



# Procurement Policy and Procedures

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# 1. INTRODUCTION

The Williamsburg Area Transit Authority operates fixed route and complementary ADA demand-response public transportation in the 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, the Authority obtains revenues from a variety of sources in order to procure services, vehicles, buildings, and materials and supplies.

WATA receives funding from both the federal and state governments. Therefore, WATA adopts procurement policies and procedures that are consistent with current Federal regulations and the laws of the Commonwealth of Virginia. Additional guidance on specific contractual actions include OMB Circular A-102, Attachment O, Federal Transit Administration (FTA) Circular 4220.1F, as amended, and the Virginia Public Procurement Act. (2.2-4342)

## 1.1 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 necessary for the operation and administration of WATA. These procedures include guidelines for the solicitation, award, and administration of contracts for goods and services.

The procurement policies and procedures are designed to:

- Instill public confidence in the procurement process of WATA.
- Ensure fair and equitable treatment for all vendors who seek to work with WATA, with particular emphasis toward Disadvantaged Business Enterprises (DBE).
- Ensure open and free competition in the expenditure of public funds.
- Avoid the purchase of unnecessary or duplicative goods or services.
- Provide the safeguards to maintain a procurement system of quality and integrity.

## 1.2 Roles & Responsibilities

**WATA Board of Directors:** The Board of Directors is responsible for establishing policies that guide the operation of the Authority. It is in this capacity that the Board adopts a set of procurement policies. 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.

**Executive Director:** Responsible for oversight of the overall procurement function and for providing direction on all matters relating to procurement. Ensures procurement actions necessary to the award of contracts is carried out in a manner consistent with applicable local, state, and federal laws and regulations.

**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. The Purchasing Director oversees the Senior Purchasing Specialist, the Purchasing Specialist, and the Administrative Specialist.

**Senior Purchasing Specialist (Buyer):** Reports to the Purchasing Director. This role performs a range of duties such as procurement, purchase order administration, and documentation and record retention. If there are any issues or perceived issues that the Senior Purchasing Specialist becomes aware of that pertain to activity conducted during a procurement, these must be reported to the Purchasing Director.

**Purchasing Specialist (Buyer):** Reports to the Purchasing Director. This role performs a range of duties such as procurement, purchase order administration, and documentation and record retention. If there are any issues or perceived issues that the Purchasing Specialist becomes aware of that pertain to activity conducted during a procurement, these must be reported to the Purchasing Director.

**Administrative Specialist:** A clerical role that reports directly to the Purchasing Director. This role performs a range of duties such as procurement, purchase order administration, and documentation and record retention. If there are any issues or perceived issues that the Administrative Specialist becomes aware of that pertain to activity conducted during a procurement, these must be reported to the Purchasing Director.

**Project Manager (PM):** Serves as an authorized representative of the Executive Director. The PM is appointed by the Executive Director and provides input and feedback into the procurement process and performs contract administration functions in accordance with the project scope of work. Project management is delegated to WATA employees based on their qualifications, as designated by the Executive Director. PMs do not have contractual authority and cannot enter into contractual agreements, including change orders.

**Budget and Grants Administrator:** Serves as DBE Liaison Officer and reports directly to the WATA Executive Director. The DBELO is responsible for ensuring compliance with, federal and state assisted contracts as required by 49 C.F.R. Part 26.

## 2. GENERAL PROCUREMENT GUIDELINES

*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.*

WATA's Board of Directors is responsible for establishing policies that guide the operation of the Authority. These written policies serve as a basis upon which procurement procedures may be developed.

### 2.1 Equal Employment Opportunity (EEO)

All Requests for Proposals and Invitations for Bids issued by the Authority require the vendor 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;
- complies with all Executive Orders and federal, state, and local laws regarding fair employment practices and non-discrimination in employment;
- agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

### 2.2 Disadvantaged Business Enterprise Program (DBE)

The Federal Transit Administration (FTA) requires that recipients of FTA assistance take necessary and reasonable steps to ensure that Disadvantaged Business Enterprises (DBEs) 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 of, 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 adopted every three years.

For the purpose of this program, a DBE is defined as a small business concern that 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 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.

### 2.3 System for Ensuring the Most Efficient and Economic Purchase

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. Purchases must reflect the quantity of property or extent of services that WATA would actually need at the time of acquisition. No purchase shall be made that adds quantities or options to contracts whose use is unlikely.

When beginning a procurement, consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

### 2.4 Written Record of Procurement History

- 1) The Purchasing and/or WATA staff member assigned to each solicitation shall ensure a permanent record of procurement history for all procurement actions, regardless of dollar value. For micro purchases, the record shall consist of a determination that the price is fair and reasonable and a description of how this determination was made. For purchases above the micro threshold, records shall include, *at a minimum*, 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.
- 2) In accordance with the Virginia Public Records Act, § 42.1-76, et seq. of the Code of Virginia and the Library of Virginia Records Retention and Disposal Schedule GS-02, purchasing records, including contracts and supporting documentation, shall be retained five (5) years after contract expiration and/or after WATA has made final payment and all other pending matters are closed

### 2.5 Independent Cost Estimate

An independent cost estimate is required for all procurements and for all contract change orders that utilize federal funds and exceed the micro purchase threshold. "Independent" means independent and **prior to** bids and proposals being received. The Project Manager **must** document the date and the source of the independent cost estimate (ICE) in each procurement file. A budget number is not acceptable as an ICE.

### 2.6 Solicitations

WATA solicitations must identify all requirements that the offerors must fulfill and all other factors to be used in the evaluation of bids or proposals.

#### 2.6.1 Clear and Accurate Specifications

WATA and/or Purchasing staff assigned to a solicitation will ensure that the solicitation and contract awarded incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

### 2.6.2 Brand Name or Equal

FTA Circular 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 staff responsible for developing specifications shall investigate whether 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 approved 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.

### 2.6.3 Full and Open Competition

All WATA procurement transactions must be conducted in a manner providing full and open competition, except as permitted by federal law or regulations. WATA and/or Purchasing staff assigned to a solicitation shall ensure that solicitation requirements do not contain features that unduly restrict competition, such as exclusionary or discriminatory specifications. Some situations considered to be impermissibly restrictive of competition include, but are not limited to, those presented in (a) through (h) below; they should be avoided by staff handling a solicitation.

- a) Placing unreasonable requirements on firms in order for them to qualify to do business;
- b) Requiring unnecessary experience and excessive bonding;
- c) Improper prequalification procedures, where prequalified lists are not current or contain an insufficient number of sources, or where potential bidders are precluded from qualifying during the solicitation period;
- d) Noncompetitive pricing practices between firms or between affiliated companies;
- e) Noncompetitive contracts to consultants that are on retainer contracts;
- f) Organizational conflicts of interest:
  - (1) When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to WATA due to other activities, relationships, contracts or circumstances
  - (2) When the contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
  - (3) When, during the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents;
- g) Specifying only a “brand name” product instead of allowing for “an equal” product to be offered and describing the performance or other relevant requirements of the procurement;
- h) Specifying in-state or local geographical preferences for firms, except as allowed by law;
- i) Any arbitrary action in the procurement process.

### 2.6.4 Revenue Contracts

A revenue contract is one in which WATA provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation or creating business opportunities involving the use of WATA property. Examples include bus advertising, bench advertising, vending machine services, etc.

When there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), a competitive process is required in order to allow interested parties an equal chance to obtain that limited

opportunity. WATA will award revenue contracts using a competitive process suitable to the purpose and scope of the procurement and the availability of competition

However, competition is not required when a business opportunity that allows reasonably unlimited access to all interested parties is made available to those parties on an equal basis (e.g., installing cables or antennae on property).

### 2.7 Award to Responsible Contractors

The WATA and/or Purchasing staff assigned to a solicitation must ensure that contracts are only awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

### 2.8 Establishment of Contract Term/Period of Performance

(a) General: The Buyer, in consultation with the Purchasing Director and Executive Director as appropriate, shall establish the contract term, including any options, and incorporate the term into the solicitation document. The contract term should be based on sound business judgment in consideration of factors such as:

- The benefit to WATA of a multi-year term;
- The potential costs or savings associated with the recommended term;
- The risk(s) in the event of unsatisfactory contractor performance; and
- The impact on the competitive marketplace

(b) Length of Term: Pursuant to FTA Circular 4220.1F, except for the procurement of bus rolling stock and replacement parts which are limited to five (5) years, and rail rolling stock and replacement parts which are limited to seven (7) years, all other contracts (such as property, services, leases, construction, revenue, etc.) are not encumbered by Federal requirements restricting the maximum period of performance. Nevertheless, the term of all other contracts must be reasonable and sufficient to accomplish the purpose of the contract.

### 2.9 FTA Required Contract Provisions

A number of general contract provisions are required by the FTA for federally funded contracts. These provisions are intended to establish minimum guidelines to which grantees must adhere when purchasing supplies, equipment, construction and professional services. The provisions and the types of contracts to which they apply are included in Appendix C.

### 2.10 Use of State and Local Purchasing Schedules

The use of state and local government purchasing schedules is acceptable.

## **3. 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.*

### 3.1 Purpose & Applicability

As a governmental entity, WATA must be vigilant in its protection of the public trust. Toward this end, employees, directors, officers, board members, 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, board members, and contracted agents of WATA.

### 3.2 Conflict of Interest

- a) No employee, officer, director, board member, or contracted agent 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:
  - 1) A WATA employee, officer, director, board member, or contracted agent,
  - 2) Any member of his/her immediate family;
  - 3) His/her business associate; or,
  - 4) 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.

- b) 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. In the case that the Executive Director may have a conflict of interest, this should be reported to the Chair of the Board of Directors. Failure to adhere to this requirement shall constitute a violation of this Policy and may subject the violator to disciplinary action.
- c) Organizational conflicts of interest are considered to be restrictive and are therefore prohibited on all WATA procurements. An organizational conflict of interest exists when:
  - 1) A contractor is unable or potentially unable to provide impartial and objective assistance or advice due to other activities, relationships, contracts, or circumstances
  - 2) A contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract
  - 3) 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

### 3.3 Gifts, Gratuities and Lobbying

- 1) 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.

- 2) 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.
- 3) 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.
  - 4) 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.

### 3.4 Contacts with Vendors, Bidders and Offerors

- 1) Prior to the issuance of a 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 and free trips to examine vendor products must also be avoided.
- 2) 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. 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 defines the method that should be followed for each type of procurement unless it is determined by the Executive Director that an alternative method would be in WATA's best interest, and such method complies with federal, state and local laws

### 4.1 Supplies, Equipment and Materials

#### **4.1.1 Less than \$2,500.00**

Purchases of less than \$2,500.00 are not subject to bidding requirements as long as it is documented that the price is fair and reasonable. Splitting or reducing the size of procurements to avoid competition is prohibited. Efforts should be made to distribute purchases equitably among qualified suppliers. Prices may be established through emailed quotes or other appropriate means. Such purchases are to be made in accordance with the procedures for informal purchases.

#### **4.1.2 \$2,500 to \$50,000.00**

Procurements of \$2,500.00 to \$50,000.00 require three written quotes, or documented attempts at securing quotes, from responsive and responsible suppliers. A deadline submittal shall be established when the solicitations are released.

#### **4.1.3 Exceeds \$50,000.00**

Purchases of supplies, equipment, and material exceeding \$50,000.00 require a competitive bidding process and approval of the WATA Board of Directors prior to contract award.

#### **4.1.4 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.

### 4.2 Construction Projects

#### **4.2.1 Less than \$2,000**

Construction projects under \$2,000 require written quotes from at least three vendors, or documented attempts at securing quotes, and are to be made in accordance with procedures for informal purchases.

#### **4.2.2 \$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. ***Federally funded procurements must comply with the Davis-Bacon Act if \$2,000 or more and compliance must be stipulated in contract.***

#### **4.2.3 Exceeds \$50,000**

Construction projects which exceed \$50,000 require a competitive bidding process. **Construction projects over \$50,000 require approval by the WATA Board of Directors prior to contract award. Federally funded procurements must comply with the Davis-Bacon Act if \$2,000 or more and compliance must be stipulated in contract.**

#### **4.2.4 Bonding Requirements**

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, FTA may accept the bonding policy and requirements of WATA provided that FTA has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be applied as follows:

- 1) A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the specified time.
- 2) A performance bond on the part of the contractor for one hundred percent (100%) of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- 3) A payment bond on the part of the contractor for one hundred percent (100%) of the contract price. A “payment” bond is one executed in connection with a contract to assure payments as required by law of all persons supplying labor and material in the execution of work provided for in the contract.

#### **4.2.5 Davis-Bacon Act Requirements**

Contractors responding to a solicitation that requires compliance with the Davis-Bacon Act, 40 U.S.C. § 3141, *et seq.*, must certify compliance with the applicable prevailing wage requirements. Contractors shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the wage decision included as part of the bid solicitation.

## 4.3 Services

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

Purchases of less than \$2,500.00 are not subject to bidding requirements as long as whoever authorizes the purchase documents that the price is fair and reasonable. Splitting or reducing the size of procurements to avoid competition is prohibited. Efforts should be made to distribute purchases equitably among qualified suppliers. Prices may be established through emailed quotes or other appropriate means. Such purchases are to be made in accordance with the procedures for informal purchases.

### **4.3.2 \$2,500 to \$50,000**

Procurements of \$2,500.00 to \$50,000.00 require three written quotes, or documented attempts at securing quotes, from responsive and responsible suppliers. A deadline submittal shall be established when the solicitations are released.

### **4.3.3 Exceeds \$50,000**

Purchases of supplies, equipment, and material exceeding \$50,000.00 require a competitive bidding process and approval of the WATA Board of Directors prior to contract award. Multiple years or optional year proposals will be valued in their entirety.

## **4.4 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.

### Step 1: Selecting the Method of Procurement

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. 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

- a) 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.
- b) Invitation for Bids (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.
- c) Requests for Proposals (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 \$150,000, or a waiver must be obtained.

### Steps 3 and 4: Making the Award and Taking the Delivery

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

#### 4.4.1 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.

- 1) Pre-Award requirements:
  - a) Review and verify 70% (FY2020 and beyond) domestic content AND U.S. final assembly location, operations and total cost OR request and receive a Buy America waiver;
  - b) Check bid specification compliance with solicitation specifications AND complete a manufacturer capability study
- 2) Post-Award requirements:
  - a) Review and verify 70% (FY2020 and beyond) domestic content AND U.S. final assembly location, operations and total cost OR Request and receive Buy America waiver
  - b) Complete resident inspector's report AND complete visual inspections and performance tests OR complete visual inspection and road tests
  - c) Verify FMVSS (Federal motor Vehicle Safety Standards) sticker affixed to each bus

#### 4.4.2 Piggybacking

- 1) 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.
- 2) Before entering into any piggyback procurement, it is the policy of the FTA and of WATA that the following are executed and documented:
  - a) Price is determined to be fair and reasonable
  - b) Contract complies with all federal requirements, including Buy America, and all applicable FTA clauses
  - c) The quantities used by others, coupled with the quantities you will use, do not exceed the amounts available under the original contract

## 5. PROCEDURES FOR INFORMAL PURCHASES

Informal procurement procedures may be followed when the dollar value is less than or equal to \$50,000 for the procurement of goods and services and less than \$2,000 for the procurement of construction projects. WATA follows local limits to define micro-purchases and small purchases and not limits set in federal regulations (based around the Simplified Acquisition Threshold).

### 5.1 Micro-Purchases

Purchases up to \$2,500, requires the requisitioner to determine that the price is fair and reasonable and document how this determination was made.

### 5.2 Small Purchases

5.2.1 For procurements over \$2,500 to \$50,000, written quotations from vendors are required. 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 signature approval of the Executive Director or designee.

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

### 5.3 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 Guidelines and Procedures. The Purchasing Card Policy and Procedures are part of the James City County Purchasing Manual. They are included here in Appendix D and are incorporated by reference.

### 5.4 Split Purchases Prohibited

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

## **6. FORMAL PROCUREMENT PROCEDURES**

### 6.1 When to Use Competitive Bidding or Competitive Negotiation

Formal procurement procedures must be followed when the dollar value of the procurement exceeds \$50,000 for goods or services. This is a limit set locally by WATA and is lower than the limit allowed by federal regulation (based around the Simplified Acquisition Threshold).

There are three basic methods of conducting formal procurements:

1. Competitive Bidding. The preferred method of procurement when:
  - a) A fair and reasonable price can be established;
  - b) Reasonably definite design or performance specifications can be written;
  - c) Adequate competition can be anticipated;
  - d) Reasonable estimate of costs can be made.
  
2. Competitive Negotiation. The preferred method of procurement 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.
  
3. Non-Competitive Negotiation. The method of procurement under the following circumstances:
  - a. There is a public exigency or emergency that does not allow time for competitive negotiation.
  - b. 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.
  - c. After solicitation of a number of sources, competition is determined to be inadequate.

- d. 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.

## 6.2 Procedures for Competitive Bidding

### **6.2.1 Prepare Invitation for Bids (IFBs)**

- 1) 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.
- 2) 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.
- 3) 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 this policy.

### **6.2.2 Develop Bidders List/Plan Holders List**

A list of prospective bidders shall be developed by the project manager and the buyer/Purchasing Specialist. The bidder's list shall be developed with consideration of WATA's DBE program with the project manager coordinating with the DBELO.

### **6.2.3 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 and on the Purchasing Office bulletin board. The due date shall not be less than 10 days from the issue date of the IFB.

### **6.2.4 Pre-Bid Conference**

A pre-bid conference may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements as early as possible after the solicitation 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 solicitation. Attendance by potential bidders or proposers may either be voluntary or mandatory.

### **6.2.5 Addendum - Invitations for Bids**

- 1) 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 a posted addendum to the IFB. Addenda shall be posted on the James City County Purchasing website and is the responsibility of the interested bidder to access.
- 2) Each addendum issued to an IFB 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.

### **6.2.6 Cancellation of IFB's**

- 1) IFBs 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 addenda to the invitation would be of such magnitude that a new invitation is necessary). 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 James City County website.
- 2) 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 applicable.

### **6.2.7 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.

### **6.2.8 Withdrawal of Bids**

- 1) A Bidder 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/offeror as a result of the breach or nonperformance of such contract or purchase order.
- 2) 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 (5%). 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.

#### **6.2.9 Bid Opening and Recording**

- 1) The Buyer in charge of the solicitation will manage the bid opening procedure.
  - a) 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.
  - b) Unidentified bids may be opened solely for the purpose of identification. If a sealed bid is opened by mistake or for purposes of identification, the WATA or Purchasing staff member receiving the bid 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.
  - c) 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. A second WATA and/or JCC employee shall be present to witness the opening and reading of the bids and shall sign the bid tab to verify its accuracy.
  - d) 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.
  - e) 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.
  - f) 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.
- 2) The IFB 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.
- 3) 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.

#### **6.2.10 Analysis of Limited Bid Response**

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 work with the Buyer to determine and document 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 it is determined that the solicitation contained elements that were restrictive of competition.

### 6.2.11 Determining Reasonableness of Price: Price/Cost Analysis

- 1) A price/cost analysis shall be used to determine the reasonableness of the bid price regardless of the number of bids received. ***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.***
- 2) **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 out 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.
- 3) **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.
- 4) 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. In conducting a cost analysis, staff will work with the offeror to gather and analyze information according to the following procedure:
  - 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;
    - (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;
    - (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.
- e) In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly overhead costs:
- (i) Is the cost allowable in accordance with **Federal cost principles as stated in 2 CFR 225?**
  - (ii) Is the cost allocable to the particular project? ;
  - (iii) Is the cost reasonable?

### **6.2.13 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:

- 1) Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
- 2) 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.
- 3) 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.
- 4) Has a satisfactory record of integrity and business ethics.
- 5) Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- 6) Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain
- 7) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain
- 8) Is not on a list of debarred, suspended, or ineligible firms or individuals.

### **6.2.14 Rejection of All Bids**

- 1) Preservation of the integrity of the competitive bid system requires 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.
- 2) 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.
- 3) 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.
  - 4) 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.

#### **6.2.15 Rejection of Individual Bids**

- 1) Normally, any bid which fails to conform to the essential requirements of the IFB, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.
- 2) 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.
- 3) Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.
- 4) 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.

#### **6.2.16 Award of the Contract**

- 1) Unless all bids are rejected, award shall be made by written notice, within the time for acceptance specified in the bid or extension thereof, to the responsible bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is lowest in price.
- 2) 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.
- 3) Award shall be made by email to the successful bidder and a notice of award issued. The successful bidder shall complete and execute applicable contract documents and return them to the Purchasing office within the time specified. WATA will finalize the execution of the contract documents and send copies to the successful bidder.

## 6.3 Procedures for Competitive Negotiation

### **6.3.1 Prepare Request for Proposals (RFPs)**

- 1) A Request for Proposal consists of a number of provisions, both general and project-specific. 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. Project-specific provisions of the RFP will be prepared by the department initiating the procurement.
- 2) The project-specific sections of the RFP shall specifically describe the scope of work and the need being met, the minimum materials and/or services needed; the time for providing same; the procedure by which a prospective offeror may examine plans and specifications; 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.

### **6.3.2 Develop List of Offerors**

A list of potential offerors may be developed by WATA and the Purchasing Office. The list will be developed with consideration of participation by Disadvantaged Business Enterprises.

### **6.3.3 Soliciting Proposals**

Requests for Proposals are open to the public to promote full and open competition. Notices inviting proposals shall be displayed on the procurement section of the James City County website and shall be published for a minimum of ten (10) days from the date of issuance of the RFP. The time period may be greater than the ten (10) days based on the complexity of the requirements and whether or not a pre-proposal conference is required.

### **6.3.4 Pre-Proposal Conference**

A pre-proposal conference may be used as a means of briefing prospective offerors and explaining complicated specifications and requirements as early as possible after the RFP has been issued and before 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.

### **6.3.5 Addendum - Requests for Proposals**

- 1) If after issuance of an 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 defective or ambiguous terms, such changes shall be accomplished by issuance of a written addendum. Addenda will be publicized on the procurement section of the James City County website and is the responsibility of the interested offeror(s) to access.
- 2) 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.

### **6.3.6 Cancellation of RFPs**

- 1) 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.

- 2) 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.

### **6.3.7 Receipt of Proposals**

Proposals shall be submitted in the office designated in the RFP 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.

### **6.3.8 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.

### **6.3.9 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.

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

### **6.3.11 Determining Reasonableness of Price (Price/Cost Analysis)**

- 1) A price/cost analysis shall be used to determine the reasonableness of the bid price regardless of the number of proposals received.

***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 proposals***

- 2) **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. 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 out 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.

3) **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.

In conducting a cost analysis, 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.
- e) In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly overhead costs:
  - i) Is the cost allowable in accordance with **Federal cost principles as stated in 2 CFR 225?**
  - ii) Is the cost allocable to the particular project?
  - iii) Is the cost reasonable?

### **6.3.12 Basis of Award**

- 1) 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.
- 2) 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.
- 3) Negotiated procurement records or files should provide at least the following pertinent information:
  - a) justification for the use of negotiation in lieu of competitive bidding by an IFB;
  - b) independent cost estimate;
  - c) contractor selection;
  - d) justification for contract type;
  - e) determination and findings (if applicable);
  - f) record of negotiations; and
  - g) cost or price analysis.
  - h) Documentation that vendor is not on the debarment and suspension list

### **6.3.13 Written Procurement Selection Procedures**

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

### **6.3.14 Architectural and Engineering (A&E) and Other Professional Services**

- 1) 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.
- 2) 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;
  - 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.
- 3) This "qualifications-based" procurement method can only be used for the procurement of A&E services where any amount of Federal funds is utilized. To the extent that this determination is not consistent with the Virginia Public Procurement Act (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.

### 6.3.15 Special Procedures for Architect/Engineering Services

- 1) 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.
- 2) The steps to be used for proposal evaluation and contract negotiation for A/E contracts are as follows:
  - a) Evaluation team is assigned by the Executive Director, in consultation with the Purchasing Director, to review eligible firms and all responses to RFP.
  - b) Team evaluates the firms based on the stated evaluation criteria published in the RFP such as:
    - i) Professional qualifications for performance of the required services.
    - ii) Specialized experience and technical competence in the type work required.
    - iii) Capacity to accomplish the work in the required time.
    - iv) Past performance in terms of cost control, quality of work and compliance with performance schedules.
  - c) Evaluation team holds discussions with the most highly qualified firms ("short list").
  - d) 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.
  - e) 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.
  - f) 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).
  - g) In determining the amount of compensation and the method of payment, consideration shall be given to:
    - i) Scope and complexity of designs, surveys and other work and the skills necessary for these services.
    - ii) Quality and quantity of data provided to the A/E by WATA.
    - iii) Location of, and conditions under which, the services will be performed.
    - iv) Date services to begin and time allowed for performance.
  - h) Costs should be negotiated taking into consideration:
    - i) Direct Labor.
    - ii) Overhead.
    - iii) General and administrative expenses.
    - iv) Materials.

- v) Other direct costs.
  - vi) Profit, which is further influenced by:
    - a. Degree of A/E's risk,
    - b. Level of effort,
    - c. Level of talent or expertise the A/E must furnish,
    - d. Amount of subcontracting,
    - e. Amount of top-level A/E management involved,
    - f. Subcontracts, and
    - g. Contractors investment.
- i) 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.
  - j) When the contract has been negotiated and signed, the negotiations are documented and placed in the procurement file.
  - k) 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.
  - l) 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.

### **6.3.16 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.

## **7. NON-COMPETITIVE NEGOTIATIONS**

Under normal circumstances, WATA provides for full and open competition when soliciting bids or proposals. However, there are limited circumstances under which a noncompetitive procurement may be appropriate or necessary.

### **7.1 Sole Source Procurement**

- 1) A procurement is considered sole source when the required supplies or services are available from only one responsible source. One of the following conditions must be present to determine that a good or service is available from only one source:
  - a) Unique or Innovative Concept
  - b) Patents or Restricted Data Rights
  - c) Substantial Duplication Costs
  - d) Unacceptable Delay
- 2) A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement and must be justified. A cost analysis must also be conducted for sole source procurements. Notice of sole source procurements exceeding the small purchase threshold shall be published on the procurement website.

## 7.2 Single Source Procurement

- 1) Upon receiving a single bid or proposal in response to a solicitation, a determination must be made that factors beyond the control of WATA were responsible for the lack of responses. This determination must be documented and will include a survey of potential respondents that chose not to submit a bid or proposal and a review of the specifications for undue restrictiveness.
- 2) The procurement file should also include the solicitation information, the solicitation due date, the number of solicitations requested, the number of responses received, the reasons for the lack of competition based on communication with vendors, the basis for contract award (if applicable), and the new solicitation.

## 7.3 Emergency Procurement

- 1) 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.
- 2) 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:
  - a) The health or safety of any person;
  - b) The preservation or protection of property; or
  - c) The continuation of core Authority functions.
- 3) 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 or services shall be requested separately in a non-emergency procurement action concurrent with the emergency procurement.
- 4) 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.
- 5) Justification. 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.
- 6) Unacceptable Justification. In the absence of an emergency condition, an emergency procurement shall not be justified on the basis of any of the following circumstances:
  - a) The lack of adequate advance planning for the procurement of required supplies, services, or construction;
  - b) Delays in procurement caused by administrative delays, or lack of sufficient procurement personnel; or
  - c) Pending expiration of budget authority.
- 7) Emergency Procurement Procedures
  - (a) Public Notification. The Purchasing Office shall not be required to publicize the solicitation of a procurement made on an emergency basis. However, it shall issue a written notice stating that the contract is being

awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded

- (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 Buyer shall attempt to solicit bids or proposals from as many potential contractors as possible under the emergency condition.
- (c) Request for Proposals. A Buyer 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) Contract Requirements. The Buyer shall ensure that each emergency procurement contract contains the required clauses, representations and certifications.
- (e) Record of procurement. The Buyer shall ensure that proper records of emergency procurements are maintained, including a written determination of the basis for the emergency and for the selection of the particular contractor.

## **8. 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.

### 8.1 Filing Protest

- 1) 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.
- 2) 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.

### 8.2 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.

### 8.3 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.

#### 8.4 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.
- 2) WATA will notify FTA in writing when it receives a third-party contract protest and keep FTA informed about the status of the protest.
- 3) WATA shall notify the protester of its decision no later than ten (10) days following receipt of all relevant information.

#### 8.5 Appeal

- 1) 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. The protester must deliver its appeal to the FTA Regional Administrator, or the FTA Associate Administrator, within five (5) working days of the date when the protester has actual or constructive notice of the WATA's 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.
- 2) The extent of review by FTA will be limited to:
  - a) Violation of Federal law or regulations;
  - b) Violation of WATA's protest procedures or failure by WATA to review a protest;
  - c) Violation of state or local laws or regulations.

## **9. GENERAL ADMINISTRATIVE PROCEDURES**

### **9.1 Purchase Requisition**

- 1) The method of procurement, the solicitation of quotes and gathering required documents occur before initiating a requisition. WATA 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.
- 2) A Purchase Requisition signed by the Executive Director or designee must be completed before a Purchase Order can be prepared. A properly completed Purchase Requisition includes:
  - a) a description of the item to be procured,
  - b) the quantity needed,
  - c) unit cost,
  - d) total cost,
  - e) ICE/price reasonableness determination.

- 3) 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 requisition becomes part of the executed purchase order document that is reviewed and executed by WATA and then distributed to the vendor.

## **9.2 Unanticipated Expenditures**

- 1) 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. A properly executed and approved Purchase Requisition must be provided to complete the requisition.
- 2) 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.

## **9.3 Purchase Order**

- 1) Upon receipt of an approved Purchase Requisition and approval by the Purchasing Director, the Purchase Order is processed. The Purchase Order shall be signed by the Executive Director or designee and distributed to the vendor. An electronic purchase order record and a hard copy original purchase order with backup are maintained in the Purchasing Office.
- 2) Vendors are instructed to include their Purchase Order number on all correspondence, including packages, invoices, credit memos, etc.

# **10. CONTRACTS**

*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.*

## **10.1 GENERAL**

- 1) Contract administration is the process that is undertaken to ensure compliance will all the terms of a contract through such actions as modification to the contract, evaluating performance and progress, monitoring contract deliveries, inspections, approval of payments, and closeout. The Executive Director ("ED") is responsible for adherence to all provisions contained within a contract and for managing the performance of a contract.
- 2) The ED may delegate authority to the Project Manager to provide all relevant contract administration duties as deemed appropriate in order to satisfy all contract requirements. The Project Manager reports directly to the ED and is responsible for regularly updating the ED on compliance matters. Delegation of responsibilities shall be in writing and the employee shall be furnished a copy of the delegation.

## **10.2 CONTRACT AWARD APPROVAL**

- 1) *Management Approval.* Requests for initiation and award of procurement actions including contract modifications shall be processed and approved in accordance with this Policy.

- 2) *FTA Approval.* WATA is self-certified by the Federal Transit Administration (FTA) and may process federally assisted procurement actions for award without prior review and concurrence of FTA. FTA retains the right to require concurrence on a case-by-case basis whenever a matter of primary federal concern is involved.
- a) WATA's self-certification status does not waive its responsibility to conform to statutory requirements such as Buy America waivers, Davis-Bacon Act requirements, bid protests filed after final action by WATA, and any other matters of contract administration which impact Federal concerns. The ED is responsible for including FTA-required provisions and clauses in all solicitations and contracts.
  - b) FTA guidelines require WATA to seek to avoid situations where it has failed to:
    - i) obtain clear access to all needed right-of-way prior to award of the construction contract;
    - ii) execute all required utility agreements in time to assume uninterrupted construction progress;
    - iii) undertake comprehensive project planning and scheduling to achieve proper coordination among contractors;
    - iv) inform potential contractors of all available geo-technical information on subsurface conditions;
    - v) assure that all grantee-furnished materials are compatible with contractor project facilities and/or equipment and available when needed;
    - vi) complete all pre-construction survey and engineering prior to issuing the contractor a Notice to Proceed;
    - vii) obtain the necessary approvals and agreements from all other public authorities affected by the project prior to contract award; or
    - viii) assure that all design and shop drawings are promptly approved and made available to the contractor as needed.
  - c) The Davis-Bacon Act, as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, and/or repair (including painting or decorating) of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classifications of laborers and mechanics employed under the contract. The DBA requires WATA to insert in full on any covered contract the clauses in the regulations at 29 CFR 5.5(a), which include clauses on the following topics:
    - i) Minimum wages. b) Withholdings.
    - ii) Payrolls and basic records.
    - iii) Apprenticeships and trainees.
    - iv) Compliance with Copeland Act requirements.
    - v) Subcontracts.
    - vi) Contract termination; debarment.
    - vii) Compliance with Davis-Bacon and Related Act requirements.
    - viii) Disputes concerning labor standards.
    - ix) Certification of eligibility.

### 3) *Acceptable Contract Types*

The following list includes the most commonly used contract types. WATA may choose whichever type is most appropriate for a specific procurement. *Note: WATA prohibits use of a Cost-Plus-a-Percentage-of-Cost Contract.*

- a) 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.
- b) 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).
- c) Cost-Plus Fixed Fee: The contractor is reimbursed for costs and receives a fixed fee. This type of contract is suitable for use only when the uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract, such as facilities contracts, and research and development contracts.
- d) 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.

### **10.3 POST-AWARD CONFERENCE (CONSTRUCTION CONTRACTS)**

- 1) *Post-Award Conference Policy.* It is the policy of WATA to conduct a “Post-Award Conference” with all construction contractors before the work under a construction contract begins. The Project Manager may conduct a Post-Award Conference for non-construction contracts as needed.
- 2) *Post-Award Conference Arrangements.* The Project Manager shall be responsible for:
  - a) Establishing the time and place of the conference;
  - b) Preparing the agenda;
  - c) Notifying appropriate WATA representatives;
  - d) Notifying appropriate contractor representatives;
  - e) Designating or acting as chairperson;
  - f) Conducting a preliminary meeting of WATA personnel; and
  - g) Preparing a summary report of the conference.
- 3) *Post Award Conference Procedures.* The assigned Project Manager shall conduct the meeting.
  - a) The meeting should provide key members of both organizations an opportunity to establish lines of communication and authority and identify their respective duties and responsibilities as well as processes and procedures. The agenda will depend on the size and scope of the project. Discussions may cover specific projects plans, general and technical specifications, safety requirements, change orders, construction bonds, site utilization, unusual conditions, progress schedules, completion and payment schedules, and emergency contact information for participants. A thorough understanding of equal employment regulations, civil rights requirements, sexual harassment prevention, prevailing wages, paperwork posting requirements, and other pertinent features of the procurement contract will promote better relations and usually improve construction operations.
  - b) The ED may make commitments or give directions within the scope of the ED's authority and shall put in writing and sign any commitment or direction.

