



Procurement Policy

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1. INTRODUCTION

The Williamsburg Area Transit Authority's operates fixed route and complementary ADA demand response public transportation in Williamsburg area. Along with operational activities, WATA is also responsible for planning, design and programming long and short range of transportation projects. To perform these activities, Williamsburg Area Transit Authority (WATA) obtain revenues from a variety of sources in order to procure services, vehicles, buildings, and materials and supplies.

WATA receives funding from both the federal government and the state. Therefore, WATA adopts procurement policies and procedures that are consistent with the current Federal regulations and the laws of the Commonwealth of Virginia. Additional guidance on specific contractual actions is provided by OMB Circular A-102, Attachment O, and Federal Transit Administration (FTA) Circular 4220.1F as amended in effect and in the Best Practices Guidelines.

1.1 Roles & Responsibilities

Executive Director: Responsible oversight of the overall procurement function and for providing advice on all matters relating to procurement. Ensures procurement actions necessary to awarding of contracts is carried out in a manner consistent with the policies and procedures adopted by WATA, and FTA and the Commonwealth of Virginia. Additionally, the Executive Director, or their designee, is in charge of ensuring that procurement personnel are trained and sufficiently updated on FTA procurement guidelines, regulations and changes. The Deputy Executive Director, Purchasing Director, Senior Purchasing Specialist and the Budget and Grants Administrator report directly to the Executive Director.

Deputy Executive Director: The Deputy Executive Director acts as Executive Director in their absence.

Purchasing Director: Reports directly to the Executive Director. This role is the key contact for all matters related to procurement, and is responsible for all procurement decisions not explicitly designated as the responsibility of the Executive Director, including all activities related to contract administration and the oversight of the Senior Purchasing Specialist role, the Purchasing Specialist and the Administrative Specialist.

Senior Purchasing Specialist (Buyer): Reports to the Purchasing Director. This role is in responsible for processes for procurement, purchase order administration, and any documentation or filing duties. If there are any issues or perceived issues that the Senior Purchasing Specialist becomes aware of that pertain to activity conducted by the any purchasing requests, these must be reported to the Purchasing Director <http://www.gowata.org/>.

Purchasing Specialist (Buyer): Reports the Purchasing Director. This role is in responsible for processes for procurement, purchase order administration, and any documentation or filing duties. If there are any issues or perceived issues that the Purchasing Specialist becomes aware of that pertain to activity conducted by the any purchasing requests, these must be reported to the Purchasing Director.

Administrative Specialist: A clerical role that reports directly to the Purchasing Director. This role is responsible for the administration process for procurement, purchase order administration, and any documentation or filing duties. If there are any issues or perceived issues that the Purchasing Specialist becomes aware of that pertain to activity conducted by the any purchasing requests, these must be reported directly to the Purchasing Director.

Budget and Grants Administrator: Reports directly to the WATA Executive Director. Serves as the Disadvantaged Business Enterprise Liaison Officer (DBELO) with direct and independent access to the Executive Director. The DBELO

is responsible for ensuring DOT compliance for the Department of Transportation, federal and state assisted contracts as required by 49 C.F.R. Part 26.

1.2 Purpose of Policies and Procedures

The purpose of these policies and procedures is to set forth the procurement methods and establish standards for obtaining goods and services, including construction, professional, and architect/engineering services necessary for the operation of WATA's mass transit service. These procedures include guidelines for the solicitation, award and administration of formally advertised contracts, as well as the consultant selection, negotiation, award and administration of competitively negotiated and architect/engineering contracts.

The procurement procedures are designed to:

- Instill public confidence in the procurement process of WATA.
- Ensure fair and equitable treatment for all vendors who seek to deal with WATA, with particular emphasis toward Disadvantaged Business Enterprise (DBE).
- Ensure maximum open and free competition in the expenditure of public funds.
- Provide the safeguards to maintain a procurement system of quality and integrity.

The methods by which the foregoing items are implemented are described in detail in the remainder of this document and the attachments hereto. Definitions of some of the key terms used throughout this document are included in Appendix B.

1.3 Files and Record Retention

Additionally, the purpose of this policy is to require the establishment of procurement files that contain all relevant records for all procurements processed by the Contracts Administration and Procurement Department. This policy applies to all procurements. James City County Purchasing shall retain the original and/or electronic copies of all documents associated with WATA procurement actions including the requisition, solicitation documents (Invitation for Bids, Request for Proposals, Request for Quotes, etc), bids or proposals, procurement evaluation reports, any negotiation or meeting notes, insurance certifications, correspondence relevant to the specific procurement action, notices, purchase orders and contract agreements for all of WATA's procurement activities. This requirement extends to all goods and services procured.

A separate procurement file for each procurement action shall be maintained regardless of the dollar value. The procurement file containing the original or electronic documentation shall remain with Procurement through closeout of the contract or purchase order.

The Administrative Specialist shall file all original or electronic documents in a consistent manner in an active working file during the solicitation phase of the procurement and ensure that all necessary documentation is included in the procurement file.

These files shall be retained in accordance with the Library of Virginia's most current Records Retention Policy under the General Schedule No. GS-02, which is a minimum of 5 years after contract completion. Purchase orders are retained for a minimum of 3 years.

2. CONTRACT ADMINISTRATION

Reference FTA C 4220.1F, Ch.III, 3: Grantee's shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and Local requirements.

The Williamsburg Area Transit Authority (WATA) ensures that contract administration is carried out onsite by assigning responsibility for and ensuring that the following is performed on each procurement:

- Suppliers perform the work that the contract calls for
- Satisfactory quality
- Timeliness of performance
- Performance within available funds
- Ensuring that WATA has a documented history of contracting activity
- Ensuring receipt, inspection, acceptance and certification for payment

Contract Administration Guidelines

1. A Notice to Proceed on any RFP and IFB will be issued after a contract is executed.
2. A contract or purchase order will be done for all projects over \$10,000 and constructions projects over \$2,000.
3. All agreements will be assigned a contract number, which must be referred to on the Contractor's invoices.
4. The Executive Director or Project Manager will approve all invoices before payment is issued.
5. The Executive Director or WATA Board Chair or their designees will sign all contracts in accordance with the adopted Procurement Policies and Procedures.
6. A contract change order is necessary for a change in scope of work, term, or compensation and must be completed before additional work or payment is authorized.
7. A copy of the procurement document must be included with the contract files, including an explanation of the process used in procuring the goods or services.

3. PROCUREMENT POLICIES

Reference FTA C 4220.1F, Ch.III, 3.a: Grantee's must have written procurement policies as a condition of self-certification. Note: training must be conducted on the policies and procedures. It also helps to conduct self-assessments to ensure staff are in compliance.

The Williamsburg Area Transit Authority (WATA) is governed by a five member Board of Directors. Two members are appointed by James City County, one is appointed by the City of Williamsburg, one is appointed by York County and one is appointed by the Colonial Williamsburg Foundation.

Among other duties, WATA's Board of Directors is responsible for establishing policies which guide the operation of the Authority. It is in this capacity that the Board adopts a set of procurement policies. These policies serve as a basis upon which procurement procedures may be developed.

3.1 Equal Employment Opportunity Policy

The WATA Board has adopted an Equal Employment Opportunity (EEO) Policy which applies to both internal hiring and promotion practices as well as to vendors who do business with WATA. All Requests for Proposal and Invitations for Bids issued by the WATA and the James City County Purchasing office require the Bidder to certify:

- that it does not discriminate against any employee or applicant for employment, because of race, religion, pregnancy, medical condition, ancestry, marital status, sexual orientation, gender identity, physical or mental disability, sex, age, creed, color, disability or national origin;
- that it is in compliance with all Executive Orders and federal, state and local laws regarding fair employment practices and non-discrimination in employment;
- that it agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

3.2 Disadvantaged Business Enterprise Program

The Federal Transit Administration (FTA) requires that recipients of FTA grant assistance take necessary and reasonable steps to ensure that Disadvantaged Business Enterprises (DBE's) are afforded the maximum opportunity to participate in the performance of contracts which are financed in whole or in part with federal funds. WATA may not exclude any person from participation in, deny any person the benefits or, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin. As evidence of compliance, WATA must set goals for DBE participation in such contracts which are expected to be awarded during the following fiscal year and describe efforts from the previous fiscal year. These goals must be set using the methods in 49 CFR 26.45. WATA's DBE goals must be filed every three years.

For the purpose of this program, a DBE is defined as: a small business concern which is both owned and controlled by socially and economically disadvantaged persons. This means that disadvantaged individuals must own at least 51% of the business and they must control the management and daily operations of the business. Included in the classification of disadvantaged individuals are United States citizens who are: African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women or members of other groups or individuals who the Small Business Administration (SBA) has determined are economically and socially disadvantaged under Section 8(a) of the Small Business Act.

3.3 System for Ensuring the Most Efficient and Economic Purchase

Reference FTA C 4220.1F, Ch.IV, 1b, c,e: Grantees are required to establish procedures to avoid the purchase of unnecessary property and services they do not need.

The FTA-required procedures are established to avoid the purchase of unnecessary property and services. This manual is intended to ensure that measures are implemented so that no duplicative or unnecessary purchases are made, including duplicative items and quantities or options whose use is unlikely. Additionally, the Purchasing Director will determine whether to consolidate or break out procurements to obtain a more economical purchase. These processes are included as part of the requisition approval process and the procurement approval process implemented at WATA.

3.4 Written Record of Procurement History

Reference FTA C 4220.1F, Ch.III, 3.d: Grantee's are required to maintain and make available records detailing the history of each procurement

The Purchasing Specialist (Buyer) or Buyer assigned to each solicitation shall ensure a written record of procurement history for all procurement actions, regardless of dollar value. *At a minimum*, records are to include the rationale for the method of procurement, the reason for the selection of the contract type, the reason for contractor selection or rejection, and the basis for the contract price.

Sample documents for procurement method selection to be included in this file can be found in Reference 1 of this manual.

3.5 Independent Cost Estimate

*Reference FTA C 4220.1F, Ch.VI, 3a, 6: In connection with **every** procurement action, grantees must make independent estimates **before** receiving bids or proposals. Price estimates need not be made for purchases under \$2,500.*

An independent estimate is required for all procurements over \$2,500 and for all contract change orders Independent does not mean independent of WATA, it means independent and **prior to** bids and proposals being received. The Purchasing office **must** document the date and the source of the independent cost estimate (ICE) in each procurement file, but it is the responsibility of the Project Manager and the Budget and Grants Administrator to prepare the actual estimate. A budget number is not acceptable as an ICE. Additionally, the ICE is the foundation for the later price analysis that is completed by the procurement department. The Purchasing Office is responsible to obtain and file the ICE in the permanent file.

3.6 Brand Name or Equal

Reference FTA C 4220.1F, Ch.III, 3a: When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

Chapter VI, Section 2(a)(3) and (a)(4)(f) of FTA C 4220.1F indicates that specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its salient characteristics is considered to be restrictive of competition.

WATA shall work with requestors to see if brand names can be removed from the specification by substituting design or performance specifications. Whenever brand names are used, the solicitation must include a phrase such as "or equal," "or approved equal," or "similar in design, construction and performance" with the brand name. Any procurement documents must also contain a clause in the general provisions that states that even if the phrase "or approved equal" is inadvertently omitted, it is implied after any brand name. If "or equal" is specified, the minimum essential characteristics and standards to which the material, product or service must conform if it is to satisfy its intended use must be included.

4. CODE OF CONDUCT

Reference FTA C 4220.1F, Ch.III, 1: Requires each grantee to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. Virginia Public Procurement Act Article 1- General Provision.

4.1 Purpose & Applicability

As a governmental institution WATA must be vigilant in its protection of the public trust. Toward this end employees, directors, officers, and contracted agents of WATA must conduct themselves in a manner which will foster public confidence in the integrity of WATA's procurement system.

This section is intended to prescribe standards of conduct designed to ensure honesty and integrity in WATA procurements. The standards established herein shall apply to all activities associated with the procurement of goods and services, and shall extend to all employees, officers, directors, and Specialists of WATA.

4.2 Conflict of Interest

Reference FTA C 4220.1F, Ch. VI, 2a: An organizational conflict of interest is considered to be restrictive of competition. Note: ensure there is an OCI clause in the contract terms.

No employee, officer, director, or Specialist of WATA shall participate in the selection, award, or administration of a contract or purchase order if a conflict of interest, whether real or apparent, would be involved. Such conflict would arise when any of the following has a financial or other interest in the firm(s) considered or selected for award:

- (a) A WATA employee, officer, director, agent, or Specialist;
- (b) Any member of his/her immediate family;
- (c) His/her business associate; or
- (d) An organization which employs or is about to employ any of the above.

Employees, officers, directors, and contracted agents of WATA shall be subject to the laws of the Commonwealth of Virginia concerning conflicts of interest for public officials, as well as applicable Federal laws. Anyone found to violate standards established by such laws may be subject to the penalties, sanctions, or other disciplinary actions provided for therein.

In cases where an employee, officer, director, or contracted agent of WATA may have a conflict or potential conflict of interest, it is the policy of WATA that such individual(s) must promptly report the conflict or potential conflict in writing to the WATA Executive Director and immediately communicate the conflict or potential conflict to the Purchasing Director. Failure to adhere to this requirement shall constitute a violation of WATA Procurement Policy and may subject the violator to disciplinary action.

No employee, officer, director, or contracted agent of WATA shall not use this information for the actual or anticipated benefit of themselves, their relatives, or persons with whom they have a common financial interest.

Organizational conflicts of interest are considered to be restrictive and are therefore prohibited on all WATA procurements. An organizational conflict of interest exists when:

- A contractor is unable or potentially unable to provide impartial and objective assistance or advice due to other activities, relationships, contracts or circumstances
- A contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract
- During the conduct of an earlier procurement, a contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents

4.3 Gifts, Gratuities and Lobbying

No employee, officer, director, or contracted agent of WATA may solicit or accept, either directly or indirectly, any gift, gratuity, favors, loan, or other item or service of value if:

- (a) The discharge of his/her official duties would be influenced;
- (b) He/she has been, is presently, or may in the near future be involved in any official act or action affecting the donor or lender; or
- (c) It is made by a contractor, potential contractor, or parties to subcontracts.

Invitations for business lunches, parties, or similar functions shall be declined if received from bidders or other parties involved in a pending procurement. This policy is intended to avoid any situation which may give an appearance of improper influence in WATA procurement activities.

Notwithstanding the above, this section shall not apply to the following:

- (a) An occasional non-pecuniary gift of nominal value accepted in the ordinary course of a business meeting, limits based on IRS Publication 463, Chapter 3, page 13;
- (b) Unsolicited advertising or promotional material of nominal intrinsic value;

Failure to adhere to the provisions of this section shall constitute a violation of WATA policy and may subject the violator to disciplinary action to the extent permitted by state or local law or regulations.

Additionally, contractors who apply or bid for an award of \$50,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal Contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal Contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

4.4 Contacts with Vendors, Bidders and Offerors

Prior to the issuance of a procurement solicitation, informational and research contacts with prospective vendors may be made for the purpose of gathering needed data. However, in making such contacts, WATA employees, officers, directors, and contracted agents shall avoid any commitment, or implication thereof, of a possible future contract.

Accordingly, requests for substantial complimentary services or supplies which may imply an obligation on the part of WATA shall be avoided. Requests for testing services, product samples or demonstrations, and free trips to examine vendor products must also be avoided.

Whenever a procurement is in process (e.g., during the solicitation, evaluation, negotiation, and award phases) all contacts with potential contractors or vendors shall be made through the Purchasing Office.

4.5 Release and use of Information

With the exception of formally advertised **sealed bid** procurements, i.e., Invitation for Bids, all cost and pricing information received by WATA is not to be treated as confidential.

5. GENERAL GUIDELINES

The method which is used to procure an item or a service depends on two factors: First, the item being procured; and second, the cost. The following define the procedures which must be followed for each type of procurement.

5.1 Supplies, Equipment and Materials

5.1.1 Less than \$2,500.00

Purchases less than \$2,500.00 are not subject to bidding requirements as long as whoever authorizes the purchase documents that the price to be fair and reasonable. Prices may be established through phone quotes or other appropriate means. Such purchases are to be made in accordance with the procedures for informal purchases described in Section 6.

5.1.2 \$2,500 to \$50,000.00

Procurements \$2,500.00 to \$50,000.00 require three written quotes from responsive and responsible suppliers. A deadline for bid submittal date shall be established at when the solicitations are released. Purchases of supplies, materials and equipment within this threshold require approval of the Executive Director.

5.1.3 Exceeds \$50,000.00

Purchases of supplies, equipment and material exceeding \$50,000.00 require a competitive bidding process which is described in Section 5. Purchases of supplies, materials or equipment over \$50,000.00 require approval of the WATA Board prior to contract award.

5.1.4 Natural Gas, Lubricants, Oil and Fuel

Natural gas purchases shall be procured from a public utility or supplier at the prevailing price. Likewise other lubricants, oil and fuels essential to transit operations are procured at local prevailing prices.

