

Williamsburg Area Transit Authority

Procurement Policies and Procedures Manual

Adopted by the Board of Directors of the Williamsburg Area
Transit Authority this 19th day of February, 2009.

Table of Contents

<u>Chapter</u>		<u>Page</u>
I.	Introduction	1
II.	Quick Reference Guide	2
	A. Step-by-Step Guide	2
	B. Brief Description of Methods of Procurement	2
	C. Delegations	3
III.	Policies and Procedures	5
	A. Procurement Policies	5
	1. Executive Director and Project Manager Responsibilities	6
	2. Standards of Conduct	6
	3. Purchasing Policies	7
	4. Public Records Act	8
	B. Procedures	8
	1. Independent Cost Estimate	8
	2. Reasonableness of Price (Price/Cost Analysis)	9
	3. Best Value	10
	4. Tag-ons	10
	5. Piggybacking	10
	6. Use of Brand Name	10
	7. Options	11
	8. Advance Payments	11
	9. Progress Payments	11
	10. Procurement by Micro-Purchases	11
	11. Small Purchases	11
	12. Competitive Procurement Process	11
	a. Invitation for Bids (IFB)	12
	b. Issuance of IFB	12
	13. "A/E" Request for Proposal (RFP)	24
	14. Sole Source Procurements	29
	15. Emergency Procurements	29
	16. Amendments and Change Orders	29
	17. Blanket Purchase Orders	30
	18. Purchase Requisition/Order Procedures	30
	19. Vendor Protest Procedures	31
IV.	Contract Administration	35
	A. Contract Administration Guidelines	35
	B. Federal Procurement Requirements	35
	C. Bonding Requirements	36
	D. Insurance Requirements	38
	E. Liquidated Damages	38
	F. Indemnification	39
	G. Termination	39
	H. Dispute Resolution	40
	I. Final Contract Approval and Distribution	41
	J. Written Record of Procurement History (Project Control File)	41
	K. Vendor File	42
V.	Types of Contracts	43
	Appendix List	46

CHAPTER I

Introduction

This procurement manual applies specifically to purchases of goods and services for the Williamsburg Area Transit Authority (WATA) that are funded by federal and state transit revenues.

WATA is responsible for the operation of a public transportation system, including the planning, designing, and programming of transportation projects. All contracts are awarded by WATA by its transit team, which is responsible for identifying its needs and originating the procurement package for supplying those needs.

WATA receives funding from the federal government and the state, as well as other agencies. Local government contributors include the City of Williamsburg and Counties of James City and York. Therefore, WATA adopts procurement policies and procedures that are consistent with federal regulations and the laws of the Commonwealth of Virginia. These procedures apply to all procurements irrespective of the source of the funds. Specific requirements for procurements funded by the Federal Transit Administration (FTA) are also identified. These procedures apply to any revenue contract whose primary purpose is to either generate revenues in connection with a transit-related activity, or to create business opportunities utilizing an FTA-funded asset.

The purpose of these policies and procedures is to set forth the procurement methods and establish standards for obtaining goods and services, including construction, professional, and Architectural/Engineering (“A/E”) services necessary for the operation of WATA transit service. These procedures include guidelines for the solicitation, award, and administration of formally advertised contracts, as well as the consultant selection, negotiation, award, and administration of competitively negotiated and A/E contracts.

The procurement procedures are designed to:

Instill public confidence in the procurement process of WATA.

Ensure fair and equitable treatment for all vendors who seek to

deal with WATA. Ensure maximum open and free competition in

the expenditure of public funds. Provide the safeguards to

maintain a procurement system of quality and integrity.

The methods by which the foregoing is implemented are described in detail in the remainder of this document and the attachments hereto.

The procurement process is ongoing throughout the fiscal year. During budget, the needs are identified for all goods and that will be procured during the upcoming fiscal year (July 1 - June 30).

