeror, to other public bodies, governmental jurisdictions and school divisions as may be interested. Should other entities decide to use the final contract, the contractor shall deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payments. James City County acts only as the “Contracting Agent” for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on consideration of your bid or offer.

It is the responsibility of the contractor to notify the public bodies, jurisdictions and political subdivisions of the availability of the contract.

Each participating public body, jurisdiction and political subdivisions has the option of executing a separate contract with the contractor. Such contracts may contain general terms and conditions unique to those jurisdictions and political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the contractor, the contractor may withdraw its extension of the award to that jurisdiction.

James City County shall not be held liable for any costs or damages incurred by another public body or jurisdiction as a result of any award extended to that public body, jurisdiction or political subdivision by the contractor.

SVGPC members reserve the right to make awards to the lowest responsive and responsible offeror during the contract term. SVGPC members not explicitly named in the IFB are not obligated to participate, nor is the successful offeror obligated to contract with other SVGPC members.

City of Chesapeake  
City of Hampton  
City of Newport News  
City of Norfolk  
City of Portsmouth  
City of Virginia Beach  
City of Williamsburg  
County of Gloucester  
County of James City  
County of King William  
Thomas Nelson Community College  
Newport News Redevelopment & Housing  
DDS Tidewater Regional Office

Newport News Public Schools  
Williamsburg/James City County Public Schools  
York County Public Schools  
Christopher Newport University  
College of William & Mary  
Norfolk State University  
Tidewater Community College  
Jamestown/Yorktown Foundation  
Southeastern Public Service Authority  
County of York  
Portsmouth Redevelopment & Housing  
CAS Norfolk Regional Office

**1. AUTHORITY AND COOPERATIVE PURCHASING-**The County Purchasing Director has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by James City County. In the discharge of these responsibilities, the County Purchasing Director may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Director, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of James City for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

**2. COMPETITION INTENDED:** It is the County's intent that this solicitation permit competition. It shall be the Bidder's/Offeror's responsibility to advise the Purchasing Director in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Director must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.

**CONDITIONS OF BIDDING**

**3. CLARIFICATION OF TERMS -** If any Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/ Offeror should contact the buyer whose name appears on the face of the solicitation no later than five (5) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the buyer. Notifications regarding specifications may not be considered if received in less than five (5) business days of the date set for opening of bids/receipt of proposals.

**4. USE OF COUNTY FORM AND TERMS AND CONDITIONS:** Failure to submit a solicitation on the official James City County form provided for that purpose or unauthorized modification of or additions to any portion of the solicitation documents may be a cause for rejection of the bid/proposal if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected. James City County reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject any bid or proposal which has been modified. The County shall not be responsible for any errors or omissions of the bidder/proposer. The solicitation shall be signed by a representative authorized to legally bind the firm. By signing the solicitation, the bidder/offeror agrees to the terms and conditions of the solicitation and certifies that they have inspected the job site(s) and are aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, shall not be considered by the County.

**5. LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/ PROPOSALS:**

Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/ modification.

James City County is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeror to ensure their bid/proposal reaches the Purchasing Office by the designated date and hour.

a. The official time used in the receipt of bids/ proposals is that time stamped by the automatic time stamp machine in the Purchasing Office. Date/time stamps marked after the designated time of receipt will be rejected.

- b. Late bids/proposals/modifications will be returned to the Bidder/Offeror UNOPENED, if solicitation number, acceptance date and Bidder/Offeror's return address is shown on the container.
- c. If the County closes its offices due to inclement weather scheduled bid openings or receipt of proposals will be extended to the next business day, same time.
- d. Vendors may modify their bids prior to the date and time specified for the bid opening. Facsimile modification of bids shall not be accepted unless the solicitation allowed such submission.

**6. WITHDRAWAL OF BIDS/PROPOSALS:**

A bidder/offeror for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

- a. Bids/Proposals may be withdrawn on written request from the Bidder/offeror received at the address shown in the solicitation prior to the time of acceptance.
- b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the County Purchasing Director, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- c. Bids/proposals shall not be withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a solicitation or resulting contract or purchase order shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder/offeror as a result of the breach or nonperformance of such contract or purchase order.

No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another Bid/Proposal of the same bidder/offeror or of another bidder/offeror in which the ownership of the withdrawing bidder/offeror is more than five percent. In the case of Invitation for Bids, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/offeror who is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.