5.2 Construction Projects

5.2.1 \$2,000.00 and under

Construction projects of \$2,000.00 require written quotes from at least three vendors (if possible) and are to be made in accordance with procedures for informal purchases described in Section 4.. Such procurements are to be made in accordance with the procedures for informal purchase described in Section 6. **Contracts over \$2,000 require prevailing wages to be paid.**

5.2.2 \$2,000.01 to \$10,000.00

Construction projects in the range of \$2,000.01 to \$10,000.00 require written quotes from at least three vendors (if possible) and are to be made in accordance with the procedures for informal purchases described in Section 4. At the discretion of the Purchasing Director, a deadline for bid submittal may be established. **Federal funded procurements**

must comply with the Davis-Bacon Act if \$2,000 or more. Contracts over \$2,000.00 require prevailing wages to be paid.

5.2.3 \$10,000.01 and above

Construction projects which exceed \$10,000.00 require a competitive bidding process which is described in Section 5. **Construction projects over \$10,000 require approval by the WATA Board prior to contract award. Prevailing wages must be paid in contracts under this category and must comply with the Davis-Bacon Act.**

5.3 Services – A&E

5.3.1 Less than \$2,000.00

Procurements for services less than \$2,000.00 are not subject to bidding requirements as long as the person authorizing the purchase considers the price to be fair and reasonable. Prices may be established through phone quotes or other appropriate means. Such purchases are to be made in accordance with the procedures for informal purchases described in Section 6.

5.3.2 \$2,000.00 to \$9,999.99

Procurements for services from \$2,000.00 to \$9,999.99 are procured as requests for proposals (RFP). This requires written or oral quotes from a sufficient number of vendors to ensure a fair and reasonable price and are to be made in accordance with the procedures for informal purchases described in Section 6. A deadline for proposal submittal date is set and included in the RFP release.

5.3.3 \$10,000.00 and above

Procurements \$10,000 to \$50,000 will be made in accordance with the procedures for formal purchases described in Section 6. **Service contracts \$10,000.00 and higher require approval by the WATA Board prior to contract award.** Multiple years or optional year proposals will be valued in its entirety.

5.4 Dividing Procurements Prohibited

The requirements outlined in this section apply to the total purchase amount of supplies, equipment, materials, construction or services. Related parts of a procurement **are not** to be divided for the express purpose of avoiding bidding requirements.

5.5 Capital Purchases

For financial purposes, items over \$5,000.00 with a useful life of over one (1) year, are defined as capital purchases. Such expenditures must be charged against capital accounts, rather than operating accounts. In addition to all other procurement requirements listed in Section 5 or 6, requisitions for capital purchases must be approved by the Executive Director or designee. The Budget and Grants Administrator is responsible for assigning a capital account number to eligible grants after the appropriate approvals have been made.

5.6 Rolling Stock

The entire process for procuring rolling stock can be broken into 4 phases:

1. Select the method of procurement;
2. Manage the solicitation process;

3. Award contract
4. Take delivery of rolling stock.

There are 3 methods that can be used when buying rolling stock: 1) Invitation for Bid (IFB), 2) Request for Proposal (RFP), and 3) Piggybacking (see Piggybacking requirements in Section 8.1.4).

Step 1; Selecting the Method of Procurement

The decision to piggyback or manage a new solicitation is made once funding has been received and the purchase request has been developed.

Step 2: Managing the Solicitation

- Piggybacking: Verify assignability clause, verify inclusion of FTA clauses and Buy America certifications (include Buy America waivers, if applicable), conduct price analysis, and determine any desired changes to the specification and ensure they are in-scope changes.
- IFB: Contract must be awarded to the lowest price responsive/responsible bidder, bidders must have the opportunity to submit requests for approved equals (RFA) and RFA responses must be provided to all bidders, and Buy America pre-award review must be conducted for procurements above \$150K or a waiver must be obtained
- RFP: Evaluation criteria must be developed and listed in order of importance, award is made to the highest rated (best value) offeror, and Buy America pre-award review must be conducted for procurements above \$150k or a waiver must be obtained

Step 3: Making the Award and Taking the Delivery

- A Buy America post-award audit must be conducted for all procurements above \$150k during manufacturing
- After the initial order quantity has been fulfilled, options may be released as needed

5.6.1 Buy America

Pre-award and post-delivery audits **must** be conducted for all rolling stock procurements. Purchasing office must verify 60% domestic product (65% after Federal Fiscal Year (FFY) 2018), review and verify proposed final assembly, and contractor may request a Buy America waiver. All information must be documented in the relevant procurement files.

- Pre-Award requirements:
 - Review and verify 60% (65% after FFY 2018) domestic content AND U.S. final assembly location, operations and total cost OR request and receive a Buy America waiver
 - Check bid specification compliance with solicitation specifications AND complete a manufacturer capability study
- Post-Award requirements:
 - Review and verify 60% (65% after FFY 2018) domestic content AND U.S. final assembly location, operations and total cost OR Request and receive Buy America waiver
 - Complete resident inspector's report AND complete visual inspections and performance tests OR Complete visual inspection and road tests for procurements of more than 10 buses
 - Verified FMVSS (Federal motor Vehicle Safety Standards) sticker affixed to each bus

6. PROCEDURES FOR INFORMAL PURCHASES (\$1-\$10,000)

The guidelines contained in Section 3 describe those circumstances under which informal purchase procedures are permitted. This section of WATA's Procurement Policies and Procedures describes the process in detail.

6.1 The Purchase Requisition

Procurement method, soliciting for quotes and gathering required documents occur before initiating a requisition. The WATA Budget and Grants Administrator shall prepare and submit to the Buyer assigned a Purchase Requisition, completing all applicable sections including unit cost and total cost. For procurements totaling \$2,500.00 or less, the purchaser may utilize phone quotes or other appropriate means to ensure that a fair and reasonable price is paid.

For procurements over \$2,500.00 to \$10,000; written quotations from vendors are required and the department that requires the goods or services will solicit quotations from vendors. The documentation of these quotations, as well as a list of the vendors contacted and the quotes received must be attached to the purchase requisition and included in the information given to the Purchasing Office.

A Purchase Requisition, with the approval of the requisitioning department's manager (or designee, as appropriate), must be completed before a Purchase Order can be prepared. The manager approving the Purchase Requisition is responsible for its completeness and accuracy. The manager is also responsible for ensuring the availability of funds in the proper account. To ensure a need exists for the item to be requisitioned, before purchase is made, a complete and accurate description of the item must be provided, along with all other information necessary to make the procurement decision. Note that all department managers have a uniform level of spending authority.

For procurements that exceed \$2,500 a WATA Independent Cost Estimate Form must be completed for each requisition and provided to the Purchasing office to begin the purchasing process.

A properly completed Purchase Requisition includes:

- a description of the item to be procured,
- the quantity needed,
- unit cost,
- total cost; and
- ICE (if over \$2,500)

The description section shall provide detailed specifications regarding the item to be purchased and, when applicable, when and where the service will be performed or when and where the items will be delivered. For the purchase of services, the person initiating a requisition must include any relevant documentation (i.e., quotes) with the Purchase Requisition.

The account name and number must be provided by the department manager to determine which account will be expensed when the requisition is invoiced. If the procurement is to be expensed against more than one account code, all accounts should be listed.

6.2 Micro-Purchases/Small Purchases

Purchase Requisitions between \$200.00 and \$2,500.00, requires the signature of the requisitioner and their supervisor for a purchase order. Purchase Requisitions exceeding \$2,500.00 must also have the signature approval

from the Executive Director or designee. If using an approved purchasing card a requisition and purchase order is not required.

Purchase Requisitions are **not** required for: medical, legal, insurance, payroll, travel reimbursements and advances, utility payments, postage, temporary help, conferences, subscriptions, advertisements, travel fares, fees, or training, less than \$2,000.00 (supervisor approval or higher).

The requisition becomes part of the executed purchase order document, which is scanned/sent to WATA to review, sign and distribute to the vendor. Purchasing is cc:ed on the PO distribution process. Purchasing retains an electronic copy of the PO.

The Purchasing Office is in part responsible for the accuracy, integrity and proper authorizations before a purchase order is issued. If the Purchasing Office becomes aware of any inconsistency or irregularity with any procurement, it must be reported to the Executive Director and the Purchasing Director.

6.3 The Purchase Order

Upon receipt of an approved Purchase Requisition and after the Purchase Order number has been assigned, the Administrative Specialist or designee will input all pertinent information into the computer system for automated record keeping. The Administrative Specialist will review the Purchase Requisition and all documentation to ensure its completeness and accuracy.

Upon receipt of appropriately approved Purchase Requisition, and approval by the Purchasing Director, the Purchase Order is processed, with numbers assigned by the Purchasing Operating system.

6.4 Purchase Order Approval

Upon completion, the Purchase Order shall be signed by WATA by Executive Director or designee and WATA Budget and Grants Administrator or a designee sends to the vendor. Electronic Purchase order record is maintained in the Purchasing Office.

Purchases are generally handled by notifying the vendor electronically of the approved Purchase Order number. The method of purchase shall be specified on the Purchase Requisition.

Vendors shall be told to include their Purchase Order number on all correspondence, including packages, invoices, credit memos, etc.

6.5 Receiving/Approval to Pay

6.5.1 Receipt of Goods

Each project manager (or designee) is responsible for receipt of physical merchandise ordered. Upon receipt, the packing slip shall be compared to the goods received. If correct, the packing slip shall be signed and dated by the project manager (or designee) and then sent to the Budget and Grants Administrator who verifies it against the Purchase Order.

After receipt and verification of the packing slip, the necessary information (items received, date received, packing slip number, and back order quantities) the packing slip and receiving information is sent to the Finance Department.

6.5.2 Receipt of Services

The project manager (or designee) is responsible for the receipt of services. Upon completion, the project manager shall sign all documents that confirm the proper completion of services performed and forward the signed documents to the Budget and Grants Administrator who verifies receipt to the purchase order.

After receipt and verification, the necessary information (items received, date received, packing slip number, and back order quantities) shall be entered into the accounting system and receiving information and/or invoices are sent to the Finance Department.

6.6 Check Request policy

WATA does not authorize advance payment for any goods or services, however pending FTA approval and a check is required in advance of receipt of goods or services, the request shall be noted on a Check Request Form, filling in the company name, items needed, exact costs (including all taxes, freight charges and any other fees), person contacted, date of delivery, and account number. FTA has to approve advance payment if Federal funds are being used. All check requests must be signed by the requisitioner and the appropriate supervisor and forwarded to the Finance Department.

WATA does not pay progress payment until concrete deliverables have been met and accepted by WATA. These deliverables are standalone pieces that close out sections of projects resulting in a new phase of a project to begin. Advance or progress payments must be included in the contract agreement and tied to specific milestones or progress.

6.7 Purchasing Card

Selected WATA personnel may be issued Purchasing Cards to use for micro/small purchases and emergency procurements in approved instances. The competition requirements for small and emergency purchases shall apply. All Purchasing Card transactions shall conform to the James City County Purchasing Card Policy and Procedures. The Purchasing Card Policy and Procedures are part of the James City County Purchasing Manual.

6.8 Emergency Procurements

For internal control purposes, deviations from the process outlined in this section are permitted only in emergency situations, as determined by the Executive Director or designee. Emergency procurements are those which, due to unusual circumstances beyond the control of the requisitioner, cannot be foreseen or otherwise provided for in the routine manner, but which must be accomplished without delay. Emergencies usually involve urgent repair of revenue vehicles, significant mechanical facilities or utilities, correction of unsafe conditions, and adverse health and safety circumstances.

The responsibility for following through with a Purchase Requisition is not relieved when the purchase is accomplished through emergency channels. A properly executed and approved Purchase Requisition must be provided to complete the requisition.

When an emergency arises, the requester may inform the Purchasing Director of the requirements, including the vendor's name and the approximate amount of the procurement. It is then the responsibility of the requisitioner to

coordinate completion of the confirming Purchase Requisition. If the requester does not know which vendor will be used, the Purchasing Director shall be notified as soon as a vendor is located.

In instances where a valid emergency exists and material must be obtained after normal working hours, the requester may follow one of several routes:

- a) Make the purchase from a firm willing to accept an oral Purchase Order. The requisitioner must document the need for the emergency purchase, the negotiations with the vendor (if applicable), and justification for the price of the purchase. The purchase order must be documented in writing the next day, and the Purchasing Director should be notified immediately and presented with the supporting documentation, or
- b) Charges on purchasing cards are reconciled with monthly statements and provided to the finance office.

6.9 Supply, Equipment, Service Contracts and Maintenance Agreements

Supply Contracts, Service Contracts and Maintenance Agreements are legal binding documents stating that a particular vendor will perform the specified services, maintenance or deliver supplies agreed upon and described. Bids should be solicited in the same manner as for other informal purchases.

Repairs of equipment not covered by service contracts or maintenance agreements must have a Purchase Order number issued before the equipment can be sent or taken in for repair. If the equipment is to be shipped or hand carried for repair, a Purchase Requisition should be prepared (including estimates) for proper record keeping prior to shipment.

For all repairs, the following information is required:

- 1) Make, model and serial number of equipment.
- 2) Inventory tag number.
- 3) Department where equipment is located.
- 4) Hourly or flat rate to be charged.
- 5) If the item being repaired is an accessory to a major piece of equipment, provide the above information from the equipment to which it is an accessory.

(NOTE: If a Purchase Order number was orally given because of an on-site emergency repair, the Purchase Requisition must have that number affixed, must include all the information shown above, and shall have a written service report attached before sending to the Purchasing office.)

7. FORMAL PROCUREMENT PROCEDURES

Formal procurement procedures must be followed when the dollar value of the procurement exceeds \$50,000, except for services and fuel. For procurement of services, these procedures must be applied to all contracts greater than \$2,000.

There are three basic methods of conducting formal procurements:

- competitive bidding,
- competitive negotiation and
- non-competitive negotiation

The following describes when each should be used.

7.1 When to Use Competitive Bidding

Competitive Bidding is the preferred method for procurement when:

- a. A fair and reasonable price can be established (a fair and reasonable price may be assumed when two or more firms submit independent, competing bids).
- b. Reasonably definite, design or performance specifications can be written.
- c. Adequate competition can be anticipated.
- d. Reasonable estimate of costs can be made.

Procedures for competitive bidding are described in Section 7.3.

7.2 When to Use Competitive Negotiation

Competitive Negotiation is to be used when:

- a. The items desired cannot be precisely defined, described or standardized.
- b. The contract is for research and development with an end product that may be conceptual in nature.
- c. The technical aspects and price will be negotiated.
- d. Offerors will have the opportunity to revise the price or technical aspects of their proposals.
- e. Quantity and contractual factors must be considered along with price.
- f. Artistic and aesthetic value are more important considerations in evaluating the proposal than the price.

Procedures for competitive negotiation are described in Section 7.4.

7.3 Procedures for Competitive Bidding

The following steps are taken in the competitive bidding process.

7.3.1 Prepare Invitation for Bids (IFBs)

Invitations for Bids (IFB's) consist of a number of provisions, and in general, project-specific provisions of an IFB are prepared by the department initiating the procurement and the general provisions are prepared by the **Buyer**. The **Buyer** is ultimately responsible for assembly of the IFB and ensuring that it meets all procurement policies and is consistent with all applicable federal, state and local procurement rules and regulations.

NOTE: Combinations of the above are also used to meet the requirements of a purchase transaction. The exact combination of specifications is fashioned to meet the needs of each purchase.

Examples of some of the project specific provisions of an IFB include:

- a. Contract specifications, which describe requirements for the supplies, equipment, construction or services to be delivered under the terms of the contract. It indicates to prospective contractors precisely what WATA requires. The specifications also establish the procedures by which it will be determined that all requirements of the contract have been met.
- b. Design specifications, which describe in detail the data necessary to produce an item such as the size and dimensions, physical characteristics, and quality tests
- c. Performance specifications, which express the desired performance characteristics in terms of output, function or operation of items and equipment.
- d. A scope of work, which defines the work required of a contractor, either to develop the equipment being delivered to satisfy the prime mission of WATA, or to compliment the procured items being delivered, or to provide services being procured without a portion of the total procurement being delivered.

IFBs shall be worded as precisely as possible. Ambiguous, or incomplete specifications can result in unnecessary delays and costly errors. Special care must be taken to ensure that the specifications are not exclusionary or overly restrictive. The specification may include a statement of the qualitative nature of the material, product or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a precise description of the technical requirements, a "brand name or approved equal" description may be used, subject to the provisions of Section 3.6 of this manual.

7.3.2 Develop Bidders List – Plan Holders List – (NotifyMe – sign in system)

A list of prospective bidders shall be developed by the project manager initiating the procurement. In addition, the Buyer assigned shall maintain a file of bidders interested in particular types of contracts through the NotifyMe sign in system.

The bidder's list shall be developed with consideration of WATA's DBE/WBE program with the project manager coordinating with the DBELO.

7.3.3 Methods and Timing of Soliciting Bids

As a goal, WATA and James City County will attempt to provide at least 14 days for standard procurements and not less than 30 calendar days when procuring non-standard items.

Invitations for Bids shall be made open to the public for full and open competition.

Notices of inviting bids shall be published on the procurement section of the website.

7.3.4 Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by potential bidders or proposers may either be voluntary or mandatory.

Questions and clarification during the open solicitation process will be addressed and provided in addenda/posted on the web site.

7.3.5 Addendum - Invitations for Bids

If after issuance of invitations for bids, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous invitation; such changes shall be accomplished by issuance, in writing, of an addendum to the invitation for bids. The addendum shall be posted on the purchasing website and is the responsibility of the interested bidder to access. Addenda will be publicized on the purchasing website.