- 4) *Post Award Conference Report.* The PM shall prepare and sign a summary report of the post award conference, including all information and guidance provided to the contractor. The report shall cover all items discussed, the names and contact information of the participants and any respective assigned responsibility for further actions, areas requiring resolution, controversial matters, and the due dates for the actions. The Project Manager shall furnish copies of the report to the ED, the contractor, and others who require the information.

#### **10.4 CONTRACT EXECUTION**

- 1) WATA. Contracts may be entered into and signed (executed) on behalf of WATA **only** by the Executive Director. The ED's name and official title shall be typed, affixed or printed on the contract. The ED shall generally sign the contract after it has been signed by the contractor.
- 2) Contractor: The following contract signatures by the contractor are required:
  - a) *Individual.* A contract with an individual shall be signed by that individual;
  - b) *Individual Doing Business As.* A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words "an individual doing business as" [insert name of firm];
  - c) *Partnership.* A contract with a partnership shall be signed in the partnership name by a general partner with authority to bind the partnership. The ED, before signing for WATA, shall obtain a list of all general partners and ensure that each person signing for the partnership has authority to bind the partnership;
  - d) *Corporation.* A contract with a corporation shall be signed in the corporate name, followed by the word "by" and the signature and title of the person authorized to sign for the corporation. The ED, before signing for WATA, shall ensure that the person signing for the corporation has authority to bind the corporation;
  - e) *Joint Venturer.* A contract with a joint venturer may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner set forth in paragraphs (a) through (d) of this section. When a corporation is participating in a joint venture, the ED shall obtain from the corporation secretary a certificate stating that the corporation is authorized to participate in the joint venture; and
  - f) *Agent.* When an agent is to sign a contract, the agent's authorization to bind the principal shall first be established by evidence satisfactory to the ED. Any agent that acts to bind a principal shall be presumed to have the authority of that principal to do so unless otherwise indicated.

- 3) Contract Distribution

The ED shall distribute, or cause to be distributed, copies of contracts or modifications within ten working days after execution by all parties, including, at a minimum, to the contractor.

#### **10.5 NOTICE TO PROCEED**

- 1) When the contract, or the solicitation that becomes part of the contract, specifies the time when the contractor is to proceed with the work under the contract, a will not be required. However, in any case where the contract requires the issuance of a Notice To Proceed, the notice will fix the time for the commencement of the work.
- 2) *Contractor's Acknowledgment:* When a Notice to Proceed is issued, the contractor will acknowledge receipt thereof by signing and dating all copies of the acknowledgment and returning all but one copy to the Project Manager.

- 3) Contractors in no case will be required to commence performance prior to the commencement date fixed in the contract or in the Notice to Proceed. If they voluntarily do so and the contract is not ultimately signed, or approved when required, such action is at their own risk and without liability on the part of the WATA or any other source of funds on the project.

## **10.6 CONTRACT PAYMENT TERMS**

Any payment terms that differ from those contained in WATA's General Terms and Conditions will be included in the solicitation documents and agreed to as necessary by the successful offeror. The Project Manager will be responsible for monitoring the receipt and approval of necessary supporting documentation and subsequent approval of payment to the contractor.

## **10.7 WATA CONTRACT FILES**

- 1) The Project Manager performing contract administration functions shall establish files containing the records of all contractual actions pertinent to the work being performed. The documentation in each contract file shall be sufficient to constitute a complete history of the transaction for the following purposes:
  - a) Providing a complete background as a basis for the decisions made at each step of the procurement process;
  - b) Supporting actions taken;
  - c) Providing information for reviews and investigations; and
  - d) Furnishing essential facts in the event of litigation.
  - e) All contract administration actions; (forms, correspondence)
  - f) All payment forms (invoices, check copies, payment forms)
  - g) Contract completion forms
- 2) A contract file generally consists of:
  - a) The procurement file that documents the basis for the procurement and the award, the assignment of contract administration (including payment responsibilities), and any subsequent action taken by the contracting office;
  - b) The contract administration file that documents actions reflecting the performance of contract administration responsibilities; and
  - c) The working contract file that documents actions prerequisite to substantiating and reflecting contract payments.
- 3) Files shall be maintained at organizational levels that ensure:
  - a) Effective documentation of contract actions;
  - b) Ready access by principal users and auditors;
  - c) Minimal duplicate and working files;
  - d) Safeguarding confidential documents; and
  - e) Conformance with any established procedures for file location and maintenance.
- 4) Record Retention
  - a) In accordance with the Virginia Public Records Act, § 42.1-76, et seq. of the Code of Virginia and the Library of Virginia Records Retention and Disposal Schedule GS-02, purchasing records, including contracts and supporting documentation, shall be retained five years after contract expiration and/or after WATA has made final payment and all other pending matters are closed. The project manager is responsible for ensuring that all records are properly retained.

- b) WATA may retain contract files in any medium (paper, electronic, etc.), or any combination of media, provided the requirements of this section are satisfied.

## 10.8 CONTRACT MODIFICATIONS

- 1) A Contract Modification means any written change to the terms of a contract.
- 2) Only the ED or authorized representatives, acting within the scope of their delegated contract authority, are authorized to execute a contract modification on behalf of WATA. WATA personnel are prohibited from taking any actions that would cause a contractor to believe that they are authorized to bind WATA or directing or encouraging a contractor to perform work that should be the subject of a contract modification.
- 3) The Board of Directors must review and approve modifications incorporating price increases greater either than \$50,000 or 25% of the contract price, whichever is greater.
- 4) *Bilateral or Unilateral Modifications.* A contract modification may be either bilateral or unilateral.
  - a) *Bilateral modifications* are signed by the contractor and the ED, or an authorized representative acting within the scope of his/her authority. Bilateral contract modifications may be used to make negotiated adjustments to the terms of the contract.
  - b) *Unilateral modifications* are signed only by the ED or an authorized representative acting within the scope of his/her authority as derived from the contract or from statute. Unilateral contract modifications may be used to make administrative changes, such as correction of typographical errors or issuance of a termination notice.
- 5) **Notification:** When a contractor considers that WATA has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that the contractor notify WATA in writing as soon as possible. This will permit WATA to evaluate the alleged change and confirm that it is a change, countermand the alleged change, or notify the contractor that no change is considered to have occurred.
- 6) **Price/Cost Analysis of Modification**
  - a) A contract modification shall be priced and an independent cost estimate shall be prepared by the Project Manager before signature by the parties. When time permits, WATA shall solicit a cost and technical proposal from the contractor before a modification is made to the contract. A written analysis of the need for the change will be completed for contract modifications. The scope and depth of the supporting analysis should be directly related to the dollar value, importance, and complexity of the modification. Once the proposal is received and the analysis is made, WATA will then attempt to negotiate an equitable adjustment to the contract price, delivery schedule, etc.
  - b) If a no-cost contract modification is issued, the ED must have, from an authorized representative, justification in writing of the reasons for the issuance of the no-cost modification.
  - c) If a change or modification (1) calls for essentially the same type and mix of work as the basic contract and (2) is of relatively small dollar value compared to the total contract value, the ED may use the basic contract's profit or fee rate as the starting point for that change or modification.
- 7) *Modifications Affecting Funding Levels.* The ED or an authorized representative shall not execute a contract modification that causes or will cause an increase in the funding level of the contract without having first obtained an approved purchase order.

- 8) *Review of Modifications.* Contract modifications for construction contracts shall be reviewed as required per the contract documents.
- 9) *Additional Work or Work Outside of the Scope of the Contract.* Before any modification is made to the contract, the ED or a representative authorized by the ED shall review the contract to determine if the proposed change may fall outside the scope of the agreement (a “Cardinal Change”). Should it appear that it may be a Cardinal Change, WATA shall consult with legal counsel to determine whether the change does fall within the scope of the contract. If it is determined that it is a Cardinal Change, then it shall be processed as a new procurement.

In any event, WATA shall not be responsible for any costs incurred unilaterally by a contractor for any additional work, or other actions by a contractor, outside the scope of the written contract and written contract modifications signed by the ED. Only the ED has the authority to direct a contractor to perform work, alter schedules or specifications, or take any other action that would normally require a written and signed contract modification.

- 10) *Responsibility to Negotiate.* The Executive Director may assign responsibility for negotiation of contract modifications to the Purchasing Director or Project Manager.

## **10.9 CHANGE ORDER REQUIREMENTS**

### **10.9.1 CHANGES CLAUSE IN SOLICITATIONS AND CONTRACTS**

- 1) A Change Order is any change within 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.
- 2) WATA shall have the right in accordance with each contract for construction or the delivery of goods and services, 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 contracts must contain provisions that (i) require change orders to be approved in advance in accordance with the value of the change order or the calculated value of the time extension and (ii) reserve the right to issue immediate change orders and negotiate costs and prices for time and materials after the issuance of the change order.

### **10.9.2 CHANGE ORDER PROCESS**

- 1) The purpose of the change order process is to outline the actions necessary to record, document, and process identified changed conditions to the contract. The ED or his/her delegated representative is responsible for documenting, monitoring, and processing all contract changes, regardless of whether they are initiated by the Contractor or directed by WATA, to ensure funding availability and that the changed work is not commenced before written authority is given for the change.
- 2) WATA Initiated Change: The Project Manager shall review the proposed change and verify that the work requested is indeed a change to the contract. To understand the scope of the change the Project Manager may seek the support of other WATA personnel or outside counsel as needed.
- 3) For changes not initiated by WATA, the Contractor must provide written notice of a change in contract scope. Written notice should include the date and time of the incident or directive giving rise to the change, the nature and circumstances of the event and the probable impacts to the work, cost of the work and/or time for performance. WATA may not make a determination of merit until it receives written justification for a Contractor-initiated change.

WATA will make an initial determination as to whether the scope of work identified by the Contractor constitutes a change to the work for which additional compensation or schedule time may be warranted. If a change notice is deemed to have merit, the Contractor will be requested to submit a cost proposal and documentation. The Cost Proposal should be prepared by an authorized representative of the Contractor who has sufficient background and related worksite experience and who is fully knowledgeable of the proposed project activities. If a Subcontractor proposal is included in the Cost Proposal, it is the Contractor's responsibility to ensure that the Subcontractor's proposal has been thoroughly reviewed by the Contractor and that it is accurate and complete.

- 4) For any proposed change, the Project Manager shall:
  - a) Review the original contract requirements and establish the details of what is being changed;
  - b) Review the written notice of change in contract scope and accompanying backup to assess the reason for the change;
  - c) Evaluate the full scope of the change and potential impacts of time and cost on the performance of remaining contract work;
  - d) Submit Change Order documentation for approval and provide such other necessary information to the ED that is necessary to evaluate and execute the change order.
  
- 5) For all contracts subject to a Federal grant, the Project Manager must perform a cost or price analysis. The Project Manager must use Federal cost principles, which are found in the Federal Acquisition Regulation Part 31, whenever WATA is negotiating costs or prices based on estimated costs. WATA should ensure that their third-party contract provisions provide for the Federal cost principles, or equivalent WATA cost principles, in determining allowable costs for equitable adjustments arising out of changes to the contract.

#### **10.10 SUSPENSION OF WORK ORDER**

Situations may occur during contract performance causing the Project Manager to order a suspension of work. WATA may take the following actions as authorized by the Suspension of Work Order clause:

- 1) The Project Manager may order the Contractor, in writing, to suspend, delay, or interrupt any or all of the contract work for the period of time determined appropriate for the convenience of WATA.
- 2) If the performance of all or any part of the work of this contract is delayed or interrupted by a specified Suspension of Work Order, as soon as practicable after the delay or interruption, the Project Manager should discuss the stop-work order with the contractor and modify the order, if necessary, in light of the discussion.
- 3) The Suspension of Work Order should include (i) a description of all activities being suspended; (ii) clear instructions or directions for the Contractor regarding pending material orders, permits, services, and scope; and (iii) direction to the Contractor on how to manage any subcontracts, including suggestions related to overhead and general condition items, as applicable.
- 4) Once the Suspension of Work Order is issued, the Contractor must, as soon as reasonably possible, submit in writing a written claim for added costs, exclusive of profit. WATA shall make an adjustment for any increase in the cost of performance of this contract caused by the delay or interruption, and the contract shall be modified in writing accordingly. There shall be no allowance for delay to the extent performance would have been delayed by some other cause.

#### **10.11 CONTRACT TERMINATION**

- 1) All WATA contracts must contain provisions enabling WATA to terminate such contracts for the convenience of WATA, as provided below. These provisions shall specify the manner in which such termination will be affected and the basis for settlement. There shall also be included in such contracts

appropriate provisions specifying causes for which the contracts may be terminated for default.

2) *Termination for Convenience of WATA.*

- a) The Executive Director may, when the interests of WATA so require, terminate a contract, in whole or in part, for the convenience of WATA, without penalty or recourse. The Executive Director shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.
- b) Termination for Convenience of WATA clause prescribed for use in fixed price supplies, services and construction contracts is included in WATA's General Terms and Conditions
- c) The Executive Director will attempt to negotiate a no-cost settlement with the contractor. Otherwise, the Executive Director will negotiate an appropriate settlement agreement with the contractor pursuant to the provisions of the Termination for Convenience clause of the contract.

3) *Termination for Default.*

- a) *Construction Contracts.* The Default clause prescribed for use in fixed-price construction contracts is included in the solicitation bid documents.
- b) *Contracts for Supplies and Services.* The prescribed Termination for Default clause for contracts for supplies and services is included in WATA's General Terms and Conditions.
- c) If a contractor's right to proceed is terminated for default, or if a contractor fails to carry out the work in accordance with the underlying contract, WATA may take over and complete the work or cause it to be completed, and the contractor and its sureties, if any, shall be liable to WATA for any increased costs caused. The contractor and his sureties shall, in addition to increased costs in completing the work, be liable for liquidated damages or for actual damages if liquidated damages are not so provided, in accordance with the terms of the underlying contract.
- d) If WATA determines that the contractor's failure to perform arises from causes which are excusable under the terms of the contract, WATA shall not terminate the contractor's right to proceed. Neither shall damages (liquidated or actual) be imposed on the contractor because of any delays occasioned by such causes.
- e) Where the surety does not complete performance of the contract, WATA normally will complete the performance of work by awarding a new contract based on the same plans and specifications. Such award may be the result of competitive bidding or negotiation, whichever procedure is most appropriate under the circumstances and complies with WATA policies and applicable statutes and regulations. WATA must use reasonable diligence to obtain the lowest price available for completion and with the assistance of legal counsel shall pursue any results under the contract against the surety.
- f) If WATA determines that termination is not in the best interest of WATA although the contractor is in default, WATA may permit the contractor to continue the work, and the contractor and his sureties shall be liable to WATA for damages (liquidated or actual) as specified in the contract. WATA's decision to permit the contractor to continue performance does not waive its right to later, at its discretion, exercise other remedies permitted herein.
- g) If WATA, accepts late delivery in a supply and service contract, WATA generally waives its right to seek any actual damages for late delivery.

## **10.12 LIQUIDATED DAMAGES**

- 1) WATA must consider the potential impact on pricing, competition, cost and difficulties of contract administration, and similar matters before including a liquidated damages clause in contracts. A liquidated damages clause should only be used when:
  - a) The time of delivery or timely performance is so important that WATA may reasonably expect to suffer

damages if the delivery or performance is delinquent, including when Contractor fails to meet completion deadlines.; and

- b) The extent or amount of damages would be difficult or impossible to ascertain or prove. Liquidated damage provisions, including all liquidated damage rates, must be stated clearly in the solicitation.
- 2) Liquidated damages are not punitive nor are they negative performance incentives. Liquidated damages are used to compensate WATA for probable damages. Therefore, the liquidated damages rate must be a reasonable forecast of just compensation for the harm that is caused by late delivery or untimely performance of the particular contract.
    - a) Liquidated damages shall not be fixed without reference to probable actual damages and shall be established on a unit of time and amount basis. The assessment for damages shall be established at a specific rate per day, or another period of time, for each day or other unit of time beyond the contractor's delivery date or performance period. A unit of measurement other than time may be used, if appropriate, such as weight requirements in a rolling stock procurement. The procurement file must include a record of the calculation and rationale for the amount of damages established;
    - b) Construction contracts with liquidated damages provisions must describe the rate(s) of liquidated damages assessed per day of delay. The rate(s) should include the estimated daily cost of Government inspection and superintendence. The rate(s) should also include an amount for other expected specified expenses associated with delayed completion such as renting substitute property or paying additional allowance for living quarters.
    - c) WATA may use more than one liquidated damage rate when probable damage to WATA is expected to change over the contract period of performance;
    - d) The Executive Director shall document the justification of the rate of liquidated damages in the contract file and shall take all reasonable steps to mitigate these damages; and
    - e) A contract may include an overall maximum dollar amount or period of time during which liquidated damages may be assessed, or both, to prevent an unreasonable assessment of liquidated damages.
  - 3) If a liquidated damages clause is included in a contract and a basis for termination for default exists, the Executive Director shall take appropriate action expeditiously to obtain performance by the contractor or to terminate the contract. If a delivery or performance is desired after termination for default, efforts shall be made to obtain the delivery or performance from another source within a reasonable time.
  - 4) WATA shall insure that nothing in a contract limits the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of WATA, its agents or employees and due to causes within their control.
  - 5) Pursuant to FTA Circulars 4220.1 "Third Party Contracting Guidance," and 5010.1 "Award Management Requirements," current revision, the FTA has a vested interest in the settlement of any disputes, defaults or breaches on federally-funded contracts, and a right to share in any recovery in proportion to the federal share of the project. Any liquidated damages recovered from a contractor on a federally-funded project must be credited to the project unless FTA permits another use.
  - 6) All contracts should include provisions allowing the FTA or any other federal government agency to assess liquidated damages in accordance with federal law.

### **10.13 DELIVERY AND PERFORMANCE SCHEDULES**

- 1) The time of delivery or performance is an essential contract element and shall be clearly stated in solicitations and be made part of the contract. WATA shall ensure that a delivery or performance schedule

is realistic and meets the requirements of the procurement. A solicitation shall inform bidders or proposers of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

2) *Factors to Consider in Establishing Schedules.*

- a) *Supplies or services.* When establishing a contract delivery schedule or performance schedule for supplies or services, the Project Manager and Executive Director shall consider applicable factors such as the:
- i) Urgency of need;
  - ii) Production time;
  - iii) Market conditions;
  - iv) Transportation time;
  - v) Industry practices;
  - vi) Capabilities of contractors;
  - vii) Administrative time for obtaining and evaluating bids or proposals and awarding contracts; and
  - viii) Time for WATA to perform its obligations under the contract, such as furnishing WATA property to the Contractor.
- b) *Construction contracts.* When scheduling the time for completion of a construction contract, the Project Manager and Executive Director shall consider applicable factors, such as the:
- i) Nature and complexity of the project;
  - ii) Construction seasons involved;
  - iii) Required completion date;
  - iv) Availability of labor and resources, materials and equipment;
  - v) Capacity of the contractor to perform; and
  - vi) Different completion dates for separate items of work.

3) *Establishing Delivery or Performance Schedules.*

- a) WATA may establish contract delivery or performance schedules in terms of:
- i) Specific calendar date or dates;
  - ii) Specific period or periods from the date of the contract;
  - iii) Specific periods from the date of receipt by the contractor of the notice of award or acceptance by WATA;
  - iv) Specific time for delivery after receipt by the contractor of each individual order issued under the contract, as in indefinite delivery contracts and federal supply schedules; or
  - v) Specific period or periods from the date agreed upon by the parties and set forth in the contract for actual commencement of performance on the contract.
- b) When establishing dates for performance or delivery, WATA shall consider factors pertaining to the ability of the Contractor to actually begin performance.
- i) The time specified for contract performance shall not be curtailed to the prejudice of the Contractor because of delay by WATA in giving notice of award or acceptance;
  - ii) If the delivery schedule is based on the date of the contract, WATA shall mail or otherwise furnish to the Contractor the executed contract, notice of award, or notice of acceptance of proposal not later than the effective date of the contract, or as soon thereafter as possible; and

- c) If the delivery schedule is based on the date the Contractor receives the notice of award, or if the delivery schedule is expressed in terms of specific calendar dates on the assumption that the notice of award will be received by a specified date, WATA shall send the contract, notice of award, acceptance of proposal, or other contract document by certified mail, return receipt requested, or by any other method that will provide evidence of the date of receipt.

#### **10.14 CLOSEOUT OF CONTRACT FILES**

- 1) *Completed Contract.* A completed contract is one which is both physically and administratively complete, and in which all aspects of contractual performance have been accomplished, terminated or otherwise disposed of by contract modification.
  - a) A contract is physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by WATA, including those articles and services for which no specific compensation may have been stipulated; and
  - b) A contract is administratively complete when all payments have been made and administrative actions accomplished.
- 2) *Review of Contract File.* The Project Manager is responsible for review of the contract file and obtaining all necessary documentation to ensure that:
  - a) All deliverables and/or services (including any reports) required under the contract have been received, inspected, and accepted;
  - b) The terms and conditions of the contract have been complied with;
  - c) Disposition of accountable property under the contract has been accomplished;
  - d) A final audit (cost reimbursement contracts) has been performed and all questioned costs have been resolved and excess funds have been deobligated;
  - e) The final voucher for the contract has been certified and sent to Accounts Payable;
  - f) All necessary actions and forms required to close the contract are completed and documented; and
  - g) A written notice of complete contract termination has been provided to the contractor.
- 3) *Written Statement Authorizing Closeout.* WATA shall ensure that all required contractual actions have been completed and shall prepare a contract completion statement to that effect. This statement formally closes the contract file and must be made a part of the official contract file. The statement should include the following:
  - a) The contract number;
  - b) the contractor name and address;
  - c) Dollar amount of excess funds, if any;
  - d) Voucher number and date, if final payment has been made;
  - e) Invoice number and date, if the final approved invoice has been forwarded to a disbursing office and status of the payment is unknown;
  - f) A statement that all required contract administration actions have been fully and satisfactorily accomplished;
  - g) Date;
  - h) Name and signature of the Project Manager and Executive Director.

- 4) Time standards for closing out contract files are as follows:
  - a) Files for simplified acquisitions shall be considered closed when WATA receives evidence of receipt of goods and/or services and final invoice and payment have been made;
  - b) Files for all firm-fixed price contracts, other than those using simplified acquisition procedures, shall be closed within six months after the end of the month in which WATA receives evidence of physical completion;
  - c) Files for all other contracts shall be closed within 12 months after the end of the month in which WATA receives evidence of physical completion.
- 5) A contract file shall not be closed if:
  - a) The contract is the subject of a claim or dispute;
  - b) The contract is in litigation or under appeal;
  - c) The contract was terminated, but all termination actions have not been completed; or
  - d) FTA approval is required and has not been received.

#### **10.15 DELEGATION OF DUTIES**

- 1) The Executive Director may delegate responsibilities to qualified Authority employees for the purpose of assisting the Project Manager with contract administration and day-to-day technical guidance to the contractor. Before a solicitation is issued and a contract awarded, a PM will be appointed by the Executive Director.
- 2) The Project Manager is an authorized representative of the Executive Director. The PM is responsible to and appointed by the Executive Director and performs contract administration functions specifically delegated per the project scope of work. Project management is delegated to WATA employees based on the recommendation of the individual and their qualifications, as designated by the Executive Director. PMs have no contractual authority and cannot enter into contractual agreements, including change orders.
- 3) Individuals appointed as PM's are responsible to the Executive Director for proper performance of duties. This includes timely notification to the ED of all significant events affecting contract performance, delivery, or price. Supervisors of individuals appointed as a PM are responsible for assuring that their subordinate satisfactorily performs assigned duties.
- 4) *Typical Delegated Functions.* Duties and functions of a delegated PM may include, but not be limited to:
  - Define project scope, requirements, and deliverables.
  - Define results at beginning of project and develop and communicate a method to track progress toward results.
  - Inspection of the work for quality assurance and compliance with the contract; monitor project activities and resources to mitigate risk; make improvements and take corrective action when problems arise.
  - Manage or administer project resources; update schedule and budget; adjust future plans when necessary; participate in phase, milestone, and final project review; give presentations or briefings on all aspects of the project; and develop and implement product release plan.
  - Issuance of orders to stop and/or resume work where such orders are authorized by the contract.
  - Negotiation with the Contractor, within specified limits, as to adjustment of contract price and/or time, and recommendation of acceptance or rejection of negotiation results.
  - Assist the ED in modification of the contract in accordance with this policy.

- Preparation and approval of payment estimates, including written recommendation to the ED regarding the release of retention or remittance of liquidated damages.
- Review and approval of the Contractor's progress schedule.
- Delegate project tasks to approved team members and define expectations and clarify how progress will be tracked. PM should assign, shift, or otherwise modify team member responsibilities to maximize efficiency, best utilize skills, and adjust workloads. PM should also maintain ongoing communication and provide regular feedback in order to ensure timely and efficient production and that team members feel supported.
- Initiating orders for supplies or services under the provisions of the contract.
- Receiving from the contractor all Certified Payroll Reports and preparation of a log sheet indicating the following: (1) name of contractor and subcontractor (a separate log sheet must be prepared for each subcontractor); (2) the contract number; (3) the certified payroll number (number for the payroll for the project starting with the number 1); (4) the time frame of the payroll period (i.e. mm/dd/yy-mm/dd/yy); (5) the Statement of Compliance date (first page of the report); and (6) the date the report was received by WATA.
- Conduct closeout meetings with contractor; review final project and task tracking; perform final review of open risks and issues.
- Monitor compliance of Contractors and subcontractors with all laws and regulations, including Davis-Bacon Act requirements.
- Other duties that the Executive Director may assign as required.

## **11. CLAIMS AND LITIGATION ACTIONS**

### **11.1 GENERAL**

- 1) It is WATA's policy to resolve all contractual issues before they become disputes. WATA shall promptly review and evaluate all contractor claims and shall provide an objective appeal process to hear and render decisions on appeals per the process defined in the General Terms and Conditions. The FTA shall be kept advised of all actual or potential major defaults, breaches, disputes, claims and litigation where federal funding is involved.
- 2) *Responsibility.* The Executive Director is responsible for the review, evaluation, and determination of the merit of contractor claims. In making merit determinations, the Executive Director should secure the assistance of WATA legal counsel and obtain the advice from technical and subject matter experts in the relevant areas, as needed, including, but not limited to procurement, finance, contract audit, and engineering and construction.

### **11.2 FTA AND AUTHORITY REQUIREMENTS**

- 1) The Federal Transit Administration ("FTA") has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contract. Although FTA does not become involved in the negotiation of a claim, the FTA may review the reasonableness of a negotiated settlement for the purpose of determining the extent of its participation in the settlement. WATA must comply with the project management guidelines of FTA Circular 5010.1 (latest revision) in processing contractor claims against federally funded contracts.
- 2) FTA review and concurrence is required in proposed claim settlements before using Federal funds in the following instances:

- a) When the negotiated settlement exceeds \$100,000. This would include any situation when the WATA is waiving liquidated damages in an amount over \$100,000.
- b) When insufficient funds remain in the approved grant to cover the settlement; or
- c) Where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste or fraud.
- d) Where the decision is reached through arbitration.

### 11.3 CONTRACT DISPUTES

- 1) *Contract Clause.* WATA's general terms and conditions for contracts includes a Disputes clause:

Claims. Written notice of the Contractor to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the 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

- 2) *Description.* A "claim" is a written demand or assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other appropriate relief arising under or relating to a contract. For any such claim, the contractor must provide WATA with a detailed position on each separate claim setting forth the amount and rationale for the contractor's position on each item. Unless otherwise specified in the contract, all contractor claims must be submitted to WATA within 5 years of accrual.
- 3) *Certification.* For any claim greater than \$100,000, the contractor must include the following certification:  
*"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."*
- 4) The Contractor is required to proceed diligently with performance of the contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Executive Director.

### 11.4 WATA CLAIMS AGAINST THE CONTRACTOR

- 1) The Executive Director, in coordination with the PM, shall attempt to settle all claims against the Contractor. If unsuccessful, other remedies, including other dispute resolution proceedings, should be pursued to resolve the claim.
- 2) *Back-charges.* WATA may initiate claims against the contractor for reasons such as back-charges, either during the contract performance or warranty period, or A/E contractor liabilities for WATA costs resulting from deficiencies in services. The Executive Director must give the contractor written notice of the

complaint and provide an opportunity to take corrective action. If the Contractor has not taken satisfactory corrective steps within a reasonable time, the Executive Director will take action to make the required corrections and assess back-charges to the Contractor. In back-charging on active contracts, a unilateral modification should be issued if agreement cannot be reached with the contractor and a final decision issued under the Disputes Clause.

- 3) *Warranty Provisions.* Major WATA construction and supply contracts shall include warranty provisions that give the Executive Director the right, after having given the contractor due notice of a defect and reasonable time to correct it, to replace, repair, or otherwise remedy such failure or defect at the contractor's expense.

## **11.5 LITIGATION ACTIONS**

- 1) WATA's legal counsel is responsible for handling all legal actions involving suits brought against WATA by contractors and those against contractors by WATA. The Executive Director will coordinate out-of-court settlements and shall assist counsel in preparing legal briefs and presenting WATA's position during the dispute resolution process.
- 2) For claims and litigation involving contracts with federal funding, the FTA must be notified about all claims and litigation and information provided as required by Circular 4220.1, Chap. VII, Sec. 4.a. (latest revision)
- 3) If the claim by the Contractor is submitted to the Executive Director or a claim by WATA is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR), unless otherwise stated in the contract. If the Contractor refuses an offer for ADR, the Contractor shall inform the Executive Director, in writing, of the Contractor's specific reasons for rejecting the offer. For all such claims involving federal funding, the FTA must be notified before the matter is submitted for arbitration.

## **11.6 COST OR PRICE ANALYSIS**

WATA's position on all claims and litigation actions shall be properly supported by a cost or price analysis performed. The Executive Director shall prepare a pre-negotiation position prior to the negotiation of any contract modification. As part of this analysis, the ED should determine (i) the "best" position of WATA should it prevail on all of its claims; (ii) the "best" position of the contractor should it prevail on all of its claims; and (iii) a "realistic" position, based on WATA's best judgment after reviewing all of the facts and conferring with counsel. The requirement shall apply to all pending claims and litigation actions covered by the procedures in this section.

## **12 - SPECIAL AGREEMENTS**

### **12.1 GENERAL**

- 1) This Chapter applies to special agreements including but not limited to:
  - a) utility contracts;
  - b) marketing agreements;
  - c) bus charter service agreements;
  - d) employee benefits contracts;
  - e) contracts for the purchase, lease, or sale of real property;
  - f) insurance contracts, and
  - g) other agreements between WATA and other entities that are not covered by other chapters elsewhere in this policy.
- 2) The Executive Director is responsible for the sufficiency of the special agreements and shall secure

necessary legal, engineering, technical, or other appropriate advice in fulfilling this responsibility. The Executive Director is also responsible for administering special agreements including the assurance of performance on the part of the second parties of these agreements. This authority may not be delegated.

## **12.2 MASTER AGREEMENTS**

- 1) Master Agreements include service agreements with the various utility companies, the railroads, and other agencies in the local jurisdictions or the Federal government.
- 2) The ED or her/his designee shall maintain originals of all master agreements and a file for recording all master utility, bond service, and other agreements entered into by WATA. The majority of master agreements will involve utility work during construction.
- 3) Master Agreements shall be executed on behalf of WATA by the Executive Director or designee. The Executive Director or designee may appoint a representative to monitor and direct technical performance and to coordinate the work.
- 4) Master Agreements will contain standard WATA contract clauses unless their use is prevented by conflicting utility regulatory requirements or state or federal regulations. Where the situation indicates that only a single project will be performed by a utility, a specific agreement, as opposed to a Master Agreement, may be appropriate.
- 5) Where there is insufficient time for a Master Agreement, a letter contract executed by the Executive Director may be used when a project is deemed urgent.

## **13 - QUALITY ASSURANCE AND WARRANTIES**

### **13.1 PURPOSE AND SCOPE**

This Chapter prescribes the procedures to ensure that WATA contracts conform to WATA's quality assurance requirements in accordance with the policies in this section. WATA contracts may include inspection and other quality requirements, including warranty clauses that are determined necessary to protect WATA's interest.

### **13.2 AUTHORITY RESPONSIBILITIES**

- 1) The Executive Director is responsible for ensuring that:
  - a) Any specifications for warranty, inspection, testing, and other contract quality assurance requirements are included in all solicitations and contracts;
  - b) The contract clearly indicates the level of quality required by referring to established standards, procedures, tests and equipment, or by providing acceptance criteria and tolerances;
  - c) Inspecting the Contractor's work and reviewing project-related documents to ensure that the contractor complies with the aforementioned quality and quantity requirements for the contract; and
  - d) Matters of insurance and insurability pre- and post-award are properly coordinated with WATA's safety and risk management staff.
- 2) The Executive Director may delegate contract quality assurance and warranty responsibility to the PM, unless functional responsibility exists within WATA for the performance, management or control of the quality assurance and warranty issues for specific operational units.
- 3) Additionally, the following is required:
  - a) Supplies, services, or construction tendered by contractors must meet contract requirements;
  - b) WATA contract quality assurance is conducted before acceptance, by or under the direction of

- WATA personnel;
- c) No contract precludes WATA from performing inspections;
- d) Specification nonconformance be identified and rejected; and
- e) Quality assurance and acceptance services of other agencies may be used when this will be effective, economical or otherwise in WATA's best interest.
- f) Davis-Bacon requirements, when applicable

### **13.3 CONTRACTOR RESPONSIBILITIES**

- 1) The Contractor shall be responsible for carrying out its obligations under the contract by doing the following:
  - a) Controlling the quality of supplies, services, or construction;
  - b) Ensuring that vendors or suppliers of raw materials, parts, components, and subassemblies have an acceptable quality control system;
  - c) Tendering to WATA for acceptance only those items that conform to contract requirements;
  - d) Maintaining evidence that contract quality requirements have been met and furnishing such information to WATA as required; and
  - e) Ensuring the quality of all subcontractor services.
- 2) The Executive Director may require the Contractor to provide and maintain an inspection system or program for the control of quality that is acceptable to WATA.
- 3) The Contractor's quality control may relate to, but is not limited to:
  - a) Manufacturing processes, to ensure that the product is produced to and meets the contract's technical requirements;
  - b) Technical documentation including drawings, specifications, handbooks, manuals, other technical publications, training and engineering changes to ensure that manufacturing methods and operations meet the contract's technical requirements required by the contract;
  - c) Testing and examination, to ensure that practices and equipment provide the means for optimum evaluation of the characteristics subject to inspection;
  - d) Reliability and maintainability assessments, including life, endurance and continued readiness;
  - e) Preservation, packaging, packing, marking, shipping and storage; and
  - f) Procedures and processes for services to ensure that services meet contract performance requirements
  - g) Compliance with legislative and regulatory requirements, such as Davis-Bacon.
- 4) The Contractor shall be responsible for performing all quality control activities required by the contract except those specifically reserved for performance by WATA.

