



# Procurement Policy and Procedures

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# 1. INTRODUCTION

The Williamsburg Area Transit Authority's (WATA) operates fixed route and complementary Americans with Disabilities Act (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 transportation projects. To perform these activities, WATA obtains revenues from a variety of sources in order to procure services, vehicles, buildings, 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.

**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.

The Administrative Specialist shall retain all original or electronic documents 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 five years after contract completion. Purchase orders are retained for a minimum of three 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 on-site 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. The Executive Director or Project Manager will approve all invoices before payment is issued.
2. The Executive Director or WATA Board Chair or their designees will sign all contracts in accordance with the adopted Procurement Policies and Procedures.
3. 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.

## **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 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.

### **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 permanent 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 and for all contract change orders. Independent 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.*

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 \$100,000 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.

### **5. METHOD OF PROCUREMENT**

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

#### **5.1 Supplies, Equipment and Materials**

##### **5.1.1 Less than \$2,500**

Purchases less than \$2,500 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.

##### **5.1.2 \$2,500 to \$50,000**

Procurements \$2,500 to \$50,000 require either three written quotes from responsive and responsible suppliers, or issuance of an informal solicitation (RFQ/URFP) depending on the need. A deadline for bid submittal date shall be established when the solicitations are released.

### 5.1.3 Exceeds \$50,000

Purchases of supplies, equipment and material exceeding \$50,000 require a competitive bidding process. Purchases of supplies, materials or equipment over \$50,000 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 and Under

Construction projects of \$2,000 require written quotes from at least three vendors (*if possible*) and are to be made in accordance with procedures for informal purchases.

### 5.2.2 \$2,000 to \$50,000

Construction projects in the range of \$2,000 to \$50,000 require written quotes from at least three vendors (*if possible*) and are to be made in accordance with the procedures for informal purchases. ***Federal funded procurements must comply with the Davis-Bacon Act if \$2,000 or more.***

### 5.2.3 \$50,000 and Above

Construction projects which exceed \$50,000 require a competitive bidding process. **Construction projects over \$50,000 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

### 5.3.1 Less than \$2,000

Procurements for services less than \$2,000 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.

### 5.3.2 \$2,000 to \$50,000

Procurements for services from \$2,000 to \$50,000 require 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. A deadline for submittal date of quotes is set and included in the request.

### 5.3.3 \$50,000 and Above

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

## 5.6 Rolling Stock

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

1. Select the method of procurement.
2. Manage the solicitation process.
3. Award contract.
4. Take delivery of rolling stock.

There are three methods that can be used when buying rolling stock: 1) Invitation for Bid (IFB); 2) Request for Proposal (RFP); and 3) Piggybacking.

### 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 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. 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.
  - Verify FMVSS (Federal Motor Vehicle Safety Standards) sticker affixed to each bus.

## **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.

## **6. PROCEDURES FOR INFORMAL PURCHASES (Up to \$50,000)**

### **6.1 Micro-Purchases**

Purchases up to \$2,500, require the approval of the requisitioner and their supervisor for a purchase order.

### **6.2 Small Purchases**

#### **6.2.1 For Procurements Over \$2,500 to \$50,000**

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. Purchases exceeding \$2,500 must have the approval of the requisitioner and their supervisor and must also have the signature approval from the Executive Director or designee.

#### **6.2.2 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.

### **6.3 Purchasing Card**

Selected WATA personnel may be issued Purchasing Cards to use for micro purchases and small purchases. 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.

## **7. FORMAL PROCUREMENT PROCEDURES**

Formal procurement procedures must be followed when the dollar value of the procurement exceeds \$50,000 for goods or construction.

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.

### **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.

### **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**

A list of prospective bidders shall be developed by the project manager initiating the procurement.

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**

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

Notices of active bids shall be published on the procurement section of the James City County 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 James City County website.

### **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, via posted addenda to the Invitation for Bids. The addenda shall be posted on the County Purchasing website and is the responsibility of the interested bidder to access.

Each addendum issued to an Invitation for Bids 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.

### **7.3.6 Cancellation of Invitations for Bids**

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 are 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 timelines 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.