**7. ERRORS IN BIDS/PROPOSALS –** When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initiated by the bidder/offeror. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeror of his responsibilities to provide the good or service. Bidders/Offerors are cautioned to recheck their bids/proposals for possible errors. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

**8. IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

**ADDRESSED AS INDICATED ON PAGE 1  
IFB/RFP NUMBER**

**TITLE**  
**BID/PROPOSAL DUE DATE AND TIME**  
**VENDOR NAME AND COMPLETE MAILING ADDRESS**  
**(RETURN ADDRESS)**

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeror takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. **ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance. At the end of the ninety (90) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

10. **PRICING:**

- a. Bidder warrants by virtue of bidding that prices, terms, and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the County or Bidder.
- b. Prices should be stated in units of quantity as specified in the bid form.
- c. Life cycle cost analysis may be considered when determining the lowest responsive and responsible bid. This analysis may consider, in addition to purchase price, any proposed upward or downward escalator clauses proposed for the initial contract term and any potential renewal terms; operating and related costs over the life of the item including maintenance, down time, energy costs, salvage value, etc.
- d. Bid prices shall be for complete installation ready for the County's use and shall include all applicable freight and installation charges; extra charges will not be allowed.
- e. When an annual contract is not requested by the County, and the bid is for products or services to be delivered on a one-time only or staggered basis, only firm pricing shall be given consideration. General terms such as "price in effect at time of delivery" shall not be considered for award.

11. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected.

12. **OPENING:** At the time fixed for the opening of responses to a bid, all bids will be opened and the names of the bidders and the amount bid shall be read aloud and made readily available to the public.

If a public opening of a Request for Proposals is held, only the names of the offerors will be read publicly.

13. **RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the County's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the County's Bidder's List.

14. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by in the

name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

15. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Offeror.

16. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Offerors certify that they are not currently debarred by James City County, the Commonwealth of Virginia, the Federal Government, any local government or government agency/entity/authority from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

17. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377, Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by James City County. By submitting their bids/proposals, all Bidders/Offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

The Bidder/Offeror certifies that to the best of his knowledge, no employee of the County, nor any member thereof, nor any public agency or official impacted by the solicitation or resulting contract has any pecuniary interest in the business of the Bidder/Offeror, and that no person associated with the Bidder/Offeror has any interest that would conflict in any manner with the performance of the contract resulting from this solicitation.

18. **PERFORMANCE BOND:** When requested in the bid, the County shall require the successful bidder to furnish a performance bond and labor and material payment bond with surety satisfactory to the County Attorney in the amount of the contract price at a time of or prior to execution of the contract.

19. **NO CONTACT POLICY:** No Bidder/Offeror shall initiate or otherwise have contact related to the solicitation with any County employee, other than the Purchasing Office, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeror with any County representative, other than the Purchasing Office, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeror from this procurement process.

20. **LICENSES, PERMITS, AND FEES:** All bids submitted shall have included a list of any business and professional licenses, permits, or fees required by James City County or the Commonwealth of Virginia.

**SPECIFICATIONS**

21. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable James City County to determine if the product offered meets the

requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data to enable James City County to determine if the product offered meets the requirements of the solicitation may result in the bid being declared non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

22. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.
23. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

The Bidder/Offeror shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

24. **EQUIPMENT STANDARDS.** Any equipment delivered shall be standard new equipment, latest model, the best quality, and the highest grade work, except as otherwise specifically stated in bid. Any part of nominal appurtenances which are usually provided in the manufacturer's stock model shall be furnished.
25. **ANNUAL CONTRACT USAGE REQUIREMENTS:** Whenever a bid is sought seeking a source of supply for an annual contract for products or services, the quantities or usage shown are estimates only. No guarantee or warranty is given or implied by James City County as to the total amount that may not be purchased from any resulting contracts. These quantities are for Bidder's information only and will be used for tabulation and presentation of bid.

#### AWARD

26. **AWARD OR REJECTION OF BIDS:** The Purchasing Director shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Director reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of James City County. The Purchasing Director reserves the right to negotiate with the lowest responsive, responsible bidder should bids exceed available funds. The Purchasing Director shall reject the bid if the bidder is deemed to be a non-responsive or non-responsive bidder.
27. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** James City County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeror to perform the work/furnish the item(s) and the Bidder/Offeror shall furnish to James City County all such information and data for this purpose as may be requested.