### **13.4 CONTRACT QUALITY REQUIREMENTS**

- 1) The Executive Director shall include appropriate quality requirements in each solicitation and contract. The type and extent of contract quality requirements needed in each solicitation or contract depends on the particular procurement and may range from inspection at time of acceptance to a requirement for the Contractor's implementation of a comprehensive program for controlling quality.
- 2) A solicitation or contract may provide for alternative, but substantially equivalent, quality control methods

to obtain broader competition and reduce costs. The Executive Director may, during negotiation, authorize an alternative quality control or inspection method recommended by the Contractor if such alternative is feasible.

### **13.5 TYPES OF CONTRACT QUALITY REQUIREMENTS**

- 1) *Authority Reliance on Inspection by the Contractor*
  - a) Except as provided in this section when supplies, services, or construction are procured by simplified acquisition procedures, WATA shall rely on the Contractor to accomplish all quality control needed to ensure compliance with contract quality requirements before the supplies, services or construction are tendered to WATA; and
  - b) WATA shall not rely on quality control by the Contractor if it is determined that there is a need for testing of the supplies, services or construction by WATA in advance of their tender for acceptance, or that there is a need to review the adequacy of the Contractor's internal work processes. In making the determination, the Executive Director or his designated representative shall consider:
    - i) The nature of the supplies, services, or construction being procured and their intended use;
    - ii) The potential losses in the event of defects;
    - iii) The likelihood of uncontested replacement or correction of defective work; and
    - iv) The cost of a detailed inspection by WATA.
- 2) *Standard Inspection Requirements.* With respect to contracts other than simplified acquisitions, the Executive Director shall include in each solicitation and contract a clause giving WATA access to make inspections and conduct tests while work is in progress.

### **13.6 QUALITY ASSURANCE REQUIREMENTS**

- 1) Contract quality assurance shall be performed at the time and place(s) necessary to determine conformance to contract requirements. Each contract shall designate the place(s) where WATA reserves the right to perform quality assurance.
- 2) Inspection shall be performed by or under the direction or supervision of WATA. The individual delegated responsibility for WATA inspection shall document the inspection on an inspection or receiving report form, or on a commercial shipping document or packing list.

### **13.7 QUALITY ASSURANCE AT SOURCE**

- 1) WATA shall perform contract quality assurance, including inspection, at the source in the following circumstances:
  - a) Performance at any other place would require uneconomical disassembly or destructive testing;
  - b) Considerable loss would result from the manufacture and shipment of unacceptable supplies or from the delay in making necessary corrections;
  - c) Specially required instructions, gauges or facilities are available only at the source;
  - d) Performance at any other place would destroy or require the repayment of costly special packing and packaging;
  - e) Inspection by WATA during manufacturing is required.
- 2) If the contract provides for performance of WATA quality assurance at the source, the place(s) of

performance shall not be changed without the authorization of the Executive Director.

### **13.8 QUALITY ASSURANCE AT DESTINATION**

- 1) Contract quality assurance that can be performed at destination shall be limited to inspection of the supplies or services.
- 2) Inspection shall be performed at destination under the following circumstances:
  - a) Safety sensitive supplies are purchased from the Original Equipment Manufacturer (“OEM”) and require technical inspection;
  - b) Necessary testing equipment is located only at destination;
  - c) The supplies have a limited shelf life;
  - d) The contract is for services performed at the destination; or,
  - e) The components are assembled on site and operation of components together is critical.
- 3) If the contract provides for delivery and acceptance at destination, and WATA inspects the supplies at a place other than the destination, the supplies shall not be re-inspected at the destination but shall be examined for quantity, damage in transit, and possible substitution or fraud.

### **13.9 QUALITY ASSURANCE FOR SIMPLIFIED ACQUISITIONS**

- 1) In determining the type and extent of WATA contract quality assurance to be required for small purchases, the Executive Director shall consider the nature of the supplies or services and their intended use, the amount of possible losses, the likelihood of uncontested replacement of defective work, and the cost of performing a detailed inspection.
- 2) WATA shall inspect small purchases at destination only for type and kind, quantity, damage, and operability, and may inspect for preservation, packaging, packing, and marking, if applicable.
- 3) Detailed WATA inspections may be limited to those characteristics that are special or likely to cause harm to personnel or property.
- 4) When repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, WATA inspection may be reduced to a periodic check.
- 5) In special situations, the Executive Director may require more detailed quality assurance.

### **13.10 QUALITY ASSURANCE OF SUBCONTRACTS**

- 1) WATA contract quality assurance on subcontracted supplies or services shall be performed only when required in the best interest of WATA and shall not relieve the prime contractor of any responsibilities under the contract. In all other situations, WATA shall rely on the Contractor to accomplish all inspection and testing needed to ensure that supplies or services acquired from subcontractors conform to contract quality requirements before they are tendered to WATA.
- 2) The Executive Director or his/her delegated representative shall perform quality assurance at the subcontract level in the following circumstances:
  - a) The item is to be shipped from the subcontractor’s plant directly to WATA and inspection at source is required;
  - b) The contract specifies that certain quality assurance functions, which can be performed only at the subcontractor’s plant, are to be performed by WATA; or

- c) It is otherwise required by the contract or determined by the Executive Director to be in the best interest of WATA.
- 3) All contract terms and conditions relating to WATA quality assurance actions at the subcontract level shall be worded so as not to do any of the following:
  - a) Affect the contractual relationship between the prime contractor and WATA, or between the prime contractor and the subcontractor;
  - b) Establish a contractual relationship between WATA and the subcontractor; or
  - c) Constitute a waiver of WATA's right to accept or reject the supplies or services.

### **13.11 NONRESPONSIVE PERFORMANCE**

- 1) The Executive Director, or delegated representative, shall reject supplies or services as nonresponsive in performance when they are not conforming in all respects to contract requirements and WATA's General Terms and Conditions, unless otherwise authorized in this section.
- 2) "Nonresponsive performance" is a deficiency in characteristic that renders the quality of an item or activity unacceptable or indeterminate and which cannot be corrected within the scope of the specification.
- 3) The Executive Director shall issue a written notice of rejection to the Contractor for nonresponsive performance, which shall include the reasons for rejection.
- 4) The contractor shall be given an opportunity to correct or replace items or services deemed nonresponsive when the correction or replacement can be accomplished within the required delivery or performance schedule. Unless the contract specifies otherwise, correction or replacement shall be accomplished without additional cost to WATA.
- 5) The items or services that are deemed nonresponsive may be accepted if the Executive Director determines that acceptance or conditional acceptance is in the best interest of WATA (e.g., reasons of economy or urgency). The Executive Director shall consider the following:
  - a) The written advice of a representative with the requisite technical expertise that the material is safe to use and will perform its intended purposes and providing a rationale for acceptance, conditional acceptance, or rejection;
  - b) Information regarding the nature and extent of the nonconformance;
  - c) A request from the Contractor for acceptance of the nonconforming or otherwise incomplete supplies or services (if feasible); and
  - d) Any appropriate contract adjustments, including any adjustments offered by the Contractor.

### **13.12 ACCEPTANCE**

- 1) "Acceptance" means the act of an authorized representative of WATA to assume ownership of existing identified supplies tendered, or approve specific services rendered as partial or complete performance of the contract. Acceptance shall constitute acknowledgment that the supplies, services, or construction conform to the applicable contract quality and quantity requirements, except as provided in this section and subject to other terms and conditions of the contract.
- 2) *Time of Acceptance.* Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the terms and conditions of the contract. Supplies, services or construction shall not be accepted before completion of Authority contract quality assurance actions.

- 3) *Place of Acceptance.* Each contract shall specify the place of acceptance, and if WATA quality assurance is contractually required, the location of performance will also be the place of acceptance. Goods accepted at a place other than destination shall not be re-inspected at destination for acceptance purposes, but shall be examined at destination for quantity, damage in transit, and possible substitution or fraud.
- 4) *Evidence of Acceptance.* Acceptance shall be evidenced by execution of an acceptance certificate on an inspection or receiving report form or on a commercial shipping document or packing list.
- 5) The Executive Director is responsible for the acceptance of supplies or services. When the Executive Director assigns the responsibility for acceptance to another employee, it shall be in writing and the notice placed in the contract file. Acceptance by that employee shall be binding on WATA.

### **13.13 TRANSFER OF TITLE AND RISK OR LOSS**

- 1) *Passage of Title.* Title to supplies, equipment and construction shall pass to WATA upon formal acceptance, regardless of when or where WATA takes physical possession, unless the contract specifically provides for earlier passage of title. Title to stock items shall pass to WATA upon receipt at destination and initial inspection for completeness and absence of damages.
- 2) *Risk of Loss or Damage.* Unless the contract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Contractor until, and shall pass to WATA, upon delivery of the supplies to a carrier if transportation is F.O.B. origin, or acceptance by WATA or delivery of the supplies to WATA at the destination specified in the contract, whichever is later, if transportation is F.O.B. destination.
- 3) *Exceptions.* If any of the items are excepted from formal acceptance by WATA due to defects or failure to conform to the requirements and specifications of the contract; or are subject to contingent acceptance pending cure of defects, the risk of loss or damage shall remain with the Contractor until the defects are cured and the contingency is removed or the construction is formally accepted by WATA.
- 4) *Right of Rejection.* The provisions of §13.13(2) shall not apply if Contractor fails to conform to contract requirements. The risk of loss or damage to nonconforming items shall remain with the contractor until cure or acceptance. After cure or acceptance, the provisions of §13.13(2) shall apply.
- 5) *Authority's Negligence.* The Contractor shall not be liable for loss or damage to supplies caused solely by the negligence of officers, agents or employees of WATA.

### **13.14 WARRANTIES**

- (a) The Executive Director shall ensure that the warranty provisions in WATA contracts: (1) clearly delineate the rights and obligations of the contractor and WATA for defective items and services; and (2) foster quality performance.
- (b) *Construction Contracts.* Unless additional warranty provisions are specifically justified by the cognizant user or Program Office, the Executive Director shall include the "Warranty of Construction" provision in all construction contracts and the "Warranty" and "Correction of Deficiencies" provisions in all supply and service contracts. Deviations to the above warranty provisions must be coordinated with the WATA's legal counsel.

## APPENDIX A: DEFINITIONS

**Abstract (“Bid Tabulation Form”):** 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. 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.

**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 (BAFO)** - 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 is not intended to be restricted to an Invitation for Bids and shall also apply to 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 Bond, and Performance Bond. A **Bid Bond** equivalent to a certain percentage of the bid price may be required with a bid. The bid bond the successful bidder 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 RFP.

**Buyer** – a purchasing agent who has 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.

**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 Rules:** (1) USDOT 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 is a method of procurement 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. 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 Authority. Competitive negotiation is appropriate when the

WATA determines that the following conditions exist:

- A complete, adequate, and realistic specification or purchase description is not available.
- 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 WATA, 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 Authority 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.

**Contract Modification** -

**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.

**Disadvantaged Business Enterprise (DBE)** – A business:

- 1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- 2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. "Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

**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. Required to be updated every three (3) years.

**DRPT:** Department of Rail and Public Transportation, an agency of the Commonwealth of Virginia

**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** – An internal estimate of the cost of goods or services for a project or Contract Modification, which is derived separately from the Contractor's pricing. Current WATA policy requires for all purchases over \$2,500

**Invitation for Bids (IFB)** - is a formal solicitation seeking offers to provide goods or 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.

**Liquidated Damages** - the pre-established amount the Contractor will pay to WATA for each day, or other appropriate period designated by WATA, that 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. Current WATA policy sets the micro-purchase threshold at \$2,500 or less. For FTA funded projects, 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.

**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 compelling 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** - 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 authorizing the start of work. Any work performed prior to issuance of an NTP shall be at the Contractor's risk.

**Offeror** - an individual or entity submitting a formal response to a solicitation.

**Option** - a unilateral right in a 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 WATA and the Contractor document 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 work in accordance with a 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, project budget management, 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 downloaded a specified solicitation package from the procurement website.

**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 Architectural and Engineering 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 (PO)** – written acceptance of an offer for specified goods and services at a specified price and delivery schedule. A PO has the force of a contractual 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. Also, 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. Any RFI should involve a wide enough audience to avoid any implication of favoritism or providing any potential offeror or group of offerors with an unfair competitive advantage.

**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 a solicitation.

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

**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 Va. Code § 2.2-4303 (G) & (H) of the VPPA (currently not exceeding \$100,000 for goods and services other than professional services, and \$80,000 for professional services); in no case shall small purchase procedures be used for procurements above the Federal simplified acquisition threshold as defined in 2 CFR § 200.88, currently \$150,000. 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.

**Specifications** - contractual terms containing written requirements for a good or service. 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 Terms and Conditions. Special Provisions take precedence over any General Condition modified by it.

**Subcontract** - an agreement including a contract or agreement (other than one involving an employer/employee relationship) entered into between the 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 another 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 a timely fashion. Items remaining to be completed after Substantial Completion are documented.

**Supplies, Material, and Equipment** – includes 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

**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 Authority** – Williamsburg Area Transit Authority, the 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 B

### WATA GENERAL TERMS AND CONDITIONS

These TERMS AND CONDITIONS serve as instructions to bidders/offerors and shall be binding on all Bidders or Offerors and are incorporated by reference in all contracts resulting from any written Request for Quotes, Invitation to Bid or Request for Proposals issued, (collectively the "Request"), to which they are attached. Use of the term "bid" in these General Terms & Conditions and Instructions to bidders/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 being intended to convey a mandatory obligation; "including" means including without limitation.

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.

1. **AUTHORITY AND COOPERATIVE PURCHASING.** The WATA 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 designated staff and 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 WATA for indebtedness. Any purchase order or contract made that 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 permit 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 after solicitation release date. Any revisions to the solicitation will be made only by addendum issued by the buyer. Notifications regarding specifications may not be considered if received more than five (5) business days after solicitation release date.
4. **COMPLIANCE WITH CONTRACTUAL TERMS AND FINANCIAL RESPONSIBILITY.** Architectural or Engineering Services (i.) Offerors shall provide relevant financial data demonstrating the firm's capability to successfully perform over the life of the contract. (ii.) Provide a definitive statement of intent to comply with the contract terms and conditions as delineated in the RFP. If proposed terms and conditions are not acceptable as described, provide a statement that the firm intends to take exception to the contract terms and conditions. After offerors are ranked for negotiation, the County may request firms to note and explain any exceptions. Failure to agree to terms required by law or Authority purchasing regulations may be grounds for disqualification of the proposal. (iii.) Acknowledge and describe any proposed deviations from the Scope of Services.
5. **USE OF AUTHORITY FORMS AND TERMS AND CONDITIONS.** Failure to submit a solicitation on the official forms 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/proposer. The solicitation shall be signed by a representative authorized to legally bind the firm. By signing the solicitation, the bidder/offeror/proposer 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.

6. **LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/PROPOSALS.** Any bid/proposal/modification received at the location 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 appointed 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 appointed 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.
7. **WITHDRAWAL OF BIDS/PROPOSALS.** A bidder/offeror for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:
    - a. Bids/proposals may be withdrawn on written request from the bidder/offeror received at the address shown in the solicitation prior to the time of acceptance.
    - b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the Executive Director or designee, 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/offeree or of another bidder/offeree in which the ownership of the withdrawing bidder/offeree is more than five percent (5%). 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/offeree 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.

8. **CANCELLATION OF BIDS/PROPOSALS:** If the Authority intends to issue another solicitation within a reasonable time after cancellation of the bid/proposal for the same materials, services or construction, any responses received under the canceled solicitation shall be retained in the procurement file, and the Authority may withhold responses from public inspection if the Executive Director or designee makes a written determination that such action is advantageous to WATA. After award of a contract under a subsequent solicitation, responses submitted in response to the canceled solicitation shall be open for public inspection.

9. **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/offeree. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the bidder/offeree of his responsibilities to provide the good or service. bidders/offerees are cautioned to recheck their bids/proposals for possible errors. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

10. **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 RETURN ADDRESS**

If a bid/proposal is not addressed with the information as shown above, the bidder/offeree 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. No other correspondence or other proposals should be placed in the envelope.

11. **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/offeree. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

12. **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.

13. **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.

14. **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.

15. **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. Due to 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.

16. **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.

17. **TAX EXEMPTION.** The Authority is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the bidder/offeree.

18. **DEBARMENT/ENJOINMENT STATUS.** By submitting their bids/proposals, bidders/offerees certify that they are not currently debarred by WATA, the Commonwealth of Virginia, the Federal Government, or any local government or political subdivision, 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 or enjoined.

19. **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/offerees 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.

20. **VENDOR REWARDS/GIFT PROGRAMS.** It is the policy of the Authority not to participate in any rewards programs offered by vendors and to not accept any gifts or gift cards, or other rewards from vendors for purchases made by the County. If a vendor customarily provides, or plans to provide, rewards, programs, gifts, or gift cards or other rewards to customers for purchases made by such customers, the vendor must identify this fact in the bid and demonstrate how the value of such rewards have resulted in a reduction in the price of the goods and services being offered.
21. **PERFORMANCE BOND.** When requested in the solicitation, the Authority shall require the successful bidder to furnish a performance bond and labor and material payment bond with surety that is satisfactory to the Authority's counsel in the amount of the contract price at the time of or prior to execution of the contract.
22. **NO CONTACT POLICY.** No bidder/offeror shall initiate or otherwise have contact related to the solicitation with any Authority employee other than the appointed buyer or the project manager appointed by the Executive Director, after the date and time established for receipt of bids/proposals. Any contact initiated by a bidder/offeror with any Authority representative, other than those stated above, is prohibited and may cause the disqualification of the bidder/offeror from the applicable procurement process.
23. **LICENSES, PERMITS, AND FEES.** All bids submitted shall have included a list of any business and professional licenses, permits, or fees required by WATA, applicable localities, or the Commonwealth of Virginia.
24. **QUALIFICATIONS OF BIDDERS AND SUBCONTRACTORS.** The apparent low bidder shall submit to the Authority a list of all subcontractors who will be performing work on the project. An experience statement shall accompany such list with pertinent information as to similar projects and other evidence of experience and qualification for each such subcontractor, person and organization, along with a documented work history of the subcontractor with the bidder.

If, after due investigation, the Authority has reasonable objection to any proposed subcontractor or other person or organization, the Authority may, before giving the Notice of Award, request the apparent low bidder to submit an acceptable substitute without an increase in bid price. If the apparent low bidder declines to make any such substitution, the contract shall not be awarded to such bidder, but declining to make any such substitution will not constitute grounds for sacrificing his bid security. For any subcontractors, other person or organization so listed and to whom the Authority does not make written objection prior to giving of the Notice of Award, it will be deemed the Authority has no objection.

#### SPECIFICATIONS

25. **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 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 product referenced in the solicitation.

26. **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.
27. **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.

28. **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.
29. **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

30. **AWARD OR REJECTION OF BIDS.** The Executive Director shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the 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 Executive Director reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the Authority. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of WATA. The Executive Director reserves the right to negotiate with the lowest responsive and responsible bidder should the bid exceed available funds. The Executive Director shall reject the bid if the bidder is deemed to be a non-responsive or non-responsive bidder.

- 31. PUBLIC INSPECTION OF CERTAIN RECORDS: Shall be per the Virginia Public Procurement Act (VPPA), 2.2-4342**
- 32. QUALIFICATIONS OF BIDDERS OR OFFERORS.** WATA may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder/offeror to perform the work or furnish the item(s) and the bidder/offeror shall provide 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.
- 33. TIE BIDS.** In the case of a tie bid, the Authority may give preference to goods, services and construction produced in the WATA area localities or provided by persons, firms or corporations having principal places of business in the WATA area localities. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Code of Virginia § 2.2-4324. If no local or Commonwealth choice is available, the tie shall be decided by lot.
- 34. 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 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**

- 35. 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.

- 36. 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.
- 37. OBLIGATIONS OF AUTHORITY AND CONTRACTOR.**
- a. 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.
  - b. 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.
- 38. 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.
- 39. 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.
- 40. 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, 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.
- 41. 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.
- 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.
- 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.
- The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.
- 42. 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.
- c. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent (1%) 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 subsection 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.

**43. ASSIGNMENT OF CONTRACT.** A contract shall not be assignable by the Contractor in whole or in part without the prior written consent of the Executive Director.

**44. 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.

**45. 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.

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

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

- a. During the performance of this contract, the Contractor agrees as follows:
  - 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona-fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be

deemed sufficient for the purpose of meeting the requirements of this Section.

- b. The Contractor will include the provisions of subsection a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**47. NONDISCRIMINATION OF CONTRACTORS.** A bidder, offeror, or contractor shall not be discriminated against in the solicitations or award of this contract because of race, religion, color, sex, national origin, age or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, 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.

**48. 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.

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

**50. 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 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:

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.

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:

- a. By mutual agreement between the parties in writing; or,
- b. 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,
- c. 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 Executive Director within thirty (30) days from the date of receipt of the written order from WATA. 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.

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.

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

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

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

All firms doing business with WATA are required to be licensed in accordance with the any local "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance(s). 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 the applicable localities.

**52. PROPRIETARY INFORMATION.** Section § 2.2-4342.F of the Code of Virginia states: "Trade secrets of proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary." Declaring an entire bid or proposal response as proprietary is unacceptable.

**53. 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 any of the Contractor's employees in and

about the said work, under and pursuant to the provisions of the Workman's Compensation Law or any amendments thereto, and the Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.

**54. 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.

**55. 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.

**56. NON-RESPONSIVE PERFORMANCE**

a. Delivery Delays: The Authority reserves the right to procure good and/or services to be provided under this contract from other sources in the event the successful bidder fails to deliver such goods and/or services in accordance with delivery dates and time frames set forth in the contract.

b. Unacceptable Deliveries (Rejections): Upon notification by WATA that goods and/or services provided by the successful bidder under this contract are damaged and/or not of the quality specified by WATA, such goods and/or services will be rejected. The successful bidder shall replace such rejected goods and or services immediately or within a reasonable time as determined by WATA. Any rejected materials or supplies shall be removed by the successful bidder within ten (10) days of notification, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials or supplies are not removed within such time will be regarded as abandoned and shall become the property of WATA to dispose of appropriately.

c. Purchase from Alternate Sources: WATA reserves the right to authorize immediate purchase from other sources against delayed deliveries and/or rejections. The successful bidder shall reimburse WATA promptly for excess costs incurred by WATA for such purchases. Any such purchases will be deducted from the contract amount. In the event that the cost to WATA of

obtaining goods and/or services from other sources is less, the successful bidder has no claim to the difference.

d. **Liability:** The successful bidder shall be liable to WATA for all costs incurred by WATA due to the successful bidder's failure to perform in accordance with the contract. The successful bidder's liability shall include, but not be limited to: damages and other costs of delay, to include costs to procure goods and/or services from other sources; increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by the successful bidder's goods and/or services; warranty and rework costs to include liability to third-party(ies), excess costs, attorney fees, and related costs incurred by WATA due to non-responsive performance.

**57. BREACH OF CONTRACT:** The successful bidder shall be deemed in breach of contract if the successful bidder: fails to comply with any terms of the contract; fails to cure such noncompliance within five (5) calendar days from the date of written notice from WATA or such other timeframe, greater than five (5) calendar days, specified in the notice; fails to submit a written response to the notification from WATA within five (5) calendar days after the date of the notice. All notices under the contract shall be submitted by email and followed up with a hard copy by certified mail, return receipt request, to the person specified in the notice.

The successful bidder shall not be in breach of the 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 subcontractors. Such causes may include, but not be limited to: acts of God or of the public enemy, acts of WATA in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather (e.g., hurricane).

**58. TERMINATION.** Subject to the provisions below, the Authority upon thirty (30) days advance written notice to the other party, may terminate the contract. 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 and 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.

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.

**59. 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.

**60. COPYRIGHTS OR PATENT RIGHTS.** The successful 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.

**61. 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, the successful bidder will 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.

**62. 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.

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

**64. 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

**65. 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

ensure compliance with these instructions for items that are drop-shipped.

**66. 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 accepted or rejected, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies are considered non-responsive performance and 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 or supplies are not removed by the Contractor within ten (10) days after date of notification, they will be regarded as abandoned and shall become the property of the Authority to dispose of appropriately.

**67. 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.

**68. COMPLIANCE.** Delivery must be made as ordered and in accordance with the solicitation or as directed by WATA 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 WATA, 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.

**69. 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.

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

**71. PACKING SLIPS OR DELIVERY TICKETS.** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

Purchase Order Number/Contract Number  
Name of Article and Stock Number,  
Quantity Ordered,  
Quantity Shipped,  
Quantity Back Ordered,  
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.

**72. 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

**73. 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.

The 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.

#### 74. DISPUTES.

Claims. Written notice of the Contractor to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the 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 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 the Contract. Any such extension must be issued in writing and signed by the Executive Director.

## APPENDIX C

### FEDERAL PROVISIONS, REQUIRED CLAUSES, AND CERTIFICATIONS

As a recipient of federal funding, WATA is required to comply with all applicable Federal laws and regulations. This requirement extends to vendors that contract with WATA to provide goods or services. This Appendix includes a compilation of required federal clauses and certifications that a vendor must adhere to when working on WATA contracts. Some requirements apply to all contracts, while some apply to contracts that meet specific criteria. The listing below and the matrix on the following page (Appendix C-1) show the number of the clause or requirement and to which contracts the provisions apply. Appendix C-2 includes the text of the clauses and provisions.

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#### **All FTA Assisted Third Party Contracts and Subcontracts**

1. No Federal Government Obligations to Third Parties
2. Program Fraud and False or Fraudulent Statements and Related Acts
3. Access to Records and Reports
4. Changes to Federal Requirements
5. Civil Rights and Equal Opportunity
6. Disadvantaged Business Enterprises (DBEs)
7. Incorporation of FTA Terms

#### **Awards Exceeding \$10,000**

8. Terminations
9. Special EEO Provision for Construction Contracts

#### **Awards Exceeding \$25,000**

10. Government-Wide Debarment and Suspension

#### **Awards Exceeding \$100,000**

11. Buy America
12. Resolution of Disputes, Breaches, or Other Litigation
13. Lobbying
14. Clean Air
15. Clean Water

#### **Transport of Property or Persons**

16. Cargo Preference
17. Fly America

#### **Construction Activities**

18. Construction Employee Protections (Davis-Bacon Act)

19. Construction Employee Protections (Contract Work Hours and Safety Standards Act)
20. Construction Employee Protections (Sections 1 & 2 Copeland Anti-Kickback Act)
21. Bonding for Construction Activities
22. Seismic Safety

#### **Non-Construction Activities**

23. Non-construction Employee Protection (Contract Work Hours & Safety Standards Act)

#### **Transit Operations**

24. Transit Employee Protective Arrangements
25. Charter Bus Operations
26. School Bus Operations
27. Drug and Alcohol Testing

#### **Planning, Research, Development, & Demonstration Projects**

28. Patent Rights and Rights in Data

#### **Miscellaneous Special Requirements**

29. Energy Conservation
30. Recycled Products
31. Conformance with National ITS Architecture
32. Access for Individuals with Disabilities
33. Assignability Clause

#### **Certifications for Rolling Stock Purchases**

34. Bus Testing
35. Buy America – Rolling Stock
36. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases
37. Federal Motor Vehicle Safety Standards

## APPENDIX C-1

### APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

No.	PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
1	No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
2	Program Fraud and False or Fraudulent Statements and Related Acts	All	All	All	All	All
3	Access to Records and Reports	All	All	All	All	All
4	Changes to Federal Requirements	All	All	All	All	All
5	Civil Rights and Equal Opportunity	All	All	All	All	All
6	Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
7	Incorporation of FTA Terms	All	All	All	All	All
8	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.
9	Special EEO Provision for Construction Contracts				>\$10,000 if 49 CFR Part 18 or 19 indicate that DOL EEOC regs at 41 CFR Chap 60 apply.	
10	Government-Wide Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
11	Buy America			>\$150,000	>\$150,000	>\$150,000
12	Resolution of Disputes, Breaches, or Other Litigation	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
13	Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
14	Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
15	Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
16	Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.

No.	PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
17	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.
18	Construction Employee Protections – Davis- Bacon Act				>\$2,000 (including ferries)	
19	Construction Employee Protections – Contract Work Hours & Safety Standards Act		>\$100,000	>\$100,000	>\$100,000 (including ferries)	
20	Construction Employee Protections – Copeland Anti-Kickback Sections 1 and 2				All (Section 1) >\$2,000 (Section 2)	
21	Bonding for Construction Activities Exceeding \$150,000				>\$250,000	
22	Seismic Safety	A&E for new buildings & additions			new buildings	
23	Non-Construction Employee Protections – Contract Work Hours & Safety Standards Act	>\$100,000	>\$100,000	>\$100,000		>\$100,000
24	Transit Employee Arrangements		Transit Operations			
25	Charter Service Operations		All			
26	School Bus Operations		All			
27	Drug and Alcohol Testing		Transit Operations			
28	Patent Rights and Rights in Data	Research & Development				
29	Energy Conservation	All	All	All	All	All
30	Recycled Products		EPA-selected items \$10,000 or more annually		EPA-selected items \$10,000 or more annually	EPA-selected items \$10,000 or more annually
31	Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
32	Access for Individuals with Disabilities	All	All	All	All	All

No.	PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
33	Assignability Clause	All	All	All	All	All
34	Bus Testing Certification			All		
35	Pre-Award and Post-Delivery Audits of Rolling Stock Purchases			All		
36	Buy America – Rolling Stock			All		
37	Federal Motor Vehicle Safety Standards			All		

## APPENDIX C-2

### **FEDERAL PROVISIONS, REQUIRED CLAUSES, AND CERTIFICATIONS**

The following federal clauses and provisions will be incorporated by reference in any contract resulting from this procurement issued by WATA. Some clauses apply to all contracts, while some only apply to certain activities or dollar thresholds. The application of each clause is listed underneath its title.

These procurement provisions and required contract clauses are in addition to other General Terms and Conditions, Special Terms and Conditions, Bidding or Proposal Procedures, and Bid or Proposal Forms that may also be incorporated by reference in any contract. Some provisions and clauses require the Bidder or Proposer to execute and submit certain required certifications with the bid or proposal, which are included herein. Failure to execute and submit required certifications with the bid or proposal documents may render a bid or proposal non-responsive.

#### **1. No Federal Government Obligation to Third Parties**

*(Applies to all contracts)*

WATA and the 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 WATA, the 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 FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **2. Program Fraud and False or Fraudulent Statements and Related Acts**

*31 U.S.C. 3801 et seq., 49 CFR Part 31, 18 U.S.C. 1001, 49 U.S.C. 5307*

*(Applies to all contracts)*

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **3. Access to Records and Reports**

*(Applies to all contracts)*

The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to: data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR 200.333. The Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

The agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### **4. Changes to Federal Requirements**

*(Applies to all contracts)*

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

The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## 5. Civil Rights and Equal Opportunity

(Applies to all contracts)

WATA is an Equal Opportunity Employer (EEO). As such, it agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, WATA agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Upon entering into a contract with WATA, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- c. **Age.** In accordance with 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, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d. **Disabilities.** In accordance with 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, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

## **6. Disadvantaged Business Enterprise (DBE)**

49 CFR Part 26

*(Applies to all contracts)*

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. It is the policy of WATA to practice nondiscrimination based on race, color, sex, or national origin in the award and administration of all DOT-assisted contracts. WATA's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement.
- b. The Contractor, sub-recipient, 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 CFR 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 WATA deems appropriate, which may include, but not be 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 under 49 CFR 26.13(b).
- c. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from WATA. In addition, [the Contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [Is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by WATA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.] Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval by WATA. This clause applies to both DBE and non-DBE subcontracts.
- d. The Contractor must promptly notify WATA's DBE Liaison Officer whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of WATA.

## **7. Incorporation of Federal Transit Administration (FTA) Terms**

FTA Circular 4220.1F

*(Applies to all contracts)*

The provisions in this Attachment include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any WATA requests, which would cause WATA to be in violation of the FTA terms and conditions.

## **8. Termination**

*(Applies to all contracts over \$10,000 total value if 49 CFR Part 18 applies)*

Subject to the provisions below, the Authority upon thirty (30) days advance written notice to the other party, may terminate the contract. 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 and 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.
- 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.

## **9. Special EEO Provisions for Construction Contracts**

*(Applies to all contracts over \$10,000 total value if 49 CFR Part 18 or 19 indicate that DOL EEOC regulations at 41 CFR Chapter 60 apply)*

For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 *et seq.*, which implement Executive Order No. 11246 "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246", relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

## **10. Government-Wide Debarment and Suspension**

2 CFR 1200, 2 CFR Part 180 *et seq.*

*(Applies to all contracts and subcontracts at any tier expected to equal or exceed \$25,000, or, any contract or subcontract at any tier for federally-required audit)*

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are not excluded or disqualified as defined at 2 CFR 180.940, 180.935 and 180.945. The Contractor is required to comply with 2 CFR part 180, Subpart C, supplemented by 2 CFR part 1200, and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction.