Each addendum issued to an invitation for bid shall:

- a. Be serially numbered and dated.
- b. Include the number and the title of original invitation for bids concerned.
- c. Clearly state the changes made in the invitation for bids and the extension of the opening date, if any.
- d. Include instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge and return the addendum.
- e. Before issuing an addendum to an invitation for bids, the period of time remaining until the time set for opening and the need for extending the time set for opening must be considered. Such notification is to be confirmed in the addendum.
- f. No award shall be made on the invitation unless such addendum has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

7.3.6 Cancellation of IFB's

Invitations for bids shall not be canceled unless cancellation is clearly in WATA's interest (i.e., where there is no longer a requirement for the material or service, or where addendums to the invitation would be of such magnitude that a new invitation is desirable). When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be posted on the website and Purchasing office bulletin board.

The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being canceled; and, where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any further requirements for the type of material or service involved.

If the invitation for bids is canceled before the time for bid opening, this fact shall be recorded in the file, together with a statement of the number of vendors invited to bid and the number of bids received, if available.

7.3.7 Receipt of Bids

Bids shall be submitted in the office designated in the invitation for bids not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at designated offices is the time/date stamp which shall be placed on the bid wrapper immediately upon receipt. The purchasing staff person receiving the bid records the date and time received and this becomes a part of the permanent contract file. The timeliness of bids is the sole responsibility of the bidder.

7.3.8 Withdrawal of Bids

Any Bidder may withdraw their bid, either personally or by email or written request, received by WATA, at any time prior to the time fixed for the receipt of the bids. Negligence on the part of Bidders in preparing their bid confers no

right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for a period of 90 days following bid opening.

7.3.9 Bid Opening

All bids received prior to the time set for opening shall be recorded and kept unopened, except as stated below.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to authorized employees who have a proper need for such information.

When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

Unidentified bids may be opened solely for the purpose of identification and then only by an authorized official of WATA. If a sealed bid is opened by mistake or for purposes of identification, the official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bid number, and their signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

The Buyer in charge of the solicitation shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received prior to the time set for receipt shall then be publicly opened and when practical, read aloud by the Buyer assigned to the persons present. The bids received shall be recorded.

A second WATA and/or JCC employee shall be present to witness the opening and reading of the bids and shall sign an abstract to verify its accuracy.

The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

Performance of the bid opening procedure is managed by the Buyer assigned.

Examination and evaluation of original bids by other interested individuals may be made only under the immediate supervision of the Buyer assigned and in charge of the solicitation and under conditions which preclude the possibility of a substitution, addition, deletion, or alteration in the bids. Copies may be distributed to interested WATA officials for evaluation.

The original bid form shall not be allowed to pass out of the hands of the Buyer. Original bids may not be removed from the office except for official review and evaluation by WATA Counsel. A copy of each bid must be maintained in WATA Procurement files managed by the Purchasing office in lieu of such originals for the interim period.

All bids, including attachments and envelopes, shall be retained for the official files.

7.3.10 Recording of Bids

The invitation for bid number, bid opening date and time, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be entered on the bid tabulation form and shall be available for public inspection.

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the Invitation for Bids. Award shall be made to the bidder submitting the lowest bid, unless the purchasing office determines that the bid is not responsive and/or the bidder is found to be not responsible.

7.3.12 Analysis of Limited Bid Response

A price or cost analysis must be performed to establish the reasonableness of the bid price before an award is made if less than two bids are received.

7.3.13 Reasonableness of Price (Price/Cost Analysis): Over \$2,500

A price/cost analysis shall be used to determine the reasonableness of the bid price regardless of the number of bids received.

The Buyer is in charge of the solicitation may conduct a price analysis in evaluating a bid price. If a valid price analysis cannot be completed, audit personnel may be requested to conduct a cost analysis of the bid price.

Price analysis is the process of examining and evaluating a bid price without evaluation of the separate cost elements and proposed profit of the individual prospective supplier whose price is being evaluated. Normally, price analysis may be accomplished through one or more of the following activities:

- a. The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.).
- b. The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry.
- c. The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, to WATA with discount or rebate arrangements.
- d. The comparison of proposed prices with estimates of cost independently developed by personnel within WATA and/or James City County purchasing office.
- e. The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

If only one bid is received, the sole bidder must cooperate with WATA as necessary in order for its bid to be considered for award. WATA must determine that competition was adequate before accepting a bid. This determination should include a review of the specifications for undue restrictiveness. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

If only one bid is received for a contract that exceeds **\$50,000**, approval of FTA may be required.

7.3.14 Responsible Bidder Evaluation

Before awarding the contract, WATA shall determine that a prospective contractor is responsible. A responsible prospective contractor is one who meets the standards set forth below:

- a. Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
- b. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental.
- c. Has a satisfactory record of performance. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
- d. Has a satisfactory record of integrity and business ethics.
- e. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- f. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
- g. Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. Evaluation of the responsibility of prospective contractors may be made based upon the following sources:
- h. Is not on a list of debarred, suspended or ineligible firms or individuals.
 - a. Chapter VI, Section 8(b) of FTA C 4220.1F requires that Grantees make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Sources of data for the responsibility review include:
 - The appropriate financial, technical, material, equipment, facility and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;
 - The capability to comply with the required delivery schedule considering all their existing business commitments;
 - A satisfactory record of performance;
 - A satisfactory record of integrity;
 - Compliance with public policy;
 - Compliance with applicable affirmative action and DBE requirements;
 - Compliance with applicable tax and licensing laws and regulations;
 - Legal qualification to contract with Grantee; and supplied all necessary information in connection with the inquiry concerning responsibility.

From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.

- a. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.

- b. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
- c. Documented past performance on contracts with WATA and other customers

7.3.15 Rejection of All Bids

Preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is compelling reason to reject all bids and cancel the invitation.

Every effort shall be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices.

After opening, an invitation for bids will not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the invitation for bids and the additional quantity should be treated as a new procurement.

Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where it is consistent with Federal, State, and local procurement regulations. A written determination must be included in the invitation for bid file stating that cancellation is in the best interest of WATA for reasons such as the following:

- a. Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids.
- b. The supplies or services are no longer required.
- c. The invitation for bids did not provide for consideration of all factors of cost to WATA.
- d. Bids received indicate that the needs of WATA can be satisfied by a less expensive item differing from that on which bids were received.
- e. All otherwise acceptable bids received are at unreasonable prices.
- f. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and reported to WATA Counsel.
- g. The bids received did not provide competition which was adequate to ensure reasonable prices. A price or cost analysis may be used to establish the reasonableness of prices.

If administrative difficulties are encountered after bid opening which may delay award beyond bidders' 90 day acceptance periods, the two lowest bidders shall be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if necessary) in order to avoid the need for re-advertisement.

When it is determined to reject all bids, WATA shall notify each bidder that all bids have been rejected and stating the reason for such action.

7.3.16 Rejection of Individual Bids

Normally, any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

A bid shall be rejected where the bidder imposes conditions which modify requirements of the invitation for bids. For example, bids may be rejected in which the bidder:

- a. Attempts to protect himself against future changes in conditions such as increased costs, if a total price to WATA cannot be determined for bid evaluation.
- b. Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery".
- c. States a price but qualifies such price as being subject to "price in effect at time of delivery".
- d. Where not authorized by the invitation for bid, conditions or qualifies his bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.
- e. Limits rights of WATA under any contract clause.
- f. Fails to comply with all of the requirements of the IFB.

Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.

Low bids received from firms determined to be not responsible pursuant to Federal, State or local procurement regulations shall be rejected in accordance with the procedures set forth in Section 7.3.17.

A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

After submitting a bid, if a bidder transfers all of his assets or that part of his assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus WATA may reject the bid.

7.3.17 Award of the Contract

Unless all bids are rejected, award shall be made by WATA by written notice, within the time for acceptance specified in the bid or extension thereof, to that responsible and responsive bidder whose bid, conforming to the invitation for bids, will be most advantageous to WATA, price and other factors considered.

When award is made to other than the lowest bidder, the lowest bidder will be notified in writing by WATA of any evidence reflecting upon the responsibility of the bidder and affording the bidder the opportunity to rebut such evidence and present evidence of qualifications to perform work outlined in the contract.

Award shall be made by email to the successful bidder of a notice of award and the proper contract documents. The successful bidder shall complete and execute the contract documents and return them to the Purchasing office within the time specified. WATA will finalize the execution of the contract and send an executed copy to the successful bidder.

7.4 Procedures for Competitive Negotiation

The following steps are taken in competitive negotiation procurements.

7.4.1 Prepare Request for Proposals (RFPs)

A Request for Proposal consists of a number of provisions, both project specific and general. Project specific provisions of the RFP should be prepared by the department initiating the procurement. The Purchasing Office is responsible for general provisions and for assembly of the RFP and ensuring that it meets all procurement policies and is consistent with all applicable federal, state and local procurement rules and regulations.

The project specific sections of the RFP shall specifically describe the actual minimum materials and/or services needed; the time for providing same; the procedure by which a prospective offeror may examine plans and specifications, if any; the criteria by which proposals will be evaluated and the relative importance of each factor; and the closing date for submission of proposals which must give sufficient time to permit a proper response.

7.4.2 Develop (Offerors) List

A list of prospective (Offerors) shall be developed by the department initiating the procurement. .

The Offeror's list shall be developed with consideration of WATA's DBE/WBE program.

7.4.3 Methods and Timing of Soliciting Proposals

WATA will advertise in newspaper of general circulation or other methods in compliance with applicable local and state laws. Requests for Proposals must be opened to the public and displayed to promote full and open competition.

Notices inviting proposals shall be displayed at the purchasing office, on WATA's website, and shall be published no less than one time at least 30 days prior to proposal due date, opening in a newspaper of general circulation and may be published in trade journals and magazines as deemed necessary or appropriate.

7.4.4 Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective offerors and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are opened. The pre-proposal conference shall never be used as a substitute for amending a defective or ambiguous request. Attendance by potential offerors may either be voluntary or mandatory.

7.4.5 Addendums Requests for Proposals

If after issuance of requests for proposals, but before the time set for opening of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP, such changes shall be accomplished by issuance, in writing, of an addendum to the RFP. Before issuing an addendum to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying offerors of an extension of time and will be stated in an addendum.

The addendum shall be posted on the website and is the responsibility of the interested bidder to access. Addendums will be publicized on the James City County and/or WATA's website.

Each addendum issued to a request for proposals shall:

- a. Be serially numbered and dated.
- b. Include the number and title of the original RFP concerned.
- c. Clearly state the changes made in the RFP and the extension of the due date, if any.

7.4.6 Cancellation of RFP's

Requests for Proposals should not be canceled unless cancellation is clearly in WATA's interest. Where a request is canceled, proposals which have been received shall be returned unopened to the offerors and a notice of cancellation shall be sent to all prospective offerors to whom RFP's were issued.

The notice of cancellation shall identify the request for proposals; briefly explain the reason the request is being canceled; and where appropriate, assure prospective offerors that they will be given an opportunity to compete on any re-solicitation of proposals or any further requirements for the type of material or service involved.

If the request for proposals is canceled before the time set for proposal submittal, this fact shall be recorded in the file, with a statement of the number of concerns invited to submit proposals and the number of proposals received.

7.4.7 Receipt of Proposals

Proposals shall be submitted in the office designated in the request for proposals not later than the exact time set in the request for proposals. The only acceptable evidence to establish the time of receipt at designed offices is the time/date stamp of receipt which shall be placed on the proposal wrapper immediately upon receipt. The timeliness of proposals is the sole responsibility of the offeror.

7.4.8 When to Conduct Negotiations

Subject to the exceptions below, after receipt and opening of initial proposals, written or oral discussions may be conducted with all responsible and responsive offerors who submit proposals within a competitive price range and other factors considered. If discussions are conducted with one offeror, discussions must be conducted with all offerors within the competitive range.

Discussion after receipt of initial proposals is not required in the following cases:

1. Procurement is for supplies for which prices or rates are fixed by law or regulation.
2. The procurement is for a product and, due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial proposal would result in a fair and reasonable price.
3. Negotiations will be completed expeditiously.

7.4.9 Subject Matter of Negotiations

Restrictions on the information that may be revealed to the offerors by WATA and/or James City County authorized personnel during the course of negotiations:

1. Contracting personnel shall not furnish information to a potential supplier which may afford an advantage over other suppliers.

2. After receipt of initial proposals, no information contained in any proposal or information regarding the number or identity of offerors shall be made available.
3. "Auction techniques", such as advising offerors of their price relationship with others, are prohibited.

Negotiation may be conducted successively with multiple offerors so long as all parties are offered an equitable opportunity to submit such price, technical, or other data necessary.

7.4.10 Conduct of Negotiations

Price and cost analysis must be made in connection with every negotiated procurement action. Evaluation of offerors or contractors' proposals, including price revision proposals, by all personnel concerned with the procurement, as well as subsequent negotiations with the offeror or contractor, shall be completed expeditiously.

Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations.

Cost or profit figures of one offeror or contractor shall not be revealed to other offerors or contractors.

7.4.11 Notice Closing Negotiations

Such notice shall advise offerors:

1. That negotiations are being concluded;
2. That offerors are being asked for their "best and final" offer, not merely to confirm or reconfirm prior offers.

7.4.12 Determining Reasonableness of Price: Cost Analysis

Price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Cost analysis is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs, to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the offeror's proposal and is used where WATA and/or James City County has less assurance of a fair and reasonable price. ***Cost plus percentage of cost and percentage of construction cost methods of contracting are prohibited.***

In conducting both a cost and price analysis, the comparison should be against the original Independent Cost Estimate that was prepared before the solicitation of bids.

The following procedure is to be followed:

- a. Verify contractor's cost data.
- b. Evaluate specific elements of costs and project these data to determine the effect on prices of such factors as:
 - (i) The necessity for certain costs;
 - (ii) The reasonableness of amounts estimated for the necessary costs;

- (iii) Allowances for contingencies; and
- (iv) The basis used for allocations of particular overhead costs to the proposed contract.
- c. When the necessary data is available, compare the contractor's estimated cost with:
 - (i) Actual costs previously incurred by the contractor;
 - (ii) The contractor's last prior cost estimate for the same or similar estimates;
 - (iii) Current cost estimates from other possible sources; and
 - (iv) Prior estimates or historical costs of other contractors manufacturing the same or similar items.
- d. Forecasting future trends in costs from historical experience:
 - (i) In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
 - (ii) In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area: *(1) Is the cost allowable in accordance with **Federal cost principles as stated in 2 CFR 225?** (2) Is the cost allocable to the particular project?;(3) Is the cost reasonable?*
See the Appendix D and E of this manual for forms related to cost and price analysis.

7.4.13 Basis of Award

After evaluation of proposals in accordance with the criteria set forth in the RFP, the contract shall be awarded to the offeror of the proposal most advantageous to WATA, price and other factors considered.

Contracts shall be made only with responsible and responsive contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. As is the case with procurements made by competitive negotiation consideration shall be given to such matters as contractor integrity and ethics, debarment and suspension, affirmative action and DBE, record of past performance, financial and technical capacity, or accessibility to other technical resources.

Negotiated procurement records or files should provide at least the following pertinent information: justification for the use of negotiation in lieu of competitive bidding by an IFB; independent cost estimate; contractor selection; justification for contract type; determination and findings; record of negotiations; and cost or price analysis. Additionally, the procurement records *must* include a screenshot or printout of the EPLS/SAM search conducted to ensure that the contractor selected is not on the debarment and suspension list, and that this is documented in the procurement file.

7.4.14 Written Procurement Selection Procedures

During the award process for an RFP, the Buyer assigned must provide a written rationale for contractor selection.

7.4.15 Special Procedures for Architect/Engineering Services

Federal procurement guidelines require that WATA use competitive negotiation procedures for qualifications-based procurement of architectural and engineering ("A/E" hereafter) services and related services pertaining to a construction project such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. Following this method, competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable

compensation. Under this method, WATA may not consider price as an evaluation factor in determining the most qualified offeror. Negotiation is initially conducted with only the most qualified offeror. This method, where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified offeror, can only be used in procurement of the above services. This method of procurement cannot be used to obtain other types of services even through a firm that provides the above types of services are also potential sources to perform other services.