James City County reserves the right to inspect Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. James City County further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeror fails to satisfy James City County that such Bidder/Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

28. **TIE BIDS:** In the case of a tie bid, the County may give preference to goods, services and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Code of Virginia § 2.2-4324. If no County or Commonwealth choice is available, the tie shall be decided by lot.
29. **FACTORS OTHER THAN PRICE IN AWARD DECISION:** The following factors, in addition to price (as they apply), shall be a consideration in the award decision:
- The quality of performance/workmanship of previous contracts, services or products, or references which attest to other specific experiences;
  - The timely completion of previous contracts or services or the timely delivery of past orders; or references which attest to other specific experiences;
  - The sufficiency of financial resources and its impact on ability of the bidder to perform the contract or provide the services;
  - The County reserves the right to conduct on-site inspections of any bidder's facilities prior to award. The results of said inspection will be considered by the County in determining bidder's capabilities of successfully administering to this contract;
  - The ability and availability of the bidder to provide both quality and timely maintenance, service, and/or parts;
  - The resale value, life cycle costing, and value analysis of a product;
  - The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the work or products required;
  - Delivery of a product and timely completion of a project as stated by vendor in bid;
  - Substantial compliance or noncompliance with specifications set forth in bid as determined by the County;
  - Product or parts inventory capability as it relates to a particular bid; and
  - Results of product testing.

#### CONTRACT PROVISIONS

30. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court or General District Court of James City County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.
31. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into this contract, vendor certifies that it does not and will not during the performance of this contract knowingly employ an unauthorized alien as defined in, or otherwise violate the provisions of, the federal Immigration Reform and Control Act of 1986, as amended.

**32. OBLIGATIONS OF COUNTY AND CONTRACTOR:**

County: The County shall furnish to the contractor all available information as listed in the solicitation that may be useful for the contract work. The County shall assist the contractor in obtaining access to enter upon public and private property as required to perform the contract work. The County shall designate a representative who shall serve as the principal contact and give direction to the contractor throughout the duration of the contract. Contractor: The contractor represents that he has, or shall secure at his expense, all personnel, including subcontractors, required to perform and complete the Scope of Work.

**33. CONFIDENTIALITY AND OWNERSHIP OF DATA:** Any reports, information, intellectual property, data, drawings, specifications, estimates and summaries given to or prepared or assembled by the contractor under the Scope of Work of the contract, shall not be made available to any individual or organization by the contractor without prior written approval of the County. All of these items shall become the property of the County upon payment of fees as required by the contract.

**34. REPORTS OF WORK:** The County and the contractor shall schedule progress meetings at appropriate intervals throughout the duration of the contract. These meetings shall provide for the exchange of information related to the status of the Scope of Work, anticipated progress and any problems that have occurred.

**35. ANTI-TRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to James City County all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and James City County, relating to the particular goods or services purchased or acquired by James City County under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Director and/or investigation for Anti-Trust violations.

**36. PAYMENT TERMS:** Unless otherwise provided in the solicitation payment will be made thirty (30) days after receipt of a proper invoice with complete supporting documentation, or thirty (30) days after receipt of all goods or acceptance of work, whichever is the latter. For construction projects, the County may retain five percent (5%) of the total amount of each partial progress payment to assure faithful performance of the contract by the contractor. The County will release all retainage upon final payment.

- a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.

**37. PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated:

- a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from James City County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- b. To notify James City County and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from James City County, except for amounts withheld as

stated in b above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of James City County.

**38. ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Director.

**39. DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, James City County, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to another remedies which James City County may have.

**40. AVAILABILITY OF FUNDS:** It is understood and agreed between the contractor and the County herein that the County shall be bound hereunder only to the extent of the funds available or which hereafter become available for the purpose of the contract.

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

In every contract over \$10,000 the provisions in a and b below apply:

- a. During the performance of this contract, the Contractor agrees as follows:
  - 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 2) 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.
  - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
- b. The Contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

42. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitations or award of this contract because of race, religion, color, sex, national origin, age or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, James City County shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, service, or disbursements from an alternative provider.

43. **INVOICES:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the IFB/RFP number and/or purchase order number.