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 WATA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to WATA, 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 CFR part 180, Subpart C, as supplemented by 2 CFR 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.*

WATA will use the System for Award Management (SAM) before entering into any contracts and review the Excluded Parties List System in SAM to verify if any third party contractor is on the excluded list.

#### **11. Buy America**

49 U.S.C. § 5323(j), 49 CFR Part 661; 49 U.S.C. 5323(j)(2)(C), 49 CFR 661.11

*(Applies to all purchases of steel, iron or manufactured products or rolling stock over \$150,000)*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which state 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. General waiver requirements are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11, which provide that Federal funds may not be obligated unless rolling stock is manufactured in the United States and have a seventy percent (70%) domestic content.

These regulations require, as a matter of responsiveness, that the Bidder or Contractor submit to WATA the appropriate Buy America certification with all bids where FTA funds are provided, except those subject to a general waiver or less than \$150,000. Bids or offers that are not accompanied by a completed Buy America certification will be deemed nonresponsive.

#### **12. Resolution of Disputes, Breaches or Other Litigation**

49 CFR Part 18, FTA Circular 4220.1F

*(Applies to all contracts over \$150,000 total value)*

**BREACH OF CONTRACT:** The successful bidder shall be deemed in breach of contract if the successful bidder: fails to comply with any terms of the contract; fails to cure such noncompliance within five (5) calendar days from the date of written notice from WATA or such other timeframe, greater than five (5) calendar days, specified in the notice; fails to submit a written response to the notification from WATA within five (5) calendar days after the date of the notice. All notices under the contract shall be submitted by email and followed up with a hard copy by certified mail, return receipt request, to the person specified in the notice.

The successful bidder shall not be in breach of the 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 subcontractors. Such causes may include, but not be limited to: acts of God or of the public enemy, acts of WATA in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather (e.g., hurricane).

## **DISPUTES.**

Claims. Written notice of the Contractor to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the 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 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 the Contract. Any such extension must be issued in writing and signed by the Executive Director.

## **13. Lobbying**

31 U.S.C. § 1352, 49 CFR Part 19, 49 CFR Part 20

*(Applies to any contract or subcontract in excess of \$100,000)*

All contractors will be required to submit a certification with the following language, as found in 49 CFR part 20, Appendices A and B:

*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.*

*If any funds other than Federal appropriated funds have been paid or will be paid to any person 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

*The undersigned shall require that the language of this certification 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.*

**14. Clean Air**

42 U.S.C. § 7401 – 7671q

(Applies to any contract or subcontract in excess of \$150,000)

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to not use any violating facilities and to report the use of prohibited facilities or facilities that are on or likely to be placed on the U.S. EPA “List of Violating Facilities.” The Contractor shall report any violations to the FTA and the appropriate EPA Regional Office.

**15. Clean Water**

33 U.S.C. 1251-1387

(Applies to any contract or subcontract in excess of \$150,000)

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 through 1387. The Contractor agrees to not use any violating facilities and to report the use of prohibited facilities or facilities that are on or likely to be placed on the U.S. EPA “List of Violating Facilities.” The Contractor shall report any violations to the FTA and the appropriate EPA Regional Office.

**16. Cargo Preference Requirements**

46 U.S.C. § 55305, 46 CFR, Part 381

*(Applies to any contract in which equipment, materials or commodities are transported by ocean vessel)*

The contractor agrees:

- to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**17. “Fly America” Requirements**

49 U.S.C. § 40118, 41 CFR Part 301-10; 48 CFR 47.4

*(Applies to any contract which involves transportation of persons or property by air between the U.S. and a place outside of the U.S.)*

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of personnel (and their personal effects) or property, to the extent such service is available. In the event that a contractor selects a carrier other than a U.S.-flag carrier for international air transportation, the Contractor shall submit an appropriate statement or memorandum explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **18. Davis-Bacon Act**

(Applies to all prime construction, alteration, or repair contracts over \$2,000)

WATA shall place a copy of the current prevailing wage determination in the solicitation. The decision to award a contract will be conditioned upon the acceptance of the wage determination.

Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week.

## **19. Contract Work Hours and Safety Standards Act (Construction)**

40 U.S.C. §§ 3701 – 3708; 29 CFR Part 5

(Applies to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers)

The Contractor shall comply with the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 - 3708., as supplemented by DOL regulations at 29 C.F.R. Part 5.

Overtime Requirements – The Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required.

Withholding for unpaid wages and liquidated damages - WATA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth herein.

Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

## **20. Copeland Anti-Kickback Act (Sections 1 and 2)**

18 US Code 874; 40 USC 3145; 29 CFR 3 and 5

*(Applies to all construction contracts [Section 1] and all prime construction, alteration, or repair contracts over \$2,000 [Section 2])*

**Section 1.** The Contractor shall induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works that are financed in whole or in part by the United States, to give up any part of the compensation to which he or she is otherwise entitled.

**Section 2.** The Contractor shall submit a weekly statement of compliance to WATA with respect to the wages paid each employee performing covered work during the preceding week.

## **21. Bonding Requirements (Construction)**

*(Applies to all construction or facility improvement contracts or subcontracts exceeding \$250,000 [simplified acquisition threshold].)*

The FTA may accept the bonding policy and requirements of WATA if it is determined that the Federal interest is adequately protected. If WATA has not proposed alternate bonding requirements and a such a determination has not been made, the following minimum requirement apply:

### **Bid Bond Requirements**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible financial institution, be issued by a fully qualified surety company acceptable to WATA and made payable to WATA. The amount of such guaranty shall be equal to five percent (5%) of the bid price. The bid guarantee is an assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

In submitting this bid, it is understood and agreed by bidder that WATA reserves the right is to reject any and all bids, or part of any bid, and it is agreed that the bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of WATA.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of its bid within ninety (90) days after the bid opening without the written consent of WATA, or refuse or be unable

to enter into this contract, he shall forfeit his bid guaranty to the extent of WATA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense WATA for the damages occasioned by default, then the undersigned bidder agrees to indemnify WATA and pay over to WATA the difference between the bid guaranty and WATA's total damages, so as to make WATA whole.

#### **Performance Bond Requirements**

A Performance Bond in the amount of one hundred percent (100%) of the contract value is required by WATA to secure fulfillment of all the contractor's obligations under the contract. Either a performance bond or an irrevocable letter of credit, issued by a fully qualified surety company acceptable to WATA and made payable to WATA, shall be provided by the Contractor and shall remain in full force for the term of the contract.

WATA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. WATA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

#### **Payment Bond Requirements**

A Payment Bond in the amount of one hundred percent (100%) of the contract value is required by WATA to assure payment as required by law of all persons supplying labor and materials in execution of the work under the contract. The bond may be issued by a fully qualified surety company acceptable to WATA and made payable to WATA.

### **22. Seismic Safety Requirements**

42 U.S.C. 7701 *et seq.*, 49 CFR Part 41

*(Applies to any contract for construction of or addition to a building)*

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project

### **23. Contract Work Hours and Safety Standards Act – Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

Any records maintained under this section shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job. The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

## **24. Public Transit Employee Protective Arrangements**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

**U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

**Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

**Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## **25. Charter Bus Operations**

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

## **26. School Bus Operations**

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

## **27. Drug and Alcohol Testing**

49 U.S.C. § 5331, 49 CFR Part 655 and Part 40

*(Applies to Contractors Performing Safety-Sensitive Functions in Transit Operations)*

FTA provides three options for WATA to work with the Contractor to implement an effective drug and alcohol testing program. WATA may modify the options below in determining the best approach for an effective testing program.

### **Option 1**

The Contractor agrees to participate in WATA's drug and alcohol program established in compliance with 49 CFR Part 655.

### **Option 2**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the Virginia Department of Rail and Public Transportation, or WATA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 655 before (insert date). To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

### **Option 3**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the Virginia Department of Rail and Public Transportation, or WATA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 655 before (insert date). To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

### **28. Patent Rights and Rights in Data**

37 CFR Part 401, 49 CFR Parts 18 and 19

*(Applies ONLY to research projects in which FTA finances experimental, developmental, or research work)*

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant WATA intellectual property access and licenses deemed necessary for the work performed under this contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason

whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance

#### **29. Energy Conservation**

42 U.S.C. § 6201 et seq., 49 CFR Part 18

*(Applies to all contracts)*

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan for the Commonwealth of Virginia, which is issued in compliance with the Energy Policy and Conservation Act.

The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **30. Recycled Products**

42 U.S.C. § 6962, 40 CFR Part 247

*(Applies to all contracts and subcontracts for items designated by the EPA, where the purchase price exceeds \$10,000 or the value of the quantity acquired during the previous fiscal year exceeded \$10,000.)*

The Contractor agrees to provide a preference, consistent with maintaining a satisfactory level of competition, for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), and U.S. EPA's "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR Part 247.

#### **31. Conformance with National Intelligent Transportation Systems (ITS) Architecture**

*(Applies to contracts funded in whole or in part by the Highway Trust Fund)*

All ITS projects shall be based on a systems engineering analysis. The systems engineering analysis shall include, at a minimum:

1. Identification of portions of the regional ITS architecture being implemented;
2. Identification of participating agencies' roles and responsibilities;
3. Requirements definitions;
4. Analysis of alternative system configurations and technology options to meet requirements;
5. Analysis of financing and procurement options;
6. Identification of applicable ITS standards and testing procedures; and
7. Procedures and resources necessary for operations and management of the system.

The final design of all ITS projects shall accommodate the interface requirements and information exchanges as specified in the regional ITS architecture.

All ITS projects shall use applicable ITS standards and interoperability tests that have been officially adopted through rulemaking by US DOT.

### **32. Access Requirements for Individuals with Disabilities**

49 U.S.C. § 5301(d)

*(Applies to all contracts)*

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151, *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with all applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;

- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 CFR Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 CFR Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### **33. Assignability Clause**

Any public agency (i.e., city, district, public authority, public agency, municipality, and other political subdivision or any FTA-funded entity) shall have the option of participating in any award made as a result of this proposal at the same prices, terms, and conditions. WATA reserves the right to assign all or any portion of the products or services awarded under this Contract including option quantities. This assignment, should it occur, shall be agreed to by WATA and the contractor. Once assigned, each agency will enter into its own contract and be solely responsible to the contractor. WATA's right of assignment will remain in force until completion of the contract to include options, whichever occurs first. WATA shall incur no financial responsibility in connection with contracts issued by another public agency. The public agency shall accept sole responsibility for placing orders or payments to the Contractor.

### **34. Bus Testing**

49 U.S.C. 5318(e), 49 CFR Part 665

(Applies to any contract for the acquisition or lease of any new bus model, or any bus model with a major change in configuration or components)

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. Part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

### **35. Buy America - Rolling Stock**

(Applies to any contract for the acquisition of rolling stock)

Requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11 and provide that Federal funds may not be obligated unless rolling stock is manufactured in the United States and have a seventy percent (70%) domestic content. These regulations require, as a matter of responsiveness, that the Bidder or Contractor submit to WATA the appropriate Buy America certification with all bids where

FTA funds are provided, except those subject to a general waiver or less than \$150,000. Bids or offers that are not accompanied by a completed Buy America certification will be deemed nonresponsive.

**36. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases**

49 U.S.C. § 5323, 49 CFR Part 663

(Applies to any contract for the acquisition of rolling stock)

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

**37. Federal Motor Vehicle Safety Standards (FMVSS), 49 CFR Part 500**

(Applies to any contract for the purchase of vehicles)

The Contractor (whether manufacturer or dealer) certifies that the vehicles to be supplied under the contract shall conform to all applicable Federal Motor Vehicle Safety Standards of the U.S. Department of Transportation, National Highway Traffic Safety Administration, and are certified by installation of the required certification plate.

**JAMES CITY COUNTY PURCHASING CARD GUIDELINES AND PROCEDURES**

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## INTRODUCTION

The Purchasing Card ("P-Card") program provides another service within the overall Purchasing system to better support departmental needs. The purchasing card guide contains policies on use of Purchasing Cards to purchase goods or services made directly by departments. The cards are a tool for individuals making purchases on behalf of the County and for which James City County is financially liable. The use of P-Cards is intended to provide a means for streamlining the procure-to-pay process for smaller dollar transactions. This allows the County and its program users to procure goods and services in a more timely manner, reduce processing costs, track expenses more easily, take advantage of supplier discounts, and recoup a sizeable annual rebate by participating in a cooperative consortium contract.

The County contracts for commercial credit card services with JP Morgan Chase. The contract provides commercial Purchasing Cards and associated services to County employees for the purpose of paying for purchases made for official county business.

These Purchase Card Guidelines and Procedures supplement the County's Purchasing Manual and any instructions distributed to the cardholder at the time the card is issued. In the event these Procedures conflict with any instructions provided by the card issuer, these Procedures take precedence.

Documentation and controls over the use of the Purchasing Cards have been designed to assure the safeguarding of County assets and to assure compliance with existing State and County policies and procedures. Training is required for participation in this program. Cardholders must also sign a written statement acknowledging that they understand the program procedures and responsibilities.

Purchasing Cards are the property of James City County. They are issued to individuals as designated by Department Managers. The cardholder is the only person entitled to use the card. The card may only be used for county business. The individual's Department Manager can determine internal dollar limits and the type of goods that can be acquired with each card within the overall parameters established for the County.

### **Purpose**

The purpose of this policy is to provide guidelines and procedures to govern the County's Purchasing Card (Pcard) Program. The Pcard Program has been established to provide County departments and its user agencies with an efficient means of purchasing goods and services. The Pcard Program and policy is intended to:

- Reduce the volume of accounts payable payments while providing departments a timesaving convenience.
- Provide a convenient method for small purchases and to facilitate e-commerce, including Internet purchases and/or payments.
- Ensure that procurement of goods and services with purchasing cards is accomplished in accordance with the County's Purchasing Policy.
- Facilitate good management practices and proper tracking of expenditures.
- Ensure that appropriate internal controls are established to prevent fraud and unauthorized purchases.
- Provide excellent value through rebates earned by making purchases on Pcards.

James City (County) utilizes an electronic Purchasing Card (Pcard) Program that provides the County the opportunity to streamline procedures for procuring small dollar goods and services. All purchases must comply with the County's Pcard Policy and Purchasing guidelines. Purchases shall only be made for official County business. Personal use of the Pcard is prohibited and can result in employee discipline up to and including termination of employment from the County.

## APPENDIX D

Pcard services are currently obtained through consortium participation in the cooperative contract administered by Fairfax County, Virginia. JP Morgan Chase is the County's current provider for the Pcard Program.

### **PURCHASING CARD REQUEST AND ISSUANCE**

Purchasing Cards may be issued to authorized and designated individual employees and volunteers who frequently purchase goods and authorized services. Cards are issued for a pre-approved amount by the employee's Department and the Purchasing Card Administrator in compliance with James City County Purchasing Card Policy and Procedures.

The Purchasing Card will have the employee's name, the County logo, and the expiration date embossed on the face of the card. The Purchasing Card issuer will not have individual cardholder information. No credit records, social security numbers, etc. of the cardholder are maintained.

The Department Program Coordinator must make all requests for new cards or changes to current cardholder accounts in writing to the Purchasing Card Administrator. The Department Coordinator shall ensure that new cardholders review the Purchasing Card Policy and the training tutorial and that the completed quiz and signed cardholder agreement are submitted. The Purchasing Card Administrator will not process the request for a new card account until the employee completes the training.

The Purchasing Card Administrator will process the new card into the system and then distribute it to the cardholder with instructions for activating the account and administering the card activities. The Purchasing Card Administrator will retain the original request, quiz and cardholder agreement.

### **ROLES AND RESPONSIBILITIES**

#### **Financial Institution**

The bank or other financial institution that provides the Purchasing Card guarantees prompt payments to merchants who accept the card as payment in accordance with the contract.

#### **Purchasing Card Administrator**

- Processes card applications in accordance with the guidelines for small purchases
- Implements card limits as requested by Departments and defined in the Procedures
- Designates certain staff who may purchase from Amazon.com
- Approves use of card for certain services on a case-by-case basis
- Issues cards
- Terminates cards
- Serves as user (cardholder) liaison
- Serves as ultimate dispute resolution
- Provides training
- Conducts annual review of program and Procedures
- Provides suggested procedural changes to FMS Assistant Director

#### **Department Manager**

- Approves requests for card applications for staff at his/her discretion
- Approves defined limits on individual cards in accordance with County policy
- Supports secure practices and procedures in his/her Department
- Approves use of card for certain services on a case-by-case basis

#### **Department Program Coordinator (Supervisor)**

- Verifies account code used and approves reconciled transactions
- Provides Accounting with necessary documentation to process payments

## APPENDIX D

- Forwards package to Accounting for payment
- Initiates requests for a card, upon approval and direction from Department Manager
- Conducts annual review of users' (cardholder) adherence to Procedures
- Serves as central point of contact for the Department
- Conducts annual inventory of cards
- Communicates change in user employment status to Purchasing Card Administrator
- Performs final reconciliation when cardholder leaves County employment

### **Cardholder**

- Adheres to approved card uses and all applicable policies and procedures
- Reconciles transactions and disputes
- Provides Department Program Coordinator with all necessary documentation to process payments
- Notifies vendors at the point of purchase that purchases are tax exempt

### **Accounting**

- Verifies and reviews reconciled statements and receipts
- Uploads transactions monthly into financial software
- Ensures timely payment to the financial institution
- Participates in the annual review process
- Performs periodic audits

## **TRAINING**

Prior to receiving a Purchasing Card, employees must complete the appropriate training program for their level of responsibility. The Purchasing Card Administrator or designee will provide the orientation information and basic instructions on how to use the card for cardholders and Department Program Coordinators. The Purchasing Card Administrator or designee will provide both refresher and new cardholder training as requested by individual Departments.

All cardholders must sign an acknowledgement of training as part of the card application. Their signature acknowledges they understand the training provided, received training materials they can utilize for future reference, and understand the consequences associated with misuse of the card. The Purchasing Card Administrator will retain this document while the cardholder's account remains active.

The training program shall cover the following subject areas:

- Internal procedures for using the credit card such as: budgeting for purchases, documenting purchases, reviewing the account statement, reconciling invoices and handling disputes.
- Cardholder and Department Program Coordinator responsibilities.
- Contracting procedures and purchasing ethics such as determining price reasonableness, the prohibition against splitting requirements, checking for existing warranties and information on current term contracts and agreements already providing services to County customers that should not be duplicated.

## REVIEWS

### Annual Review

The Purchasing Card Administrator will conduct an annual review of the Purchasing Card program in accordance with established policy.

### On-Site Review

The Department Program Coordinator will conduct a card inventory and Procedure Review every twelve (12) months.

The Purchasing Card Administrator, or designated representative will take advantage of automated systems that can provide reports of denied transactions for purchases from unauthorized merchants, violations of limits, and other irregular activities. On-site reviews will be conducted immediately when violations are noted.

On-site review results will remain on file for 3 years. Copies of the results are forwarded to the Department Manager, the Department Program Coordinator and the cardholder. The Department Program Coordinator will meet with the cardholder to discuss each finding of noncompliance.

## LIMITS

Individual transaction: \$2,500

Monthly limit: \$5,000--Departments can define lower or higher limits if appropriate, and subject to review/approval from the Program Card Administrator or County Administrator.

Travel: The above limits for individual transaction, and monthly amount apply. The County Administrator can grant exceptions to the above limits for travel. Employees can indicate their proposed travel limits on the card application.

Emergency: 50,000 up to \$100,000 in a declared emergency

An emergency is defined as:

- an officially declared state of emergency or
- a situation which would adversely affect the life, health or well-being of citizens or employees.
- Work stoppages, unforeseen conditions, rapid response actions, etc. qualify as emergencies if the conditions arise from unforeseen circumstances.
- Conditions that arise from a lack of planning on the part of employees do not qualify as an emergency.

## ALLOWED AND PROHIBITED USES FOR PURCHASING CARDS

### Allowed Uses

- Shipping charges
- Office supplies
- Food supplies
- Publications
- Registration fees for seminars and training
- Travel expenses when on County business such as: hotel charges, airline tickets, and rental car
- Operating materials & supplies
- Clothing, as specified with County policy
- Clothing for emergencies, such as for social services clients
- Emergency equipment repair

## APPENDIX D

- Emergency clean up, such as after storms, etc.
- Catering (see below for alcohol policy)
- Other services as approved on a case-by-case basis by Department Manager and Purchasing Card Administrator

### **Prohibited Uses: All Pcards are restricted from the following transactions**

- Alcoholic beverages
- Capital assets
- Cash advances
- Purchase of gift cards
- Personal use
- Any substance, material or service that violates policy, law or County regulation.
- Betting (including lottery tickets, casino gaming chips, off-track betting & wagers)
- Insurance or insurance premiums
- Rental or lease of land or buildings
- Telephone calls
- Entertainment during travel
- Professional services and services not on Allowed Uses list
- Drinking establishments
- Wires
- Money orders
- Pawn shops
- Manual cash disbursements
- Automated cash disbursements
- Non-Financial Institutions
- Dating/escort services
- Massage parlors
- Bail and bond payments
- Sweepstakes
- Food stamps

## **VIOLATIONS**

Any abuse or misuse of the Purchasing Card may result in the privilege being suspended or revoked. Violations will be handled in accordance with County personnel policy. The following actions are considered violations:

- Attempting to make single item purchases that exceed limits. It is the responsibility of the ordering Department to ensure all "extra" charges such as freight handling, set up, etc. are considered before a card transaction is made. A vendor's willingness to honor a transaction exceeding the limit does not authorize a Department to make such purchases.
- Attempting to make more transactions per day than allowed.
- Purchasing from Amazon.com without getting pre-approval from Card Administrator.
- Purchases from vendors that create conflicts of interest, i.e.: companies owned by any County employee, etc.
- Multiple transactions to circumvent the pre-determined limits.
- Purchase of prohibited goods or services.
- Consistently failing to produce proper documentation and receipts.
- Failure to send reconciled statements to Accounting by the due date.

## APPENDIX D

- Failure to properly report a lost or stolencard.
- Purchase of any item that is an unlawful expenditure in accordance with County regulations and policy.
- Failure to use correct Purchasing policies and procedures when using the card.

### DISPUTES

If goods and services purchased with the Card are defective or faulty, the cardholder has the responsibility to return the item(s) to the merchant for replacement receive a credit on the purchase or request the service be performed at a satisfactory level. **CASH REFUNDS WILL NOT BE PERMITTED.** If the merchant refuses to replace or correct the faulty item, then the purchase of this item will be considered in DISPUTE. The cardholder will notify the card issuer and the merchant of the dispute.

It is essential that the time frames and documentation requirements established by the card issuer be followed to protect the cardholder's rights in dispute. Dispute policies and procedures of the card issuer will be the subject of Purchasing Card training and will be provided at the time the cards are issued to cardholders.

### BILLING DISCREPANCIES

If an amount on the Transaction Summary differs from the monthly statement:

- Contact the vendor and inquire about the difference.
- If the amount referenced on the Summary is incorrect, note the correction and reason for correction on the Transaction Summary.
- If the amount on the statement is incorrect, ask the vendor to credit the card. Note the credit on your summary to ensure the credit is received.

If a charge appears on the cardholder statement but it not reflected on the Transaction Summary:

- Contact the vendor to determine that the item was a legitimate charge and was received.
- If you determine the charge should not have been posted to your account, ask the vendor to credit your card.
- If you suspect a fraudulent charge, contact the Purchasing Card Administrator immediately.

If a copy of a sales draft is required to investigate a discrepancy, a written request should be sent to the card issuer.

### SECURITY

Purchasing Cards will be issued in the names of individual employees. Therefore, it is the responsibility of the employee to secure the Purchasing Card. Cardholders should always treat the Purchasing Card with the greatest level of care.

Employees who are issued a Purchasing Card must:

- Maintain the Purchasing Card in a secure place at all times.
- Carefully guard the account number.
- Not allow other individuals to use their Purchasing Card.
- Immediately report a lost or stolen card to the Department Program Coordinator and the card issuer (use toll free number).
- Return the Purchasing Card to the Department Program Coordinator upon terminating employment with James City County.
- NOT store the card on a vendor site

### **LOST OR STOLEN CARD**

The employee shall notify the bank, 1-888-297-0774, the Purchasing Card Administrator, and the Department Program Coordinator immediately after discovery of the loss or theft of the card.

### **REBATES**

Rebates issued and received by card users, either by check or other means are to be used to purchase items intended for county use only.

### **TAX-EXEMPT STATUS**

Cardholders must notify vendors of the County's tax-exempt status before the order is processed. If sales tax is charged on a purchase for the County, the cardholder will be responsible for reimbursing the County for the sales tax.

### **DOCUMENTATION**

Any time a purchase is made with the card, the cardholder is to obtain or print a customer copy of the transaction, which will become the accountable document. If the card is used to purchase meals, the **detailed receipt showing each item purchased is required**. A receipt with solely the total and tip is not suitable documentation.

### **PUBLIC RECORDS**

All documents related to the Pcard shall be fully disclosed as a public record to the extent provided for by the Virginia Freedom of Information Act (FOIA).

When a detailed charge receipt is not provided with the order, the cardholder shall provide a written explanation that it was a telephone, fax or internet purchase and provide a description of the item, date of purchase, merchant name and total price including shipping and handling. For internet transactions, print out the order confirmation and attach it to the written explanation.

Forward all documentation (including packing slips) to Department Program Coordinator.

If, for some reason, the cardholder doesn't have documentation of the transaction to send with the Reconciliation Report, he/she must attach an explanation that includes an item description, date of purchase, merchant's name, amount and the reason why there is no supporting documentation. Consistent abuse of this provision may result in card cancellation.

### **RECONCILIATION**

Each cardholder must reconcile all purchases made within the transaction cycle. All posted transactions will be reviewed in the Financial Summary tab and a description added to each transaction. The default account code will be reviewed and edited if needed.

After the cardholder has edited and reviewed the financial summary and saved all updates, the cardholder must run the report for the transaction cycle, reviewing it for accuracy, and attaching all supporting documentation/detailed receipts to the report. The report will be signed and approved by the Department Manager or Supervisor (the cardholder should never approve his/her own transaction report) and forwarded to Accounting by the due date specified each month.

The Department Program Coordinator reviews the package to ensure the appropriateness of the purchases and the account codes for the charges. The package is then sent to Accounting by the specified due date.

## APPENDIX D

The vendor will provide a monthly account statement to each cardholder and a consolidated master statement to Accounts Payable at the end of each billing cycle. This statement of account will list all purchases processed in the previous billing cycle. Statements are provided electronically to individual cardholders. Cardholders without access to a computer may obtain a copy of their monthly statement from the Department Program Coordinator.

### **ACCOUNTING RECONCILIATION**

Accounting will pull the monthly transaction report and notify the Treasurer's Office of the total charge for the month. Payment will be made via direct debit for the total amount of the bill. Detailed ledger information will be updated and posted in the general ledger system by the 10<sup>th</sup> of the following month.

### **TERMINATION OR TRANSFER**

Cardholders who leave the County's employment must surrender the card to the Department Program Coordinator when the resignation becomes official. The person receiving the resignation notice must immediately notify the Department Program Coordinator. The Department Program Coordinator or his designated representative will be responsible for collecting the card, forwarding it to the Purchasing Card Administrator and notifying the Department Manager that the card has been surrendered. The Purchasing Card Administrator will destroy the card and close the account.

For interdepartmental transfers, cardholders must surrender the card as indicated above. Cardholders may reapply if approved by the new Department Manager.

If the Department Program Coordinator is unable to collect the card, he will notify the Purchasing Card Administrator who immediately will cancel the account. The Department Program Coordinator will also notify Human Resources to attempt to recover the card at the exit interview.

### **RENEWAL AND EXPIRATION**

The James City County Purchasing Card will be issued for two (2) years. If the Department Manager approves reissue, the cards will be reissued during the third week of the month the card actually expires to provide for continued access to the card.

### **CHANGES TO PROCEDURES**

The Purchasing Card Administrator shall propose amendments to the James CityCounty Purchasing Card Procedures for approval by the Assistant Director of the Department of Financial and Management Services.



APPENDIX D  
**APPENDIX B**  
**Dispute Form**

**CARDHOLDER NAME:** \_\_\_\_\_ **DEPARTMENT:** \_\_\_\_\_

**(LAST 4) CARD NUMBER:** \_\_\_\_\_

**MERCHANT NAME:** \_\_\_\_\_

**Amount of disputed transaction: \$** \_\_\_\_\_

**Transaction date:** \_\_\_\_\_

**Transaction reference #:** \_\_\_\_\_

**JP Morgan Dispute #: 888-297-0768**

**(Please check the appropriate box and provide additional details as directed)**

- I did not make nor authorize the above transaction.
- There is a difference in the amount I authorized and the amount that I was billed (Include copy of receipt/transaction slip)
- I only transacted one charge and I was previously billed for this transaction on date: \_\_\_\_\_
- The above transaction is mine, but I am disputing the transaction (State your reasons why in detail):  
\_\_\_\_\_  
\_\_\_\_\_
- Please send me a copy of the sales draft/transaction (Your account will be charged \$5 for each copy requested/supplied)
- I have received a credit for the above transaction but it has not yet appeared on my account (attach copy of credit/verification)
- My account has been charged for the above transaction but I have not received this merchandise. The date of expected delivery is/was: \_\_\_\_\_ The details of my attempt to resolve the dispute with the merchant and the merchant response are (provide detail and/or attach documentation):  
\_\_\_\_\_  
\_\_\_\_\_
- My account has been charged for the above transaction, but the merchandise has since been returned. The details of my attempt to resolve the dispute with the merchant and the merchant's response are indicated below (attach documentation and provide details below):  
\_\_\_\_\_  
\_\_\_\_\_
- Other (Please explain):  
\_\_\_\_\_  
\_\_\_\_\_

Cardholder Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX C**  
**Notification of Lost or Stolen Card**

<b>Cardholder Name:</b>	
<b>Account Number:</b>	
<b>Date Lost:</b>	<b>Date Discovered:</b>
<b>Location of Loss:</b>	
<b>Last Known Legitimate Purchase: Date, Merchant, Item, Price</b>	
<b>Description of Incident and Other Relevant Information</b>	
<b>Signature:</b>	<b>Date:</b>

**APPENDIX E**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

Enclosed please find a copy of WATA's adopted Disadvantaged Business Enterprise (DBE) Program. (59 pages)

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**  
**Williamsburg Area Transit Authority**

**Objectives/Policy Statement – (§26.1, §26.23)**

The Williamsburg Area Transit Authority (WATA) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT) as included in the Code of Federal Regulations (CFR) at 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. WATA receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, WATA certifies and assures that it will comply with 49 CFR Part 26.

It is the intent of this Program and the policy of WATA to ensure that Disadvantaged Business Enterprises will have an equal opportunity to receive and participate in DOT-assisted contracts. It is also WATA policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To assist the development of small businesses that can compete successfully in the marketplace outside the DBE Program.

The Budget and Grants Administrator has been designated as the DBE Liaison Officer (DBELO) and shall have direct access to the Executive Director concerning DBE matters. The DBELO is responsible for implementing all aspects of the DBE Program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by WATA in its financial assistance agreements with the Department of Transportation.

WATA has disseminated this policy statement to the Williamsburg Area Transit Authority Board of Directors and all the components of the organization. The policy and program are provided to DBE and non-DBE business communities through outreach events, WATA's website, and in all solicitations.

  
**Mark Bellamy, Chair**  
**Board of Directors**

9/16/2020  
**Date**

## **A. GENERAL REQUIREMENTS**

### **1. Objectives (§26.1)**

The objectives are found in the Policy Statement on the first page of this program.

### **2. Applicability (§26.3)**

As WATA will be the recipient of financial assistance from the Federal Transit Administration of more than \$250,000 in planning, capital, or operating assistance in a federal fiscal year, it is a requirement to have a DBE Program. The Program applies to any contracts that utilize DOT financial assistance.

### **3. Definitions (§26.5)**

*Disadvantaged Business Enterprise or DBE* means a for-profit small business concern:

- a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

For other terms, WATA adopts the definitions contained in 49 CFR Part 26, Subpart A, Section 26.5.

### **4. Non-discrimination Requirements (§26.7)**

WATA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering our DBE Program, WATA will neither directly nor indirectly use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of our DBE Program with respect to individuals of a particular race, color, sex, or national origin.

### **5. Record Keeping Requirements (§26.11)**

a) Uniform Report of DBE Awards or Commitments and Payments

WATA will report DBE participation to FTA on a semi-annual basis using the Uniform Report of DBE Awards or Commitments and Payments as required by 49 CFR Part 26.11(a). A sample of this form is included in **Attachment 1**.

b) Bidders List

As required by 49 CFR Part 26.11(c), WATA will create and maintain a bidders list consisting of information about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts. The bidders list will contain the following information:

- 1) Firm name;
- 2) Firm address;
- 3) Firm's status as DBE or non-DBE;
- 4) Age of the firm; and
- 5) Annual gross receipts, reported by bracket (e.g., less than \$500,000, \$500,000-\$1,000,000, etc.) and not to report an exact figure.

WATA will obtain this information from the DBE directory maintained by the Virginia Department of Supplier Diversity and from the eVA Vendor List maintained by the Commonwealth of Virginia Department of General Services. These lists are electronic and searchable by filter criteria. WATA will also contact peer transit agencies and regional local governments to inquire about bidder listings.

**6. Assurances (§26.13)**

WATA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

- a) *WATA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) Program or the requirements of 49 CFR Part 26. WATA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of DOT assisted contracts. WATA's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to WATA of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).*

b) *The contractor, subrecipient, 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 CFR 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.*

## **B. ADMINISTRATIVE REQUIREMENTS**

### **1. DBE Program Updates (§26.21)**

As the recipient of an award of \$250,000 or more in FTA planning, capital, and operating assistance in a federal fiscal year, WATA will continue to carry out this program until all DOT financial assistance has been expended. WATA will provide to updates to DOT of significant changes in the Program.

### **2. DBE Liaison Officer (DBELO) (§26.25)**

WATA has designated the following individual as the DBE Liaison Officer (DBELO):

Barbara Creel  
7239 Pocahontas Trail  
Williamsburg, VA 23185  
(757) 220-5574  
[bcreel@gowata.org](mailto:bcreel@gowata.org)

The DBELO is responsible for overseeing all aspects of the DBE Program and ensuring that WATA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to WATA's Chief Executive Officer concerning DBE matters. An organization chart can be found in **Attachment 2**.