CHAPTER II

Quick Reference Guide

A. Step-by-Step Guide to the Procurement Process for WATA programs, services, and supplies

Step 1: Staff must determine the following:

Project scope;
Expected cost of the procurement;
Funding source and whether the procurement is budgeted or non-budgeted; and whether the procurement will be informal or formal.

Step 2: For procurement type, Staff should refer to the policies described herein. Any questions regarding the procurement process should be immediately discussed with the Executive Director to ensure that the policies are being followed.

Step 3: The Executive Director is responsible for the administration of the procurement, which includes obtaining the required approval, if necessary, before initiating the procurement process.

Step 4: Upon completion of the procurement process, a Purchase Order must be issued by the Executive Director prior to the execution of any contract, notice-to-proceed, or initiation of work.

Important: Sections written in *italic font* indicate that a change has occurred to the procurement policies and procedures since the original version of the procurement manual. The addendum number and the item referenced are located at the end of the modified text in parentheses.

B. Brief Description of Methods of Procurement

1. Goods and Services

Definition: Procurement of services, supplies, or other property, with the A/E services or labor and/or materials.

<u>Price Threshold</u>	<u>Method of Procurement</u>	<u>Required Approval Level</u>
Up to \$3,000	Micro Purchase	Budget Grant Administrator
Over \$3,000 - \$30,000	Small Purchase / RFP / IFB	Director of Planning and Development
Greater than \$30,000 - \$100,000	RFP / IFB	Executive Director
Over \$100,000	RFP/IFB	WATA Board of Directors

2. Please note that any amendments and/or change orders will be approved as listed above.

Professional / Architectural and Engineering Services

Definition: The services of attorneys, physicians, architects, engineers, consultants, auditors, specialized printers, or other individuals or organizations possessing a high degree of professional, unique specialized technical skill or expertise, not adaptable to competitive bidding, or where the service involves a contract for special activities, negotiations for the acquisition of

land, trash services, insurance bonds or any other service similar to the above, engaged for a particular project or series of projects.

A/E: Procurement of professional consultants for engineering, architectural, land surveying or other support services, such as program management, construction management, feasibility studies, preliminary engineering and design which require performance by a registered or licensed architect or engineer. **A/E services require the use of an A/E method of procurement.**

<u>Price Threshold</u>	<u>Method of Procurement</u>	<u>Required Approval Level</u>
Up to \$30,000	RFP / A/E	Executive Director
Greater than \$30,000	RFP / A/E	WATA Board of Directors

Please note that, any amendments and/or change orders greater than 10 % of the original Purchase Order must be approved by WATA Board.

3. Public Works/Construction Projects

Definition: Procurements of labor and/or materials for construction or public works projects.

<u>Price Threshold</u>	<u>Method of Procurement</u>	<u>Required Approval Level</u>
Up to \$100,000	IFB	Executive Director
More than \$100,000	IFB	WATA Board of Directors

Please note that any amendments and/or change orders to the Contract resulting from the solicitation process for public works/construction projects must be approved according to the following:

<u>Type of Service</u>	<u>Price Threshold</u>	<u>Required Approval Level</u>
Construction	More than 10 % of PO.	WATA Board of Directors
Equipment	20 % of Bidded Price.	WATA Board of Directors

4. Sole Source

Definition: Procurement accomplished through solicitation or acceptance of a proposal from only one available source or solicitation of a number of sources in which competition is determined inadequate.

<u>Price Threshold</u>	<u>Method of Procurement</u>	<u>Required Approval Level</u>
Up to \$30,000	Sole Source	Executive Director
Greater than \$30,000	Sole Source	WATA Board of Directors

See Chapter III, Section B.14 for standards for justification for Sole Source.

C. Delegations

1. Except as otherwise provided in these procedures, all rights, powers, duties, and authorities relating to the procurement of supplies, services, and construction are vested in the Executive Director or a designee.
2. The Executive Director is specifically authorized to delegate approval authority to a designee.

3. The WATA Board of Directors is specifically authorized to execute approval authorized at any level.
4. The Executive Director is specifically authorized to execute approvals delegated to a designee.