44. **PRECEDENCE OF TERMS:** In the event there is a conflict between the General Terms and Conditions and any Special Terms and Conditions, the Special Terms and Conditions shall apply.

45. **CHANGES TO THE CONTRACT:** There shall be no extra work allowed on the contract without prior written authorization in the form of a change order signed by the Purchasing Director or the County Administrator. No officer, agent or employee of the County is authorized to give verbal instructions to increase the Scope of Work and the contractor shall not use verbal instructions as the basis for additional costs. Changes can be made to the contract in any of the following ways by the issuance of a Change Order:

a. The parties may agree to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

b. James City County may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the County a credit for any savings. Said compensation shall be determined by one of the following methods.

- 1) By mutual agreement between the parties in writing; or
- 2) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the County's right to audit the Contractor's records and/or determine the correct number of units independently; or
- 3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the County with all vouchers and records of expenses incurred and savings realized. The County shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Office within thirty (30) days from the date of receipt of the written order from the Purchasing Office. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract

price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of the contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the County or with the performance of the contract generally.

c. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater, without the advanced written approval of the Board of Supervisors.

46. **AUTHORIZATION TO TRANSACT BUSINESS, STATE REGISTRATION OF CONTRACTORS (IF APPLICABLE) AND COUNTY BUSINESS LICENSE:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

Pursuant to competitive sealed bidding or competitive negotiation, all bidders or offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 are required to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

Attention is directed to Chapter 11, title 54.1 of the Code of Virginia (Re: State registration of contractors), which requires that all bidders must show evidence of the proper license under the provision of this chapter before such bid is considered.

All firms doing business in James City County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in James City County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Business License Inspector, telephone (757) 253-6698.

47. **PROPRIETARY INFORMATION:** Section 2.2-4342F of the Code of Virginia states: "Trade secrets of proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protections 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." Declaring an entire bid or proposal response as proprietary is unacceptable.

48. **INDEMNIFICATION:** The Contractor hereby binds himself and his successors to indemnify, defend, and save harmless James City County, 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 the County, 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 the County. The said Contractor further agrees to indemnify and save harmless James City County 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.

advance notice requirement is waived in the event of Termination for Cause.

49. **NOTICE OF REQUIRED DISABILITY LEGISLATION:** The County government is required to comply with State and Federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) of 1990 Title II and the Virginia with Disabilities Act of 1990. Specifically, the County, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II or the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

50. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

51. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the County upon thirty (30) days advance written notice to the other party. Upon receipt of a notice of termination, the contractor shall cease all work underway on behalf of the County unless advised by the County to do otherwise. In the event of termination, Contractor shall be compensated only for the services as set forth in the contract provided to the satisfaction of the County and expenses incurred as of the date of termination. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

- a. **Termination for Convenience:** In the event that the contract is terminated upon request and for the convenience of the County, without the required thirty (30) days advance notice, then the County shall be responsible for payment of services up to the termination date.
- b. **Termination for Cause:** Termination by the County for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to the Default paragraph of these General Conditions, the County may hold the contractor responsible for any resulting additional purchase and administrative costs. Any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the County by reason of the contractor's default. The thirty (30) days

c. **Termination Due to Unavailability of Funds in Succeeding Fiscal Years:** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled.

52. **CONTRACTOR RESPONSIBILITY FOR COUNTY PROPERTY:** The Contractor shall be responsible for damages to County property caused by work performed by itself or its subcontractors. The Contractor shall be responsible for maintaining the area surrounding and adjoining the work site in their current condition. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Contractor shall be replaced or remedied by the Contractor, to the satisfaction of the County, at the Contractor's expense.

53. **COPYRIGHTS OR PATENT RIGHTS:** The bidder certifies by submission of bid that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the product or services shipped or ordered as a result of this bid. The successful bidder shall, at his own expense, defend any and all actions or suits charging such infringement, and will save James City County, its officers, employees, and agents harmless from any and all liability, loss, or expense occasioned by any such violation.

54. **DELIVERY:** In the appropriate space, the bidder shall state the time of proposed delivery or project completion in number of calendar days. Unless otherwise specified, calendar days shall be presumed. Unless otherwise specified, quote the earliest delivery possible, as this may be considered a factor in making award. Delivery expressed in calendar days may be given preference over such general terms as "stock immediately," and "as soon as possible." As time will be of the essence for any orders places as a result of this bid, the County reserves the right to cancel such orders, or any part thereof, without obligation, if delivery is not made at the time(s) specified on bid form.