The DBELO is responsible for developing, implementing and monitoring the daily aspects of the DBE Program, in coordination with other appropriate officials. The duties and responsibilities include the following:

- 1) Gathers and reports statistical data and other information as required by DOT.

- 2) Reviews third party contracts and purchase requisitions for compliance with this program.
- 3) Works with all Departments to set overall annual goals and contract specific goals.
- 4) Ensures that bid notices and requests for proposals are available to DBEs in a timely manner
- 5) Identifies procurements with DBE participation opportunities so that DBE goals are included in solicitations.
- 6) Analyzes WATA's progress toward achievement and identifies ways to improve progress.
- 7) Participates in pre-bid meetings.
- 8) Advises the Executive Director/governing body on DBE matters and achievement.
- 9) Plans and participates in DBE outreach.
- 10) Provides outreach to DBEs and community organizations to advise them of opportunities with WATA.
- 11) Maintains WATA's updated directory on certified DBEs.

### **3. DBE Financial Institutions (§26.27)**

It is the policy of WATA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

This information is obtained through historical data published by the Federal Deposit Insurance Corporation (FDIC) on Minority Depository Institutions (MDIs). FDIC defines MDIs as any depository institution where 51% or more of the stock is owned by one or more socially and economically disadvantaged individuals. FDIC provides this historical data on a year-by-year basis and makes quarterly revisions as well.

To date there are no such institutions identified within the Commonwealth of Virginia. WATA will continue to investigate the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals and make reasonable efforts to use these institutions.

### **4. Prompt Payment Mechanisms/Retainage Clause (§26.29(a) and (b))**

WATA will include the following clause in each DOT-assisted prime contract:

*The Prime Contractor shall, within ten (10) days of receiving payment from WATA, pay all amounts properly due to its Subcontractors and shall cause its Subcontractors of every tier to pay their Subcontractors within an equivalent period after their receipt of payment. The Contractor shall promptly notify WATA of any circumstances in which payment is not so made. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of WATA. Failure to comply with the requirements of this paragraph may be deemed a material breach of this Contract.*

*As required by CFR 49 Part 26.29, any retainage held at the completion of a Subcontractor's work shall be returned to the Subcontractor within thirty (30) days of the completion and acceptance of the Subcontractor's work. Failure to comply with the requirements of this paragraph may be deemed a material breach of this Contract.*

This clause applies to both DBE and non-DBE subcontractors.

**5. Directory of DBE Firms (§26.31)**

The Virginia Unified Certification Program statewide DBE and ACDBE Directory is hosted by the Virginia Department of Small Business and Supplier Diversity on its website at <https://www.sbsd.virginia.gov/directory/>.

The Directory is made available to the public and is searchable according to a number of criteria.

**6. Overconcentration (§26.33)**

WATA has not identified that overconcentration exists in the types of work that DBEs perform. WATA will evaluate our DBE Program triennially to determine if overconcentration exists.

**7. Business Development Programs (§26.35)**

WATA has neither elected nor been required to establish a specific business development program as part of the DBE Program.

**8. Monitoring and Enforcement Mechanisms (§26.37)**

As the recipient of federal financial assistance, WATA is responsible for monitoring and

remediating noncompliance of contractors with 49 CFR Part 26 and this Program. The following mechanisms, among others, may be used to monitor and enforce compliance:

- a) Staff will conduct site inspections and interviews with DBEs that are engaged in contracted work and maintain a DBE Compliance Review Checklist for each active DBE contract. **Attachment 3** contains a sample of the Checklist.
- b) Staff will keep a running tally of actual payments made to DBE firms for work committed to them at the time of contract award. **Attachment 4** contains a copy of the DBE Monthly Payment Monitoring Procedure and a copy of **Forms E and E-2**. The prime contractor will submit Form E monthly identifying the participation of, and payments to, DBE subcontractors. Similarly, DBEs will be required to submit Form E-2 monthly verifying receipt of payment from the prime contractor.
- c) Every WATA contract that utilizes federal financial assistance includes a clause that the contractor will comply with DBE requirements. Failure to do so may result in the contractor being in default or breach of contract. WATA will consult with its legal counsel to determine the appropriate legal remedies that apply in such a circumstance. We will also make referrals to appropriate federal, state and/or local authorities in suspected instances of fraud, misrepresentation and misappropriation of funds, theft of services, and other activities that warrant criminal referrals or other judicial action.
- d) WATA will require prime contractors to maintain records and documents regarding DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of WATA or DOT. This reporting requirement also extends to any certified DBE subcontractor.
- e) WATA shall perform interim audits of contract payment to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of the DBE participation.

#### **9. Fostering Small Business Participation (§26.39)**

The requirements of 49 CFR Part 26.39 state that WATA's program must include elements to foster and facilitate participation by small businesses in contracting opportunities. WATA will take all reasonable steps to eliminate obstacles that may preclude small business participation in procurements as prime contractors or subcontractors. WATA will implement the small business participation elements on a race-neutral basis.

WATA has incorporated the following elements to the DBE Program with the intent of increasing participation by small businesses in DOT-assisted contracts:

- a) Avoid unnecessary or unjustified bundling of contract requirements that may

place a contract outside the size for participation by small businesses and structure a reasonable number of prime contracts to be of a size for small businesses, including DBEs, can perform;

- b) When no DBE goal is established for a contract, WATA encourages the prime contractor to utilize the DBE Directory as certified DBE's may exist for contracting opportunities;
- c) For large contracts, requiring the prime contract to specify elements that of the contract that are of a size that small businesses, including DBEs, can perform them;
- d) Partner with the Small Business Development Center, the local Chambers of Commerce, the Virginia Department of Small Business and Supplier Diversity, and other regional partners in an effort to provide technical assistance, classroom training, and mentoring opportunities to small and disadvantaged businesses.
- e) Assist small businesses seeking help in getting through the DBE certification process. This assistance will occur on a case-by-case basis.

## **C. GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **1. Set-Asides or Quotas (§26.43)**

- a) A quota is a simple numerical requirement that a contractor must meet, without consideration of other factors. USDOT does not permit use of quotas on DOT-assisted contracts and WATA does not use quotas in the administration of its DBE Program.
- b) A set-aside is a contracting practice that restricts eligibility for the competitive award of a contract solely to DBE firms. USDOT regulations only allow the use of set-asides in limited circumstances if they are absolutely necessary to address the effects of egregious discrimination. WATA would only consider the use of set-asides in such limited circumstances as well.

### **2. Overall Goals (§26.45)**

- a) A description of the methodology used to calculate the overall goal and the goal calculations are included in **Attachment 5** to this Program. These goals will be updated annually.
- b) In accordance with CFR 49 Section 26.45(f), WATA will submit its overall goal to FTA by August 1 of each third year (triennially). WATA may adjust the three-year overall goal during the three-year period to which it applies in order to reflect changed

circumstances. Any adjustment must be submitted to the FTA for review and approval.

- c) In establishing the overall goal every three years, WATA will consult with the Virginia Department of Small Business and Supplier Diversity (VDSBSD), the Hampton Roads and Williamsburg Chambers of Commerce, and other agencies to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and WATA's efforts to establish a level playing field for the participation of DBEs.

Following consultation with stakeholders, WATA will publish a notice of the proposed overall goal informing the public that the overall goal and its rationale will be available for inspection on WATA's website or during normal business hours for a 30-day comment period. This notice is normally published by June 1 of the reporting year. The notice will include addresses to which comments may be sent and where the proposed overall goal is available for review. WATA's overall goal submission to FTA will include a summary of information and comments received during this public participation process and our responses.

- d) WATA will begin using the approved overall goal on October 1 of each year in which a new DBE goal is established, unless we have received other instructions from DOT. If a goal is established on a project basis, WATA will begin using the goal at the time of the first solicitation for any DOT-assisted contract for the project.

### **3. Meeting Overall Goals/Contract Goals (§26.51)**

- a) Breakout of Estimated Race-Neutral & Race Conscious Participation

The breakout of estimated race-neutral and race-conscious participation is included in **Attachment 5 [§26.51 (a-c)]**. WATA must meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. A projection of the portion of the goal that is expected to be met through race-neutral means, and the basis for that projection, is submitted to FTA at the same time as the overall three-year goal.

Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal. Means to increase race-neutral DBE participation include, but are not limited to, the following:

- 1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBE's and other small businesses.
- 2) Providing technical assistance and other services.

- 3) Carrying out information and communication programs on contracting procedures and specific contract opportunities.
- 4) Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
- 5) Ensuring distribution of our DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

b) Contract Goals (§26.51 (d-g))

WATA must use contract goals to meet any portion of the overall goal that is not projected to be met using race-neutral means. Contract goals are established so that, over the period covered by the overall goal, they will cumulatively result in meeting any portion of that overall goal that is not projected to be met using race-neutral means. Contract goals are expressed as a percentage of the Federal share of a DOT-assisted contract.

The following provisions apply to the use of contract goals:

- 1) Contract goals are only used on those DOT-assisted contracts that have subcontracting possibilities;
- 2) The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract;
- 3) FTA approval of each contract goal is not required, but are subject to review if necessary;
- 4) Contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

c) Goal Setting and Accountability (§26.47)

If the awards and commitments shown on WATA's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- 1) Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
- 2) Establish specific steps and milestones to correct the problems identified in the analysis; and;
- 3) Prepare a shortfall analysis and maintain it in our records. This analysis will be made available to FTA upon request.

#### **4. Transit Vehicle Manufacturers (§26.49)**

WATA will require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, WATA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

#### **5. Good Faith Efforts Procedures (§26.53)**

##### **a) Award of Contracts with a DBE Contract Goal (§26.53 (a))**

In those instances where WATA has established a DBE contract goal, the contract will only be awarded to a bidder who makes good faith efforts to meet it. A bidder will have demonstrated good faith efforts if it does either of the following things:

1. Documents that it has obtained enough DBE participation to meet the goal; or
2. Documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

##### **b) Sample Bid Specification:** A sample bid specification when including a contract goal can be found in **Attachment 6**.

##### **c) Information to be Submitted (§26.53(b))**

Each solicitation for which a DBE contract goal has been established will require bidders/offerors to submit the following information (appropriate forms noted in parentheses):

- 1) The names and addresses of DBE firms that will participate in the contract (Form A);
- 2) A description of the work that each DBE will perform (Form A);
- 3) The dollar amount of the participation of each DBE firm participating (Form A);
- 4) Written and signed documentation of the bidder's/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal (Form A);
- 5) Written and signed confirmation from the DBE that it is participating in the kind and amount of work provided in the prime contractor's commitment (Form B); and

- 6) If the contract goal is not met, there must be written evidence of good faith efforts provided (Form C).

The necessary forms, available in **Attachment 7**, are: **Form A**, *Schedule of DBE Participation*; **Form B**, *Intent to Perform as a Subcontractor*; and **Form C**, *Good Faith Effort Documentation*. WATA will ensure that all information is complete and accurate and adequately documents the bidder's/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

d) Evaluation of Good Faith Efforts (§26.53(a) & (c))

The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. Guidance in determining the adequacy of a bidder's/offeror's good faith efforts are found in Appendix A to CFR 49 Part 26.

e) Administrative Reconsideration (§26.53(d))

- 1) Within 10 days of being informed by WATA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative consideration. Bidders/offerors should make this request in writing to:

Zach Trogdon, Executive Director  
7239 Pocahontas Trail  
Williamsburg, VA 23185  
[ztrogdon@gowata.org](mailto:ztrogdon@gowata.org)

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make sufficient good faith efforts.

- 2) As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will be able to meet in person with the reconsideration official to discuss the issue. The bidder/offeror will be sent a written decision on reconsideration explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to DOT.
- f) Terminating a DBE Subcontractor on a Contract with a DBE Goal (§26.53(f))

A prime contractor will not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without WATA's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm. (§26.53(f)(3)).

Good Cause includes the following circumstances when the listed DBE subcontractor:

- 1) Fails or refuses to execute a written contract;
- 2) Fails or refuses to perform the subcontracted work consistent with industry standards, unless the failure results from bad faith or discriminatory action on the part of the prime contractor;
- 3) Fails or refuses to meet the prime contractor's reasonable non-discriminatory bond requirements;
- 4) Becomes bankrupt, insolvent, or exhibits credit unworthiness;
- 5) Is ineligible to work on public works projects because of suspension or debarment under the Code of Federal Regulations for applicable state law;
- 6) Is determined to not be a responsible contractor;
- 7) Voluntarily withdraws from the project and provides written notice of withdrawal;
- 8) Ineligible to receive DBE credit for type of work required;
- 9) Owner dies or becomes disabled and the result is the DBE is unable to complete the work;
- 10) Other documented good cause, unless the prime contractor seeks to terminate a DBE it relied upon to obtain the contract in order to self-perform the work assigned to the DBE contractor or in order to substitute another DBE or non-DBE contractor after award.

Before transmitting to WATA its request to terminate, the prime contractor must give notice in writing to the DBE, with a copy to WATA, of its intent to do so, and the reason for the request. The DBE will then have five (5) days to respond and advise the prime contractor and WATA of why it objects to the proposed termination.

g) Good Faith Efforts to Replace a DBE on a Contract with a DBE Goal

In those instances where "good cause" exists to terminate a DBE, WATA will require the prime contractor to make good faith efforts to replace a DBE that is terminated with another certified DBE to the extent needed to meet the contract goal.

WATA will require the prime contractor to obtain prior approval from the DBELO of the substitute DBE and to provide copies of new or amended subcontracts or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, WATA may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, WATA may pursue termination for default.

## **6. Counting DBE Participation (§26.55)**

WATA will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55.

## **D. CERTIFICATION**

### **1) Certification Process (§26.61-26.73)**

WATA is not a certifying agency. For information about the certification process or to apply for certification, firms should contact:

Virginia Department of Small Business and Supplier Diversity  
1111 East Main Street, Suite 300  
Richmond, VA 23219  
(804) 786-6585  
[sbsd@sbsd.virginia.gov](mailto:sbsd@sbsd.virginia.gov)

### **2) Unified Certification Programs (§26.81)**

WATA is a member of the Virginia Unified Certification Program (UCP) which is administered by the Virginia Department of Small Business and Supplier Diversity. The UCP meets all of the requirements of this section.

Please contact the Virginia Department of Small Business and Supplier Diversity for information on Certification reciprocity and/or coordination mechanisms which exist with other recipients.

Virginia Department of Small Business and Supplier Diversity  
1111 East Main Street, Suite 300  
Richmond, VA 23219  
(804) 786-6585  
[sbsd@sbsd.virginia.gov](mailto:sbsd@sbsd.virginia.gov)

### **3) Procedures for Certification Decisions (§26.83-26.91)**

For information about the procedures for certification decisions firms should contact;

Virginia Department of Small Business and Supplier Diversity  
1111 East Main Street, Suite 300  
Richmond, VA 23219  
(804) 786-6585  
[sbsd@sbsd.virginia.gov](mailto:sbsd@sbsd.virginia.gov)

### **4) Certification Appeals**

Any firm that is denied certification or whose eligibility is removed by a recipient may appeal a Virginia Department of Small Business and Supplier Diversity's decision to DOT.

Such appeals should be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Program Division (S-33)  
1200 New Jersey Ave., S.E.  
Washington, DC 20590  
Phone:(202) 366-4754  
TTY: (202) 366-9696  
Fax: (202) 366-5575

## **E. COMPLIANCE AND ENFORCEMENT (§26.109)**

### **1. Noncompliance Complaints**

Any person who believes that WATA has failed to comply with its obligations under this Program may file a written complaint with the FTA Office of Civil Rights. You must file a complaint no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing noncompliant course of conduct. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in § 26.109(b).

### **2. Information, Confidentiality, Cooperation, and Intimidation or Retaliation**

#### **a) Availability of Records**

Notwithstanding any provision of federal or state law, WATA will not release any information that may reasonably be construed as confidential business information to any third party without consent of the firm that submitted the information. This does not apply to the transmittal of information to DOT in any certification appeal proceeding under Section 26.89 or to any other state to which the individual's firm has applied for certification under Section 26.85.

#### **b) Cooperation**

WATA will cooperate fully and promptly with DOT compliance reviews, certification reviews, investigations, and other requests for information.

#### **c) Intimidation and Retaliation**

WATA will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this Program or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Program.

### **3. Regulations (49 CFR Part 26)**

This Program has been developed to implement 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. A copy of these regulations is available online at <https://ecfr.io/Title-49/Part-26> and can also be obtained by contacting WATA at 757-220-5493 or [info@gowata.org](mailto:info@gowata.org).

## **ATTACHMENTS**

- Attachment 1.** Uniform Report of DBE Commitments/Awards and Payments
- Attachment 2.** WATA Organizational Chart
- Attachment 3.** DBE Compliance Review Checklist
- Attachment 3.1 – Commercial Use Function Form
- Attachment 4.** DBE Monthly Payment Monitoring Procedure
- Attachment 4.1 – Contractor Monthly Report of DBE Participation (Form E)
- Attachment 4.2 – DBE Subcontractor Monthly Report (Form E-2)
- Attachment 5.** DBE Overall Goal Methodology: Fiscal Years 2019 – 2021
- Attachment 6.** Sample Bid Specifications
- Attachment 7.** Good Faith Efforts Reporting Forms
- Attachment 7.1 – Schedule of DBE Participation (Form A)
- Attachment 7.2 – Intent to Perform as a Subcontractor (Form B)
- Attachment 7.3 –DBE Good Faith Effort Documentation (Form C)
- Attachment 7.4- Prompt Payment (Form D)

Attachment 1 - WATA DBE Program

**UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS**

\*\*Please refer to the instruction sheet for directions on filling out this form\*\*

1	Submitted to (check only one)	<input type="checkbox"/> FHWA	<input type="checkbox"/> FAA	<input checked="" type="checkbox"/> FTA - Recipient ID Number
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):			
3	Federal Fiscal year in which reporting period falls	FY 20XX	4. Date This Report Submitted:	
5	Reporting Period	<input checked="" type="checkbox"/> Report due June 1 (for period Oct 1-Mar 31)	<input type="checkbox"/> Report due Dec 1 (for period April 1-Sep 30)	<input type="checkbox"/> FAA annual report due Dec 1
6	Name and address of Recipient:			
7	Annual DBE Goal(s):	Race Conscious Projection:	Race Neutral Projection:	OVERALL Goal:

**Awards/Commitments this Reporting Period**

		A	B	C	D	E	F	G	H	I
A	<b>AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD</b> (Total contracts and subcontracts committed during this reporting period)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
	8 Prime contracts awarded this period	\$ -	0	\$ -	0			\$ -	0	
	9 Subcontracts awarded/committed this period	\$ -	0	\$ -	0	\$ -		\$ -	0	
	10 <b>TOTAL</b>			\$ -	0	\$ -		\$ -	0	

	B <b>BREAKDOWN BY ETHNICITY &amp; GENDER</b>	A	B	C	D	E	F
		Total to DBE (dollar amount)			Total to DBE (number)		
		Women	Men	Total	Women	Men	Total
		11	Black American	\$ -	\$ -	\$ -	0
12	Hispanic American	\$ -	\$ -	\$ -	0	0	0
13	Native American	\$ -	\$ -	\$ -	0	0	0
14	Asian-Pacific American	\$ -	\$ -	\$ -	0	0	0
15	Subcontinent Asian Americans	\$ -	\$ -	\$ -	0	0	0
16	Non-Minority	\$ -	\$ -	\$ -	0	0	0
17	<b>TOTAL</b>	\$ -	\$ -	\$ -	0	0	0

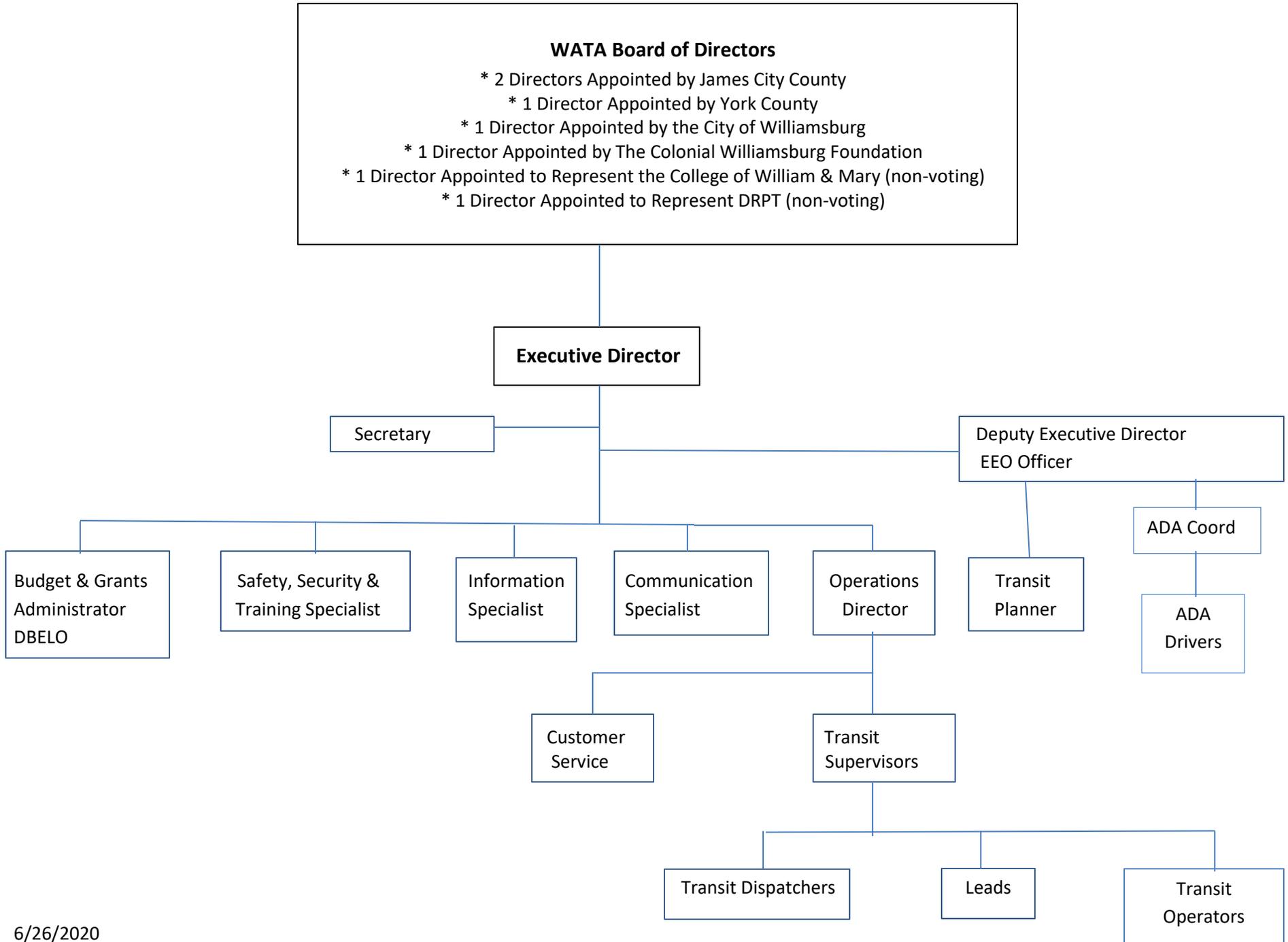
**Payments Made this Period**

	C <b>PAYMENTS ON ONGOING CONTRACTS</b>	A	B	C	D	E	F
		Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs
18	Prime and subcontracts currently in progress	0	\$ -	0	\$ -	0	

	D <b>TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD</b>	A	B	C	D	E
		Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs
19	Race Conscious	0	\$ -	\$ -	\$ -	
20	Race Neutral	0	\$ -		\$ -	
21	<b>Totals</b>	0	\$ -		\$ -	

22	Submitted by:	23. Signature:	24. Phone Number:
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# Williamsburg Area Transit Authority (WATA) Organizational Chart



## **DBE COMPLIANCE MONITORING PROCEDURE**

The Williamsburg Area Transit Authority (WATA) has implemented a DBE monitoring process to ensure compliance with 49 CFR Part 26.

### **MONITORING**

Per 49 CFR Part 26.37(b), the DBE Program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

WATA will comply with this provision by conducting random site inspections and interviews of contractors and DBE subcontractors. Interviews will be held either on-site, at our offices, or at any other location determined to be in the best interest of the WATA. A ***DBE Participation Commercially Useful Function Checklist*** will be maintained as records of having completed the on-site monitoring process.

### **COMMITMENT/ ATTAINMENT REVIEW**

Per 49 CFR Part 26.37(c), the DBE Program must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. To monitor this process, WATA will require prime contractors to submit a monthly report of DBE participation (***Form E***) identifying their participation of, and payment to, DBEs for the previous month. Similarly, DBEs will be required to submit a monthly report (***Form E-2***) verifying the payments they received for services rendered in the previous month.

WATA will maintain these records and review them often to ensure that DBEs are being utilized and paid on time. These forms will also be used to monitor the prime contractor's progress toward achieving the DBE goal established for the contract.

When possible, WATA will engage our Project Managers to assist when needed in monitoring and documenting the contractor's utilization of DBEs on the contract to ensure DBE commitments have been achieved by the prime contractor, DBE firms are actually performing the work listed on bid documents, DBE firms are receiving the corresponding amount of payment agreed to, and payments are consistent with approved applicable change orders.

In accordance with 49 CFR Part 26.37(c), a ***DBE Compliance Review Checklist*** will be completed for each active DBE contract and will be maintained as the Official Written Certification of Monitoring.

To ensure that all DBE obligations under contracts awarded to DBEs are met, WATA will review the prime contractor's DBE participation efforts during the performance of the contract. If contracts are found to be out of compliance, a more comprehensive review, including on-site investigations, prompt payment verifications, and other DBE related compliance issues review processes, will be administered. Penalties will be assessed as needed to assist with bringing the contract back into compliance.

Both prime contractors and DBE subcontractors shall cooperate fully with WATA staff and shall provide all requested documents immediately upon request. WATA may consider failure to cooperate as a breach of contract, entitling WATA to apply penalties such as stoppage of payments or termination of contract.



**DBE COMPLIANCE REVIEW CHECKLIST**

Project Title: \_\_\_\_\_

Project Number: \_\_\_\_\_ Award Date: \_\_\_\_\_

Prime Contractor/Contact Person/  
Email/Phone: \_\_\_\_\_

DBE Firm/Contact Person/  
Email/Phone: \_\_\_\_\_

**PRE-PROJECT**

**Good Faith Documents:** A contractor must obtain the percentage of participation for a DBE subcontractor as indicated in the award, or document good faith efforts to obtain that participation. The reviewer will verify this information on the following forms.

**DBE Goal:** \_\_\_\_\_ %

- 1. Form A – Schedule of DBE Participation
- 2. Form B - Intent to Perform as a Subcontractor
- 3. Form C – DBE Good Faith Documentation (if applicable)

**DURING PROJECT**

**1. Monitoring**

Commercially Useful Function Review

**Date of Inspection:** \_\_\_\_\_

**2. Commitment/Attainment Review**

Contractor Monthly Report of DBE Participation (Form E)

DBE Subcontractor Monthly Report (Form E-2)

**3. Prompt Payment**

Prompt Payment Verification Form D

**4. Termination/ Substitution/ Reduction, if applicable**

Completed Termination/ Substitution Request Form

Written notice of intent to request termination/ substitution sent to DBE Firm

Good Faith Efforts statement, if applicable

**POST-PROJECT**

**Has DBE Goal been achieved?**

Yes

No  Good Faith Effort statement explaining reason(s) shortfall took place.

**OFFICIAL WRITTEN CERTIFICATION OF MONITORING**

In accordance with 49 CFR 26.37, I, \_\_\_\_\_, hereby certify that the contracting records for the above referenced contract have been reviewed and the work sites in this state have been visited/monitored to ensure that the work committed to the DBE at contract award or subsequently was actually performed by the DBE to which the work was committed.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**COMMERCIALLY USEFUL FUNCTION REVIEW**

Project Title: \_\_\_\_\_

Project Number: \_\_\_\_\_ Award Date: \_\_\_\_\_

Prime Contractor/Contact Person/  
Email/Phone: \_\_\_\_\_

DBE Firm/Contact Person/  
Email/Phone: \_\_\_\_\_

Per 49 CFR 26.55, “A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation...” To determine whether a DBE firm is performing a CUF, five elements must be considered: management, workforce, equipment, materials, and performance.

If a DBE firm is found to not be performing a CUF, no work performed by the DBE can count as eligible goal participation and, if a shortfall would occur, the prime contractor will be required to obtain another DBE or show adequate good faith effort.

Provide a brief description of the DBE’s scope of work:

<b>Supervision:</b>	<b>Yes</b>	<b>No</b>
Does the DBE have a superintendent/foreman on the project?		
Does the superintendent/foreman work exclusively for the DBE?		
Who does the superintendent/foreman report to?		
<b>Employees:</b>		
Does the DBE have employees on the job?		
Do they appear on DBE payrolls?		
Do they appear on the prime contractor’s payroll?		
Who assigns work to the DBE employees?		
<b>Performance:</b>		
Has any other contractor performed any of the DBE’s work?		
<b>Equipment:</b>		
Whose name appears on the equipment?		
Does the DBE lease or own the equipment?		
Does the DBE use the prime contractor’s equipment?		
<b>Overall Review: Does it appear the DBE is performing a CUF?</b>		

**Comments:**

**Reviewer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**DBE MONTHLY PAYMENT MONITORING PROCEDURE**

The contractor is responsible for documenting to the Williamsburg Area Transit Authority (WATA) the participation of, and payment to, DBE subcontractors as part of each invoice submittal on a monthly basis. This information is captured in **Form E - Contractor Monthly Report of DBE Participation**, which should be completed by the contractor no later than the 7th of each month. Each DBE subcontractor is responsible for completing the **Form E-2 - DBE Subcontractor Monthly Report**, which verifies receipt of payment from the contractor, and as such should be submitted by the 7th of each month following the start of work.

If reports are not received by the 7<sup>th</sup> of each month, a notice of non-compliance will be sent to the prime contractor and the contractor will have ten (10) days from the date of notice to submit the required forms. If reports are not received after ten (10) days from the date of notice of non-compliance, the prime contractor will receive a final notice (the project manager for the respective contract will be notified as well) and the contractor will have ten (10) days from the date of notice to bring the reporting requirements into compliance. If, after the final notice, the prime contractor remains in non-compliance with the DBE monthly reporting requirements, the contract will be flagged and actions will be taken to stop payments on submitted invoices until the contract is brought back into compliance.

Failure to submit these monthly reports may result in delay or suspension of payments to the contractor or such other remedies as HRT deems appropriate. If HRT has reason to believe that any person or firm has willfully and knowingly failed to submit any required forms, provided incorrect information, or made false statements, it may utilize remedies provided by the contract, up to and including termination for default. It may also refer the matter to the Department of Transportation (DOT) for further action.

Please send all forms and questions to:

Barbara Creel, Budget & Grants Administrator  
7239 Pocahontas Trail  
Williamsburg, VA 23185  
P: 757-220-5574  
F: 757-220-6268  
[bcreel@gowata.org](mailto:bcreel@gowata.org)



**PRIME CONTRACTOR MONTHLY REPORT OF DBE PARTICIPATION  
Form E Report**

**CONTRACT INFORMATION:**

Original Contract Value: \$ -  
 Change Orders Values: \$ -  
 Current Contract Value: \$ -  
 Total Payments Received To Date: \$ -  
 Payments Received This Month: \$ -  
 Start Date: \_\_\_\_\_  
 Completion Date: \_\_\_\_\_

Contract Duration: \_\_\_\_\_  
 Project Ref. No.: \_\_\_\_\_  
 Report for Month of: \_\_\_\_\_  
 Name and Location of Project: \_\_\_\_\_  
 Name and Address of Prime Contractor: \_\_\_\_\_

**Respond "Yes" or "No" to the Questions Below:**

Did your firm or an affiliate rent or lease equipment to a DBE? \_\_\_\_\_  
 Did any DBE/SBE utilize employees(or former employees) of your firm or an affiliate? \_\_\_\_\_  
 Did any DBE/SBE subcontract any portion of its work to a non-DBE/SBE since the last report firm? \_\_\_\_\_  
 Has the scope of work or subcontract amount changed for any DBE/SBE since the last report? \_\_\_\_\_

Name of Subcontractor	Project Task	DBE Cert.#	Original Contract Amount	Original Contract +/- Amount C.O.	Payment This Month	Billed This Month	Previous Payments	Total Payments	Pending C.O.'s Amount and Date	Overall Work Completed %	Contract P.O. Submitted
<b>TOTAL</b>			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		

COMMENTS: \_\_\_\_\_  
 \_\_\_\_\_

Prime Contractor Compliance Officer: \_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*By signing this form, I personally and on behalf of the contractor affirm that the information presented in this document is truthful, accurate, complete and not misleading.*

**SEND COMPLETED FORM TO:** Williamsburg Area Transit Authority  
 Attn: DBELO  
 7239 Pocahontas Trail  
 Williamsburg, VA 23185  
 Email: bcreel@gowata.org  
 Fax: 757-220-6238  
 Phone: 757-220-5574



**DBE SUBCONTRACTOR MONTHLY REPORT  
FORM E-2**

**PRIME CONTRACTOR:**

Name of Firm: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

**CONTRACT INFORMATION:**

Report for Month of: \_\_\_\_\_  
 Contract Reference #: \_\_\_\_\_  
 Contract Name: \_\_\_\_\_  
 Date Executed: \_\_\_\_\_

Did you subcontract any portion of your contract with the Prime? \_\_\_\_\_ Is yes, was the subcontractor a CERTIFIED DBE? \_\_\_\_\_

**SUBCONTRACT INFORMATION:**

Services Purchase Order No. Task Order No.	Original Subcontract Amount	TOTAL SPENT ON MATERIALS/SUPPLIES THIS MONTH	Change Order Amount (+/-)	Change Order Date	Current Subcontract Amount	Payments Received This Month	Total Payments Received	% Work Complete

**INVOICES PAST DUE:**

Invoice Date	Reference No.	No. Days Past Due	Amount

**DBE/SBE SUBCONTRACTOR**

Name of Firm: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Email Address: \_\_\_\_\_  
 Certification #: \_\_\_\_\_  
 Signature: \_\_\_\_\_

**COMMENTS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SEND COMPLETED FORM TO:**  
 Williamsburg Area Transit Authority- Budget & Grants Administrator  
 7239 Pocahontas Trail Williamsburg, VA 23185  
 (757) 220-5574  
 Fax (757) 220-6268

*\*Please state if you leased/rented any equipment, or utilized employees of the prime and/or an affiliate firm during this reporting period. Failure to respond will lead to further investigation and possible compliance audits.*



November 20, 2019

Lynn Bailey | Region III Civil Rights Officer  
Federal Transit Administration | U.S. Department of Transportation  
1760 Market Street  
Suite 500  
Philadelphia, PA 19103-4124

Re: Disadvantaged Business Enterprise (DBE) Participation Goal

Dear Ms. Bailey:

Enclosed is Williamsburg Area Transit Authority's (WATA) updated statement of its proposed overall goal for Disadvantaged Business Enterprise (DBE) participation for Federal Fiscal Years 2019, 2020 and 2021. This update addresses the DBE Goal Review Assessment notice dated May 9, 2019 and further guidance provided in the May 2019 presentation. Included is a summary of the methodology used to calculate the proposed DBE goal and the breakdown of estimated participation for the goal. WATA anticipates the overall goal will accrue to be six percent (6%).