The steps to be used for proposal evaluation and contract negotiation for A/E contracts are as follows:

1. Evaluation team is assigned by the **Purchasing Director, in coordination with the WATA Project Manager** to review eligible firms and all responses to RFP.
2. Team evaluates the firms based on the stated evaluation criteria published in the RFP such as:
 - a. Professional qualifications for performance of the required services.
 - b. Specialized experience and technical competence in the type work required.
 - c. Capacity to accomplish the work in the required time.
 - d. Past performance in terms of cost control, quality of work and compliance with performance schedules.
3. Evaluation team holds discussions with the most highly qualified firms ("short list").
4. Evaluation team prepares a report for the **Executive Director** recommending, in order of preference, those firms that are considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the **Executive Director** to review the basis upon which the recommendations were made. The **Executive Director** shall not add firms to the selection report. If recommended firms are deemed to be unqualified or the report is inadequate, the **Executive Director** shall document the reasons therefore and return the report to the evaluation team for appropriate revision.
5. If firm is not selected, it shall be made by the **Executive Director** from a list of the most highly qualified firms prepared by the Purchasing Director or evaluation team.
6. The final selection authorizes negotiations to begin with the most qualified firm. At that time the qualified firm will be requested to submit a proposal that includes fees and cost estimates.
7. The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment (i.e. milestone payment, payment upon acceptance).
8. In determining the amount of compensation and the method of payment, consideration shall be given to:
 - a. Scope and complexity of designs, surveys and other work and the skills necessary for these services.
 - b. Quality and quantity of data provided to the A/E by WATA.
 - c. Location of, and conditions under which, the services will be performed.
 - d. Date services to begin and time allowed for performance.
9. Costs should be negotiated taking into consideration:
 - a. Direct Labor.
 - b. Overhead.
 - c. General and administrative expenses.
 - d. Materials.
 - e. Other direct costs.
 - f. Profit, which is further influenced by:

- 1) Degree of A/E's risk,
 - 2) Level of effort,
 - 3) Level of talent or expertise the A/E must furnish,
 - 4) Amount of subcontracting,
 - 5) Amount of top level A/E management involved,
 - 6) Subcontracts, and
 - 7) Contractors investment.
10. Failing agreement on price with most the qualified offeror, negotiations with the next most qualified offeror will be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable.
 11. When the contract has been negotiated and signed, the negotiations are documented and placed in the procurement file.
 12. The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract.
 13. The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to WATA for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

7.4.17 Architectural and Engineering (A&E) and Other Professional Services

Except to the extent that the Commonwealth of Virginia adopted by statute prior to August 10, 2005, a formal procedure for the procurement of these services, WATA will use qualification-based competitive proposal procedures based on the Brooks Act, Chapter 11 of Title 40 of the United States Code, and 49 U.S.C. §5325(b), when contracting for A&E services, which are defined to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services that are directly in support of, directly connected to, directly related to or lead to construction, alteration, or repair of real property. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

The Brooks Act requires that:

- (a) An offeror's technical qualifications be evaluated;
- (b) Price be excluded as an evaluation factor;
- (c) A pricing proposal be requested from, and negotiations be conducted only with the most qualified offeror; and,
- (d) Failing agreement on price, the proposal must be rejected and negotiations conducted with the next most qualified offeror, until a Contract award can be made to the most qualified offeror whose price is fair and reasonable; if the pool of qualified offerors is exhausted without an agreement, the solicitation must be canceled.

This "qualifications-based" procurement method can only be used for the procurement of A&E services where any amount of Federal funds is utilized. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services. To the extent that this determination is not consistent with the VPPA, WATA determines that acceptance of Federal funds and compliance with the Federal standard is in the public interest even though the Federal limitation of the use of qualification-based procurement procedures is inconsistent with §4301 of the Act.7.4.18 Construction Bonding Requirements

Bonds are required on all construction contracts. Based on FTA Circular 4220 1.F, the following bonds are required for all construction contracts:

- Each bidder must provide a bid bond equivalent to 5% of its bid price
- Third party contractors (not initial bidder) must obtain a performance bond for 100% of the contract price
- Third party contractors must obtain a payment bond based on the following:
 - Less than \$1M: 50% of the contract price if the contract price is not more than \$1M
 - More than \$1M but less than \$5M: 40% of the contract price if the contract price is more than \$1M but not more than \$5M
 - More than \$5M: \$2.5M if the contract price is more than \$5M

7.4.19 Geographic Preferences

Procurement transactions will be conducted in a manner that prohibits the use of in-state or local geographical preferences in the solicitation and evaluation of bids or proposals, except in those cases where applicable statutes or regulations expressly mandate or permit geographic preference. This does not preempt State or local licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the Contract.

8. NON-COMPETITIVE NEGOTIATIONS

8.1 When to Use Non-Competitive Negotiation (Circular 4220 1.F, Section 3.i.)

Federal regulations require that one or more of the following conditions be met:

- a. There is a public exigency or emergency that does not allow time for competitive negotiation.
 - a. In case of great public calamity, such as extraordinary fire, flood, storm, epidemic, or other disaster, the WATA Board may, by resolution passed by a four-fifths vote of all its members declare and determine that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids or notice.
- b. The Federal Transit Administration (FTA) authorizes a non-competitive negotiation.
- c. The item(s) is available only from a single source, as a matter of fact and not as a matter of preference or convenience. Unique capability or availability must be definitively established.
- d. After solicitation of a number of sources, competition is determined to be inadequate.
- e. When WATA's need for the supplies or services is of such an unusual or compelling urgency that it would be seriously injured unless sole source procurements were utilized.

Any contract amendment or change order is needed that is not within the scope of the original contract must meet the above conditions.

Procedures for non-competitive negotiation are described in Section 8.2 (below).

8.2 Procedures for Non-competitive Negotiation

Circumstances under which a contract may be awarded by non-competitive negotiation are limited to those listed in the Common Grant Rule for governmental recipients as defined C4220.1F VI.3.i.

8.2.1 Single Source Procurement

Upon receiving a single bid or proposal in response to a solicitation, the Purchasing Director must determine if competition was adequate. This must be documented and include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

An analysis *must* be conducted by the purchasing office or project manager and documented in the procurement file, including the solicitation information, the solicitation due date, the number of solicitations requested, the number of bids received, the reasons for the lack of competition based on communication with suppliers, the basis for contract award (if applicable), and the new solicitation release date, if applicable.

8.2.2 Sole Source Procurement

Procurements are accomplished through solicitation and acceptance of a proposal from only one (1) source. A Contract amendment or change order that is not within the scope of the original Contract is considered a sole source procurement that must comply with this subparagraph. Guidance as to what is “within the scope” of a Contract may be found in the FTA BPPM, Section 9.2.1 - Contract Scope and Cardinal Changes. “Tag-ons” are defined by FTA as additions to the Scope of Work or deliverable items that were not included in the original Contract competition, and which must be treated as sole source additions to the Contract. Tag-ons are not to be treated as changes within the scope of the Contract. Notification of non-competitive procurements exceeding the small purchases threshold shall be published on the procurement website.

8.2.3 Emergency Procurement

(a) General Authority. Notwithstanding any other provision of these procedures, the Executive Director may authorize emergency procurements for which a public exigency or emergency will not permit the time required to obtain competition. In accordance with the Board approved Procurement Policy, the Authority may conduct a procurement on an emergency basis if the procurement is essential to an Authority requirement to deal with an existing “emergency condition”, as defined below (b). Emergency procurements may be negotiated on a sole source or limited competition basis depending on the circumstances.

(b) Definition. An "emergency condition" is a situation (such as a flood, epidemic, riot, equipment failure or equipment destruction, or other reason declared by the Executive Director) which creates an immediate threat to the public health, welfare, or safety. The existence of an “emergency condition” creates an immediate need for goods, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one or more of the following:

- The health or safety of any person;
- The preservation or protection of property; or
- The continuation of core Authority functions.

(c) Scope of Emergency Procurements. The emergency procurement of goods or services shall be limited to quantities or time periods sufficient to meet the immediate condition and shall not be used to meet long-term requirements. Long-term requirements for the same goods, services, or construction shall be requested separately by the requesting office, to initiate a separate non-emergency procurement action concurrent with the emergency procurement.

(d) Modification Restriction. A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless additional time or a limited number of additional supplies, services, or other items are needed to fill an ongoing emergency requirement until regular procurement action procedures can be completed, not-to-exceed six months.

EMERGENCY JUSTIFICATION AND DETERMINATION

(a) General. A written determination, based on the written justification from the user department describing the basis for the emergency, and for the selection of the particular contractor shall be included in the procurement file.

(b) Unacceptable Justification. The justification for emergency procurement shall not be based solely on internal Authority circumstances. In the absence of an emergency condition, an emergency procurement shall not be justified on the basis of any of the following circumstances:

- The lack of adequate advance planning for the procurement of required supplies, services, or construction;

- Delays in procurement caused by administrative delays, or lack of sufficient procurement personnel; or
- Pending expiration of budget authority.

(c) Determination and Finding. When an emergency procurement is proposed, the Program Office shall prepare a written D&F that sets forth the justification for the emergency procurement. The D&F must be reviewed and approved by the Procurement Office and the General Counsel. Each emergency procurement D&F shall include the following:

- Specific identification of the document as an emergency procurement D&F;
- The nature or description of the proposed procurement action;
- A description of the emergency, including the nature of the condition to the public health, welfare, or safety, and the nature of the harm that the public might suffer if the requirement were not met by emergency procurement;
- A description of the requirement, including the estimated value or cost; and cost analysis
- A description of the efforts made to ensure that bids or proposals are received from as many potential sources as possible under the circumstances, or inclusion of a sole source justification in accordance with the appropriate sole source provisions in the Emergency D&F; and
- Any other pertinent facts or reasons supporting the procurement on an emergency basis.

(d) Emergency as a Sole Source Restriction. An emergency procurement shall not be made on a sole source basis unless the emergency D&F includes justification for the sole source procurement.

11-9 EMERGENCY PROCUREMENT PROCEDURES

(a) Public Notification. The Contracting Officer shall not be required to publicize the solicitation of a procurement made on an emergency basis.

(b) Source Selection Method. The procedure used shall be selected to ensure that the required goods, service, or construction is procured in time to meet the emergency. Any procurement conducted shall provide for full and open competition. The Contracting Officer shall attempt to solicit bids or proposals from as many potential contractors as possible under the emergency condition.

(c) Request for Proposals. A Contracting Officer may use either a written or a verbal request to solicit proposals for an emergency procurement. Written requests shall be clear and concise, and only contain the data and information necessary for providing a proposal.

(d) Negotiation Procedures. The Contracting Officer shall comply with the applicable negotiation procedures.

(e) Contract Requirements. The Contracting Officer shall ensure that each emergency procurement contract contains the required clauses, representations and certifications, in accordance with the requirements of these procedures.

(f) Record of procurement. The Contracting Officer shall ensure that proper records of emergency procurements are maintained.

9. CHANGE ORDERS

- A change to a contract, task order, or work order for any professional services – including all A/E services – that alters the terms and conditions of the original document. Any change in the scope of a contract that increases the cost of the contract must follow the sole source procurement procedures. Change orders are formal changes that must be approved at the same signature authority level as the original document.
- WATA shall have the right, based on a clause contained in each contract for construction or the delivery of goods and services other than those listed in subsection (a) above, to issue a change order to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory, or market conditions. All change orders must be approved in advance in accordance with the value of the change order or the calculated value of the time extension. In addition, WATA shall have the unilateral right, based on a clause contained in each contract, to issue an immediate change order and negotiate cost and price for time and materials after the issuance of the change order.
- All amendments and change orders shall be submitted to the Executive Director complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.
- The Executive Director will verify all change orders as to the:
 - Appropriateness of the modification of the contract and whether it is unreasonable to do a separate bid for the item under consideration.

- b. The methods of calculating the amount of the change order are in conformance with the terms of the contract.
- e) The issuance of change orders for each individual contract shall be handled by the Purchasing Office .

10. BID PROTEST PROCEDURES

The Williamsburg Area Transit Authority (WATA) shall make every effort to award contracts in compliance with state, federal and local regulations. Bidders who feel that a contract has been, or may be, awarded improperly shall have the right to protest the specifications and/or contract award in compliance with applicable local, state and federal regulations.

10.1 Filing Protest

Any Bidder/ Offeror who desires to protest the award or decision to award a contract by WATA shall submit such protest in writing to the Authority 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 specific relief sought. WATA's Executive Director or designee 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.

10.2 Confidentiality

Materials submitted by a protester will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protest contains proprietary material, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

10.3 Withholding of Award

When a protest is filed before opening of bids, the bids will not be opened prior to resolution of the protest, and when the protest is filed before award, the award will not be made prior to resolution of the protest, unless WATA determines that:

1. Items to be procured are urgently needed, or delivery or performance will be unduly delayed by failure to make award promptly; or
2. Failure to make award will cause undue harm to WATA.

In the event an award is to be made while a protest is pending, the Federal Transit Administration shall be notified if federal funding is involved.

10.4 Processing the Protest

1. WATA shall respond to the contractor within ten (10) working days of receiving the protest. A conference on the merits of the protest may be held with the protester.
3. WATA will notify FTA in writing when it receives a third party contract protest and keep FTA informed about the status of the protest.

10.5 Notification

WATA shall notify the protester of its decision no later than ten (10) days following receipt of all relevant information.

10.6 Appeal

If a protester is not satisfied with the decision made by WATA, and Federal funds are involved, the protester may file a protest with the Federal Transit Administration. Review by FTA will be limited to:

1. Violation of Federal Law or regulations.
2. Violation of WATA's protest procedures described herein, or failure by WATA to review a protest.

Protests must be filed with FTA (with a concurrent copy to WATA) within five (5) working days after protester has actual or constructive notice that WATA has rendered a final decision, or five (5) working days after the protester knows, or has reason to know, that WATA failed to render a final decision. After five (5) working days, WATA will confirm with FTA that FTA has not received a protest on the contract in question.

The FTA Circular 4220. 1F is available for review at WATA offices. A copy may be obtained from FTA at the following address:

Federal Transit Administration
Region III
1760 Market Street, Suite 500
Philadelphia, PA 19103-4124

WATA shall not be responsible for any protests not filed in a timely manner with FTA.

11. CONTRACTS

11.1 Compensation Arrangements

Contracts are divided into specific types of compensation arrangements reflecting WATA's varying responsibility, as the buyer, to pay the allowable cost incurred by the contractor, as the seller. The following list includes the most commonly used compensation arrangements. It is up to WATA to decide which compensation arrangement is most appropriate for a specific procurement.

WATA's adopted procurement policy prohibits use of a cost-plus-a-percentage-of-cost contract. The following are definitions of allowable compensation arrangements:

1. Firm Fixed-Price
This arrangement is characterized by a lump-sum price not subject to adjustment. The adjustment referred to in these discussions does not include contract modifications or change orders. The risk of

performance falls on the contractor. This type of arrangement should be used where competition is present and detailed specifications are available.

2. Fixed-Price with Escalation

This arrangement is characterized by a lump-sum price subject to upward or downward adjustment depending on contingencies specified in the contract. These contingencies are matters beyond the parties' control (such as labor rates or market indices).

3. Fixed-Price with Price Redetermination

This is essentially a lump-sum arrangement with adjustments within specified limits negotiated as actual costs become known. As in fixed-price escalation arrangements, WATA assumes the risk of contingencies which may occur. The price re-determination may be made either at specified times during performance or after completion of performance. This type of arrangement should be used in limited instances only.

4. Cost-Plus a Fixed Fee

The contractor is reimbursed for costs and receives a fixed fee. This type of contract is used for procurements such as facilities contracts, and research and development contracts

5. Time-and-Materials/Labor-Hour

These are contracts provided for supplies or services on the basis of direct-labor hours at specified fixed hourly rates and materials at cost. This type of contract should be used only ***after determination that no other type of contract is suitable. The contract must specify a ceiling price that the contractor shall not exceed except at its own risk.***

11.2 Contract Provisions

The main purpose of a written contract is to capture all the essential information regarding an agreement between two parties so that both sides are clear about their roles and responsibilities. The contract should also describe procedures to be followed in case of a disagreement between the parties or in case one or other of them fails to perform as agreed.

- The basic elements of a contract are as follows:
- Scope of work/goods to be delivered
- Contract amount/method of payment
- Term of contract/schedule
- Provisions for amendment/termination
- Legal and administrative obligations
- Terms & Conditions

The elements of the contract describing the service or goods to be delivered, the contract amount and schedule will normally be unique to the particular circumstances and can be tailored by WATA to suit particular needs. The other elements of the contract may be governed by Federal, state or District regulations. FTA grantees are regulated in the type of payments they can make since FTA does not allow grantees to make advance payments and requires them to follow specific standards in the use of progress payments. Exceptions to making advance payments are permitted for

sound business reasons, but the FTA must provide written concurrence before the advance payment is made, if payment required in the marketplace exceeds \$100,000. Additionally, adequate security must be obtained when using progress payments. Consult allowable advance payments in FTA Circular 4220.1F.

To find out which provisions should be included in the contract, refer to the applicable Federal, state and local legislation and policies. At the end of this section and in the appendices is a summary of the contract clauses required by FTA.

11.2.1 Basic Contract Provisions

The following provisions are typical examples found in most types of contracts:

- **Scope of Work/Specifications**

The scope of work included in the contract shall be the same as the scope of work included in the Request for Proposals or Invitation for Bids documents and it should reflect any changes that have been made as a result of negotiation. It is often convenient to attach the scope of work or specifications to the contract as an exhibit and incorporate it into the contract by reference.

- **Contract Amount**

For fixed price and cost plus fixed fee agreements, the contract shall identify the lump sum and the maximum amount that will be paid (if different) and describe any allowable costs that will be reimbursed. For a fixed unit cost contract, the agreement shall include the amount that will be paid per unit of service and how the units will be measured. Note that cost plus a percentage of cost and cost plus percentage of construction cost methods of contracting are prohibited by the FTA, per FTA Circular 4220.1F. Specific areas to watch for are automatic add-ons above costs, fixed incentive rates, and no upper limits on costs.

- **Payment Schedule/Method of Payment**

Payment is commonly made after all aspects of the contract are complete, (usually receipt of merchandise, services and construction), lump sum payment.

Payment may be related to progress made under the contract and tied to certain milestones or the submission of deliverables. In these cases, a schedule of payments may be attached to the contract and incorporated by reference.