55. **INDEPENDENT CONTRACTOR:** The contractor shall be legally considered an independent contractor and neither the contractor nor its employees shall, under any circumstances, be considered servants or agents of James City County or James City Service Authority; and the County shall be at no time legally responsible for any negligence or other wrongdoing by the contractor, its servants, or agents. The County shall not withhold from the contract payments to the contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the contractor. Further, the County shall not provide to the contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the County for its employees.

56. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Director. In the event that the contractor desires to subcontract some part of the work, the contractor shall furnish the Purchasing Director the names, qualifications and experience of the proposed subcontractors. The contractor shall remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the contract.

57. **HOLIDAYS:** The Contractor shall receive approval of the County, in advance, of any work to be performed on Holidays. James City Service Authority/James City County observes the following Holidays:

New Year's Day	1 <sup>st</sup> day of January
Martin Luther King's Birthday	3 <sup>rd</sup> Monday in January
President's Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	4 <sup>th</sup> day in July
Labor Day	1 <sup>st</sup> Monday in September
Veteran's Day	11 <sup>th</sup> day in November
Thanksgiving Day	4 <sup>th</sup> Thursday in November

Day after Thanksgiving      4<sup>th</sup> Friday in November  
Christmas Eve                24<sup>th</sup> day in December  
Christmas Day                25<sup>th</sup> day of December

#### DELIVERY PROVISION

58. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of **8:00 a.m. – 3:00 p.m.** Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.
59. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, and a physical inspection is made and material is requested or rejected, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
60. **TESTING AND INSPECTIONS:** James City County reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.
61. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Office when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Office, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.
62. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.
63. **REPLACEMENT:** Materials or components that have been rejected by the Purchasing Office, in accordance with the terms of

the contract, shall be replaced by the Contractor at no cost to the County.

64. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:
- Purchase Order Number/Contract Number
  - Name of Article and Stock Number,
  - Quantity Ordered,
  - Quantity Shipped,
  - Quantity Back Ordered,
  - The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

65. **SAMPLES:** Evidence in the form of samples may be requested if brand being quoted upon is other than as specified. The County reserves the right to request that such samples be furnished at the time of bid opening. The County also reserves the right to request samples after the date of bid opening. Requested samples must be furnished free of expense to the County and if not used in testing or destroyed, will, upon request, be returned at the bidder's expense.

#### BIDDER/CONTRACTOR REMEDIES

66. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/ Offeror who desires to protest the award or decision to award a contract, by James City County shall submit such protest in writing to the County no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeror is not a responsible Bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Director shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/offeror appeals within ten (10) days of the written decision by instituting legal action. Nothing in this paragraph shall be construed to permit an offeror to challenge the validity of the terms or conditions of the solicitation.
67. **DISPUTES:**  
Claims. Written notice of the Contractor to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the County's Purchasing Director no later than sixty (60) days after final payment. The Purchasing Director shall give written notification of the final decision on such claim to the Contractor within thirty (30) days of the date the claim was received. The Contractor may not institute legal action before receiving the Purchasing Director's final written decision, unless the Purchasing Director fails to render such decision within the specified time. Pendency of claims shall not delay payment of amounts agreed due in the final payment. (Code of Virginia, § 2.2-4363).

Claims Relief. Under certain circumstances beyond the control of the Contractor, such as acts of God, sabotage, and fire or explosion not caused by negligence of the Contractor or its agent, the Purchasing Director may extend the time limit for performance required by this Contract. Any such extension must be issued in writing and signed by the Purchasing Director.