WATA participated in two public business outreach events in Norfolk and Newport News. WATA hosted a business community event in the Williamsburg area to discuss the DBE goals and how DBE vendors can do business with WATA. Flyers, copies of the sign in sheets, and feedback notes from the outreach events are attached at the end of the document. The goal was published in the local newspaper, posted on social media and on WATA's website. The link to WATA's website: <http://www.gowata.org/184/Procurement>

Based on feedback from the outreach events, past project delays, upcoming projects, and using the methodology provided in the May 2019 DBE presentation, of the 6% overall goal WATA will strive for, 1.4 percent to be a race-conscious measure and 4.6 percent of be a race-neutral measure. Upon reviewing the May 2019 presentation, the RN/RC Split is adjusted slightly from the original submission. We have reviewed the goal development process and believe it represents a fair assessment of available DBE participation that can be achieved during the triennium.

If you have any additional questions, please contact me at (757) 220-5574 or by email at [bcreel@gowata.org](mailto:bcreel@gowata.org).

Sincerely,

Barbara Creel  
Budget and Grants Administrator  
DBE Liaison Officer

Enclosures  
Cc: Zach Trogdon

## Overall Goals (§26.45)

### Goal Amount

WATA's overall goal for FY 2019-2021 is six (6) percent of the federal financial assistance expended in DOT-assisted contracts. This goal excludes FTA funds to be used for the purchase of transit vehicles.

### Method

The method used to calculate the relative availability of DBEs "base figure" for Step 1 of the process was taken from Example 1 of §26.45, which suggests the use of DBE Directories and Census Bureau Data.

f First, WATA staff determined the number of ready, willing and able DBEs from the State's DBE Directory.

f Second, WATA staff examined lists of other MBE/WBE (Minority Business Enterprise/Women Business Enterprise) organizations in the region to ascertain the availability of additional firms that might be certified as ready, willing and able DBEs if they were alerted to the benefits of the program. In making this determination, WATA considered two scenarios. The first scenario assumed that one third (1/3) of those available DBEs would be eligible or qualify for Virginia's DBE certification. The second scenario considered all the MBEs as available DBEs.

f Third, using the U.S. Census Bureau under America Fact Finder, WATA staff determined the number of businesses available in the state of Virginia market that could provide the goods and services that WATA projected for purchase in FY19-21. Staff realizes that not all DBE's across the State will participate in all purchases in Williamsburg; however, we wanted to be liberal in our assumptions.

f Finally, a base figure for each of the scenarios was derived by dividing the number of DBEs and available DBEs by the number of all regional businesses in the appropriate business sectors. To tailor the data to WATA's contracting program for FY19-21, the relative availability of DBEs was weighted. This calculation method gave more weight to the categories of work in which WATA anticipates expending more money.

### **Step 1: Determining a Base Figure for the Overall Goal**

- a. Link to determine the correct NAICS code: <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>
  - b. Link to determine the number of vendors who can provide the service based in the state of Virginia: <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>
  - c. Link to Virginia DBE search: <http://publicsearch.virginiainteractive.org/MBE/DBE/Search/SearchCodeResult?searchKey=541620&searchType>
- ≡C

The final rule making, Section 26.45 of 49 CFR Part 26, suggested five methodologies and provided examples for recipients to use as guidelines to set overall goals. The WATA transit system opted to use method number one, which was used for the last triennial period. This method allows the use of DBE Directories and Census Bureau Data and makes use of the following formula:

- Ready, willing and able DBEs
- Step One Base Figure = DBE firms ready, willing and able/all firms ready, willing and able (including DBEs and non-DBEs)

WATA staff was careful to address the issue of determining a percentage as accurately as possible, by using the same scope of businesses for both the numerator and the denominator. Staff took into account the Census Bureau's Business Pattern (CBP) data available and the area from which WATA draws contractors and subcontractors. Staff also opted to use Virginia as the boundaries for its local market, based on scope of contracting opportunities.

### **The Numerator**

To determine the number of ready, willing and able DBEs, WATA staff used the Virginia Department of Minority Business Development's (DMBE) DBE Directory [DMBE is the DBE certifying agent for the state of Virginia and WATA utilizes the State's DBE Directory as its own directory]. As suggested in the "Tips for Goal Setting" released by the *Office of Small and Disadvantaged Business Utilization (OSDBU)*, WATA staff consulted relevant data sources to supplement the data with available DBEs for the purpose of goal setting only. In doing so, the following MBE/WBE (Minority Business Enterprise/Women Business Enterprise) directories were carefully examined: *Office of Minority Business Enterprise (MBE) City of Richmond Directory, VA Department of Minority Business Enterprise (Virginia DMBE) Directory, Virginia Minority Supplier Development Council (VMSDC) Directory and the Metropolitan Business League (MBL)*.

The total number of available DBEs became the numerator.

### **The Denominator**

WATA staff derived the denominator from the 2010 Census Bureau's Business Pattern (CBP) database.

Again, the CBP database was sorted to reflect only those fields in which WATA intends to contract during FY19-21. To do this NAICS codes were carefully examined and matched with the categories of work determined to most likely occur in WATA's federal contracting program for FY19-21. The DBE vendor geographic area used was the entire state of Virginia.

### **Weighting**

To tailor the data to WATA's contracting program for FY19-21, the relative availability of DBEs was weighted, giving more weight to the categories of work in which WATA projects expending more money. In performing weighting by category, WATA staff accounted for total projected federal expenditures for FY19-21, and then calculated percentages to be spent per project. These percentages were applied to the ratios obtained when comparing the number of DBEs and available DBEs to the availability of CBP businesses in each of the business sectors.

The results of Step 1 were: **Base Figure 1 844/14708 = 6%**

## **Step 2: Adjusting the Base Figure**

### **Justification**

In accordance with the guidance on DBE goal setting, adjustment to the Step 1 Base Figure was considered, but not required, in order to make it as precise as possible. To determine whether an adjustment is needed or not, WATA reviewed the projects from the last triennial goal calculations and resolved that many of the projects from the previous triennial goal were not completed; therefore, they carry forward into this triennial DBE goal. However, a major construction project is expected to be implemented within the next year or two. The current projects included in this year's projections reduced our DBE Goal by 4 percent, as vendors have qualified for DBE certification and additional federal funds are anticipated to be utilized.

This led WATA to the assumption that our previous anticipated rate of DBE participation was over estimated due to projects not starting or being completed in FY16-18. The median between FY 16 thru FY 18 was 3%. Adding this to the base figure of 6%, then dividing this by 2 equals 4.5%. In one year during the last triennial cycle, WATA was able to exceed the goal set in that triennial period due to a construction project for bus stop improvements. Considering most of the construction projects listed in the prior DBE goal were not implemented or procured, we looked at future participation to only be the number of ready/willing/able vendors who could perform the tasks associated with our projects. It was determined to not adjust the base rate.

To provide public participation in the goal-setting process, WATA worked in concert with the Virginia Department of Small Business Supplier Diversity (SBSD) to solicit and receive public comments. Historically, DBE vendors who submitted proposals on solicitations failed to respond responsibly. To mitigate this issue WATA has coordinated with the SBSBD to assist DBE vendors to submit proposals and bids as well as assist vendors become DBE certified. With this network to assist small business vendors WATA believes that reaching this goal in the next three years is feasible.

Based on feedback from the outreach events and anticipated solicitations for the next three years, WATA believes that allocating a portion of the established goal should be by race conscious means. Vendors who attended the outreach events expressed they may not have the resources to bid as a prime contractor, however, could possibly sub-contract for goods and/or services under a prime. Solicitations for construction projects are anticipated to be released within the next three years and there are several ready willing and able DBE vendors under these related NACIS codes that could potentially sub-contract with a WATA prime contractor.

**Base Figure(s) Adjustment**

WATA staff did not adjust the base figure that represented WATA’s DBE goal. WATA decided to allocate a portion of the base figure to race-conscious, which was zero in the last triennial goal period. The race-neutral rate of 4.8 percent and race-conscious rate of 1.2 percent was derived by dividing the amount of federal dollars for upcoming projects with the percentage of DBE ready and willing vendors for each of our upcoming projects.

The final step was to determine the number that would represent the new goal. WATA will use the weighed base figure as the goal.

Weighted	Base	Figure	6%
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The types of projects for FY19-21 are similar to the types of projects led in FY16 and a portion of FY18, however, it is WATA’s expectation to begin the construction for a new facility, which leads us to believe obtaining more participation through sub-contractors is a realistic goal. This also leads WATA to the assumption that a portion of the 6% of DBE participation should be allocated to race conscious. DBE capacity in projects in FY19-21 projects once implemented; staff proposes a total DBE goal of 6 percent, the base figure and not adjust it.

**Breakout of Estimated Race-Neutral and Race-Conscious Participation**

WATA will meet the maximum feasible portion of its overall goal by using race-neutral and race-conscious means of facilitating DBE participation and will employ all appropriate means described in section 26.51(b) to encourage DBE participation.

WATA estimates that in meeting the overall goal of 6 percent, we will obtain 4.6 percent participation employing race-neutral means and 1.4 percent by race conscious means. We reviewed the past DBE performance from the last three years, to analyze a race-neutral vs. race-conscious split the FY 2019-2021 DBE goal. Based on RN attainment in the last triennial 7.7% divided by the 10% overall goal using RN means would equal 77%. The next step in the breakout is .77 times the newly developed goal of 6% equaling 4.6% for the new RN Goal, therefore applying a 1.4 percent towards race conscious.

<b>RN/RC Split</b>	
<b>Step 1</b>	
Average RN Attainment FY16-18	7.7%
/Overall Goal %	10%
Relative RN Attainment	77%
<b>Step 2</b>	
Relative RN Attainment	77%
x Proposed Overall Goal %	6%
<b>Step 3</b>	
RC Spit	4.6%
RN	1.4%

To ensure that WATA's DBE program will be narrowly tailored to overcome the effects of discrimination, the use of contract goals will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see section 26.51(f)) and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

WATA will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

### **Recommendation**

The following is a summary of the basis of WATA's estimated breakout of race-neutral DBE participation in accordance with §26.45, WATA staff recommend. WATA reviewed the estimated breakout of race-neutral participation as needed to reflect actual DBE participation (§ 26.51 (f)) and will track and report race-neutral participation. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through prime contract a DBE obtains through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- DBE participation on a prime contract exceeding a contract goal; and
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

WATA estimates that in meeting the overall goal of 6 percent, it will obtain 4.6 percent race-neutral participation and 1.4 percent through race-conscious measures.

WATA utilizes the Virginia DMBE database and researches available DBE's specific to each Request for Proposals (RFPs) released. WATA then includes these vendors on the RFP distribution list.

Per the rule for submission of DBE goals and goal-setting methodology, WATA will continue to set its overall goal on a triennial basis. WATA will continue to review the DBE opportunities semi-annually to determine if any changes to the goal would be needed.

WATA uses the following means to increase DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small businesses' participation.

2. Ensuring availability of the State's DBE directory (WATA's DBE Directory) both internally and to interested parties by advertising to any DBEs listed in the State's list for all RFPs and IFBs.
3. WATA provides a link on the website to the Virginia Department of Rail and Public Transportation (VDRPT). The VDRPT has developed a presentation that outlines how to do business in Virginia; to include information on how to register as a SWAM and/or DBE vendor.
4. WATA will continue to consult with community organizations, chamber of commerce, small businesses, women's groups and minority groups to get their feedback. These groups can act as a resource to help determine the availability of DBEs that meet WATA's service needs.

## **Best Practices Strategies**

### Ensure the DBE Goal Setting Process is a Forethought not an Afterthought

- Ensure DBE goal setting process is part of the construction procurement process check list
- Obtain preliminary estimate and items of work areas as soon as possible
- Identify necessary reference documents related to meeting the DBE goal or demonstration of good faith efforts to meet the DBE goal
- Review all aspects of work and potential NACIS codes aligned with project and identify DBE's ready, willing, and able to perform identified areas of work

### Proposers Information Day

- Schedule meeting with proposers to discuss project scope, status of NEPA study, procurement schedule, and DBE Program
- Discuss DBE Goals
- Discuss Design & Construction
- Discuss Good Faith Effort Monitoring
- Discus DBE Program Requirements

### Monitoring DBE Participation

- Monitor good faith efforts documentation quarterly to determine progress
- Total contract value
- DBE goal and DBE goal amount
- DBE subcontracts and subcontract value
- Payments made to DBE firms quarterly

**FY19-21 DBE Goal Setting: Data & Calculations**

**Step 1 - Determine the weight of each type of work by NAICS Code:**

\* Enter all the FTA-assisted projects below. Project amounts should be assigned relevant NAICS Code(s).

	<b>NAICS Code</b>	<b>Project</b>	<b>Amount of DOT funds on project:</b>	<b>% of total DOT funds (weight)</b>
<b>1</b>	236220	Construction - Facilities	\$2,912,000.00	0.6417
<b>2</b>	541330	A&E/NEPA/Survey	\$200,000.00	0.0441
<b>3</b>	237990	Project Management	\$200,000.00	0.0441
<b>4</b>	811213	Vehicle Maintenance	\$720,000.00	0.1587
<b>5</b>	561720	Bus Shelter Cleaning	\$36,000.00	0.0079
<b>6</b>	541110	Legal Services	\$30,000.00	0.0066
<b>7</b>	237310	Construction Management	\$360,000.00	0.0793
<b>8</b>	541614	Consulting Services	\$80,000.00	0.0176
	<b>Total FTA-Assisted Contract Funds</b>		<b>\$4,538,000.00</b>	<b>1.0000</b>

**Step 2 - Determine the relative availability of DBE's by NAICS Code:**

\* Use DBE Directory, census data and/or a bidders list to enter the number of available DBE firms and the number of available firms.

	<b>NAICS Code</b>	<b>Project</b>	<b>Number of DBEs available to perform this work</b>	<b>Number of all firms available (including DBEs)</b>	<b>Relative Availability</b>	
<b>1</b>	236220	Construction - Facilities	206	3020	0.0682	VA/NC/M D
<b>2</b>	541330	A&E/NEPA/Survey	285	5480	0.0520	VA/NC/M D
<b>3</b>	237990	Project Management	91	1238	0.0735	VA/NC/M D
<b>4</b>	811213	Vehicle Maintenance	4	1817	0.0022	USA

<b>5</b>	561720	Bus Shelter Cleaning	68	1392	0.0489	VA VA/NC/M D
<b>6</b>	541110	Legal Services	5	284	0.0176	
<b>7</b>	237310	Construction Management	78	834	0.0935	
<b>8</b>	541614	Consulting Services	107	643	0.1664	
<b>Combined Totals</b>			<b>844</b>	<b>14708</b>	<b>0.0574</b>	<b>Overall availability of DBEs</b>

**Step 3 - (Weight) x (Availability) = Weighted Base Figure**

	NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
<b>1)</b>	236220	Construction - Facilities	0.6416 9	x	0.06821	0.0438
<b>2</b>	541330	A&E/NEPA/Survey	0.0440 7	x	0.05201	0.0023
<b>3</b>	237990	Project Management	0.0440 7	x	0.07351	0.0032
<b>4</b>	811213	Vehicle Maintenance	0.1586 6	x	0.00220	0.0003
<b>5</b>	561720	Bus Shelter Cleaning	0.0079 3	x	0.04885	0.0004
<b>6</b>	541110	Legal Services	0.0066 1	x	0.01761	0.0001
<b>7</b>	237310	Construction Management	0.0793 3	x	0.09353	0.0074
<b>8</b>	541614	Consulting Services	0.0176 3	x	0.16641	0.0029
<b>Total</b>						0.0605
Expressed as a % (*100)						6.05%
<b>Rounded, Weighted Base Figure:</b>						<b>6%</b>



The VA Department of Small Business & Supplier Diversity  
presents:

# DOING BUSINESS WITH TRANSIT AGENCIES

March 19, 2018 | 10 a.m. to 12 p.m.  
2ND FLOOR BOARDROOM  
509 EAST 18<sup>th</sup> Street | Norfolk, VA 23504

**NO FEE. RSVP REQUIRED.**

Please visit [www.sbsd.virginia.gov](http://www.sbsd.virginia.gov) to register.

**QUESTIONS?** Please contact Nina Britton at [Nina.britton@sbsd.virginia.gov](mailto:Nina.britton@sbsd.virginia.gov).





## **Feedback – Public Outreach**

### **March 2018 DBE event at HRT in Norfolk**

DBE vendors at this event commented about wanting potential companies they may work with to understand they were viable, responsible options for contracts big and small. They wanted to be looked at like other vendors, and provided with feedback on their work before, during and after contracts. Matter of fact, the need for better communications with companies hiring DBE vendors seemed to be overall theme from this group of DBE vendors. Tasked with navigating world of requisitions and forms, some asked for more support in completing all aspects of contracts, not just for DBE vendors, but for all smaller businesses. Most of the DBE vendor proposals were unresponsive to solicitations and SBSB offered to assist these vendors to prepare responsive bids and proposals.

While they appreciated outreach efforts, some asked for more targeted workshops and what kind of support/help was available for those going after large contracts for first time or competing in bid process for first time. The group provided a wide range of services, and cautioned companies not to just look for DBE vendors for services like housekeeping, grounds work, sewage, cleaning vehicles, landscaping, etc. when they also provide printing, engineering, site planning, legal and other services.

In sum, DBE vendors really wanted to be seen and dealt with as individuals and not a monolith with more feedback and communications as well as not just looked at for certain jobs and services.



# **BUSINESS COMMUNITY OUTREACH SESSION**

**DATE:** Monday May 7, 2018

**TIME:** 10:00 am to 11:30 am

**LOCATION:** Quarterpath Recreation Center  
202 Quarterphath Road  
Williamsburg, VA 23185



Learn more about Williamsburg Area Transit Authority's contracting opportunities through a discussion of the agency's proposed Disadvantaged Business Enterprise (DBE) utilization for Fiscal Years 2017-2019. For more information, contact Barbara Creel, Budget & Grants Manager, at [bcreel@goWATA.org](mailto:bcreel@goWATA.org) or call 757-220-5574.



## BUSINESS COMMUNITY OUTREACH

### DISADVANTAGE BUSINESS ENTERPRISE (DBE) GOAL

May 7, 2018 10:00 AM – 11:30 AM

### AGENDA

- Welcome
- Introductions
- Virginia Department of Small Business and Supplier Diversity (SBSD)
- Doing Business with WATA – DBE
- Questions - Feedback



Business Community Outreach Session Sign-In

DATE: 5/7/18

Name	Business & Job Title	Email	Phone
Dana Staley	HHSBDC Education Program Coord	staleyd@hcc.edu	757-865-3128
JAVAN CRAIN	LIBERTY EAGLE INTERNATIONAL	JAVAN.CRAIN@ LIBERTYEAGLEINTERNATIONAL.com	757-392-6491
Nina Britton	SOSD	nina.britton@sbsd.virginia	757-287-1197
Natalie Robertson, PhD	360 VIRTUAL ASSISTANCE Executive Creative Director	sales@360virtual assistance.com	757 927 8006
Debra Kemelek	Coffee News Publisher	debra@yourcoffee news.com	(757) 903-5885
NAYMOND SUNKINS	VDOT DBE ADVOCATE	naymond.sunkins@vdot	757 409 1521
Beth Shumaker	Taylorred Printing Sales	beth@taylorredprinting.com	804-840-7748
Link Shaw	Director of Marketing - CDIS	lshaw@cdiscorp.com	757-696-0002
Luca Bore	DPC Eng & Prof Service	dpceng.prof services	804 543 0462

# WATA

Williamsburg Area Transit Authority



## *BUSINESS COMMUNITY OUTREACH*

*May 7, 2018 - Quarterpath Recreation Center  
10:00 am to 11:30 pm*



# DOING BUSINESS WITH WATA

WATA is a political subdivision of the Commonwealth of Virginia that provides sustainable, accessible, community-focused transportation bus, trolley and paratransit options. WATA is innovative, environmentally responsible and the authority promotes the vitality of our region.

This regional transit authority provides services in:

- James City County
- City of Williamsburg
- York County
- Section of Newport News
- Section of Surry County
- College of William and Mary

WATA builds partnerships to deliver transportation solutions to meet the evolving mobility needs of the Williamsburg Area.

# WHAT ARE WATA PROCUREMENT AND CONTRACT NEEDS?

Full range of goods, supplies and services. Examples include, but aren't limited to:

- Professional Services Consultants: Engineers, Designers, Architect and other.
- Construction contracting for bus shelters
- Printing services – brochures, rack cards, postcards
- Procurement of operational goods and services, anywhere from office supplies to buses.
- Marketing, brand materials – logo merchandise for events, job fairs, public transportation initiatives

# 2017-2018 ACTIVE CONTRACTS

- Vehicle maintenance services
- Bus shelter cleaning services
- Interior bus cleaning services
- Bus stop sign and pole installations
- Consulting services
- Engineering and Design – Bus Shelters
- Legal services

# FY 2019-2021 PROCUREMENT OPPORTUNITIES

- Vehicle maintenance services
- Bus shelter cleaning services
- Interior bus cleaning
- Bus stop sign and pole installation
- Architectural and engineering services
- Printing brochures, rack cards, etc.
- Marketing, brand and logo items
- Construction
- Construction Management
- Legal services
- Consulting services

# DEVELOPMENT OF DBE GOAL FISCAL YEARS 2019-2021

- Preliminary goal for this three period is 6%
  - Review the number of ready, willing and able DBEs divided all firms ready willing and able
  - Review past DBE participation

# PROCUREMENT THRESHOLDS

- Micro Purchase- Under \$2,500
- Small Purchase- \$2,500 to \$50,000
- Request for Proposals (RFP)/Invitation for Bid (IFB)

# PROCUREMENT AND CONTRACTING METHODS

## Invitation for Bids (IFB)

- Conduct technical evaluations of the proposals received and to determine the advantageous offer
- Awards are made to responsible proposers whose proposal is most advantageous to WATA with price and other factors considered

## Negotiated Procurements (RFP)

- RFP is used for contracting whereby WATA and potential contractor negotiate on both price and technical requirements after submission of proposals
- Award is made to the contractor whose final proposal is most advantageous to WATA

# SOLICITATIONS

WATA IFBs and RFPs are advertised on James City County's Procurement web site. The basic details of the solicitations can be viewed on the site at the following link:

<https://www.jamescitycountyva.gov/467/Bids-Requests-For-Bids-Requests-For-Proposals>

# QUESTIONS AND FEEDBACK

## Doing Business

- What challenges do you have?
- What information would help you?

## Feedback

We'd like to hear from you about today's seminar.

- Email your feedback on WATA seminar to [bcreel@gowata.org](mailto:bcreel@gowata.org)

## **Feedback – Public Outreach**

### **DBE Event May 2018**

This DBE event was smaller and focused on our service area in Williamsburg and surrounding counties. Still, a number of vendor echoed sentiments expressed by DBE vendors at Norfolk seminar in regards to better communication through bid/application process as well as assistance in navigating paperwork. They also asked for communications after contract with information on how they could improve their pitches for future contracts. Those new to the process also asked what resources were available to help them fill out and complete all needed, required forms for contracts. SBSB offered their services to help DBE vendors prepare better.

Some felt they had good grasp of process only to not be selected for contracts or not even considered because of filing errors. Details on the errors and how to correct them were what these DBE vendors said they wanted and needed to be successful and competitive in market with larger vendors who employ full staffs that work on getting contracts.

They also expressed wanting to be considered for contracts other than service ones – networking and IT, printing services, recruiting services, legal representation as well as engineering and environmental studies.

A takeaway for those looking to hire DBE vendors is to look at building relationships with DBE vendors by keeping local database on potential DBE vendors and using them for work that may not require contract process under certain dollar amounts. Those looking for DBE vendors are also able to provide guidance with better communication and feedback throughout the contract process or even after. One vendor even suggested businesses send all who applied for contract response on whether they were selected with small note on why or why not. It would help them grow as businesses and those seeking vendors hone communication skills with all vendors.

Note: Based on feedback from the outreach events and anticipated solicitations for the next three years, WATA believes that allocating a portion of the established goal should be by race conscious means. Vendors who attended expressed they may not have the resources to bid as a prime contractor, however, could be hired by a prime to subcontract on a WATA contract. Solicitations for construction projects are anticipated to be released within the next three years and there are several ready willing and able DBE vendors under these related NACIS codes that could potentially sub-contract with a WATA prime contractor.



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

REGION 3  
Delaware, Maryland,  
Pennsylvania, Virginia,  
West Virginia, and the  
District of Columbia

1835 Market Street  
Suite 1910  
Philadelphia, PA 19103-2968

November 26, 2019

Ms. Barbara Creel, Administrator/DBELO  
Budgets & Grants Department  
Williamsburg Area Transit Authority (WATA)  
7239 Pocahontas Trail  
Williamsburg, VA 23185

*Re: FFY 2019-2021 Triennial DBE Goal Submission (Revision), Recipient ID: 5719*

Dear Ms. Creel,

The Federal Transit Administration (FTA) has received and reviewed the Williamsburg Area Transit Authority's *revised* Disadvantaged Business Enterprise (DBE) triennial goal setting methodology received on November 22, 2019. This DBE goal will be effective October 1, 2018 through September 30, 2021. This submission is required by the Department of Transportation DBE regulations found at 49 C.F.R. Part 26. Your proposed overall goal is 6.0% and is proposed to be achieved using race-neutral and race-conscious measures, 4.6% and 1.4%, respectively.

Our review considered all elements required by the Department of Transportation regulations found at 49 C.F.R. § 26.45, including the descriptions of the evidence and methods used to calculate, adjust and establish the overall goal. While your goal status is now *Concur*, you are expected to make a good faith effort to meet your goal each year during the three-year period for which it is in effect. You must document your DBE attainment on FTA-funded contracts and purchases by submitting a semi-annual report via TrAMS on June 1 and December 1 of each year. If you fall short of your overall DBE goal in any given year, you must develop a shortfall analysis and corrective action plan following the guidance in 49 C.F.R. § 26.47(c). Transit vehicles must be purchased from a DBE-certified transit vehicle manufacturer (TVM) and reported to FTA within 30 days of purchase. The current list of DBE-certified TVMs and the online reporting tool can be found on the DBE portion of FTA's website at [www.transit.dot.gov](http://www.transit.dot.gov). Finally, any mid-cycle adjustment to your goal to reflect changed circumstances must be submitted to FTA.

FTA is committed to providing technical assistance to help to implement your DBE program consistent with the regulations and guidance. We are issuing this letter electronically only and it is attached to your profile in TrAMS. Please do not hesitate to contact me directly at 215-656-7121 or via email ([Lynn.Bailey@dot.gov](mailto:Lynn.Bailey@dot.gov)) if you have any questions.

Sincerely,

Lynn A. Bailey  
Civil Rights Officer, Region 3

cc: TrAMS Profile #5719

### Sample Bid Specification

The following is a sample bid specification to use when establishing a contract goal:

*The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Williamsburg Area Transit Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE.*

*A DBE contract goal of \_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.*

*The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4) and (5) above if the contract goal is not met, evidence of good faith efforts*



**Form A**  
**Schedule of DBE Participation**

**Project Title:** \_\_\_\_\_

**Project Number:** \_\_\_\_\_

DBE Firm Name & Address	DBE Certification #	Work / Supplies Committed	Estimated Start Date	Percent of Total Project	Dollar Value of Subcontracts
1					
2					
3					
4					
5					
<b>Totals (Dollar Value; Percent of Total Project)</b>					

*The undersigned, as a duly authorized representative of the prime contractor, agrees to enter into a formal subcontract agreement with above named DBE firm(s) within thirty (30) days of a contract award between the prime contractor and WATA.*

**Prime Contractor:** \_\_\_\_\_

**Contact Person/ Title:** \_\_\_\_\_

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

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

**Phone:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Questions or completed form can be sent to:**

**Barbara Creel, DBELO**  
**7239 Pocahontas Trail**  
**Williamsburg, VA 23185**

**Email: [bcreel@gowata.org](mailto:bcreel@gowata.org)**  
**Phone: 757-220-5574**  
**Fax: 757-220-6238**



**Form B**

**Intent to Perform as a Subcontractor**

Project Title: \_\_\_\_\_

Project Number: \_\_\_\_\_

Is Intended Subcontractor a Certified DBE? \_\_\_\_\_ DBE Certification #: \_\_\_\_\_

**Statement of Intent:**

1. The undersigned certified DBE intends to enter into a formal agreement with (*Name of prime offeror/bidder*) to perform work on this project
2. The undersigned certified DBE is prepared to perform the following work (specify particular work to be performed)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. At the following price: \_\_\_\_\_
4. Of the above price, \$ \_\_\_\_\_ ( \_\_\_\_\_ %) will be further sublet and/or awarded to non-DBE contractors or suppliers.

**The DBE status of the undersigned is confirmed on the attached DBE identification.** (DBE shall provide documentation of its DBE status.)

DBE Name: \_\_\_\_\_

DBE Firm: \_\_\_\_\_

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

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**DBE GOOD FAITH EFFORT DOCUMENTATION**

**All information submitted on this form is subject to review/audit by the WATA**

Date Submitted: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

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

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

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

\*\*\*\*\*

I certify that the information contained in this good faith effort documentation form is true and correct to the best of my knowledge. I further understand that any willful falsification, fraudulent statement or misrepresentation will result in appropriate sanctions which may involve debarment and/or prosecution under applicable State and Federal laws.

Authorized Representative Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DBE GOOD FAITH EFFORT DOCUMENTATION**

Project Title:		Description of Work or Material:		
DBE Firm Name:		DBE Certification #: (Virginia):		
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount
1.				\$0.00
2.				\$0.00
3.				\$0.00
Comments:				
Project Title:		Description of Work or Material:		
DBE Firm Name:		DBE Certification #: (Virginia)		
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount
1.				\$0.00
2.				\$0.00
3.				\$0.00
Comments:				

**EXAMPLES OF GOOD FAITH EFFORT DOCUMENTATION**

The following is a list of types of actions a bidder should take when documenting good faith efforts. This list is not intended to be exclusive or exhaustive, nor are all the actions mandatory. Other factors or types of efforts may be relevant in appropriate cases.

**SOLICITATION/ADVERTISEMENT EFFORTS** – should include your efforts to solicit quotes, through all reasonable and available means, the interest of all certified firms who have the capability to perform the work of the contract. The contractor should ensure that the requests are made within sufficient time to allow DBE firms to respond. The contractor should take the initiative to contact firms which have indicated an interest in participating as a subcontractor/supplier.

**NEGOTIATION EFFORTS** – should include your efforts to make a portion of the project work available consistent with the availability and capabilities of our DBE firms in order to facilitate DBE participation. You are encouraged to break out contract work items into smaller economically feasible subcontracts to ensure DBE participation. As a part of your negotiation you should make plans/specifications available to the DBE firms which have shown an interest in participating. When negotiating with DBE firms a contractor should use good business judgement by considering price and capability, as well as, project goals. A contractor is not expected to accept a price that is not reasonable and is excessive. Comparison figures should accompany your good faith effort submittal which supports the price differential.

**ASSISTANCE EFFORTS** – should include your efforts to assist DBE firms in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other project related assistance. Contractors are encouraged to assist firms with independently securing/obtaining these resources. A contractor may not provide these resources to the DBE firm. The level of assistance should be limited to referral sources, introductions, and making initial contacts with industry representatives on the DBE firm’s behalf.

**ADDITIONAL EFFORTS** – could include any additional efforts to utilize the services of minority/women organizations, groups; local, state and federal business offices which provides assistance in the recruitment and placement of DBE firms. Utilizing the services offered by WATA’s DBE supportive services consultant for assistance with advertisement and recruitment efforts. Contractors are encouraged to undertake and document any other efforts taken in their attempt to fulfill the project goal.



### Prompt Payment Verification - Form D

1. The Prime Contractor shall, within ten (10) days of receiving payment from WATA, pay all amounts properly due to its Subcontractors and shall cause its Subcontractors of every tier to pay their Subcontractors within an equivalent period after their receipt of payment. The Contractor shall promptly notify WATA of any circumstances in which payment is not so made. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of WATA. Failure to comply with the requirements of this paragraph may be deemed a material breach of this Contract.
  
2. As required by CFR 49 Part 26.29, any retainage held at the completion of a Subcontractor's work shall be returned to the Subcontractor within thirty (30) days of the completion and acceptance of the Subcontractor's work. Failure to comply with the requirements of this paragraph may be deemed a material breach of this Contract.

### Payments to Subcontractors from Contractor

Please list <u>all</u> payments made to <u>all</u> subcontractors during the preceding month on the following project:				
Project Name and Number	Name of Subcontractor	Amount Paid	Date Paid	Final Payment

I declare that the statements made in this document are true and complete to the best of my knowledge:

---

Contractor Name

Authorized Signature

Date

This report must be submitted no later than the 10<sup>th</sup> of each month, to reflect all payments to subcontractors for the preceding month. Please e-mail to: [bcreel@gowata.org](mailto:bcreel@gowata.org)

Please contact Barbara Creel with any questions: 757-220-5574

## **APPENDIX F**

### **SURPLUS PROPERTY & DISPOSAL POLICY**

It is the intent of this section of the Authority's Procurement Policy, entitled **SURPLUS PROPERTY & DISPOSAL**, to maximize the use of Authority assets and to create an audit trail for the disposal of assets consistent with good accounting procedures.. All staff shall be responsible for the maintenance, care, custody, and control of Authority property assigned to them.