CHAPTER III

Policies and Procedures

A. Procurement Policies

A five member Board of Directors governs WATA. Among other duties, the WATA Board is responsible for governing the operation of WATA, including all procurement policies. These policies serve as a basis for procurement procedures development.

The WATA Board of Directors has related policies that serve to guide procurement activities.

Those policies are summarized in this Section.

1. Executive Director and Project Manager Responsibilities

a) Executive Director

The Executive Director has authority to authorize contract actions. Whenever the term "Executive Director" shall appear in this document, the term shall also include authorized designee(s). (The authority of the designees varies significantly depending on the value and type of procurement action.)

The Executive Director is responsible for updating these procurement procedures on an as-needed basis.

The Executive Director shall be authorized to enter into, administer, and terminate contracts. However, the Executive Director may bind WATA only to the extent of the Contracting authority delegated to the Executive Director.

The Executive Director shall ensure that a clear and accurate specification/scope of work is developed for all procurement.

The Executive Director shall not enter into a contract unless all applicable requirements of Federal law, Federal regulations and Circulars, Virginia law, and all other applicable WATA procedures (including approvals) have been met.

The Executive Director shall ensure that contractors receive impartial, fair, and equitable treatment in accordance with the policies specified in this Manual.

The Executive Director or his/her designee shall be the primary WATA employee to determine that contract prices are fair and reasonable prior to signing the Contract or any changes thereto.

The Executive Director shall not make any purchase or enter into any contract for an amount which exceeds his or her specifically delegated contracting authority.

The Executive Director and/or his/her designee is responsible for soliciting bids and proposals; for serving as the chairperson of pre-bid and pre-proposal conferences, qualification hearings and proposal evaluation meetings; for conducting contract negotiation sessions; for managing the non-technical aspects of post award contract administration including negotiation of modifications, claims, and supplemental agreements; and for maintaining all official contract files.

The Executive Director is also responsible for such tasks as writing, preparing, and assembling contract documents; obtaining necessary pre-solicitation approvals; advertising RFP's and IFB's, issuing amendments, obtaining post-bid opening approvals for award, conducting investigations of the proposed Contractor's past performance, conducting consultant selection meetings for negotiated contracts and conducting negotiations, consulting with the Project Managers to monitor the Contractor's performance, and managing termination for default or convenience procedures whenever the need arises.

b) Project Manager

The Project Manager is a duly appointed WATA employee who will be directly responsible for the daily technical administration of a contract including monitoring the Contractor in its performance of the Contract and performing those functions as specified by WATA Policy. The Project Manager should be a responsible individual assigned to and familiar with the procedures and requirements of the user department. As such, the Project Manager is the Executive Director's technical expert and is at his/her disposal to assist in ensuring contractor compliance with technical requirements of the Contract. Normally, the Project Manager approves or disapproves the technical acceptability and timeliness of the work completed and the invoices submitted by the Contractor for payment.

The Project Manager shall ensure that sufficient unencumbered funds are available for each contract.

The Project Manager shall develop a clear and accurate specification/scope of work for each procurement.

The Project Manager is also the person to whom reports of warranted equipment malfunctions, failures, or any problems with the Contractor's performance are submitted, pursuant to the specific authority granted by the user department manager. The Project Manager makes the initial request for the Contractor's remedial action. The Executive Director becomes involved when and if the lapse constitutes a serious, i.e., repetitive, or unresolved, breach of contractor's civil or contractual responsibility.

Should the Contractor fail to respond in a timely or adequate manner to rectify any problem, the Project Manager notifies the Executive Director that an apparent breach of the Contract exists. After investigating the situation, the Executive Director and the Project Manager take any steps necessary and available to enforce WATA rights under the Contract. This may include withholding payment, imposing liquidated damages, negotiation and recommending a settlement, terminating the Contractor for default, or referring the matter for legal action.