The contract shall indicate when the contractor is to submit invoices and what information the invoices shall include. This provision shall also describe any supporting documentation that must be submitted with the invoice, for example, progress reports and invoices.

This provision shall also describe any provisions for retaining a portion of the invoice and the procedures for making the last payment under the contract. A small percentage of each progress payment shall be retained where the contractor must deliver a product, such as a report, to WATA. Payment of the retained amount shall be made only after WATA has reviewed and accepted the final product.

• **Contract Term**

The contract shall include the effective date of the contract, which is usually the date of execution. If contract execution is delayed beyond the required project start date, a written notice to proceed may be issued and incorporated in the contract. The contract shall also indicate when its term expires. The term of the contract may be expressed in years, calendar months or days.

Contract term limitation for rolling stock and replacement parts shall not exceed the recipient's needs for rolling stock and replacement parts within five (5) years inclusive of options without prior written FTA approval when FTA funds are involved.

• **Independent Contractor Provision**

An independent contractor provision is often included in service contracts. Its purpose is to make it clear that the contractor is an independent contractor and that all the individuals working for or under the direction of the contractor are employees of the contractor and not employees of WATA. Additional language is sometimes included to indicate that the contractor is responsible for its own acts and those of its subordinates, employees and subcontractors and that the contractor is responsible for all matters relating to the payment of its employees, including social security and unemployment compensation.

• **Insurance**

Minimum insurance requirements are often set by State, District and local government policies. In most cases, contractors are required to obtain general and automobile liability insurance and workers compensation. Consultants providing professional services are usually required to obtain professional liability insurance. At a minimum, the insurance section of the contract shall specify the following:

- The types of insurance required (general/automobile liability, workers compensation, professional liability)
- The amount of insurance required (for example, \$1,000,000 of professional liability insurance)
- The minimum acceptable rating of the insurance carrier
- Whether the contractor is required to name WATA as an additional insured on the policy
- That the insurance must remain in effect for the duration of the contract
- Whether insurance certificates must be submitted to WATA before the contract is executed or before work proceeds and, if so, to whom the insurance certificates should be sent.

• **Indemnification**

This is a common clause under which the contractor agrees to hold WATA and its governing body, officers and employees harmless from any liability or claims resulting from the contractor's negligence under the contract.

• **Non-Assignability/Approval of Subcontractors**

This clause states that the Contractor is not permitted to assign or transfer its interests in the contract or to subcontract any part of the work to any other party without prior written approval of WATA and then only as permitted by law.

- **Amendment**

This provision describes how the contract can be amended and often specifies whom, in WATA, must approve any changes. As a practical matter, some minor changes not involving compensation may be made upon written permission of WATA. More significant scope of work changes and all changes involving a change in compensation shall be made by a formal contract amendment.

- **Termination Provisions**

There are two major types of termination provisions: termination for cause and termination for convenience. These provisions must be included in any contracts for more than \$10,000.

Termination for cause means that WATA can cancel the contract if the contractor fails to perform, if there is evidence of financial mismanagement or if there is continual substandard performance. The termination for cause provision shall make it clear who is responsible for making the final determination of the contractor's default, how much notice will be given to the contractor, whether there is a remedy period and how any final payments will be made.

Termination for convenience means WATA may terminate the contract if it is in its best interest to do so. While there are some good reasons why WATA may need to cancel a contract for convenience, this clause is often written in such a way that WATA may cancel for any reason. The termination for convenience clause shall also include agreement as to how much notice should be given and how any final payment can be made. From the contractor's perspective, the termination for convenience clause can be mitigated by requiring WATA to pay certain closeout costs.

- **Remedies for Breach**

Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.

- **Governing Law**

This provision makes it clear that the agreement is to be interpreted or enforced under the laws of the Commonwealth of Virginia, *County of James City*.

- **Authorized Signatures**

The contract should include signature blocks for officials of both WATA and the contractor authorized to execute the agreement. All contracts over \$500.00 require the signature of the Executive Director, or his designee.

- **Liquidated Damages**

Liquidated damages must be at a specific rate per day for each day of time delay and must be specified in the contract. Any damages recovered must be credited to the project involved unless the FTA permits otherwise.

- **Other Common Contract Provisions**

The following are additional provisions commonly included in contracts for goods and services:

1. The contractor shall keep all business records relevant to the contract for a period of three years and permit WATA to inspect or audit their records.
2. The contractor is required to comply with all federal, state and municipal laws and to obtain any necessary permits or licenses.
3. The contractor shall comply with WATA's policy on the participation of disadvantaged businesses in contracts.
4. The contractor must not have used anyone other than a bona fide employee to obtain the contract
5. The contractor must not have any conflict of interest in providing the service.
6. The contractor must represent and warrant that neither the Executive Director, nor any manager, officer, director or employee of WATA, is in any manner interested, directly or indirectly, in any contract which may be awarded or any profits expected to arise therefrom in violation of the provisions of the Political Reform Act of 1974, as amended (commencing with Government Code 81,000).
7. No member, officer or employee of WATA or of any local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in any contract or the proceeds thereof.
8. No member of Congress will benefit from the contract (if contract involves Federal assistance).

| Federally Required and Other Model Contract Clauses (FTA Best Practices Procurement Manual) | Applicability Contract Value (all tier levels) | Minimum Contract Value |
|--|--|---|
| Drug and Alcohol Testing | All operational service contracts | |
| Buy America Certifications | Construction, goods, rolling stock | \$100,000.00 |
| Charter Bus and School Bus Requirements | All operational service contracts | |
| Cargo Preference | Transported by ocean vessel | |
| Seismic Safety | New bldg construction | |
| Energy Conservation Requirements | All Contracts | |
| Clean Water | All Contracts | \$150,000.00 |
| Bus Testing | Rolling stock and turnkey | |
| Pre-award and Post Delivery Audit Requirements | Rolling stock and turnkey | |
| Lobbying Certification | All Contracts * | \$100,000.00 |
| Access to Records and Reports | All Contracts * | |
| Federal Changes | All Contracts | |
| Bonding Requirements | Construction & non-construction | \$100,000.00 |
| Clean Air | All Contracts | \$150,000.00 |
| Recycled Products | EPA designated items | \$10,000.00 |
| Davis-Bacon Act | Construction | \$2,000.00 |
| Contract Work Hours and Safety Standards Act | Construction/ rolling stock, operation | \$100,000. |
| Copeland Anti-kick Act | Construction | \$2,000.00 |
| No Government Obligation to Third Parties | All Contracts | |
| Program Fraud and False or Fraudulent Statements and Related Acts | All Contracts | |
| Termination | All Contracts | \$10,000.00 |
| Government wide Debarment and Suspension Certification | All Contracts | \$100,000.00 |
| Federal Privacy Act Requirements | All Contracts | |
| Civil Rights | All Contracts | |
| Breach of Contract and Dispute Resolution | All Contracts | \$100,000.00 |
| Patent Rights, Right in Data, and Copyright | Research projects | |
| Transit Employee Protective Agreements | Transit operations | |
| Disadvantage Business Enterprises | All Contracts | |
| State and Local Law Requirements | All Contracts | |
| Incorporation of Federal Transit Administration (FTA) Terms | All Contracts | |
| Non-discrimination Certification | All formal bid contracts | |

*Contract types are construction, architectural and engineering, rolling stock, professional services, and operational service turnkey contracts.

11.2.2 Contract Provisions for FTA Grantees

A number of general contract provisions are required by the Federal Transit Administration (FTA) for FTA funded contracts. These provisions are intended to establish minimum guidelines to which grantees must adhere when purchasing supplies, equipment and construction and professional services. The provisions and the types of contracts to which they apply are summarized on the next page, followed by a brief description of each provision.

11.2.3 Use of State and Local Purchasing Schedules

The use of state or local government purchasing schedules are acceptable. However, the use of intergovernmental purchasing schedules is prohibited. Joint purchase agreements and contracts that are only “intergovernmental” agreement approved for use are permitted.

11.2.4 Piggybacking

Piggyback procurements are permissible when the solicitation contract contains an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. The solicitation must contain a minimum and maximum quantity that represents the reasonably foreseeable needs of the parties.

Before entering into any piggyback procurement, it is the policy of the FTA and of WATA that the following are executed and documented:

- Price is determined to be fair and reasonable
- Contract complies with all federal requirements, including Buy America, and all applicable FTA clauses
- The quantities used by others, coupled with the quantities you will use, do not exceed the amounts available under the original contract

11.2.5 Required Contract Clauses

See Appendix C & F

APPENDIX A: PROCUREMENT FORMS LIBRARY

1. Independent Cost Estimate (ICE)
2. Cost and Price Analysis
3. IFB Opening Summary
4. Micro Purchase Determination Form
5. Sole and Single Source
6. TVM Certification
7. Pre-Bid and Pre-Proposal
8. Sole and Single Source Competition Analysis
9. WATA Requisition Form
10. Pre and Post Delivery Audit Requirements
11. Pre-Award Buy American Certification
12. FMVSS Certification
13. Federal Certs and Assurances
14. DBE Good Faith Efforts
15. Equitable Adjustment Form
16. Final Acceptance and Completion Form
17. Procurement Decision Matrix

APPENDIX B: DEFINITIONS

Abstract – At the time of bid opening there should be a public reading of the bids and a recording of them, usually referred to as an *Abstract of Bids*. An example of an abstract is in Appendix B.4 in the FTA Best Practices Procurement Manual (BPPM) which contains the GSA Forms 1409/1410, *Abstract of Offers*, used in Federal procurements for the recording of bids. Abstracts of bids should be available for public inspection.

Addendum: A procurement addendum is a document that is added to an existing procurement to modify or update any information to the procurement.

Advance Payments – Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic pre-award authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other pre-award authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:

1. Use of FTA Assistance Prohibited. The recipient may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable.
2. Exceptions for Sound Business Reasons. FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.
 - a. Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds.
 - b. Customary Advance Payment. FTA recognizes that advance payments typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

Basic Contract Provision: An article, clause, or stipulation in an agreement or contract that explains a specific condition, effect, implication, qualification, or requirement.

Best Value – the overall combination of quality, price, and material requirements for solicited services that in total are optimal to the agency.

Best and Final Offer - or BAFO is a term used in solicitations for a proposal containing final pricing and deliverables, based on the outcome of the negotiations conducted during the initial evaluation stage of the procurement, and a determination by the Contract Administrator that negotiations are completed.

Bid - a formal offer by an individual or entity to provide goods or services specified, in a formal Invitation for Bids, at a specified price. Use of the term “bid” in these General Terms & Conditions and Instructions to Bidders/Offerors 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.

Bond – a written guarantee of performance, secured by a surety listed in the Comptroller General’s List of Approved Sureties (OMB Circular 570) that is authorized to do business in Virginia. The three (3) relevant bonds are Bid Bond, Payment (or labor and material payment) Bond, and Performance Bond. A **Bid Bond** equivalent to five percent (5%) of the bid price is submitted with a bid. The bid bond ensures that on WATA’s acceptance of the bid, the offeror will proceed with the work. If the bidder does not proceed, WATA is due from the guarantor the Difference between the bid price and the next highest bid price. A **Payment Bond** or **labor and Material payment bond** secures payment of all contractual obligations by the Contractor. A **Performance Bond** secures the obligation to complete the Work.

Bidder – An individual or entity submitting a bid for an IFB or RFQ.

Buyer – a purchasing agent who is granted the authority to procure goods or services on behalf of WATA

Cardinal Change – A significant change in the work that causes a major deviation from the original scope of the Contract, or the intended method of achievement, or causes a revision of Contract work so extensive, significant, or cumulative, that in effect the Contractor is required to perform very different work from that described in the original Contract.

Certificate of Insurance – a document issued by or on behalf of a surety verifying that the insured party named on the certificate has purchased the specified insurance coverages. It is typically provided to a third party, such as WATA, as evidence that the specified coverages are in effect. The certificate typically identifies the specific coverages involved, the providing insurance company, the effective date and expiration date of the policy, and the dollar limits for each type of coverage. WATA requires that its Contractors identify WATA as an additional insured; this information, and the number and title of the Contract involved, should be noted on the certificate. WATA also requires thirty (30) days advance notice if the policy is cancelled; this may be, but usually is not noted on the certificate. A certificate is only evidence of coverage as of the date issued; it is not in itself an insurance policy, nor does it give the certificate holder any rights under the policies referenced.

Change Order (CO) - a written document signed by the Contractor and executed by the agency, which alters the scope of the Work to be performed by the Contractor, changes the schedule for performance of the Work or makes any other change to the Contract, with or without a change in price.

Common Grant Rule: (1) DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18, which apply to Federal grants and cooperative agreements with governmental recipients of Federal assistance including Indian tribal governments, and(2) DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” 49 CFR Part 19, which apply to Federal grants and cooperative agreements with non-governmental recipients of Federal assistance.

Competitive Negotiation: Competitive negotiation procurement process is conducted through a formal Request for

Proposals (RFP). This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. The process for procuring A&E services; or for other types of professional services in excess of \$50,000 if federal funds are not involved, varies and is described below. This method cannot be used for the acquisition of construction service except under very limited instances defined in VPPA §4303D, and with a written determination made in advance by the Commission. The competitive negotiation method of procurement is appropriate when the Contracting Officer determines that following conditions exist:

- a) A complete, adequate, and realistic specification or purchase description is not available.
- b) Two or more responsible offerors are willing and able to compete effectively for the award.

Conflict of Interest – when an offeror or Contractor has any contractual or other financial relationship with the Commission, its members, officers, employees, or agents other than the contractual relationship established under the Contract.

Consultant or Contractor or Vendor or Supplier - the person or entity entering into a Contract for the performance of services or delivery of goods or equipment to WATA.

Contract or Agreement - the executed agreement between WATA and the Contractor for performance and completion of the Work.

Contractor – the person or entity that has been awarded a Contract for goods or services.

Contract Administrator or Contracting Officer - the person granted authority, or their designee, to act on behalf of the Commission in all contractual matters concerning a Contract.

Contract Administration - the post-award administration of Contracts to ensure Contract deliverables are fulfilled by the Contractor in accordance with the Contract terms and conditions. These responsibilities may be delegated to a Project Manager (PM) serving as the point of contact with the Contractor; however, depending on the Contract type, complexity, and resource availability, functions may be retained by the Contract Administrator.

Cost Analysis - the review and evaluation of the Contractor’s direct cost elements (labor, materials, equipment, etc.), proposed indirect costs (overhead), and profit of a Contractor’s cost or pricing data, and the judgmental factors applied in determining the reasonableness of costs.

Days are, except as otherwise provided in a contractual document, calendar days, including weekends and holidays.

DBE - Disadvantaged Business Enterprise.

DBE Goal - the participation goal established, 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:

When only non-federal sources are being used to fund the procurement, Virginia’s Small, Women and Minority Owned Business Certifications (SWaM/MBE/WBE) is an acceptable substitution for FTA’s required DBE certification.

DRPT: Department of Rail and Public Transportation

Equitable Adjustment - An adjustment in the contract price, delivery schedule or other terms of the contract arising out of the issuance of a change order. The purpose of an equitable adjustment is to fairly compensate the Contractor for the change work. It is not a vehicle for increasing the Contractor’s profit or reducing its loss for reasons unrelated to a change. See FTA C4220.1E paragraph 9.h.

Final Acceptance - written notice by WATA acknowledging that a Contractor has fulfilled all of its obligations

under the Contract, and that WATA has accepted the Work as of the date stated in the written notice. Final Acceptance is a condition precedent to Final Payment and defines commencement of the warranty period.

Final Completion - fulfillment of all the Contractor's obligations under the Contract.

FTA - Federal Transit Administration.

Independent Cost Estimate – Williamsburg Area Transit Authority's internal estimate of the cost of Scope of Work for a project or Contract Modification, which is derived separately from the Contractor's pricing. Required for all purchasing requests \$2,500

Information Technology – Computers, computer hardware and accessories, software and telecommunications devices used to retrieve, store, or transmit information. Information technology is comprised of any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, display, manipulation, movement, control, switching, interchange, transmission, or management of data or information. Electronic and information technology includes:

computer hardware (such as workstations/desktop computers, laptops, notebooks, tablets, servers); computer software; operating systems; telephones; cellular phones; and other telecommunications products; information kiosks; web-based applications and information; office products such as multi-function devices, printers, photocopiers, plotters, scanners and fax machines; fare equipment; digital camera; and, video equipment and multimedia products.

Invitation for Bids (IFB) - is a formal solicitation seeking offers to provide goods and services at a fixed price. In IFB procurements, award is made on the basis of the lowest price offered in a responsive bid from a responsible bidder. The determination is solely on price, with no consideration of a bid's quality beyond meeting the minimum requirements established in the IFB.

Industry Survey – the process for soliciting information from private industry regarding a contemplated procurement prior to issuance of a formal solicitation. This may involve requesting industry comments on a draft specification or scope of services, holding meetings with potential offeror's, or requesting interested parties to submit their general qualifications in a particular area of expertise (Request for Expression of Interest or RFEI). An industry survey can be used in order to prepare an effective solicitation document capable of eliciting acceptable offers. Any industry survey should involve a wide enough audience to avoid any implication of favoritism or providing any potential offeror or group of offeror's with an unfair competitive advantage.