Personal property, as outlined in this policy, shall include any excess, obsolete, salvageable, or non-salvageable, Capital or Non-Capital property that is sold, replaced through the budget process, transferred, or loaned to another agency , auctioned, discarded, scrapped, traded in, or otherwise removed from service by any other means of disposal. Disposal of surplus property as outlined in this policy does not apply to real estate.

This policy also contains requirements for the disposal of assets that are purchased using funds awarded by the Federal Transit Administration (FTA).

#### **A. Authority**

1. Unless otherwise directed by the Board of Directors, the Executive Director, or designee, shall have the sole authority to dispose of surplus property using the method of disposal deemed to be most cost effective and/or to provide the greatest return to the Authority.
2. Disposal of surplus property shall require the following approvals:
  - a) Property valued at less than \$5,000 – Executive Director approval
  - b) Property valued at more than \$5,000 – Board of Directors' approval
3. The Executive Director or designee shall maintain documentation and reports of final disposition and provide upon request.

#### **B. Reporting of Surplus Property**

Surplus Property Disposal Forms shall be submitted to the Executive Director or designee for the disposition of any surplus property. Approval of disposal will be obtained according to the value of the surplus property. It is not required to submit a Form for the disposition of salvageable or non-salvageable equipment, materials, and/or supplies purchased that are considered to be of no value or nominal value.

#### **C. Methods of Disposal**

The Executive Director may use any of the following methods to dispose of surplus property:

1. Public auction to be held utilizing an approved on-line auction site.
2. Sale by utilizing:
  - a) Formal Sealed Bid - The property is sold using the formal sealed bid process for competitive bids. Surplus property sold using this method will be advertised in local print media, transit industry or public sector publications as appropriate, and on the Authority website.

- b) Request for Quotation - The property is sold using quotations as governed by small dollar procedures. In the event that no offer is received in response to methods (1) and (2), the Executive Director or designee may accept any subsequent offer to purchase said surplus property deemed to be in the Authority's best interest.
- 3. Transfer of surplus property, whether capital or non-capital assets, may be accomplished as follows:
  - a) Transfer of property to another public entity prior to placing an asset on the open market for sale, the Executive Director may transfer it to another public entity for a negotiated price or, with written justification, at no cost. The transfer of property to another public entity will be the sole responsibility of the Executive Director.
  - b) Surplus property may be donated to charitable and other non-Authority activities where appropriate. The Executive Director shall evaluate the request for donation and first determine whether the requested item is suitable in terms of availability of the requested item, serviceability, compatibility to the intended use and potential benefits to the Authority, including public relations and goodwill.
- 4. Trade-in

WATA shall not use trade-in allowances to offset the cost of a new or replacement asset unless stated in the procurement process; however, the Executive Director may negotiate a trade-in allowance. In the event a trade-in is authorized by the Executive Director, the trade-in allowance will be credited to WATA's appropriate fund.
- 5. Donations

At the discretion of the Executive Director or designee, any surplus property which remains unsold may be donated to any local government, agency or school division, non-profit or historical organization. Surplus property may be donated directly to the organization without using other methods of disposal, if deemed in the best interest of the Authority.
- 6. Loan

The temporary use of a surplus asset may be with written permission by the Executive Director or designee, to another public entity or non-profit organization.
- 7. Cannibalization

At the discretion of the Executive Director or designee, obsolete, worn-out, inactive, or uneconomical operating equipment may be used for parts for the repair of other equipment.
- 8. Scrap

Should no additional offers for purchase be received or requests made for donation of surplus property, the Executive Director may declare the asset void of any value to the Authority and direct disposal of the property as scrap at an appropriate landfill or reclamation facility.

#### **D. Disposal of Federally Assisted Property**

Requirements governing disposal of assets purchased with federal funds are contained in FTA

Circular 5010.1E. The Authority is able to use its own procedures under this policy to dispose of surplus assets; however the following additional requirements apply to the disposition of assets purchased using federal funds:

1. FTA retains financial interest in equipment with a unit value exceeding \$5,000, and supplies with an aggregate value exceeding \$5,000, even if the useful life has been met;
2. Federally assisted property to be replaced must have achieved at least the minimum useful life;
3. Any disposition of federally assisted property before the end of its useful life requires prior FTA approval and FTA is entitled to its share of the remaining federal interest;
4. If the recipient receives insurance proceeds when federally assisted property has been lost or damaged, the proceeds may be used to replace the asset or return to FTA an amount equal to the remaining federal interest in the asset;
5. After the minimum useful life of federally assisted property is reached:
  - a. the property may be used by WATA for other transit projects or programs;
  - b. if the property has a Fair Market Value above \$5,000, the property may be retained or sold, and the FTA reimbursed the appropriate share;
  - c. if the property has a Fair Market Value of \$5,000 or less, the property may be retained or sold with no obligation to reimburse FTA.

The relevant FTA Circular contains more detail about the requirements for disposing of federally assisted property.

#### **E. Damaged Surplus Property – Subject of Insurance Claim**

When damage to an asset is the subject of an insurance claim, the Executive Director will coordinate the disposal of the asset.

#### **F. Proceeds from Surplus Property Disposition**

Proceeds from the disposition of surplus property shall be returned to the appropriate Authority fund to help defray other operating or capital expenditures.

#### **G. Purchase of Surplus Property by Authority Employees**

No Authority employee, whether permanent or temporary, shall convert to personal use any surplus property, with or without salvage value. No Authority employee, nor any member of their immediate family, may purchase surplus property. Surplus property may not be purchased by an Authority employee through a third party.

## Surplus Property Disposal Form

Date: \_\_\_\_\_

- A. The property detailed below is excess, obsolete, unusable, or extensively damaged and requested for disposal according to Authority policy.

Description	Quantity	Identifier (serial number, etc.)

- B. The surplus property is valued at:

Greater than \$5,000 – requires approval by Board of Directors

Less than \$5,000 – requires approval by Executive Director

Please explain valuation:

- C. The method of disposal is (circle one):

Public Auction

Donation

Sale by Sealed Bid

Cannibalization

Transfer

Scrap

\_\_\_\_\_  
Signature of Requester

\_\_\_\_\_  
Executive Director

**APPENDIX G**  
**ASSET MANAGEMENT POLICY**

The purpose of this policy is to provide a guide to the recordation and reporting of the acquisition, retirement, and disposal of fixed assets for the Williamsburg Area Transit Authority (WATA). The policy addresses how staff will work with James City County (the "County"), WATA's fiscal agent, to carry out the above purposes.

**Policy:**

- A. Fixed assets have a minimum cost to WATA of \$5,000, unless it is land, licensed vehicle, or acquired through donation. Land and licensed vehicle purchases will be recorded using the purchase amount, whereas a donation will be recorded using the Fair Market Value at time of acquisition. Every two (2) years the fixed asset inventory will be physically checked by WATA's fiscal agent.
- B. Fixed assets will be accounted for in the month in which they are acquired and will be recorded in the financial management system of the County. Fixed assets will be reconciled to the County's General Ledger on an annual basis by the end of the fiscal year. All current fixed assets as of the date of reconciliation will be recognized. The annual reconciliation of fixed assets shall be reviewed and approved by WATA's Executive Director.
- C. A log of potential fixed assets approved for requisition will be maintained by the Budget and Grants Administrator, or designee. This log will be used to assist in the maintenance of fixed asset records. The log will be maintained on a real-time basis and is used in the annual reconciliation process carried out by the County.
- D. Depreciation of fixed assets will be entered in the County's General Ledger on an annual basis by the close of the fiscal year. Acquired assets are stated at cost and depreciated on a straight-line basis over their estimated useful life. Useful life figures for asset classes are included in the table on Page 3.
- E. The Executive Director is responsible for approving the capital contribution ratios for each asset purchase. The capital contribution ratio expresses the amount of resources from each of WATA's funding sources (federal, state and local) that were used to purchase the asset. This figure is important in case the asset is ever disposed of or removed from service and it is determined that a portion of the cost of purchase needs to be returned to the funding agency.
- F. Disposal of fixed assets is addressed in WATA's Surplus Property and Disposal Policy. The disposal of assets purchased using federal funds is addressed in said Policy, as well as FTA Circular 5010.1E.

**Responsibility:**

- A. Maintenance of fixed asset documentation is the responsibility of the County or its designee. At least one individual in James City County Financial and Management Services will be cross-trained in order to perform fixed asset entries and reconciliations.

- B. The party responsible for fixed asset maintenance is responsible for seeking input and approval from WATA's Budget and Grants Administrator to determine the federal, state, and local funding actually utilized for each fixed asset acquisition.

<b>ASSET</b>	<b>SUBTYPE</b>	<b>YEARS</b>
<b>Buildings</b>		
Real Estate/Facilities		40
Temporary	T-buildings- portable	25
HVAC Systems	Heating, Cooling, Ventilation	20
Electrical/Plumbing		30
Roofing (structural)		20
Improvements	Windows, Doors, Cabinetry	20
Alarm System		10
<b>Improvements</b>		
Fencing		20
Radio Towers		20
Land Improvements	Parking, Lighting	20
Landscaping		10
<b>Infrastructure</b>		
Improvements	Sidewalks, Concrete Pads, Walls	20
Bus Shelters		10
<b>Equipment</b>		
Audio Visual Equipment		10
Communications	Radios, Phones	10
Office Furniture	Desks, Tables, Chairs	10
Fare Boxes		10
Heavy Equipment	Garage Equipment	10
Computer Equipment	Servers	4
Office Equipment	Copiers	6
Computer Software		5
Cellular Devices		3
<b>Vehicles</b>		
Cars		3
Light Trucks/SUV		4
Heavy Trucks		6
Trailers		6
<b>Buses and Trolleys (years/miles):</b>		
30' Heavy Duty Buses		10/350,000
35' – 40' Heavy Duty Buses		12/500,000
Medium Duty Trolley Buses		7/200,000
Heavy Duty Trolley Bus		10/300,000
Light Duty Body on Chassis Bus		5/350,000
Medium Duty Body on Chassis Bus		7/500,000



## **APPENDIX H SAMPLE CONTRACT**

*Note: This is a basic template of a contract that can be used as needed. Not all goods or services purchased will need to have a formal contract, but one will be used when needed to make sure that all terms and conditions are clear and agreed to by all parties. For larger procurements, especially construction, there may be larger and more complex contract documents that will be more appropriate for such projects.*

Williamsburg Area Transit Authority  
Contract  
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 Authority is undertaking certain activities requiring the services hereinafter referred to as the "Project"; and

WHEREAS, the Authority 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 Authority.

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:

#### **A. SCOPE OF SERVICES**

1. The Contractor shall perform all necessary services in connection with the administration and management of [DESCRIPTION] as required by the Authority. 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 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 Contractor's proposal in its entirety, dated [DATE] (the "Contractor's Proposal").
  - b. Both the RFP and the Contractor's Proposal are made a part this Contract as if the same

were fully set forth.

**B. 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.

**C. 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 Authority before payment is made.

**D. TERMS AND CONDITIONS**

- 1. It is the responsibility of the Contractor to ensure that all federal clauses, provisions and certifications applicable to this Contract are adhered to.
- 2. This Contract is subject to WATA’s General Terms and Conditions unless specific terms and conditions are agreed to in writing.

**E. 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**

**WILLIAMSBURG AREA  
TRANSIT AUTHORITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

## APPENDIX H-1 CONTRACT ADMINISTRATION TEMPLATE

*Note: This is a basic template for monitoring the performance of a contract. The Project Manager should use this template during the administration of a contract to document whether work is going according to plan or if correction is needed. For larger contracts, staff will use contract administration more suited to the size and scope of the project.*

Project Title:	Project Manager:
Contract Start Date:	Contract Expiration Date:
Contract Terms and Conditions:	
Project Budget:	
Deliverable	Status
Invoices Received:	Payment Terms:
Comments/Notes:	



## **APPENDIX I - PROCUREMENT FORMS LIBRARY**

The enclosed forms are intended to be used in providing consistency in the information that is collected and documented by WATA staff and vendors. Information collected is used to ensure that WATA is procuring goods and services with adequate competition and at fair and reasonable prices. The users of these forms beyond staff and vendors include auditors and reviewers from the state or federal governments who must confirm that WATA is procuring goods and services appropriately.

These forms should not become an end in themselves since they will not meet every circumstance that arises. Staff will review the forms periodically to make changes if necessary to meet the intended purpose.

### **Pre-Solicitation**

1. Competitive Procurement Initiation Form
2. Independent Cost Estimate (I.C.E.)
3. Micro-Purchase Documentation Form
4. Method of Procurement Decision Matrix

### **Post-Solicitation/Pre-Award**

1. Sole Source Request Form
2. Single Bid Analysis Form
3. Price Analysis  
OR
4. Cost Analysis
5. Bid Tabulation Cover Sheet
6. Responsiveness Checklist
7. Responsibility Determination Checklist
8. Best and Final Offer Cover Sheet

### **Post Award**

1. RFP File Memo
2. Purchase Requisition Form
3. Contract Change Order (accompanied by I.C.E)
4. Purchasing Card Log
5. Indemnity Form

### **Contract Forms – All Procurements**

1. Non-Collusion Statement
2. Certification Regarding Debarment and Suspension
3. Subcontractor Debarment Certification
4. Certification Regarding Lobbying
5. Certification of Compliance – Immigration Laws
6. Organizational Conflict of Interest (as required)

### **Reference/Checklists**

1. Contract/Purchase Order File Index
2. FTA Construction Checklist
3. FTA Small Purchase Contract Clauses
4. Piggybacking Worksheet
5. WATA Forms Responsibility Designation

### **FTA Forms – Rolling Stock Procurements**

#### **(Vendor-Completed)**

1. Transit Vehicle Manufacturer's Certification of Compliance with DBE
2. Certificate of Compliance with Buy America Rolling Stock
3. Contractor Service and Parts Support Data
4. Certification of Compliance with Bus Testing Requirement
5. DBE Approval Certification
6. Federal Motor Vehicle Safety Standards Certification

#### **(WATA-Completed)**

7. Pre-Award FMVSS Compliance Certification
8. Pre-Award Buy America Certification
9. Pre-Award Purchaser's Requirements Certification
10. Post-Delivery Forms (one file)
  - a. Purchaser's Requirements Certification
  - b. Buy America Compliance
  - c. FMVSS Compliance



**COMPETITIVE PROCUREMENT INITIATION FORM**

**\*To be used when dollar value exceeds \$50,000, or when an informal or formal solicitation must be issued by Procurement (RFQ, URFP, IFB, RFP)**

**Brief description of Need:**

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**\*ATTACH STATEMENT OF WORK OR OTHER SUPPORTING DOCUMENTS IF POSSIBLE**

**Anticipated Need-by Date:** \_\_\_\_\_

**Project Manager:** \_\_\_\_\_

**Funding Source(s):**

- Federal
- State
- Local

**Executive Director Approval:** \_\_\_\_\_

Signature

Date



**INDEPENDENT COST ESTIMATE FORM**

*Purpose: To comply with FTA Circular 4220.1F, Chapter VI, Paragraph 6 that requires grantees to perform a cost or price analysis in connection with every procurement action. This form will be included in the procurement file when an independent cost estimate is not documented otherwise.*

Project Manager: \_\_\_\_\_ Date of Estimate: \_\_\_\_\_

Description of Goods/Service: \_\_\_\_\_

Reason for ICE:       New Procurement       Contract Modification       Exercise of Option

Method of Obtaining the Estimate (*check all that apply*):

- Published price list (*attach source and date*)
- Historical pricing (*attach copy of documentation from previous PO/Contract*)
- Comparable purchases by other agencies (*attach price list or correspondence*)
- Engineering or Technical estimate (*attach*)
- Independent Third Party estimate (*attach*)
- Other (specify)

**\* Supporting Documentation Required**

Through the methods stated above, it has been determined that the total cost of the goods/services is estimated to be \$\_\_\_\_\_

**NOTES:**

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**Prepared by:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**MICRO-PURCHASE DOCUMENTATION FORM**

*Purpose: To comply with guidance in FTA Circular 4220.1F, Chapter VI, Paragraph 3.a that requires grantees to determine if a price is fair and reasonable for micro-purchases and a description of how the determination was made.*

*\*Note: FTA regulations designate \$3,000 as the threshold below which a purchase is deemed a “micro-purchase.” WATA policy sets this threshold at \$2,500 or below.*

**Requester:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Micro Purchase Description:**

Vendor/Brand Name	Item/Service Description	Unit Price	Quantity	Total Price

**Cost/Price Determination:**

- Found reasonable on recent purchase
- Obtained from current published price list
- Similar to it in related industry
- Other: \_\_\_\_\_
- Personal knowledge of item procured
- Regulated rate (utility)
- Commercial Advertisement



**METHOD OF PROCUREMENT DECISION MATRIX**

*Purpose: To comply with guidance in FTA Circular 4220.1F, Chapter III, Paragraph 3.d(1), that requires a recipient to maintain and make available written records detailing the history of each procurement.*

Solicitation No./Title (if applicable): \_\_\_\_\_

*Determine the suitable procurement method by checking the appropriate boxes below. All of the elements must apply to use that method.*

**Micro-Purchase**

- Amount < \$2,500
- Multiple Sources

**Small Purchase**

- Amount < \$50,000
- Three or More Quotes Available
- Complete Specifications Known

**Sealed Bid (IFB)**

- Amount > \$50,000
- Complete Specifications Known
- Two or More Responsible and Willing Bidders
- Selection Made on Basis of Price Alone
- Firm Fixed-Price Contract
- No Discussion Required with Bidders after Bid Submittal

**Competitive Proposals (RFP)**

- Complete Specifications Not Feasible
- Proposer Input Needed
- Two or More Responsible and Willing Proposers
- Discussion Needed with Proposers after Proposal Submittal
- Fixed Price or Cost Reimbursement Contract as appropriate

**Sole Source**

- Approved by FTA
- OEM/Custom Item, **or**
- Only One Source, **or**
- Competition Inadequate after solicitation, **or**
- Emergency/Public Exigency

**Selection of Contract Type**

- Fixed Price
- Firm Fixed Unit Prices
- Cost Plus Fixed Fee
- Time and Materials (must provide written justification)
- Blanket Purchase Order
- Indefinite Delivery Indefinite Quantity

Purchasing (Initial) \_\_\_\_\_

Date: \_\_\_\_\_



**SOLE SOURCE REQUEST FORM**

**Purpose:** *To comply with FTA Circular 4220.1F, Chapter VI, Paragraph 3.i(1)(b) that requires grantees to justify the reasons for conducting a sole source procurement and not providing for full and open competition.*

Project Manager: \_\_\_\_\_ Date: \_\_\_\_\_

Description of Goods/Service: \_\_\_\_\_

**Under which exception to the FTA Circular 4220.1F, Chapter VI, 3.i. requirements for competition is this Sole Source Request made? You may select one or more.**

	<b>Unique or Innovative Concept</b> - <i>The offeror demonstrates a unique or innovative concept or capability not available from another source.</i>
	<b>Patents or Restricted Data Rights</b> - <i>Patent or data rights restrictions preclude competition.</i>
	<b>Substantial Duplication Costs.</b> <i>It is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition</i>
	<b>Unacceptable Delay.</b> <i>It is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.</i>

**JUSTIFICATION:**

A memorandum must be attached with this Form that provides sufficient justification for a sole source award. The following questions should be addressed in this memorandum, along with any other relevant information.

- 1.) What market research was done to determine that there is no or inadequate competition?
- 2.) If 'product or proprietary service is unique,' why is your chosen supplier the only viable solution? For instance:
  - Is the knowledge/skills/experience unique to the provider of the service?
  - Are there patents or restricted data rights? (goods or services, i.e., intellectual property)
  - Is there a need for compatibility with an existing item (please provide enough detail to demonstrate that compatibility is indeed necessary)? (goods)
  - Are there substantial duplication costs? If so, how much in comparison to the total project costs? (goods or services)
  - Have you completed a Request for Information (RFI) that indicates limited availability? (goods or services)
- 3.) Is there information on any previous competitive bids for this good or service?
- 4.) Is there unusual and compelling urgency?
- 5.) What are the consequences of not purchasing the goods/service from, or not contracting with, the proposed sole source supplier?

***To the best of my knowledge and belief, the information in this sole source justification form is true and correct.***

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_



**SINGLE BID ANALYSIS FORM**

***Purpose: To comply with FTA Circular 4220.1F, Chapter VI, Paragraph 3(i)(2) that requires grantees to determine if competition was adequate in the case of only a single bid or proposal.***

Project Manager: \_\_\_\_\_ Date: \_\_\_\_\_

Description of Goods/Service: \_\_\_\_\_

Solicitation No: \_\_\_\_\_ Bid or Proposal Due Date: \_\_\_\_\_

**The Solicitation has been reviewed, and it has been determined that specifications are not unduly restrictive of competition. Non-responding sources were contacted, and gave the following reasons for not submitting a response:**

- |   |  |
|---|--|
| <input type="checkbox"/> Lack Competency          | <input type="checkbox"/> Short Response Due Date |
| <input type="checkbox"/> Lack Available Resources | <input type="checkbox"/> Other: _____            |
| <input type="checkbox"/> Poor Timing              | _____  |

***To the best of my knowledge and belief, the information in this sole source justification form is true and correct.***

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_



**PRICE ANALYSIS**

*Purpose: To comply with FTA Circular 4220.1F, Chapter VI, Paragraph 6.b that requires grantees to determine the reasonableness of a proposed contract price.*

Project Manager: \_\_\_\_\_

Description of Goods/Service: \_\_\_\_\_

Independent Cost Estimate: \_\_\_\_\_

**The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:**

- Adequate price competition was obtained from at least two responsible offerors.
- Review of applicable rate schedule for prices set by law or regulation.
- Comparison of price to established catalog or market prices.
- Comparison of price with historical pricing from prior purchases of the same item
- Comparison with in-house independent estimate

**Attachments (please list any attachments to support the analysis):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Requester: \_\_\_\_\_ (Initial)      Date: \_\_\_\_\_

Approved: \_\_\_\_\_ (Initial)      Date: \_\_\_\_\_



**COST ANALYSIS**

*Purpose: To comply with FTA Circular 4220.1F, Chapter VI, Paragraph 6.a that requires grantees to perform a cost analysis to determine the reasonableness of a contract cost.*

Project Manager: \_\_\_\_\_

Description of Goods/Service: \_\_\_\_\_

Solicitation No. \_\_\_\_\_

**DIRECT LABOR:**

CLASSIFICATION	PERSONAL HOURS	X	HOURLY RATE	X	LABOR COSTS
			\$		\$
			\$		\$
<b>TOTAL HOURS</b>					
<b>TOTAL LABOR COSTS</b>					\$

**OVERHEAD:**

TOTAL LABOR	X	PERCENTAGE (Enter as a percent, i.e. 25%)	=	TOTAL OVERHEAD
				\$

**FACILITIES COST OF CAPITAL:**

TOTAL LABOR	X	PERCENTAGE (Enter as a percent, i.e. 25%)	=	TOTAL FCC
				\$

**DIRECT EXPENSES** (List by item at Actual Cost to you – NO MARKUP):

ITEM	TOTAL DIRECT COSTS
	\$
	\$
<b>TOTAL DIRECT EXPENSES</b>	

**FIXED FEE:**

TOTAL LABOR	+	TOTAL OVERHEAD	X	PERCENTAGE* (Enter as a percent, i.e., 10%)	TOTAL FIXED FEE
<b>GRAND TOTAL</b>					

**Price is considered fair and reasonable**    **YES**    **NO**

**Basis for fair and reasonable determination** \_\_\_\_\_

\_\_\_\_\_

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_



**BID TABULATION COVER SHEET**

*Purpose: To comply with guidance in FTA Circular 4220.1F, Chapter III, Paragraph 3.d(1), that requires a recipient to maintain and make available records detailing the history of each procurement.*

Project Manager: \_\_\_\_\_

Solicitation No./Title: \_\_\_\_\_

Bid Opening Date/Time: \_\_\_\_\_

\*BID TAB ATTACHED



**RESPONSIVENESS CHECKLIST**

*Purpose: To comply with guidance in FTA Circular 4220.1F, Chapter III, Paragraph 3.d(1), that requires a recipient to maintain and make available written records detailing the history of each procurement.*

Project Manager: \_\_\_\_\_

Solicitation No./Title: \_\_\_\_\_

Name of Vendor: \_\_\_\_\_

Solicitation Requirement	Yes	No	Comments
Response received on time and in sealed envelope.			
Signature of Duly Authorized Official			
Any and all Addenda acknowledged			
All items priced clearly in unit measures specified			
Drawings submitted for products proposed as equal to specified brand			
Bid Security Received (if necessary)			
Lobbying certification signed and attached			
Financial information submitted			
DBE Documentation included and complete			
Insurance certification included			
No exceptions to terms or other solicitation language (if prohibited)			
Other			

Purchasing \_\_\_\_\_ (Initial)

Date: \_\_\_\_\_



**RESPONSIBILITY DETERMINATION CHECKLIST**

*Purpose: To comply with guidance in FTA Circular 4220.1F, Chapter III, Paragraph 3.d(1), that requires a recipient to maintain and make available written records detailing the history of each procurement.*

Project Manager: \_\_\_\_\_

Solicitation No./Title: \_\_\_\_\_

Name of Vendor: \_\_\_\_\_

Responsibility Criteria	Acceptable	
	Yes	No
Adequate financial, equipment, facility and personnel		
Ability to meet the delivery schedule		
Satisfactory period of performance		
Satisfactory record of integrity, not on declined or suspended listings		
Receipt of all necessary data from supplier		
SAM (sam.gov) Attach copy of results		
References		
Technical Resources		
Other		
Provide an analysis of how determination of contractor responsibility was made including a list of documents reviewed:		

Purchasing \_\_\_\_\_ (Initial)

Date: \_\_\_\_\_



**BEST AND FINAL OFFER COVER SHEET**

*Purpose: To comply with guidance in FTA Circular 4220.1F, Chapter III, Paragraph 3.d(1), that requires a recipient to maintain and make available written records detailing the history of each procurement.*

Project Manager: \_\_\_\_\_

Solicitation No./Title: \_\_\_\_\_

Name of Vendor: \_\_\_\_\_

**\*Price Schedule Attached**



**RFP FILE MEMO**

DATE:

TO: File

FROM: James City County Purchasing \_\_\_\_\_ (Initial)

SUBJECT: Memorandum of Record – RFP 18-XXXX Project Title

**Introduction:**

WATA required proposals to be solicited for a qualified source to provide Project Title for WATA.

**Determination of Procurement Method:**

Professional services shall be procured by competitive negotiation (RFP) method of procurement for the requested services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

**RFP Issued:**

The RFP was issued on \_\_\_\_\_, 2017, for the specified services. The RFP was solicited on the James City County Internet, was advertised On Saturday, \_\_\_\_\_, 2017 in The Virginia Gazette and The solicitation was advertised for more than 30 days in the APTA Magazine and online. Three (3) responsible and capable firms were also contacted by email with an announcement but only one attended the pre-proposal conference and submitted a proposal.

**Pre-Proposal Conference:**

N/A

**Mandatory Site Visits:**

N/A

**Addenda:**

N/A

**RFP Closing:**

Proposals were received until \_\_\_\_\_, 2017 at 2:00 PM. One (1) proposal was received in response to the RFP. Please refer below for the names of those Offerors.

- 1.

When contacting the other two firms to check why they did not submit proposal's they indicated that they chose to no bid for their own business reasons one was at a conference's and failed to submit. The other

was unable to submit because they had not yet finished signing contracts with the company that would be \_\_\_\_\_.

**Evaluation of Proposals:**

On Friday, \_\_\_\_\_, 2017, the proposals were distributed to the evaluation committee members. On \_\_\_\_\_, 2017, the evaluation committee members met to discuss the proposals and “short-list” the firms. Each committee member was instructed to independently review, evaluate and rank all of the proposal responses based on the following evaluation matrix:

_____ Services		
	Evaluation Criteria	Points
1.	Firms Qualification and Experience. Firm’s prior experience in the execution of similar contracts. Experience with and understanding of Hampton Roads Planning Commission (HRPDC) Regional Construction Standards.	25
2.	Firms Capability and Skill. Profiles of the personnel and the project team (architects and engineers within the firm and its consultant re design and construction management of municipal projects.	20
3.	Firms Responsiveness to Proposal. Demonstrated ability to provide projects on schedule and within budget. Demonstrated quality of prior work in design, cost estimating, quality control, preparation of documents and contract administration.	20
4.	Firms geographic location and ability to respond on-site. Proximity and ability to be on site as necessary or as required by JCC, JCSA and WJCC Schools.	5
5.	Firms Understanding. Demonstrated knowledge and understanding of local conditions and all pertinent code and regulations as evidenced by previous experience working with local building officials for approval of plans and specifications.	10
6.	Firms LEED Certification. The County is interested in achieving a high level of environmental performance, durability and healthy indoor air quality through integrated design, best practices, and incorporation of green building practices into the project. Certification level of the Leadership in Energy and Environmental Design (LEED) program of the United State Green Building Council’s 2009 standards for New Construction and Major Renovations.	10
7.	Firms current workload. Workload and priority to be assigned to County, JCSA and WJCC School projects while providing a timely response to request for service und the contract.	5
8.	Firms overall quality and completeness of proposal.	5
	<b>EVALUATED SCORE</b>	<b>100</b>

Based on the evaluation results of the scoring of each of the one (1) proposal received by the Evaluation Committee, oral presentations were found to be not necessary for the overall determination of which Offeror (s) can provide the best value to WATA.

**Short-List Evaluation:**

**RFP #17- ----- Services Summary Evaluation Form.**

<b>Evaluation Criteria:</b>								
Qualifications and Experience. Firm's prior experience in the execution of similar contracts. Experience with and understanding of Hampton Roads Planning Commission.								
Capability and Skill. Profiles of the personnel and the project team.								
Responsiveness. Demonstrated ability to provide projects on schedule and within budget. Demonstrated quality of prior work in design cost estimating, quality control, preparation of documents.								
Geographic location and ability to respond on-site to JCC, JCSA and WJCC								
Demonstrates knowledge and understanding of local conditions and all pertinent codes and regulations and as evidenced by previous experience working with local building officials for approval of plans and specifications.								
The workload of firm; and priority to be assigned to County, Schools and JCSA projects while providing a timely response to request for service under the contract.								
Overall quality and completeness of proposal								
<b>TOTAL:</b>								

Individual scores were averaged to obtain a collective committee score. The committee discussed the individual scores and determined that the calculated averages accurately represented the consensus of the group.

**Short List:**

After the one (1) proposal was evaluated based on the above criteria, \_\_\_\_\_ was determined as more fully qualified and best suited to provide the services detailed in the RFP for WATA.

**Negotiations:**

The committee determined that \_\_\_\_\_ was the top ranked firm. And requested negotiations begin. However, the committee only identified areas which required additional information or should be negotiated with \_\_\_\_\_. \_\_\_\_\_ was contacted by email on Monday, \_\_\_\_\_, 2017. The areas that were identified as requiring additional information or negotiations were as follows:

1. Hourly fee schedule best and final offer.

### **Award Recommendation**

After receipt of written response from \_\_\_\_\_ concerning areas outlined above, the committee members thoroughly reviewed the proposal based on the information obtained in the firm's proposal, responses to questions and negotiations. The committee determined that the candidate listed made the best proposal and recommends a contract be awarded to \_\_\_\_\_. The major factors supporting this recommendation are as follows:

- 1.) \_\_\_\_\_ selected would best provide services needed and are fully qualified and best suited to provide the services detailed in the RFP
- 2.) \_\_\_\_\_ offer a cost-effective and flexible solution for our organization's varying needs
- 3.) \_\_\_\_\_ proposal showed flexibility in scheduling
- 4.) \_\_\_\_\_ provided a larger presentation of previous work with LEEDS and more detail in examples of keeping projects on track with design and budget consistency among projects.
- 5.) Pricing was deemed fair and reasonable based on comparison to the ICE, and \_\_\_\_\_

For these reasons, the committee has determined that \_\_\_\_\_ has made the best proposal and presented the best qualifications and fair and reasonable price to WATA. As such, WATA intends to award this contract to \_\_\_\_\_.