## **SPECIAL TERMS AND CONDITIONS**

1. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this solicitation, no indication of such sales or services to James City County will be used in product literature or advertising. The Contractor shall not state in any of the advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
2. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The County, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
3. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the County shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
4. **CANCELLATION OF CONTRACT:** The County reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
5. **IDENTIFICATION OF PROPOSAL ENVELOPE:** The signed proposal should be returned in a separate envelope or package, sealed and addressed as follows: James City County Purchasing, 101F Mounts Bay Road, P. O. Box 8784, Williamsburg, VA 23187. Reference the opening date and hour and RFP Number in the lower left corner of the envelope or package. If a proposal not contained in the special envelope is mailed, the Offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. No other correspondence or other proposals should be placed in the envelope. Proposals may be hand delivered to James City County Purchasing at 101F Mounts Bay Road, Williamsburg, Va. 23185.
6. **INDEPENDENT CONTRACTOR:** The contractor shall not be an employee of the County, but shall be an independent contractor. Nothing in this agreement shall be construed as authority for the contractor to make commitments which shall bind the County, or to otherwise act on behalf of County may expressly authorize in writing.
7. **INSURANCE:** By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, it will have the following insurance coverage's at the time the work commences. Additionally, it will maintain these during the entire term of the contract and that all insurance coverage's will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. During the period of the contract, the County reserves the right to require the Contractor to furnish certificates of insurance for the coverage required.

### **INSURANCE COVERAGE'S AND LIMITS REQUIRED:**

- A. Worker's Compensation -Statutory requirements and benefits.
- B. Employers Liability -\$100,000.

- C. General Liability -\$500,000 combined single limit. Montgomery County and the Commonwealth of Virginia shall be named as an additional insured with respect to goods/services being procured. This coverage is to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.
- D. Automobile Liability -\$500,000.
- E. Professional Liability/Errors and Omissions \$1,000,000 occurrences, \$3,000,000 aggregate.

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 occurrences, \$3,000,000 aggregate

The contractor agrees to be responsible for, indemnify, defend, and hold harmless the County, its officers, agents, and employees from the payment of all sums of money by reason of any claim against them arising out of any and all occurrences resulting in bodily or mental injury or property damage that may happen to occur in connection with and during the performance of the contract, including but not limited to claims under the Worker's Compensation Act. The contractor agrees that it will, at all times, after the completion of the work, be responsible for, indemnify, defend and hold harmless the County, its officers, agents and employees from all liabilities resulting from bodily or mental injury or property damage directly or indirectly arising out of the performance or nonperformance of the contract.

- 8. **PROPOSAL ACCEPTANCE PERIOD:** Any proposal received in response to this solicitation shall be valid for (90) days. At the end of the (90) days the proposal may be withdrawn at the written request of the Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is cancelled.

CONTRACT  
FOR  
JAMES CITY COUNTY  
REQUEST FOR PROPOSALS  
XX-XXXX  
TITLE OF PROJECT

THIS CONTRACT ENTERED INTO THIS \_\_\_ day of October, 2011, by and between the COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "County"), and VENDOR NAME., (the "Contractor").

WITNESSETH

WHEREAS, the County is undertaking certain activities requiring contractor services hereinafter referred to as the "Project"; and

WHEREAS, the County desires to engage the Contractor to SERVICE/GOOD TO BE PROVIDED as set forth in the Contract Documents (defined herein) between the Contractor and the County.

NOW, THEREFORE, the County and the Contractor, in consideration of the foregoing by their mutual covenants set forth herein and for the consideration hereinafter set forth agree as follows:

**I. SCOPE OF SERVICES**

1. The Contractor shall perform all necessary services in connection with the administration and management of DESCRIPTION as required by the County. The Contractor shall provide the full scope of services as set forth in the Contract Documents and shall do so in a satisfactory and proper manner under the direction of the County Administrator or his designated representative.

2. The work to be performed pursuant to this Contract shall be limited to those items set forth in the Contract Documents. The Contract Documents consist of:

- a. the Request for Proposal dated DATE, including all related addenda (the "RFP"); and
- b. the Contractor's sealed proposal in its entirety, dated DATE (the "Contractor's Proposal").

Both the RFP and the Contractor's Proposal are made a part this Contract as if the same were fully set forth.

**II. TIME OF PERFORMANCE**

The services of the Contractor are to commence no later than DATE and shall continue through DATE. These services may be renewed or terminated as set forth in RFP Section II, Period of Contract.

**III. COMPENSATION AND METHOD OF PAYMENT**

1. The fee schedule for cost of services will be applied under this Contract as set forth in the Contractor’s Proposal (any any addenda)

2. Payments are subject to receipt of an invoice from the Contractor and shall be adequately supported by detailed summary documentation. All requisitions and supporting documents shall be acceptable to the County before payment is made.

**IV. AMENDMENTS**

This Contract may be amended from time to time upon written agreement by the County and the Contractor and shall be subject to renegotiation if such amendment results in a change in the scope of services, compensation, or method of payment.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract as of the day and year above written.