Liquidated Damages - the pre-established amount the Contractor will pay to WATA for each day, or other appropriate period designated by WATA, any portion of the work remains incomplete after the Contract completion term, or for each day that any designated milestone is not met, reflecting the additional estimated cost that WATA will incur because of the delay.

Micro-Purchases - is a method of procurement without obtaining competitive quotations for goods and services valued at \$2,500 or less. See Section 6.3.A of FTA Circular 4220.1F. For FTA funded projects, the Micro-Purchases are exempt from FTA's Third Party Contract clauses except: (1) construction Contracts exceeding \$2,000 are subject to the wage provisions of the Davis-Bacon Act; and (2) the file must include a determination that the price is fair and reasonable, and the justification for that determination.

MSDS – Material Safety Data Sheets which provide safety information, identifying hazardous chemicals, health, and physical hazards, exposure limits and precautions needed to allow safe handling of products.

Non-Competitive Negotiations - A recipient may use noncompetitive proposals only when the procurement

is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present: Adequate competition; sole source; unusual and completing urgency; authorized by the FTA. Circumstances under which a contract may be awarded by non-competitive negotiation are limited to the Common Grant Rule for governmental recipients.

Notice-of-Award (NOA) - a written notice by WATA to the successful contractor that WATA will sign and issue a Contract subject to the terms and conditions stated in the solicitation.

Notice-to-Proceed (NTP) - written notice by WATA to a Contractor directing the start of Work. Any Work performed prior to issuance of an NTP shall be at the Contractor's risk.

Notify Me System – System where Interested Bidders can sign in on the procurement website and download identified solicitation packages. The Interested bidders who have downloaded a Specified solicitation package from the website or included by WATA for notification purposes are responsible for obtaining any addendums that may be added to solicitation.

Offeror - an individual or entity submitting a formal response to a Request for Proposal.

Option - a unilateral right in the Contract for WATA to extend the Contract term, or purchase at a predetermined price, additional equipment, supplies, or services called for by the Contract.

Price Analysis – the review and evaluation of the offeror's proposed price, to determine its reasonableness, without consideration of the separate elements of labor, material, equipment, overhead, and profit.

Procurement Lead Time (PLT) - the time required to award a purchase order or Contract. It usually begins with the submittal of a purchase requisition and ends with award. Depending on the value and complexity, PLT activities may include submittal or development of the following: a purchase requisition, statement of work, independent cost estimate, price analysis, insurance requirements, DBE goal determination, contracting method, sole source justification, selection of solicitation and Contract clauses, advertisement, issuance of solicitation, pre-bid conference, questions and responses to questions, bid opening/receipt of proposals, responsiveness and responsibility review, technical evaluation, negotiations, best and final offers, Operations and Oversight Committee presentation, Commission presentation and approval, issuance of Notice- to-Proceed.

Product Data - written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, drawings, or other information furnished by the Contractor to describe Materials to be used for some portion of the Work.

Professional Services – work performed by an independent Contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering.

Progress Payment - a partial payment request for acceptable work performed or materials received.

Project - the overall objective of the Contract.

Project Closeout - the process by which the Contractor documents fulfillment of all obligations under the Contract. This process follows Substantial Completion and precedes Final Acceptance.

Project Schedule - the schedule agreed to by the parties setting forth the logical sequence of activities required for the Contractor's orderly performance and completion of the Work in accordance with this Contract, and specifically, to meet the specified milestone dates, including updates.

Project Manager (PM) - WATA's designated technical point of contact for managing the project and coordinating with Procurement on a day-to-day basis. Coordination with Procurement includes entry of the purchase requisition, verification of funding, obtaining budget checks, verification of receipt of goods and services, verification of receipt and accuracy of invoices, and payment.

Plan holders List (Bidder's List) – known prospective offerors who have either downloaded a Specified solicitation package from the procurement website or included by WATA for notification purposes.

Proposal - a formal plan for the provision of goods or services, tendered to WATA by an individual, firm, partnership, corporation, joint venture, or combination thereof. Proposals are evaluated on qualitative technical factors in addition to price. For Architecture and Engineering project proposals, price is not a competitive factor.

Protest – a written request, by an interested party, for specified relief from a procurement action or decision.

Purchase Order – written acceptance of an offer in response to a Request for Quotes for specified goods and services, that purchasing thresholds must be met, at a specified price and delivery schedule. A PO will be executed not a formal contract agreement.

Request for Information (RFI) - a written request by a vendor, supplier, consultant, or Contractor requesting clarification or additional information concerning a solicitation and/or Contract documents.

Request for Proposals (RFP) – A competitive negotiation for equipment, goods, or services on a competitive basis. An RFP is used where there is not a clear definition of the desired goods or services, or where different approaches to the work are possible, or where personal knowledge, experience and skills are a determining factor; professional services are always procured by RFP. Award is made by evaluation of both technical merit and price, and may not be based on price alone.

Responsible Bidder - a person or entity that has the capability, in all respects, to perform fully the Contract requirements and the business integrity and reliability that will assure good faith performance.

Responsive Bidder - a person or entity who has submitted a bid that conforms in all material respects to the Invitation to Bid.

Service Contract – an agreement between WATA and a contractor that may cover; professional services; A&E; maintenance and servicing of equipment; training; consultants; or other time and effort tasks

Single Source – a competitive procurement action where there is only one (1) offeror who is deemed responsive and responsible. Before an award is made based on a single source, the price must be negotiated and justified as reasonable.

Small Purchase - Small purchase procurements are relatively simple and informal solicitations for services, supplies, or other property that cost more than \$2,500 but do not exceed the limits described in §2.2-4303G & H of the VPPA (currently not exceeding \$50,000 for goods and services other than professional services, and \$50,000 for professional services); in no case shall small purchase procedures be used for procurements above the Federal simplified acquisition threshold as defined in 41 U.S.C. §403(11), currently \$100,000. If small purchase procedures are used, price or rate quotations shall be solicited from an adequate number of qualified sources. The number of sources will depend upon the availability of qualified sources, but the objective should ordinarily be to obtain quotes from at least three (3) vendors.

Sole Source – a noncompetitive procurement action whereby there is only one (1) known source who can comply with the explicit requirements of a solicitation. Sole source is typically when the goods or services are proprietary to one company and not easily obtained elsewhere. A sole source justification is required. All change orders outside the scope of the original Contract are considered a sole source procurement action.

Sole Source Justification – written justification for a procurement action, when full and open competition does not exist. The justification must document fully and adequately, the appropriateness of the decision to solicit an offer from only one source. The justification must include documentation of a cost analysis to verify the proposed cost data and the evaluation of the cost and profit.

Solicitation - the document issued by WATA requesting Quotes (RFQ), Bids (IFB), or Proposals (RFP) for goods or services.

Solicitation Addendum - If it is necessary to amend a solicitation, prepare, and post an addendum to all potential bidders or offerors who received a copy of the solicitation and/or who attended a pre-bid or preproposal conference. Signed acknowledgment of addenda must be returned to the purchasing office prior to the date and time of the opening or with the bid or proposal. Failure to return the addendum may be grounds for declaring the bid/proposal nonresponsive. When an addendum for a sealed solicitation is issued, there must be a minimum of 10 days from the date of the addendum to the due date set for the receipt of bids/proposals. If there are not 10 days from the date of the addendum to the due date set for receipt of bids/proposals, then the due date shall be extended to meet the minimum 10 days' notice.

Specifications - contractual terms containing written direction and requirements for completing the Work. Standards cited in the Specifications by reference have the same effect as if physically included in the Contract.

Special Provisions - contractual terms which supplement or modify the General Conditions. Special Provisions take precedence over any General Condition modified by it.

Specialty Items - Materials which are of a special design or which require special fabrication specifically for the Contract.

Subcontract - an agreement including purchase orders (other than one involving an employer/employee relationship) entered into between WATA's Contractor and a lower tier Subcontractor calling for services, labor, equipment, and/or materials required for Contract performance.

Subcontractor - an individual or entity at any tier, other than employees of the Contractor, who Contract with the Contractor or a Subcontractor to furnish services, labor, equipment and/or materials, or labor and materials, under the Contract. The term Subcontractor is considered to include the term Supplier.

Substantial Completion - completion of the Work, or a designated portion of the Work, to a point where WATA certifies that the Work or the designated portions can be used for the purpose intended, whether or not minor portions of the work, or corrections to any portions of the Work, remain to be completed. Substantial Completion does not relieve the Contractor of its obligation to finally complete the Work in timely fashion. Items remaining to be completed after Substantial Completion are documented in a Punch List.

Supplies, material, and equipment - all items incorporated in the Work or otherwise

Supplier - a person or entity that provides supplies, materials, or equipment, but usually does not provide labor on WATA property other than delivery.

Task Order - Supplementary contractual and obligating document that usually includes task description, and is used in task type contracts.

Tag On - Additions to the Scope of Work or deliverable items that were not included in the original contract

competition, and which must be treated as sole source additions to the contract.

WATA or Administration – Williamsburg Area Transit Authority, the operating organization governed by the WATA Board of Directors.

Work - the furnishing of all of the supervision, labor, Materials, equipment, services, and incidentals necessary to complete the Contract, and the carrying out of any duties and obligations imposed on the Contractor by the Contract.

Working Drawings - the drawings prepared by the Contractor which depict the sequence, methods, Materials, details of construction or procedures for accomplishing the Work.

APPENDIX C: PIGGYBACKING CHECKLIST

| Grantee: | | Contractor: | | | | |
|-----------------------|--|-----------------------------|----|---|----|----------|
| Reviewer: | | PO Number: | | | | |
| Date Reviewed: | | Description: | | | | |
| Observations: | | Award Amount: | | | | |
| No. | Element | Basic Requirement 4220.1F | ND | D | NA | Comments |
| 50 | <p>Piggybacking</p> <p>(1) This contract contains:</p> <p>(a) Assignability provisions</p> <p>(b) Required Federal clauses</p> <p>(c) Minimum and maximum quantities (if IDIQ)</p> <p>(2) The procurement file contains:</p> <p>(a) Price reasonableness determination</p> <p>If this is not a “Piggybacking” contract, check NA.</p> | FTA C 4220.1F, V, 7. a. (2) | | | | |

APPENDIX D: RESPONSIBILITY DETERMINATION FORM

| | | |
|---|---|---|
| Bid/RFP No: | | |
| Supplier: | | |
| Date: | | |
| For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results. | | |
| | Evaluated Reviewed part Technical Evaluation | or as of Comment/Documentation |
| 1.Appropriate financial, equipment, facility, and personnel | <input type="checkbox"/> Yes <input type="checkbox"/> No | Can review standard ratios on submitted financial reports or ask for D&B report |
| 2.Ability to meet the delivery schedule | <input type="checkbox"/> Yes <input type="checkbox"/> No | Conduct an analysis of the offeror's technical approach |
| 3.Satisfactory period of performance | <input type="checkbox"/> Yes <input type="checkbox"/> No | Tied to reference check; can also use D&B Past Performance Evaluation service/product |
| 4.Satisfactory record of integrity, not on declined or suspended listings | <input type="checkbox"/> Yes <input type="checkbox"/> No | Attach the results from checking the Excluded Parties website at www.sam.gov |
| 5.Ability to WATA bonding and insurance | <input type="checkbox"/> Yes <input type="checkbox"/> No | Evaluate insurance certificate and assurances from Bonding company_____ |

APPENDIX E: DOCUMENTATION REQUIREMENTS BY PROCUREMENT TYPE

| | Micropurchase >\$2,500 | Small Purchase \$2,500 to \$10,000 | IFB \$2,500 to \$50,000 | RFP <\$50,000 | Sole Source |
|--|---------------------------|--|-------------------------------|------------------|-------------|
| <i>Standard Inclusions</i> | | | | | |
| Method of Procurement Decision Matrix | | X | X | X | X |
| Fair and Reasonable Price Determination | X | | | | |
| Independent Cost Estimate | | X | X | X | X |
| Clear, Accurate, Complete Specifications (Copy of Solicitation) ¹ | | X | X | X | X |
| Price Quotations | | X | | | |
| Cost/Price Analysis | | X | X | X | X (Cost) |
| Written Selection Procedures (Included in Solicitation) | | | X | X | |
| Emails to Potential Vendors, Proof of Publication ² | | | X | X | |
| Bid Opening Sheet/Record of Proposals Submitted | | | X | X | |
| Responsiveness Determination | | | X | X | |
| Bid/Proposal Rejection Explanation (if any) | | | X | X | |
| Responsibility Determination (Copy of EPLS search) | | | X | X | X |
| Bid Tabulation / Selection of Lowest Price (incl. options) ³ | | | X | | |
| Evaluation Rating Sheets and Summary ⁴ | | | | X | |
| Sole Source Justification | | | | | X |
| Sound and Complete Agreement (Signed Contract) ⁵ | | | X | X | X |
| Clauses (In Solicitation and Contract) | | | X | X | X |

¹ no brand names, unless "equal" is specified

² must allow adequate response time

³ must have received responses from at least two responsive and responsible vendors

⁴ see 3

⁵ must establish contract start and end dates; payment terms

| | | | | | |
|---------------------------------------|--|----------------|---|---|---|
| Written Record of Procurement History | | X (2 sections) | X | X | X |
| Awarded Supplier's Proposal | | X | X | X | X |

| | Micropurchase | Small Purchase | IFB | RFP | Sole Source |
|---|---------------|----------------|-----|-----|-------------|
| <i>Special Circumstances</i> | | | | | |
| Contract Mods (in scope) ⁶ | | | X | X | X |
| Progress Payments | | | X | X | X |
| Approval for Advance Payments From FTA | X | X | X | X | X |
| Documentation of Board Approval | | | X | X | X |
| Notice of Protests and Resolution | | X | X | X | X |
| Notice of Contract Claims and Resolutions | | X | X | X | X |
| Piggybacking ⁷ | | | X | X | X |
| Davis-Bacon (Construction/Prevailing Wage) | X >\$2000 | X | X | X | |
| Copies of Bonds (Construction) | | | X | X | X |
| Buy America (Bus and Rolling Stock) | | | X | X | X |
| Evidence of Negotiations with Highest Ranked Suppliers and Ranking Based on Technical Capability Only (A&E) | | | | X | |

⁶ out-of-scope must re-compete

⁷ include copy of original contract

APPENDIX F: SAMPLE PROCUREMENT FILE CHECKLIST

| Section 1 | CONTRACT FILE DOCUMENTATION | Section 2 | SOLICITATION FILE DOCUMENTATION |
|----------------------------|--|-----------|---|
| A | Notice of Award / Notice to Proceed | | Below Threshold |
| B | Contract | A | Procurement Summary (<i>over \$50K or \$30K PS</i>) |
| C | Task Orders | B | Method of Procurement Decision ___ Selection of Contract Type ___ Sole Source Justification |
| D | Contract Modifications / Change Orders Independent Cost Estimate ___ Price Reasonableness Determination ___ Cost / Price Analysis | C | Procurement Requisition Duplicate Purchase Review Lease vs. Buy Analysis |
| E | Exercise of Option Year ___ Evaluated Option Quantities Price Reasonableness Determination ___ Cost / Price Analysis | D | Amendments - Number Issued ___ |
| | | E | Solicitation (IFB, RFP, RFQ, RFI) |
| F | Required Contractor Certification ___ Buy America Act Anti-Collusion ___ OCI - Hardware Exclusion Clause ___ Compliance with Lobbying Policy ___ Drug and Alcohol Certification | F | Cost / Price: Independent Cost Estimate ___ Price Reasonableness Determination ___ Cost / Price Analysis |
| | | G | Advertisement Notices and Website Posting |
| G | PeopleSoft Purchase Order | H | Plan Holder's List |
| H | External Correspondence | I | Pre-Proposal / Bid Conference Attendee List |
| I | Internal Correspondence | J | Pre Proposal / Bid Conference Presentation |
| J | Performance and Payment Bonds | K | Questions and Answers (Q&A) |
| K | Certificate(s) of Insurance | L | Approved Equal Requests and Responses |
| L | Contract Closeout Documentation | M | Bid Opening Record and Attendee List |
| M | Contractor Performance Evaluation | | Offer Evaluation Documentation ___ SAM (EPLS) VA Debarment and Prohibited List Determination of Contractor Responsibility ___ DBE Participation Tech Review <i>evaluations</i> Financial / Reference Verification ___ Other _____ |
| ROLLING STOCK ONLY: | | | |
| N | Pre-Award Buy America Review | N | |
| O | Post-Delivery Buy America Review | | |
| P | Purchaser's Requirements Certification | | |
| Q | Federal Motor Vehicle Safety Standards (FMVSS) Certification | O | Request for Best and Final Offers and BAFOs |
| R | On Site Inspector's Report | P | Record of Late Offers and Return |
| S | ADDED TO ACCESS DATABASE | Q | Vendor Correspondence Log / Post Opening Survey Documentation |
| | | R | Internal Correspondence |

