

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/offeror as a result of the breach or nonperformance of such contract or purchase order.

No bid/proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid/proposal of the same bidder/offeror or of another bidder/offeror in which the ownership of the withdrawing bidder/offeror is more than five percent (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.

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

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/offeror takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/proposals may be hand-delivered to the designated location. 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/offeror. 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/offeror.

18. DEBARMENT/ENJOINMENT STATUS. By submitting their bids/proposals, bidders/offerors 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/offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present

or promised, unless consideration of substantially equal or greater value was exchanged.

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

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 TRANACT 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.