VENDOR NAME

JAMES CITY COUNTY

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

## **ATTACHMENT C**

### **INFORMATION OVERVIEW**

#### **I. GENERAL INFORMATION**

The County is located in southeastern Virginia and partially surrounds the City of Williamsburg. Although much of the County's 144 square miles consists of developed suburban areas, it has retained a considerable amount of undeveloped agricultural and forest land. There are no incorporated towns within the County. The County is empowered to levy a property tax on both real and personal properties located within its boundaries.

The County is organized under the County Administrator form of government (as defined under Virginia Law). Under this form of government, the Board of Supervisors appoints a County Administrator to serve as the Chief Executive Officer of the County. The Administrator serves at the pleasure of the Board of Supervisors, implements its policies, appoints department heads, and directs business and administrative procedures.

The Board of Supervisors is a five-member body, elected by the voters of the Electoral Districts in which they live to non staggered terms. The Chairman of the Board is elected annually by its members. Each member serves a four-year term. This body enacts ordinances, appropriates funds, sets tax rates, and establishes policies for the administration of the County's public services.

The County provides a full range of services, including law enforcement, fire protection, and recreational activities. Water and sewer services are provided through the legally separate James City Service Authority (JCSA). The Board of Supervisors of James City County serves as the board of directors of the JCSA.

The County is also financially accountable for the legally separate Williamsburg-James City County (WJCC) School Board and the legally separate James City County Economic Development Authority (EDA), both of which are reported separately as discretely presented component units within the County's financial statements.

The County shares a school system with the City of Williamsburg and acts as its fiscal agent. A seven-member School Board oversees the public school system. Five County members are elected for non-staggered four-year terms and the City of Williamsburg Council (City) appoints two representatives to the School Board.

At December 31, 2011, the School system operated nine elementary schools, three middle schools and three high schools. Both the County and the City appropriate General Fund revenues to support School Board expenditures because the School Board cannot levy taxes or incur indebtedness under Virginia law.

#### **II. PERSONNEL/PAYROLL**

At December 31, 2011, the County had 556 full-time equivalent employees and the School Board had approximately 1,200 full-time equivalent employees. The School Board payroll is processed separately from the County although one elected Treasurer serves the County, the City and the Schools.

#### **III. ACCOUNTS PAYABLE**

The County and School Board disbursements are processed separately. The County processes

disbursements for the James City Service Authority and the EDA.

#### IV. ECONOMIC AND FINANCIAL ACTIVITY

James City County is a growing community of approximately 70,000 residents. The County celebrated its 400<sup>th</sup> anniversary since the English landed at Jamestown in 1607. Jamestown Island is located in the County and is the source of the County's unusual name. The "Shire of James City" was created in 1634 as one of eight original shires, or counties, in English Colonial America.

In addition to its historical heritage, the County enjoys a solid tax base, with In Bev's Anheuser Busch brewery as its largest taxpayer and the County is also the home to Busch Gardens. There has been a gradual increase in economy activity during the 2011 fiscal year. Overall, revenues increased 1.3% from last year. Revenues are expected to have a modest increase of 2% during fiscal year 2012. The real estate tax revenue is expected to increase during fiscal 2012 due to new development and is expected to decline for the 2013 fiscal year with the scheduled reassessment on January 1, 2012.

The County is a popular retirement destination with several planned communities, sixteen golf courses and a growing adult care industry. It actively partners with the City of Williamsburg and the College of William and Mary in a variety of service offerings.

In October 2010, the County was upgraded by Standard & Poor's to a AAA bond rating. The County also maintains a AAA rating with Fitch Ratings and Aaa rating from Moody's Investors Service. These bond ratings are based on analysts' recommendations after a review of economic and fiscal performance, fiscal policies and practices, current debt outstanding and evidence of financial planning to meet future capital needs. These ratings are excellent for a community the size of James City County and give the County additional leverage in the bond market for potential bond buyers and investors.

The County has published annual operating and capital budgets, as well as the Comprehensive Annual Financial Reports on its web site at <http://www.jccgov.com/fms>. The County has received the Government Finance Officers' Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting for its Comprehensive Annual Financial Report for the fiscal year ended June 30, 2010. This was the twenty-sixth year that the County has received this prestigious award.