APPENDIX G: SAMPLE PROCUREMENT CHECK SHEET

| ACTION | DONE | Contract No. | |
|---|---|--|--|
| Identification of Procurement & Need Date | <input type="checkbox"/> | | |
| Receive Requisition | <input type="checkbox"/> | | |
| Project Codes | <input type="checkbox"/> | | |
| Receive Draft Scope of Work | <input type="checkbox"/> | | |
| Funding Source - Local-State-Federal | <input type="checkbox"/> | | |
| Estimated Contract Amount | <input type="checkbox"/> | | |
| Estimated Duration of Contract | <input type="checkbox"/> | | |
| Identify Affected Departments | <input type="checkbox"/> | | |
| Reserve Contract Number | <input type="checkbox"/> | | |
| Procurement Type | <input type="checkbox"/> IFB <input type="checkbox"/> 130238 | <input type="checkbox"/> RFP <input type="checkbox"/> RFQ | <input type="checkbox"/> Quals Base <input type="checkbox"/> Sole Source <input type="checkbox"/> FFP / Unit Price <input type="checkbox"/> Other |
| Contract Type | <input type="checkbox"/> Cost Reimbursable | <input type="checkbox"/> Time & Materials | |
| Interview Decision | <input type="checkbox"/> | | |
| Develop Evaluation Criteria | <input type="checkbox"/> | | |
| Acquisition & Evaluation Schedule | <input type="checkbox"/> | | |
| Develop Potential Bidders List | <input type="checkbox"/> | | |
| Request DBE Goal | <input type="checkbox"/> | | |
| Request Insurance Amounts | <input type="checkbox"/> | | |
| Receive Insurance Amounts | <input type="checkbox"/> | | |
| Comte Agenda Item | <input type="checkbox"/> | | |
| Board Agenda Item | <input type="checkbox"/> | | |
| Advertising | <input type="checkbox"/> | | |
| Identify Newspapers/Magazines | <input type="checkbox"/> | | |
| Requisition for Advertising | <input type="checkbox"/> | | |
| Distribution List (internal) | <input type="checkbox"/> | | |
| Draft Documents - Complete | <input type="checkbox"/> | | |
| Legal Review (if required) | <input type="checkbox"/> | | |
| Evaluation Team Members | <input type="checkbox"/> | | |
| Schedule Evaluation Meeting(s) / Room | <input type="checkbox"/> | | |
| Evaluation Plan | <input type="checkbox"/> | | |
| Final Documents - Complete | <input type="checkbox"/> | | |
| Final Document to Website | <input type="checkbox"/> | | |
| Final Document to Admin for Printing | <input type="checkbox"/> | | |
| Information/Clarification Letter(s) | <input type="checkbox"/> | | |
| Information/Clarification Letter(s) | <input type="checkbox"/> | | |
| Information/Clarification Letter(s) | <input type="checkbox"/> | | |
| Pre-bid/Proposal Meeting Preparation | <input type="checkbox"/> | | |
| Pre-bid/Proposal Meeting Minutes | <input type="checkbox"/> | | |
| Final Addenda | <input type="checkbox"/> | | |
| Bids Opened / Proposals Received | <input type="checkbox"/> | | |
| Evaluation Team 'Kick-off' Meeting | <input type="checkbox"/> | | |

Contract No. _____

| ACTION | DONE | | |
|--|--------------------------|--|--|
| Declarations of Confidentiality / Conflict of Interest Statements Received | <input type="checkbox"/> | | |
| Technical Evaluation Complete | <input type="checkbox"/> | | |
| Cost / Price Proposal Evaluation Complete | <input type="checkbox"/> | | |
| Independent Cost / Price Analysis (if required) | <input type="checkbox"/> | | |
| Request Best & Final Offer | <input type="checkbox"/> | | |
| Receive BAFO | <input type="checkbox"/> | | |
| Complete BAFO Evaluation | <input type="checkbox"/> | | |
| Evaluation Complete | <input type="checkbox"/> | | |
| Recommendation Memo | <input type="checkbox"/> | | |
| Agenda Item (Committee/Board) | <input type="checkbox"/> | | |
| Unopened Price Proposals Returned | <input type="checkbox"/> | | |
| Courtesy Notices | <input type="checkbox"/> | | |
| Contract Award Approved | <input type="checkbox"/> | | |
| Dear John' Letters Sent | <input type="checkbox"/> | | |
| Protest Received | <input type="checkbox"/> | | |
| Protest Resolved | <input type="checkbox"/> | | |
| Notice(s) of Award Sent | <input type="checkbox"/> | | |
| Letter of Award | <input type="checkbox"/> | | |
| Bond Received (If required) | <input type="checkbox"/> | | |
| Manager | <input type="checkbox"/> | | |
| Insurance Approval Received from Risk Manager | <input type="checkbox"/> | | |
| Notice to Proceed (if required) | <input type="checkbox"/> | | |
| Conformed Contract | <input type="checkbox"/> | | |
| Conformed Contract Signed | <input type="checkbox"/> | | |
| Contract Entered in FIS | <input type="checkbox"/> | | |
| Purchase Order Sent to Vendor | <input type="checkbox"/> | | |

POST AWARD ANNUAL AUDIT ACTIVITY

| | | | |
|-----------------------------------|--------------------------|--|--|
| Request Audit | <input type="checkbox"/> | | Memo to Finance & Project Manager |
| Kick-off Meeting | <input type="checkbox"/> | | Include vendor(s), auditor, CA, PM, Project Manager from Finance |
| Receive Draft Audit | <input type="checkbox"/> | | |
| Draft Audit to Vendor for Comment | <input type="checkbox"/> | | |
| Vendor Accepts Audit | <input type="checkbox"/> | | In writing, email is okay |
| CA Request Final Audit | <input type="checkbox"/> | | Copy request memo to Project Manager from Finance |

APPENDIX H – TERMS AND CONDITIONS



GENERAL TERMS & CONDITIONS and INSTRUCTIONS TO BIDDERS/OFFERORS

Vendor. These CONDITIONS AND INSTRUCTIONS TO BIDDERS/OFFERORS 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, Request for Proposals issued, or Solicitations (collectively the "Request"), to which they are attached. Use of the term "bid" in these General Terms & Conditions and Instructions to Bidders/Offerors 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. "Shall" and "will" as used in the solicitation documents, as well as the resulting Contract, are interchangeable, both terms convey a mandatory obligation; "including" means including without limitation.

The Williamsburg Area Transit Authority Office is responsible for the purchasing activity of Williamsburg Area Transit Authority, a political subdivision of the Commonwealth of Virginia, herein referred to collectively as "WATA" or "Authority." Bidders/Offerors 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 Bidders'/Offerors' 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 Authority Procurement Policy, bids/proposals on all solicitations issued by the WATA Office will bind Bidders/Offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

1. AUTHORITY AND COOPERATIVE PURCHASING.

WATA's Executive Director has the sole responsibility and authority for negotiating, placing, and when necessary, modifying every solicitation, contract and purchase order issued by WATA.

In the discharge of these responsibilities, the Executive Director may be assisted by assigned buyers. Unless specifically delegated by the Executive Director, no other Authority officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of WATA for indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the Authority shall not be bound thereby.

2. COMPETITION INTENDED.

It is the Authority's intent that this solicitation permits competition. It shall be the Bidder's/Offeror's responsibility to advise the Executive 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 Executive 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, unless specifically identified in IFB/RFP. 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, unless specifically identified in IFB/RFP.

4. USE OF AUTHORITY FORM AND TERMS AND CONDITIONS.

Failure to submit a solicitation on the official WATA 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. WATA 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 Authority shall not be responsible for any errors or omissions of the Bidder/Offeror. 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 Authority.

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.

WATA 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 its bid/proposal reaches the WATA 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 WATA 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 Authority 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 its 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 Executive 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 Authority 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/offeree 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 initialed by the Bidder/Offeror. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeror of its 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 its 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 Authority 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 Authority'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 Authority 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 Authority'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 Authority'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 or 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 Authority is exempt from the payment of any federal excise or any Virginia sales tax. However, depending upon the situation, the vendor or Bidder/Offeror may not be exempt from said taxes and the Authority is making no representation as to any such exemption. 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 WATA, 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 WATA. 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 its knowledge, no employee of the Authority, 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 Authority shall require the successful Bidder/Offeror to furnish a performance bond and labor and material payment bond with surety satisfactory to the Authority Attorney in the amount of the contract price at a time of or prior to execution of the contract. Any performance bond must be from a bank with a physical presence in Virginia.

19. NO CONTACT POLICY.

No Bidder/Offeror shall initiate or otherwise have contact related to the solicitation with any Authority employee, other than the Executive Director or designee, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeror with any Authority representative, other than the Executive Director or designee 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 WATA 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 Authority 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/Offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable WATA 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 WATA to determine if the product offered meets the requirements of the solicitation may result 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 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 WATA 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 Authority 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 Authority to accept it. Awards made in response to an RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the Authority, taking into consideration the evaluation factors set forth in the RFP. The Authority 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 Authority. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of WATA. The Authority reserves the right to negotiate with the lowest responsive, responsible bidder should bid exceed available funds. The Authority shall reject the bid if the bidder is deemed to be a non-responsive or non-responsive bidder.

27. QUALIFICATIONS OF BIDDERS OR OFFERORS.

The Authority 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 WATA all such information and data for this purpose as may be requested. WATA reserves the right to inspect Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. WATA further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeror fails to satisfy WATA 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. Bidder/Offeror may not use anyone other than a bona fide employee to obtain the contract.

28. TIE BIDS.

In the case of a tie bid, the Authority may give preference to goods, services and construction produced in the member jurisdictions of the Authority or provided by persons, firms or corporations having principal places of business in the member jurisdictions of the Authority. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth of Virginia pursuant to Code of Virginia § 2.2-4324. If no Authority 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:

- a. The quality of performance/workmanship of previous contracts, services or products, or references which attest to other specific experiences;
- b. The timely completion of previous contracts or services or the timely delivery of past orders; or references which attest to other specific experiences;
- c. The sufficiency of financial resources and its impact on ability of the bidder to perform the contract or provide the services;
- d. The Authority 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 Authority in determining the bidder's capabilities of successfully administering to this contract;
- e. The ability and availability of the bidder to provide both quality and timely maintenance, service, and/or parts;
- f. The resale value, life cycle costing, and value analysis of a product;
- g. The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the work or products required;
- h. Delivery of a product and timely completion of a project as stated by vendor in bid;
- i. Substantial compliance or noncompliance with specifications set forth in bid as determined by the Authority;
- j. Product or parts inventory capability as it relates to a particular bid; and
- k. 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 the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court or General District Court of Williamsburg/James City County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.

31. SEVERABILITY.

In the event that any part or provision of the Agreement is declared fully or partially invalid, unlawful or unenforceable by a court of competent jurisdiction, the remainder of the part or provision and the agreement will remain in full force and effect, if the essential terms and conditions of the Agreement for each party remain valid, binding and enforceable.

32. NOTICE.

All demands, notices, approvals, payments, statements, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when delivered by first-class regular mail or overnight delivery via a national carrier addressed to WATA at 7239 Pocahontas Trail, Williamsburg, Virginia 23185 and to the Contractor at its address of record.

33. 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.

34. OBLIGATIONS OF AUTHORITY AND CONTRACTOR.

Authority: The Authority shall furnish to the contractor all available information as listed in the solicitation that may be useful for the contract work. The Authority shall assist the contractor in obtaining access to enter upon public and private property as required to perform the contract work. The Authority 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. The Contractor further agrees that it will be responsible for obtaining the necessary permits and licenses. The Contractor agrees to retain all business records relevant to the contract for a period of three years and to permit the Authority to inspect or audit the records.

35. 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 Authority. All of these items shall become the property of the Authority upon payment of fees as required by the contract.

36. REPORTS OF WORK.

The Authority 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.

37. ANTI-TRUST.

By entering into a contract, the contractor conveys, sells, assigns, and transfers to WATA 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 WATA, relating to the particular goods or services purchased or acquired by WATA under said contract. Consistent and continued tie bidding could cause rejection of bids by the Executive Director and/or investigation for Anti-Trust violations.

38. 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 Authority 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 Authority 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.

39. 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 WATA for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- b. To notify WATA 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 WATA, 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 WATA.

40. ASSIGNMENT OF CONTRACTOR OR CONTRACT FUNDS.

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

41. DEFAULT.

In case of failure to deliver goods or services in accordance with the contract terms and conditions, WATA, 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 other remedies which WATA may have.

42. AVAILABILITY OF FUNDS.

It is understood and agreed between the Contractor and the Authority herein that the Authority shall be bound hereunder only to the extent of the funds available or which hereafter become available for the purpose of the contract.

43. NONDISCRIMINATION.

By submitting their bids/proposals, Bidders/Offerors certify to WATA that they will conform to the provisions of Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia § 2.2-4343.1.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, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, gender identity 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. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. 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 will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, gender identity or any other basis prohibited by state law relating to discrimination in employment that is unrelated to the individuals' ability to perform the duties of the particular job or position. The Contractor will, in all solicitations or advertisements for employees
Placed by or on behalf of the Contractor, 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.
- c. The contractor or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. 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 the recipient deems appropriate, which may include, but is not limited to:
 - (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

44. NONDISCRIMINATION OF CONTRACTORS.

A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability or status as a service disabled veteran (§ 2.2-4310), or against faith-based organizations (§ 2.2-4343.1). 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, WATA 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.

45. 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.

46. 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 take precedence.

47. 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 WATA Executive Director or designee. No officer, agent or employee of the Authority 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. WATA 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 Authority 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 Authority'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 Authority with all vouchers and records of expenses incurred and savings realized. The Authority 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 WATA Purchasing Office within thirty (30) days from the date of receipt of the written order from the WATA 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 Authority 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 WATA Board of Directors.

48. AUTHORIZATION TO TRANACT BUSINESS, STATE REGISTRATION OF CONTRACTORS (IF APPLICABLE) AND AUTHORITY BUSINESS LICENSE.

A contractor organized as a stock or non-stock 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 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 with WATA are required to be licensed in accordance with the Authority's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in the jurisdictions served by WATA are exempt from this requirement. Questions concerning the BPOL Tax should be directed to James City County's Business License Inspector, telephone (757) 253-6698.

49. 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 or prequalification application submitted pursuant to subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror, or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) must identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary." Declaring an entire bid or proposal response as proprietary is unacceptable.

50. 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 the Authority, 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 Authority. 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 The Authority 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

51. NOTICE OF REQUIRED DISABILITY LEGISLATION.

The Authority 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 Authority 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.

52. 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.

53. BREACH OF CONTRACT.

Successful Bidder shall be deemed in breach of this contract if the Successful Bidder: Fails to comply with any terms of this contract; Fails to cure such noncompliance within ten (10) calendar days from the date of the Owner written notice or such other time frame, greater than ten (10) calendar days, specified by the JCC Contract Administrator in the notice. Successful Bidder fails to submit a written response to the Owner notification of noncompliance within ten (10) calendar days after the date of the Owner notice. All notices under this contract shall be submitted, either by fax, email or certified mail, return-receipt requested, to the respective contract administrator. Successful Bidder shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Successful Bidder and its sub-contractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of Owner in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes. The Authority may cancel the contract, whole or in part, for any reason.

54. TERMINATION.

Subject to the provisions below, the contract may be terminated by the Authority 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 Authority unless advised by the Authority 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 Authority 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 Authority, without the required thirty (30) days advance notice, then the Authority shall be responsible for payment of services up to the termination date.
- b. Termination for Cause: Termination by the Authority 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 Authority 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 Authority by reason of the Contractor's default. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause. "Cause" includes failure to perform, situations where there is evidence of financial mismanagement, or continual substandard performance. The Executive Director or designee is responsible for making the final determination of default for cause. If it is later determined by the Authority that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.
- 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.

55. CONTRACTOR RESPONSIBILITY FOR AUTHORITY PROPERTY.

The Contractor shall be responsible for damages to Authority 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 Authority, at the Contractor's expense.

56. 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 WATA, its officers, employees, and agents harmless from any and all liability, loss, or expense occasioned by any such violation.

57. 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 placed as a result of this bid, the Authority 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.

58. 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 WATA; and the Authority shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, or agents. The Authority 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 Authority shall not provide to the Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the Authority for its employees.

59. SUBCONTRACTS. No portion of the work shall be subcontracted without prior written consent of the Executive Director or designee. In the event that the Contractor desires to subcontract some part of the work, the Contractor shall furnish the Executive Director or designee 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. Work may be subcontracted only as permitted by law.

60. HOLIDAYS.

The Contractor shall receive approval of the Authority, in advance, of any work to be performed on Holidays. WATA observes the following holidays:
New Year's Day, 1st day of January Thanksgiving Day, 4th Thursday in November Christmas Day, 25th day of December

DELIVERY PROVISION

61. 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.

62. 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 Authority 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.

63. TESTING AND INSPECTIONS.

WATA 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 Authority 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 Authority for such materials or supplies as are not in accordance with the specifications.

64. COMPLIANCE.

Delivery must be made as ordered and in accordance with the solicitation or as directed by the WATA 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 WATA Purchasing Office, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the Authority, there shall be added to the time of completion a time equal to the period of such delay caused by the Authority. 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.

65. POINT OF DESTINATION.

All materials shipped to the Authority 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.

66. REPLACEMENT.

Materials or components that have been rejected by the WATA Purchasing Office, in accordance with the terms of the contract, shall be replaced by the Contractor at no cost to the Authority.

67. 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:

- a. Purchase Order Number/Contract Number
- b. Name of Article and Stock Number,
- c. Quantity Ordered,
- d. Quantity Shipped,
- e. Quantity Back Ordered,
- f. 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.

68. SAMPLES.

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

BIDDER/CONTRACTOR REMEDIES

69. PROTEST OF AWARD OR DECISION TO AWARD.

Any Bidder/ Offeror who desires to protest the award or decision to award a contract by WATA shall submit such protest in writing to the Authority 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. WATA's Executive Director or designee 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.