## Requisition

Today's Date:	Requisition No.:
Date Required:	
Requested by:	
Budget Code ( <i>Fund-Activity-Expense</i> ):	
Funding Source ( <i>Federal/State/Local</i> ):	
Purchase Type: <input type="checkbox"/> Micro <input type="checkbox"/> Small <input type="checkbox"/> Contract	

<b>Suggested Vendor &amp; Address:</b>	<b>Ship To:</b>
	7239 Pocahontas Trail
	<b>Other:</b>
	<b>Ship by:</b>
<b>Telephone:</b>	<b>Ship via:</b>
<b>Fax:</b>	<b>Terms:</b>
<b>Email:</b>	<b>Vendor Contact:</b>
Current Contract with Vendor?:	Is this a contract item?:
Contract Name and Number (if known):	
Special Instructions:	

Item Description	Catalog No. (if applicable)	Qty.	Unit	Price	Total
Shipping/Delivery Charge(s)					
<b>TOTAL:</b>					

**\*PLEASE ATTACH ALL REQUIRED DOCUMENTS**

SAM                       If new Vendor: COI, W-9, ACH, Indemnity, Business Licenses

Invoices may be sent via electronic mail to: \_\_\_\_\_

Send all mail correspondence to: Williamsburg Area Transit Authority  
 Attention: \_\_\_\_\_  
 7239 Pocahontas Trail, Williamsburg, VA 23185

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_



# Contract Change Order

Williamsburg Area Transit Authority • 7239 Pocahontas Trail • Williamsburg, VA 23185

*This form is to be filed prior to work being completed.*

DATE: \_\_\_\_\_

CONTRACT NO.: \_\_\_\_\_

CHANGE ORDER NO.: \_\_\_\_\_

CONTRACT DATE: \_\_\_\_\_

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

PURCHASE ORDER NO.: \_\_\_\_\_

\_\_\_\_\_

*The following changes are hereby made to the Contract Documents:*

Item No.	Description	Decrease in Contract	Increase in Contract
<b>TOTALS</b>			

NET CHANGE IN CONTRACT PRICE: \$ \_\_\_\_\_

**JUSTIFICATION:** \_\_\_\_\_

ATTACHMENTS: (\*I.C.E. Required) \_\_\_\_\_

CONTRACT PRICE PRIOR TO THIS CHANGE ORDER: \$ \_\_\_\_\_

THIS CHANGE ORDER WILL INCREASE CONTRACT PRICE BY: \$ \_\_\_\_\_

NEW CONTRACT PRICE INCL. THIS CHANGE ORDER WILL BE: \$ \_\_\_\_\_

COMPLETION DATE PRIOR TO THIS CHANGE ORDER: \_\_\_\_\_

**NEW CONTRACT TIME WILL (INCR/DECR) BY \_\_\_\_\_ CALENDAR DAYS**

NEW DATE FOR COMPLETION OF ALL WORK WILL BE: \_\_\_\_\_

**This document will become a supplement to the CONTRACT and all provisions will apply hereto.**

Requested by \_\_\_\_\_  
(Project Manager)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Recommended by \_\_\_\_\_  
(Vendor)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Accepted by \_\_\_\_\_  
(Purchasing)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Approved by \_\_\_\_\_  
(Executive Director)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**INDEMNITY CLAUSE ATTACHMENT**

**[Company Name] (The Company)** hereby binds itself and its successors to indemnify, defend, and save harmless **James City County (The County)**, its officers, agents or employees, from all suits and actions of every name and description brought against it of them, all costs or damages to which it or they may be put, on account of , or by reason of any injury of 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 Company** or its agents; in the performance of the contract and that the whole or so much of the moneys due to **The Company** , under and by virtue of this contract, as such or may be considered necessary by **The County**, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of **The County**. The said **Company** further agrees to indemnify and save harmless **The County** against any and all claims, suits or demands that may accrue to, be suffered by, of adjudicated against it by reason of any injury sustained by any of The Company employees in and about the said work, under and pursuant to the provisions of the Workman’s Compensation Law or any amendments thereto, and The Company shall produce certificates or other satisfactory evidence of ample protection against such liability.

**I. CONTRACTOR’S INSURANCE**

1. Workers’ Compensation and Employers’ Liability

Coverage A - Statutory Requirement  
Coverage B - \$100,000/\$100,000/\$500,000

2. Commercial Auto Liability Including Hired and Non Owned Car Liability Coverage

Limit of Liability            \$1,000,000 Per Occurrence

3. Commercial General Liability Including Contractual and Completed Operations

Limit of Liability            \$1,000,000 Per Occurrence

4. Excess Liability: Contractors have the option of meeting the insurance requirements of 2 and 3 above with a single primary policy or by providing evidence of an excess policy that, in addition to the primary policy, provides the coverage and meets the limit requirements of the coverage as specified in 2 and 3.

5. Self Insured Retentions, Deductibles and Aggregate Limits: All self insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the James City County Risk Management Director.

**VENDOR SHALL MAIL ORIGINAL INSURANCE CERTIFICATE TO:** James City County, Purchasing Office, P.O. Box 8784, Williamsburg, VA 23187.

**\*Please reference the following the Description of Operation: James City County and Williamsburg Area Transit Authority shall be endorsed as an Additional Insured on the Commercial General Liability per ISO 2010 on a primary basis.**

**ENDORSEMENT PAGE:** Accompanying the COI must be a separate endorsement page and must show the policy number listed on the COI.

---

PRINT NAME AND TITLE

---

SIGNATURE

DATE

**TO EXPEDITE THIS MATTER, THE INSURANCE CERTIFICATE AND SIGNED INDEMNIFICATION CLAUSE MAY BE FAXED TO THE ATTENTION OF: Buyer**



**NON-COLLUSION STATEMENT**

(To be submitted with each bid of offer)

In the preparation and submission of this proposal on behalf of \_\_\_\_\_ (name of Offeror), we did not either directly or indirectly enter into any combination or arrangement with any person, firm or corporation, or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free competition in violation of the Sherman Anti-Trust Act, 15 USCS Sections 1 et seq., or the Conspiracy to Rig Bids to Government Statutes, Virginia Code Sections 59.1-68.6 through 59.1-68.8. The undersigned Offeror hereby certifies that the agreement, or any claims resulting there from, is not the result of, or affected by, any act of collusion with, or any act of, another person or persons, firm or corporation engaged in the same line of business or commerce; and, that no person acting for, or employed by Williamsburg Area Transit Authority has an interest in, or is concerned with, this proposal; and, that no person or persons, firm or corporation, other than the undersigned, have or are interested in this proposal.

“...or otherwise take any action in the restraint of free competition in violation of the Sherman Antitrust Act, 15 USCS Sections 1 et seq., the Virginia Antitrust Act, Virginia Code Sections 59.1-9.1 through 59.1-9.18 or the Conspiracy to Rig Bids to Government Statutes, Virginia Code Sections 59.1-68.6 through 59.1-68.8”

By: \_\_\_\_\_ Signature  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Date

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in \_\_\_\_\_ (City and State)

\_\_\_\_\_  
Notary Public

Federal Provisions/Required Clauses/Certifications



**CERTIFICATION REQUIREMENTS FOR RECIPIENTS OF GRANTS AND COOPERATIVE AGREEMENTS  
REGARDING DEBARMENT AND SUSPENSIONS**

(To be submitted when a contract at any tier is expected to equal or exceed \$25,000; a contract at any tier for a Federally-required audit (irrespective of contract amount); and a contract at any tier that must be approved by an FTA official irrespective of the contract amount).

The purpose of the following certifications is to exclude entities and individuals that the Federal Government has either debarred or suspended from obtaining Federal assistance funds through grants, cooperative agreements or third party contracts.

To assure that such entities and individuals are not involved in projects financed with Federal Transit Administration (FTA) assistance, FTA requires its applicants to complete the certificates. The primary participant must sign the "Certification of Subcontractor." If there is more than one subcontractor, each subcontractor must sign one of these forms.)

**DEBARMENT AND SUSPENSION CERTIFICATION OF PRIMARY PARTICIPANT**

The Primary Participant, \_\_\_\_\_, certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them or commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.
- (e) The Primary Participant also certifies that, if it later becomes aware of any information contradicting the statements of Paragraphs (a)-(d) above, it will promptly notify WATA.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

The Primary Participant \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq. are applicable thereto.

---

Name & Title of Authorized Representative (Printed)

---

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

In \_\_\_\_\_ (City and State)

---

Notary Public



**DEBARMENT AND SUSPENSION CERTIFICATION OF SUBCONTRACTOR**

The Subcontractor, \_\_\_\_\_, certifies, by submission of this certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or agency.

The Subcontractor, \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq. are applicable thereto.

---

Name & Title of Authorized Representative (Printed)

---

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

in \_\_\_\_\_ (City and State)

---

Notary Public



## CERTIFICATION REGARDING LOBBYING

(To be submitted with each bid or offer **exceeding \$100,000**)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned, \_\_\_\_\_ (Contractor), certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency or Federal department, 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.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government-Wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.) The Standard Form-LLL, "Disclosure Form to Report Lobbying," shall be submitted to the Regional Transportation Commission, attention: Management Services.
- (3) The undersigned shall require that the language of this certification 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 sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(Note: Pursuant to 31 U.S.C. ¶1352 (C)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.)

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official: \_\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
in \_\_\_\_\_ (City and State)

\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires: \_\_\_\_\_

My Commission No.: \_\_\_\_\_



**CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS**

This sworn certification of compliance with all federal immigration laws and regulations is provided by \_\_\_\_\_ (Name of Firm). These laws include the Federal Immigration Reform and Control Act, which makes it unlawful for a person or other entity to hire, recruit or refer for a fee for employment in the United States, an alien knowing the alien is unauthorized, and Section 40.1-11.1 of the Code of Virginia, which makes it unlawful for any employer to knowingly employ an alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States. The state law, in particular, places an affirmative duty on employers to ensure that aliens have proof of eligibility for employment.

Accordingly this certification shall be completed and attached to all contracts and agreements for goods and services made by the City/County of James City County or any of its boards and commissions. Failure to attach a completed certification shall render the contract or agreement void.

*Type or print legibly when completing this form.*

**1.) Legal Name of Contractor:** (Note: This is your name as reported to the IRS. This should match your Social Security card or Federal ID Number)

\_\_\_\_\_

**2.) Type of Business Entity:**

- Sole proprietorship (*Provide full name and address of owner*):
- Limited Partnership (*Provide full name and address of all partners*):
- General Partnership (*Provide full name and address of all partners*):
- Limited Liability Company (*Provide full name and address of all managing members*):
- Corporation (*Provide full name and address of all officers*):

**3.) Doing Business As:** (If Applicable - Note: This is the name that appears on your invoices but is not used as your reporting name.)

**4.) Name and Position of Person Completing this Certificate:**

**5.) Physical Business Address:**

**6.) Primary Correspondence Address (If different from physical address):**

**7.) Number of Employees:**

**8.) Are all Employees Who Work in the United States Eligible for Employment in the United States?**

Under penalties of perjury, I declare on behalf of the Contractor listed above that to the best of my knowledge and based upon reasonable inquiry, each and every one of the Contractor's employees who work in the United States are eligible for employment in the United States as required by the Federal Immigration Reform and Control Act of 1986 and Section 40.1-11.1 of the Code of Virginia. I further declare on behalf of the Contractor that it shall use due care and diligence to ensure that all employees hired in the future who will work in the United States will be eligible for employment in the United States. I affirm that the information provided herein is true, correct, and complete.

Sworn this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ on behalf of \_\_\_\_\_ as evidenced by the following signature and seal:

Name of Contractor: \_\_\_\_\_

Printed Name of Signatory: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA:

City/County of \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by

\_\_\_\_\_

Notary Public: \_\_\_\_\_

Registration No: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



### Organizational Conflict of Interest

**\*To be used in instances where a contractor assists in preparing work statements for future competitive acquisitions, to preclude the contractor from doing work under those acquisitions.**

*49 CFR § 18.36(c)(v) and 49 CFR § 19.43 prohibit organizational conflicts of interest as restrictive of competition. In accordance with FAR 9.505 and FAR 9.507-1, the following provision states the nature of the potential conflict as seen by the contracting officer; states the nature of the proposed restraint upon further contractor activities; and states whether or not the terms of any proposed clause and the application of this subpart to the contract are subject to negotiation.*

- (a) This contract, in whole or in part, provides for the contractor to draft and/or furnish specifications in support of \_\_\_\_\_ (Contracting Officer identify system or program). Further, this contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions in support of \_\_\_\_\_ (Contracting officer identify program). The parties recognize that by the Contractor providing this support a potential conflict of interest arises as defined by FAR 9.505-2.
- (b) During the term of this contract and for a period of \_\_\_\_\_ (Contracting officer insert period of time after contract completion that contractor will not be allowed to supply time) after completion of this contract, the Contractor agrees that it will not supply as prime contractor, subcontractor at any tier, or consultant to a supplier to WATA, any product, item or major component of an item or product, which was the subject of the specification and/or work statements furnished under this contract. The Contractor shall, within 15 days after the effective date of this contract, provide, in writing, to the Contracting Officer, a representation that all employees, agents and subcontractors involved in the performance of this contract have been informed of the provisions of this clause. The Contractor shall provide any subcontractor affected by these provisions with the necessary language contained in this clause.
- (c) For the purpose of this clause, the term "Contractor" means the contractor, its subsidiaries and affiliates, joint venture involving the Contractor, any entity with which the contractor may hereafter merge or affiliate and any other successor or assignee of the contractor.
- (d) The Contractor acknowledges the full force and effect of this clause. It agrees to be bound by the terms and conditions and understands that violation of this clause may, in the judgement of the Contracting Officer, be cause for Termination for Default under 49 U.S.C Part 18 and FTA Circular 4220.1E. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to the Government in the event the Contractor breaches this or any other Organizational Conflict of Interest clause.
- (e) The terms of this clause and the application of FAR 9.505 to this contract are not subject to negotiation.

Company Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Signature: \_\_\_\_\_



**CERTIFICATE OF COMPLIANCE WITH  
BUY AMERICA REQUIREMENTS**

(Certification requirement for procurement of steel, iron, or manufactured products exceeding \$150,000)

***Certification of Compliance with 49 U.S.C. 5323(j)(1)***

The bidder or offeror hereby certifies that it and/or the manufacturer it represents will comply with the requirements of 49 U.S.C. 5323 (j)(1), and the regulations at 49 CFR Part 661.5, as amended.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company \_\_\_\_\_

***Certification of Non-Compliance with 49 U.S.C. 5323(j)(1)***

The bidder or offeror hereby certifies that it and/or the manufacturer it represents cannot comply with the requirements of 49 U.S.C. 5323 (j)(1) and 49 CFR 661.5, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and regulations in 49 CFR 661.7

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in

\_\_\_\_\_ (City and State)

\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires: \_\_\_\_\_

My Commission Number: \_\_\_\_\_

**Description of Attached Document**

**Type or Title of Document:** \_\_\_\_\_

**Signer's Name:** \_\_\_\_\_

**Document Date:** \_\_\_\_\_



**CONTRACT/PURCHASE ORDER FILE INDEX**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the lowest number on top. When an item is not applicable, it will be designated with "NA" in the Tab Column.

<b>CONTRACT FILE BINDER</b>		
<b>Tab #</b>	<b>Document (s)</b>	<b>Y/N/NA</b>
1	Purchase Request (from user)	
2	<b>Contract Documents</b>	
	- Executed PO/contract	
	- Change Orders/Amendments (Options)	
	- Notice to Proceed	
	- Notice of Award/Board Approval	
	- Awarded Bid/Proposal	
3	Certificate of Insurance	
4	SAM	
5	Bonds	
6	<b>Pricing</b>	
	- Price/Cost Analysis	
	- Best and Final Offer Price Schedule	
	- Independent Cost Estimate	
7	<b>Contractor Selection</b>	
	- Responsiveness Checklist	
	- Responsibility Checklist	
	- Evaluations	
	- Bid Tab	
8	Sole Source Justification	
	Single Bid Analysis	
9	FTA Forms/Certifications	
10	DBE	
11	<b>Procurement Rationale</b>	
	- Method of Procurement Decision Matrix	
	- RFP File Memo	
12	Pre-Proposal Meeting Documents	
13	Solicitation Documents/Addenda/Advertising	
14	Correspondence	
Other:		

Solicitation No. \_\_\_\_\_ Buyer: \_\_\_\_\_

Date: \_\_\_\_\_



PRODUCT: \_\_\_\_\_ COST ESTIMATE: \$ \_\_\_\_\_ BID NO: \_\_\_\_\_

**FTA PROCUREMENT CHECKLIST – CONSTRUCTION**

**REQUIRED THIRD PARTY CONTRACT CLAUSES**

REQUIREMENT	WATA REVIEW (Staff Initials/Date)	PURCHASING REVIEW (Staff Initials/Date)
<b>Awards Exceeding \$100,000 by Statute</b>		
<b>All FTA Assisted Third Party Contracts and Subcontracts</b>		
No Federal Government Obligations to Third Parties (Use Disclaimer)		
False or Fraudulent Statements of Claims; Civil and Criminal Fraud		
Access to Third Party Contract Records		
Changes to Federal Requirements		
Civil Rights (Title VI, EEO, ADA)		
Disadvantaged Business Enterprises (DBEs) With Contract Goals/without Contract Goals (Circle One)		
Incorporation of FTA Terms		
Independent Cost Estimate (I.C.E.)		
<b>Construction Activities</b>		
Construction Employee Protection – Davis-Bacon Act (contracts exceeding \$2,000)		
Construction Employee Protection – Contract Work Hours & Safety Standards Act (contracts exceeding \$100,000)		
Construction Employee Protection – Copeland Anti- Kickback Act		
Bonding for Construction Activities Exceeding \$5,000		
Seismic Safety		
<b>All Contracts and Purchase Orders Exceeding \$10,000</b>		
Terminations		
<b>Awards Exceeding \$25,000</b>		
Suspension and Debarment		
<b>Awards Exceeding the Simplified Acquisition Threshold (100,000)</b>		
Buy America		
Resolution of Disputes, Breaches, or Other Litigation		

REQUIREMENT	STARTRAN REVIEW (Staff Initials/Date)	PURCHASING REVIEW (Staff Initials/Date)
<b>Awards Exceeding \$100,000 by Statute</b>		
Lobbying		
Clean Air		
Clean Water		
<b>Planning, Research, Development and Demonstration Projects</b>		
Patent Rights		
Rights in Data and Copyrights		
<b>Special Notification Requirements for States</b>		
Special Notification Requirement for States		
<b>Miscellaneous Special Requirements</b>		
Energy Conservation		
Recycled Products		
Conformance with National ITS Architecture		
ADA Access		
Assignability Clause		
<b>Non-Construction Activities</b>		
Non-Construction Employee Protection – Contract Work Hours & Safety Standards Act		
<b>Transport of Property or Persons</b>		
Cargo Preference		
Fly America		

## **FEDERAL TRANSIT ADMINISTRATION (FTA) CONTRACT CLAUSES FOR SMALL PURCHASE**

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- 1. FLY AMERICA REQUIREMENTS (49 USC 40118, 41 CFR Part 301-10)**  
Requires use of U.S. Flag air carriers for U.S. Government-financed international air travel and transportation.
- 2. CARGO PREFERENCE REQUIREMENTS (46 USC 1241, 46 CFR Part 381)**  
Requires use of privately-owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage involved for equipment, material, or commodities.
- 3. ENERGY CONSERVATION REQUIREMENTS (42 USC 6321 et seq., 49 CFR Part 18)**  
Requires compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- 4. ACCESS TO RECORDS AND REPORTS (49 USC 5325, 18 CFR Part 18.36[i], 49 CFR Part 633.17)**  
Requires the Contractor to provide access to books, documents, papers and records for the purpose of making audits, examinations, excerpts and transactions as it relates to this procurement.
- 5. FEDERAL CHANGES (49 CFR Part 18)**  
Requires compliance with FTA regulations, policies, procedures and directives, as they may be amended or promulgated during the term of the contract.
- 6. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**  
Specifies that the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, the Contractor, or any other party.
- 7. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS (31 USC 3801 et seq., 49 CFR Part 31, 18 USC 1001, 49 USC 5307)**  
Specifies that the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this purchase or contract and reserves to the Federal Government the right to impose penalties on the Contractor.
- 8. CIVIL RIGHTS REQUIREMENTS (29 USC 623, 42 USC 2000, 42 USC 6102, 42 USC 12112, 42 USC 12132, 49 USC 5332, 49 USC 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.)**  
Requires non-discrimination and equal employment opportunity, and prohibits discrimination on the basis of race, color, creed, national origin, sex, age, or disabilities.
- 9. DISADVANTAGED BUSINESS ENTERPRISE (DBE) (49 CFR Part 26)**  
Requires compliance with U.S. Department of Transportation regulations, "Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs", cooperation with regard to maximum utilization of disadvantaged business enterprises, and best efforts to ensure opportunity for disadvantaged business enterprises to compete for subcontractual work.
- 10. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS (FTA Circular 4220.1F)**  
Incorporates FTA terms set forth in FTA Circular 4220.1F by reference, and specifies that all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions in this contract.
- 11. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS (Construction Contracts in excess of \$2,000)**  
In accordance with 40 USC 3145(a), 29 CFR 5.2(h) and 49 CFR 18.36(i)(5) as it applies to construction contract over \$2,000, all laborers and mechanics must be paid the full amount of wages and bona fide fringe benefits due at rates not less than those contained in the wage determination of the Secretary of Labor.



## PIGGYBACKING WORKSHEET

**Definition:** *Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process.* ("FTA Dear Colleague" letter, October 1, 1998).

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post- Delivery audits?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Did the Contractor submit the "certifications" required by Federal regulations? See <u>BPPM</u> Section 4.3.3.2.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Does the contract contain the clauses required by Federal regulations? See <u>BPPM</u> Appendix A1.	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?	<input type="checkbox"/> Yes <input type="checkbox"/> No
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files. Have you performed a market analysis of the prices to be paid and have you determined the price to be fair and reasonable and in the best interests of the Agency?	<input type="checkbox"/> Yes <input type="checkbox"/> No
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA <u>Circular 4220.1F</u> , Chapter IV, 2 (14) (i).	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.	<input type="checkbox"/> Yes <input type="checkbox"/> No
12. If you will require changes to the vehicles (deliverables), are they "within the scope" of the contract or are they "cardinal changes"? See <u>BPPM</u> Section 9.2.1.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator's "Dear Colleague" letter of October 1, 1998, (b) the [Best Practices Procurement Manual](#), Section 6.3.3—*Joint Procurements of Rolling Stock and "Piggybacking,"* and (c) [FTA Circular 4220.1F](#).



**PROCUREMENT FORMS RESPONSIBILITY DESIGNATION**

**W = WATA**

**P= Purchasing**

**V = Vendor**

**PRE-SOLICITATION**

Form	Initiated By	Completed By	Submitted To
Micro-purchase Form	W	W	P – to initiate purchase <\$2,500
ICE	W	W	P – to initiate purchase >\$2,500
Competitive Procurement Initiation Form	W	W	P - when an informal or formal solicitation is needed; submit as soon as need is defined
Method of Procurement Decision Matrix	P	P	Procurement File

**SOLICITATION/PRE-AWARD**

Form	Initiated By	Completed By	Submitted To
Sole Source Request Form	W	W	P – to initiate contract/purchase with vendor
Single Bid Analysis Form	P	W (signed off)	Procurement File
Price Analysis	W (PM)	W (PM)	P – prior to award
Cost Analysis	W (PM)	W/V	P – prior to award
Bid Tabulation	P	P	Procurement File
Responsiveness Checklist	P	P	Procurement File
Responsibility Checklist	P	P	Procurement File
Best and Final Offer	P	P/W/V	Procurement File
Indemnity Form	W	V	P (If working with a new vendor, not under contract and not contracted via a formal solicitation (RFP, IFB), that will perform work on County property)

**POST AWARD**

Form	Initiated By	Completed By	Submitted To
RFP File Memo	P	P	Procurement File
Requisition Form	W	W	P – If small purchase, attach SAM. If new vendor, also attach licenses, W-9, COI, Indemnity, and ACH
Contract Change Order	W (PM)	W/V/P	P – attach ICE; WATA ED MUST sign off prior to any new work performed
Purchasing Card Log	W	W	Accounting – monthly P-card schedule

Indemnity Form	W	V	P – along with a requisition that involves a new vendor coming on to WATA property to perform work.
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### CONTRACT FORMS – TO BE INCLUDED IN SOLICITATIONS, AS INDICATED

Form	Initiated By	Completed By	Submitted To
Non-Collusion Statement	P - included in all solicitations	V	P – in Bid/Proposal Document
Certification – Debarment and Suspension	P - included in all solicitations	V	P – in Bid/Proposal Document
Subcontractor Debarment Certification	P - included in all solicitations	V	P – in Bid/Proposal Document
Certification Regarding Lobbying	P - included in all solicitations	V	P – in Bid/Proposal Document
Certification of Compliance with Immigration Laws	P- included in all solicitations	V	P- in Bid/Proposal Document
DBE Federal Provisions/Data Sheet	P-included in all solicitations	V	P – in Bid/Proposal Document
DBE Good Faith Effort Documentation	P - included in solicitation, <b><u>as required</u></b>	V	P – in Bid/Proposal Document
Organizational Conflict of Interest	P -included in solicitation, <b><u>as required</u></b>	V	P – in Bid/Proposal Document
Buy America Certification – Iron, Steel and Manufactured Goods	P - included in solicitation, <b><u>as required</u></b>	V	P – in Bid/Proposal Document

### REFERENCE/CHECKLISTS

Form	Initiated By	Completed By	Submitted To
Contract/PO File Index	P	P	Procurement File
Third-Party Contract Provisions	-	-	Used as reference prior to initiating procurement
WATA – General Terms & Conditions	P	-	Included in solicitation
Federal Clauses & Certifications	P	-	Included in solicitation
FTA- Construction Procurement Checklist	W	W/P	P – for inclusion in procurement file
FTA Small Purchase Contract Clauses	W or P		May be distributed to vendor prior to purchase; however, this is typically accomplished by sending a vendor a link to the clauses on the WATA website.

Piggybacking Worksheet	-	-	May be used as guide when piggybacking
WATA Forms Responsibility	-	-	Used as a reference

**FTA ROLLING STOCK PROCUREMENTS**

<b>Form</b>	<b>Initiated By</b>	<b>Completed By</b>	<b>Submitted To</b>
Transit Vehicle Manufacturer's Certification of Compliance with DBE	P (included in solicitation)	V	P – in Bid/Proposal Document
Certificate of Compliance with Buy America Rolling Stock	P (included in solicitation)	V	P – in Bid/Proposal Document
Contractor Service and Parts Support Data	P (included in solicitation)	V	P – in Bid/Proposal Document
Certification of Compliance with Bus Testing Requirement	P (included in solicitation)	V	P – in Bid/Proposal Document
DBE Approval Certification	P (included in solicitation)	V	P – in Bid/Proposal Document
Federal Motor Vehicle Safety Standards Certification	P (included in solicitation)	V	P – in Bid/Proposal Document
Pre-Award FMVSS Compliance Certification	W	W	P – prior to contract award
Pre-Award Buy America Certification	W	W	P – prior to contract award
Pre-Award Purchaser's Requirements Certification	W	W	P – prior to contract award
Post-Delivery Purchaser's Requirements Certification	W	W	P – post Purchase Order, after vehicles are delivered
Post-Delivery Buy America Compliance	W	W	P – post Purchase Order, after vehicles are delivered
Post-Delivery FMVSS Compliance	W	W	P – post Purchase Order, after vehicles are delivered



**TRANSIT VEHICLE MANUFACTURERS CERTIFICATION OF COMPLIANCE**  
**WITH 49 CFR PART 26.49**

(To be submitted with each bid or offer for the purchase of buses or passenger vans)

This procurement is subject to the provisions of 49 CFR, Part 26.49. Accordingly, as a condition of permission to bid, the following certification must be completed and submitted with the bid.

TRANSIT VEHICLE MANUFACTURER CERTIFICATION

\_\_\_\_\_, a TVM, hereby certifies that it has complied with  
(Name of Manufacturer)  
the requirement of 49 CFR Part 26.49 by submitting a current annual DBE goal to FTA. The goals apply to Federal Fiscal Year \_\_\_\_\_, October 1, \_\_\_\_\_ to September 30, \_\_\_\_\_ and have been approved or not disapproved by FTA.

OR

\_\_\_\_\_, hereby certifies that the Manufacturer of the  
(Name of Dealer/Distributor)  
transit vehicle to be supplied, \_\_\_\_\_, has complied with the  
(Name of Manufacturer)  
above referenced requirement of 49 CFR part 26.49.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, in  
\_\_\_\_\_ (City and State)

\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires: \_\_\_\_\_  
My Commission Number: \_\_\_\_\_

**Description of Attached Document**

**Type or Title of Document:** \_\_\_\_\_

**Signer's Name:** \_\_\_\_\_

**Document Date:** \_\_\_\_\_



**CERTIFICATE OF COMPLIANCE WITH  
BUY AMERICA ROLLING STOCK REQUIREMENTS**

(Certification requirement for procurement of buses, other rolling stock, and associated equipment exceeding \$150,000)

***Certification of Compliance with 49 U.S.C. 5323(j)(2)(c)***

The bidder or offeror hereby certifies that it and/or the manufacturer it represents will comply with the requirements of 49 U.S.C. 5323 (j)(2)(c), and the regulations at 49 CFR Part 661.11, as amended.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company \_\_\_\_\_

***Certification of Non-Compliance with 49 U.S.C. 5323(j)(2)(c)***

The bidder or offeror hereby certifies that it and/or the manufacturer it represents cannot comply with the requirements of 49 U.S.C. 5323 (j)(2)(C) and 49 CFR 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and regulations in 49 CFR 6617.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in

\_\_\_\_\_ (City and State)

\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires: \_\_\_\_\_

My Commission Number: \_\_\_\_\_

**Description of Attached Document**

**Type or Title of Document:** \_\_\_\_\_

**Signer's Name:** \_\_\_\_\_

**Document Date:** \_\_\_\_\_



CONTRACTOR SERVICE AND PARTS SUPPORT DATA

**Location of nearest Technical Service Representative to WATA:**

Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Describe technical services readily available from said representative:

\_\_\_\_\_

\_\_\_\_\_

**Location of nearest Parts Distribution Center to WATA:**

Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Describe the extent of parts available at said center:

\_\_\_\_\_

\_\_\_\_\_

**Policy for delivery of parts and components to be purchased for service and maintenance:**

\_\_\_\_\_

\_\_\_\_\_

**Regular method of shipment:** \_\_\_\_\_



CERTIFICATION OF COMPLIANCE WITH FTA’S BUS TESTING REQUIREMENTS

(To be submitted with each bid or offer for the purchase of buses or passenger vans)

The undersigned (Contractor/Manufacturer) certifies that the vehicle offered in this procurement complies with and will, when delivered comply with 49 U.S.C. 5323(c) and FTA’s implementing regulation at 49 CFR Part 665, and any amendments, thereto, according to one of the indicated following alternatives:

(Indicate with an “X” only one of the following statements)

1. \_\_\_ The vehicles offered herewith have been tested in accordance with 49 CFR Part 665 on \_\_\_\_\_ (date). The vehicles being sold should have the identical configuration and major components as the vehicle in the test report, which must be submitted with the Offer. If the configuration or components are not identical, the manufacturer shall provide with this Certification a description of the change and the manufacturer’s basis for concluding that it is not a major change requiring additional testing.
2. \_\_\_ The vehicles offered are a new model, or with a major change in configuration or components to be acquired, and will be tested, and the full testing report(s) and any applicable partial testing report(s) will be submitted to WATA prior to final acceptance of the first vehicle.
3. \_\_\_ The manufacturer represents that the vehicles offered are “grandfathered” (have been in mass transit service in the United States before October 1, 1988, and are currently being produced without a major change in configuration or components), and submits with this bid the name and address for the recipient of such a vehicle and the details of that vehicle’s configuration and major components.
4. \_\_\_ The manufacturer represents that the vehicles offered are not required to be bus tested.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation’s regulation on Program Fraud Civil Remedies, 49 CFR part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: \_\_\_\_\_

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



**DBE APPROVAL CERTIFICATION**

I hereby certify that the Proposer has complied with requirements of 49 CFR 26, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

Name and Title of the proposer's authorized official:

\_\_\_\_\_

Authorized Signature

\_\_\_\_\_

Date



**FEDERAL MOTOR VEHICLE SAFETY STANDARDS CERTIFICATION**

This is to certify that the \_\_\_\_\_ bus model(s) proposed, complies (comply) with all applicable Federal Motor Vehicle Safety Standards as required by the F.T.A. and the D.O.T., and described in Title 49 CFR Chapter V, part 571-FMVSS, last revised on October 1, 1998.

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**PRE-AWARD FMVSS COMPLIANCE CERTIFICATION**

As required by Title 49 of the CFR, Part 663 – Subpart D, the Williamsburg Area Transit Authority certifies that it received, at the pre-award stage, a copy of \_\_[VENDOR]’S\_\_ self-certification information stating that the vehicle(s), \_\_[NUMBER AND TYPE OF VEHICLE]\_\_, will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



**PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION**

As required by Title 49 of the CFR, Part 663 – Subpart B, the Williamsburg Area Transit Authority is satisfied that the vehicle(s) to be purchased, \_\_[NUMBER AND TYPE OF VEHICLE], meet(s) the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended.

The Williamsburg Area Transit Authority has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the vehicle(s) identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the vehicle(s), including a description of the activities that will take place at the final assembly point and the cost of final assembly.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



**PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION**

As required by Title 49 of the CFR, Part 663 – Subpart B, the Williamsburg Area Transit Authority certifies that the vehicle(s) to be purchased, \_\_[NUMBER AND TYPE OF VEHICLE]\_\_ from \_\_\_[VENDOR]\_\_\_\_\_, are the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the specifications.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



**POST-DELIVERY PURCHASER’S REQUIREMENTS CERTIFICATION**

As required by Title 49 of the CFR, Part 663 – Subpart C, the Williamsburg Area Transit Authority (WATA) (the recipient), certifies that a resident inspector, [INSPECTOR], who is not an agent or employee of [VENDOR], was at the [VENDOR] manufacturing site during the period of the manufacture of [NUMBER AND TYPE OF VEHICLE]. The inspector monitored manufacturing and completed a report on the manufacture of the vehicles providing accurate operation of the vehicles fulfills the contract specifications, details visual and measured inspections, and contains road test records. After reviewing this report, the recipient certifies that the vehicles meet the contract vehicle specific technical specifications.

Signature: \_\_\_\_\_ Title: Operations Director Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: Executive Director Date: \_\_\_\_\_



**POST-DELIVERY BUY AMERICA COMPLIANCE CERTIFICATION**

As required by Title 49 of the CFR, Part 663 – Subpart C, the Williamsburg Area Transit Authority (WATA) (the recipient) certifies that it is satisfied that the buses received, \_\_\_\_ [NUMBER AND TYPE OF VEHICLE]\_\_ from \_\_ [VENDOR]\_\_ (the manufacturer) meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The recipient, or its appointed analyst, \_\_ [ANALYST]\_\_, has reviewed documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the buses identified by the manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for the buses, including a description of the activities that took place at the final assembly point and the cost of final assembly.

Signature: \_\_\_\_\_ Title: Operations Director Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: Executive Director Date: \_\_\_\_\_



**POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION**

As required by Title 49 of the CFR, Part 663 – Subpart D, the Williamsburg Area Transit Authority (WATA) (the recipient), certifies that it received, at the post-delivery stage, a copy of \_\_[VENDOR]\_\_, the manufacturer, self-certification information stating that the, \_\_[NUMBER AND TYPE OF VEHICLE]\_\_, comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.

Signature: \_\_\_\_\_ Title: Operations Director Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: Executive Director Date: \_\_\_\_\_