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 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 James City County employee shall be present to witness the opening and reading of the bids and shall sign the bid tab to verify its accuracy.

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.

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. The Executive Director must determine and document to the Purchasing office 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.

### **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 situations 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 Bids, 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 Invitation for Bids.

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.

### **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 Proposals 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**

The Offerors 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. Request for Proposals must be open to the public and displayed to promote full and open competition.

Notices inviting proposals shall be displayed on the James City County purchasing 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 Addendum Request for Proposals**

If after issuance of Request for Proposals (RFP), 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.

The addendum shall be posted on the James City County website and is the responsibility of the interested offeror(s) to access. Addendums will be publicized on the James City County 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.

#### **7.4.6 Cancellation of RFPs**

The Request 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 RFPs 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 cancelled 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 designated 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.

#### **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**

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 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 offerors 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 A of this manual for procurement forms related to cost and price analysis.

#### **7.4.12 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 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 offerors 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.

#### **7.4.16 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 hold discussions with the most highly qualified firms (“short list”).
4. Evaluation team determines by consensus a short list in order of preference, those firms that are considered to be the most highly qualified to perform the required services.
5. The purchasing point of contact will begin negotiations with the top-ranked firm. At that time the qualified firm will be requested to submit a proposal that includes fees and cost estimates.
6. 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*).
7. 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.
8. 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:
    - Degree of A/E's risk;
    - Level of effort;
    - Level of talent or expertise the A/E must furnish;
    - Amount of subcontracting;
    - Amount of top level A/E management involved;
    - Subcontracts; and
    - Contractor's investment.
9. 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.
10. When the contract has been negotiated and signed, the negotiations are documented and placed in the procurement file.
11. 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.

12. 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 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.
- b) 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.
- c) The Federal Transit Administration (FTA) authorizes a non-competitive negotiation.
- d) 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.
- e) After solicitation of a number of sources competition is determined to be inadequate.
- f) 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 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 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.

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.

## 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.

### 8.2.2 Sole Source Procurement

Procurements are accomplished through solicitation and acceptance of a proposal from only one 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 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*).

## 9. CHANGE ORDERS

- a) A Change Order is any change in the scope of a contract that increases or decreases the total cost of the contract. Change Orders are formal changes that must be approved at the same signature authority level as the original document.
- b) 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 right, to issue an immediate Change Order and negotiate cost and price for time and materials after the issuance of the Change Order.

- c) All 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.
- d) The Executive Director will verify all Change Orders as to the:
  - 1) Appropriateness of the modification of the contract and whether it is unreasonable to do a separate bid for the item under consideration.
  - 2) 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 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 days stating the reasons for the action taken. This decision shall be final unless the bidder/offeror appeals within ten 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 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 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 (FTA). 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 working days after protester has actual or constructive notice that WATA has rendered a final decision, or five working days after the protester knows, or has reason to know, that WATA failed to render a final decision. After five working days, WATA will confirm with the FTA that the 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.

## **GENERAL ADMINISTRATIVE PROCEDURES**

### **Purchase Requisition**

The method of procurement, the solicitation of 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. 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.

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. A properly completed Purchase Requisition includes:

- A description of the item to be procured;
- The quantity needed;
- Unit cost;
- Total cost; and
- ICE.

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 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.

For financial purposes, items over \$5,000 with a useful life of over one year, are defined as capital purchases. Such expenditures must be charged against capital accounts, rather than operating accounts. 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.

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.

### **Unanticipated Expenditures**

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.

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.

## **The Purchase Order**

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

## **Purchase Order Approval**

Upon completion, the Purchase Order shall be signed by WATA by the Executive Director or designee and WATA Budget and Grants Administrator or a designee sends to the vendor. The electronic Purchase Order record is maintained in the Purchasing Office. Hard copy original purchase order with backup is retained in the WATA offices.

Vendors are instructed to include their Purchase Order number on all correspondence, including packages, invoices, credit memorandums, etc.

## **Split Purchases Prohibited**

The requirements outlined in this Manual 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.

## **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.

## **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.

## **Check Request Policy**

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.

## 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. **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, research and development contracts.
4. **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.*

#### 11.2.2 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.