70. 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. Contractual claims, whether for money or other relief, shall be submitted in writing to the Authority's Executive Director or designee no later than sixty (60) days after final payment. The Executive Director or designee 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 Executive Director's final written decision, unless the Executive Director or designee 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, WATA's Executive Director (or designee) may extend the time limit for performance required by this Contract. Any such extension must be issued in writing and signed by WATA's Executive Director.

71. ENERGY CONSERVATION.

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the Virginia Energy Plan, Va. Code Title 67, and any other state law issued in compliance with the Energy Policy and Conservation Act.

72. SPECIAL CONTRACT CLAUSES.

The following clause applies to all Contracts with a Contract Value of over \$25,000.00:

DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Authority. If it is later determined by the Authority that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The following clauses apply to all Contracts with a Contract Value of over \$100,000.00:

LOBBYING RESTRICTIONS. Contractor certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Contractor shall require that certification language be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

BUY AMERICA CERTIFICATION. For all contracts for construction, goods, or rolling stock, the Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

The following clause applies to all Contracts with a Contract Value of over \$150,000.00:

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT CERTIFICATION. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). As part of that compliance, Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

Adopted:

APPENDIX I – SAMPLE CONTRACT

CONTRACT

FOR

Williamsburg Area Transit Authority

REQUEST FOR PROPOSALS

XX-XXXX

TITLE OF PROJECT

THIS CONTRACT ENTERED INTO THIS ___ day of _____, by and between the WILLIAMSBURG AREA TRANSIT AUTHORITY, 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 Executive Director 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 (and any addenda)

2. Payments are subject to receipt of an invoice from the Contractor 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 Authority 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

WILLIAMSBURG AREA
TRANSIT AUTHORITY

BY: _____

BY: _____

TITLE: _____

TITLE: _____

Attest: _____

Attest: _____

REFERENCE 1: SYSTEM-WIDE ELEMENTS CHECKLIST

| No. | Element | Basic Requirement 4220.1F | ND | D | NA | Comments |
|-----|---|---------------------------|----|---|----|----------|
| 1 | <p>Written Standards of Conduct - The grantee has a written code of standards of conduct which provides that no employee, officer, Specialist, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved. The grantee defines such a conflict to be when any of the following has a financial or other interest in the firm selected for award:</p> <p>(a.) The employee, officer, Specialist, or Board member, (b.) Any member of his/her immediate family, (c.) His or her partner, or (d.) An organization that employs, or is about to employ, any of the above.</p> <p>The grantee's code of conduct also provides that its officers, employees, Specialists, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements and contains penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or Specialists, or by contractors or their Specialists.</p> | III, 1.a.b.c. | | | | |
| 2 | <p>Contract Administration System - The grantee has a contract administration system that ensures that it and its third party contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.</p> | III, 3. | | | | |
| 3 | <p>Written Protest Procedures - The grantee has written protest procedures to handle and resolve disputes relating to their procurements. These procedures require the following:</p> <p>(a.) In all instances involving FTA funds the grantee must disclose information regarding the protest to FTA, and keep FTA informed about the status of the protest,</p> <p>(b.) All protest decisions must be in writing, and</p> <p>(c.) A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.</p> | VII, 1. a. b. | | | | |
| 4 | <p>Prequalification System - The grantee has a system of prequalification which ensures that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. The system also provides that potential bidders may not be precluded from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date. If the grantee does not prequalify bidders and offerors, so state in the comments column and mark NA in the Not Deficient column.</p> | VI, 1.c. | | | | |
| 5 | <p>System for Ensuring Most Efficient and Economic Purchase - The grantee has a system for review of proposed procurements to avoid purchase of unnecessary or duplicative items. It provides for analysis of lease versus purchase alternatives and for considering consolidating or breaking out procurements to obtain a more economical purchase.</p> | IV, 1. b. c. e. | | | | |

*: ND-No Determination; D-Determination; NA-Not Applicable

| 6 | Procurement Policies & Procedures | | YES | NO | Comments |
|----|--|------------------|-----|----|----------|
| | <p>Procurement Policies and Procedures - The grantee’s procurement policies and procedures contain the following FTA C 4220.1F, requirements: <i>(After checking YES or NO for regulatory coverage of the following, mark Not Deficient or Deficient)</i></p> | III, 3.a. | | | |
| a. | <p>Make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. YES _____ NO _____</p> | VI, 8. b. | | | |
| b. | <p>Maintain records detailing the history of a procurement. At a minimum, these records shall include: (1) The rationale for the method of procurement, (2) Selection of contract type, (3) Reasons for contractor selection or rejection, and (4) The basis for the contract price. YES _____ NO _____</p> | III, 3. d. (1) | | | |
| c. | <p>Requirement that “Time and Materials Type Contracts” may only be used: (1) After a determination that no other type of contract is suitable, and (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk. YES _____ NO _____</p> | VI, VI, 2.(2)(b) | | | |
| d. | <p>Contract term limitation for rolling stock and replacement parts shall not exceed the recipient’s needs for rolling stock and replacement parts within five (5) years inclusive of options without prior written FTA approval when FTA funds are involved. For all other types of contracts, the contract file contains evidence that the contract term is based upon sound business judgment. YES _____ NO _____</p> | IV, 2.e.(10) | | | |
| e. | <p>Tag-ons. The use of tag-ons is prohibited and applies to the original buyer as well as to others. Tag-on is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change and is subject to non-competitive procurement procedures. YES _____ NO _____</p> | V, 7.b.(2). | | | |
| f. | <p>All procurement transactions will be conducted in a manner providing full and open competition. YES _____ NO _____</p> | VI, 1. a. | | | |

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| g. | <p>Prohibits unreasonable requirements from being placed on firms in order for them to qualify to do business (e.g. unnecessary experience and excessive bonding requirements). YES _____ NO _____</p> | VI, 2. a. (4) (b) (e) | | | |
| h. | <p>Coverage that defines Organizational Conflicts of Interest and provides means for eliminating or mitigating such conflicts. For instance, a “Hardware Exclusion Clause” may be recommended for inclusion in hardware design or R&D contracts. YES _____ NO _____</p> | VI, 2. a. (4) (h) | | | |
| i. | <p>Prohibit any arbitrary action in the procurement process (e.g. in the competitive selection of contractors). YES _____ NO _____</p> | VI, 2. a. (4) (j) | | | |
| j. | <p>Except when procuring A&E services, prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals unless Federal statutes expressly mandate or encourage geographic preference. YES _____ NO _____</p> | VI, 2. a. (4) (g) | | | |
| k. | <p>Contains contractor selection procedures. YES _____ NO _____</p> | III, 3. a. | | | |
| l. | <p>Require clear and accurate contract specifications (or statements of work) that do not unduly restrict competition and identify all requirements that offerors must fulfill and all factors to be used in evaluating bids or proposals. YES _____ NO _____</p> | VI, 2. e.; VI, 3. c. (1) (a) | | | |
| m. | <p>Requirements for using “Brand Name or Equal” purchase descriptions: (1) Only when an adequate specification cannot be provided without performing an inspection and analysis in time for the acquisition under consideration, and (2) Minimum needs are carefully identified and those salient physical and functional characteristics of the brand name product are clearly set forth in the solicitation. YES _____ NO _____</p> | VI, 2. a. (3) | | | |
| n. | <p>Requirements applicable to micro-purchases (\$2,500 or less) : (1) Competition not required, (2) Must document determination that price is fair and reasonable and how the determination was derived, (3) Prohibit splitting of procurements to avoid competition, and (4) When competition is not obtained, require equitable distribution among qualified suppliers. YES _____ NO _____</p> | VI, 3. a. | | | |

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| o. | <p>Requirements applicable to the grantee’s simplified small purchase threshold (for FTA funded purchases the threshold may range from \$2,500 to \$100,000):</p> <p>(1) Must obtain price or rate quotations from an adequate number of qualified sources, and (2) Document file that price is fair and reasonable. YES _____ NO _____</p> | VI, 3. b. | | | |
| p. | <p>Requirements applicable to sealed bid method of procurement:</p> <p>(1) Defines conditions for sealed bid, (2) Requires public advertising, (3) Must allow sufficient time to prepare bids prior to bid opening, (4) Award must be made to the lowest responsive and responsible bidder, and (5) Must document sound business reason if any or all bids are rejected. YES _____ NO _____</p> | VI, 3. c. | | | |
| q. | <p>Requirements applicable to competitive proposal (RFP) method of procurement:</p> <p>(1) Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance; (2) Proposals will be solicited from an adequate number of qualified sources; (3) Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees; (4) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee’s program with price and other factors considered; and (5) In determining which proposal is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “best value” to the Procuring Agency as defined in 4220.1F, I, 5. b., Definitions. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language that establishes that an award will be made on a “best value” basis. YES _____ NO _____</p> | VI, 3. d. | | | |
| r. | <p>Unless State law provides procedures for procurement of A&E services the Brooks Act procedures apply and may only be used when procuring A&E services:</p> <p>(1) Evaluate qualifications excluding price as a factor, (2) Negotiate only with the most qualified offeror, and (3) Failing agreement on price, negotiate with the next most qualified offeror until agreement is reached on a price that is determined to be fair and reasonable. YES _____ NO _____</p> | VI,3.f.3. | | | |

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| s. | <p>Procurement of Design-Bid-Build. Grantees may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of this Circular relative to the method of procurement used and all other applicable federal requirements. YES _____ NO _____</p> | <p>9.f VI, 3.g.</p> | | | |
| t. | <p>Procurement of Design-Build. Grantee must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in 4220.1F, VI, 3. h. when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in 4220.1F, VI, 3. f. Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in 4220.1F, VI, 3. f, unless required by State law adopted before August 10, 2005. YES _____ NO _____</p> | <p>VI, 3.h.</p> | | | |
| u. | <p>Sole source documentation requirements: (1) Infeasible to use small purchase, sealed bid, or competitive procedures, and (a) Item is available only from one source, (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation, (c) FTA authorizes noncompetitive negotiations, (d) After solicitation of a number of sources, competition is determined inadequate, or (2) Cost and profit analysis are required. YES _____ NO _____</p> | <p>VI, 3.i.</p> | | | |
| v. | <p>Requirements for use of options: (1) Option quantities must be evaluated to determine contract award, and (2) When exercising options, ensure it is in accordance with the contract and that the price is better than prices available in the market or is more advantageous at the time the option is exercised. YES _____ NO _____</p> | <p>V, 7. a.; VI, 7. b.</p> | | | |
| w. | <p>Must perform cost or price analysis in connection with every procurement action, including contract modifications. YES _____ NO _____</p> | <p>VI, 6.</p> | | | |
| x. | <p>Must make independent cost or price estimates before receiving bids or proposals. YES _____ NO _____</p> | <p>VI, 6.</p> | | | |
| y. | <p>Must perform cost and profit analysis when adequate price competition is lacking. YES _____ NO _____</p> | <p>VI, 6. a.</p> | | | |
| z. | <p>Grantee's cost principles for evaluation of proposed costs are consistent with Federal cost principles. YES _____ NO _____</p> | <p>VI, 4.</p> | | | |

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| a.a | <p>Cost plus percentage of cost type contract is prohibited. YES _____ NO _____</p> | VI, 2.c.(2)(a) | | | |
| b.b | <p>Bonding requirements for construction contracts above \$100,000 meet the following minimums:</p> <p>(1) 5% bid guarantee, (2) 100% performance bond, and (3) Payment bonds as follows: - 50% on contracts under \$1 million - 40% on contracts between \$1 million and \$5 million, or - \$2.5 million on contracts over \$5 million.</p> <p>If grantee bonding policy and requirements do not comply with this criteria, FTA approval must be obtaining. YES _____ NO _____</p> | IV, 2.b.h.(1) | | | |
| c.c | <p>Advance payments utilizing FTA funds are prohibited unless prior written concurrence is obtained from FTA. YES _____ NO _____</p> | IV, 2.b.(5)(b) | | | |
| d.d | <p>Progress payments may only be made on the basis of costs incurred (or, in the case of construction contracts only, on the basis of percent of completion) and the grantee must obtain adequate security for which progress payments are made. Adequate security may include taking title, letters of credit or equivalent means to protect the grantee’s interest. YES _____ NO _____</p> | IV, 2.b. (5) (c) | | | |
| e.e | <p>Liquidated damages assessment must be at a specific rate per day for each day of overrun and must be specified in the contract. Any damages recovered must be credited to the project involved unless the FTA permits otherwise. YES _____ NO _____</p> | IV, 2.(b).(6)(b) | | | |
| f.f | <p>Each State must include provisions in all its RFPs, solicitations, press releases or other publications involving FTA assistance, stating that FTA is or will be providing Federal assistance for the project, the amount of the assistance FTA has provided or expects to provide, and the Catalogue of Federal Domestic Assistance (CFDA) Number of the program that authorizes Federal assistance.</p> <p>Note: This notification requirement applies only to States and their subrecipients, lessees, and third party contractors. It does not apply to grantees that are not States (e.g., Transit Agencies). The current Master Agreement will define the notification requirements that are currently in effect, as they may change from year to year. YES _____ NO _____</p> | III, 3. e. | | | |
| g.g | <p>Contracts above the small purchase threshold must contain remedies for breach of contract. YES _____ NO _____</p> | IV, 2.(c)(6)(b) 2 | | | |
| h.h | <p>Contracts in excess of \$10,000 must have termination for cause and termination for convenience provisions. YES _____ NO _____</p> | IV, 2.(c)(6)(b) 4 | | | |

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| i.i | <p>Addresses Federal statutory and regulatory requirements for contracts funded under Federal grants.</p> <p>YES _____ NO _____</p> | II, 3 | | | |
| j.j | <p>Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the grantee.</p> <p>YES _____ NO _____</p> | II, 2.b.(4) | | | |

REFERENCE 2: THIRD PARTY CONTRACT PROVISIONS

| PROVISION | Professional Services/A&E | Operations/ Management | Rolling Stock Purchases | Construction | Materials & Supplies |
|---|--------------------------------------|--------------------------------------|---|---|---|
| No Federal Government Obligations to Third Parties (by Use of a Disclaimer) | All | All | All | All | All |
| False Statements or Claims Civil and Criminal Fraud | All | All | All | All | All |
| Access to Third Party Contract Records | All | All | All | All | All |
| Changes to Federal Requirements | All | All | All | All | All |
| Termination | >\$10,000 if 49 CFR Part 18 applies. | >\$10,000 if 49 CFR Part 18 applies. | >\$10,000 if 49 CFR Part 18 applies. | >\$10,000 if 49 CFR Part 18 applies. | >\$10,000 if 49 CFR Part 18 applies. |
| Civil Rights (Title VI, EEO, ADA) | >\$10,000 | >\$10,000 | >\$10,000 | >\$10,000 | >\$10,000 |
| Disadvantaged Business Enterprises (DBEs) | All | All | All | All | All |
| Incorporation of FTA Terms | All | All | All | All | All |
| Debarment and Suspension | >\$25,000 | >\$25,000 | >\$25,000 | >\$25,000 | >\$25,000 |
| Buy America | | | >\$100,000 | >\$100,000 | >\$100,000 |
| Resolution of Disputes, Breaches, or Other Litigation | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Lobbying | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Clean Air | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Clean Water | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Cargo Preference | | | For property transported by ocean vessel. | For property transported by ocean vessel. | For property transported by ocean vessel. |
| Fly America | For foreign air transport or travel. | For foreign air transport or travel. | For foreign air transport or travel. | For foreign air transport or travel. | For foreign air transport or travel. |

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| Davis-Bacon Act | | | | >\$2,000 (including ferry vessels) | |
| Contract Work Hours and Safety Standards Act | | >\$100,000 (except transportation services) | >\$100,000 | >\$100,000 (including ferry vessels) | |

| PROVISION | Professional Services/A&E | Operations/ Management | Rolling Stock Purchases | Construction | Materials & Supplies |
|---|-----------------------------------|---|-------------------------|---|---|
| Copeland Anti-Kickback Act Section 1 Section 2 | | | | All All exceeding \$2,000 (including ferry vessels) | |
| Bonding | | | | \$100,000 | |
| Seismic Safety | A&E for New Buildings & Additions | | | New Buildings | |
| Transit Employee Protective Arrangements | | Transit Operations | | | |
| Charter Service Operations | | All | | | |
| School Bus Operations | | All | | | |
| Drug Use and Testing | | Transit Operations | | | |
| Alcohol Misuse and Testing | | Transit Operations | | | |
| Patent Rights | Research & Development | | | | |
| Rights in Data and Copyright Requirements | Research & Development | | | | |
| Energy Conservation | All | All | All | All | All |
| Recycled Products | | Contracts for items designated by EPA, when procuring \$10,000 or more per year | | Contracts for items designated by EPA, when procuring \$10,000 or more per year | Contracts for items designated by EPA, when procuring \$10,000 or more per year |

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|--|-------------------|-------------------|-------------------|-------------------|-------------------|
| Conformance with ITS National Architecture | ITS Projects | ITS Projects | ITS Projects | ITS Projects | ITS Projects |
| ADA Access | A&E | All | All | All | All |
| Notification of Federal Participation for States | Limited to States | Limited to States | Limited to States | Limited to States | Limited to States |