The Project Manager also attends pre-bid and pre-proposal conferences as the technical expert, conducts investigations of the proposed Contractor's technical past performance, questions prospective contractors during clarifications and discussions as to their technical capability to perform the Contract, assists the Executive Director with contract negotiations, ascertains the availability of funds prior to asking the Executive Director to initiate the negotiation and approval process for change orders, contract modifications and supplemental agreements, and issues directions to correct or replace defective items of work.

Absent the appointment of a Project Manager, the Executive Director shall perform these duties.

2. Standards of Conduct and Conflict of Interest Policies

There will be uniform and equitable application of the Standards of Conduct of WATA involving all activities associated with the procurement of goods and services. This section defines responsibility to identify and prevent a real or apparent conflict of interest.

a) Conflict of Interest

The following groups shall not participate in or attempt to use their official position to influence any purchasing decisions in which they, or persons related to them, have a financial interest:

- (1) The employee, officer, agent, or Board member;
- (2) Any member of his/her immediate family;
- (3) His or her partner; or
- (4) An organization that employs, or is about to employ, any of the above.
- (5) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable or potentially unable, to render impartial assistance or advice to WATA; a contractor's objectivity in performing the Contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;

In cases where there may be a benefit, either direct or indirect, there is a responsibility to report in writing such benefit to the Board of Directors. If anyone fails to report such benefit, he or she is subject to any disciplinary proceeding deemed appropriate by the Board of Directors, including possible dismissal.

Members of the groups listed in item (a) above shall be subject to the conflict of interest laws of the Commonwealth of Virginia. Anyone who violates the standards of the law shall be subject to the penalties, sanctions, or other disciplinary actions provided for therein.

b) Gratuities, Kickbacks, and Contingent Fees

No member of the groups listed in item (a) above shall solicit, demand or accept from any person, contractor, potential contractor, or potential subcontractors, anything of a monetary value, including gifts, gratuities, favors, etc; except when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by WATA, including possible dismissal.

c) Confidential Information

No member of the groups listed in item (a) above shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by WATA, including possible dismissal.

d) Organizational Conflict of Interest

Each entity that enters into a contract with WATA is required, prior to entering into such contract, to inform WATA of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities result in an unfair competitive advantage to the Contractor, or may impact the Contractor's objectivity in performing the contract work.

3. Purchasing Policies

a) Equal Employment Opportunity/Affirmative Action

All procurement documents issued by WATA require all interested vendors to certify:

- (1) That the vendor does not discriminate against any employee, or applicant for employment, because of race, religion, sex, age, creed, color, disability or national origin;

- (2) That the vendor is in compliance with all Executive Orders and federal, state, and local laws regarding fair employment practices and non-discrimination in employment; and
- (3) That the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

b) Disadvantaged Business Enterprise

WATA has determined that disadvantaged business enterprises, as defined in 49 C.F.R. Part 26, shall have the opportunity to compete fairly for contracts financed in whole or in part with Federal funds. Accordingly, all WATA procurements funded with Federal funds may include, as appropriate, the use of goals for the procurement of all classes of goods and services, as set forth in the WATA Disadvantaged Business Enterprise program.

c) Cooperative Procurement

When circumstances warrant, WATA may attempt to fill requirements through a cooperative purchasing agreement (without independent bids or quotations) with the Virginia Department of Rail and Public Transportation, or with other appropriate public agencies.

d) Open Competition Required

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- (1) Unreasonable requirements placed on firms in order for them to qualify to do business;
- (2) Unnecessary experience and excessive bonding requirements;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive award to any person or firm on retainer contracts;
- (5) The specification of only a brand name product without listing its salient characteristics and not allowing an equal product to be offered;
- (6) Exclusionary or discriminatory specifications; and
- (7) Any arbitrary action in the procurement process.

4. Public Records Act

All bids and proposals received become the exclusive property of WATA. At such time a contract award is recommended to the WATA Board of Directors, all bids and proposals become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are trade secrets as that term is defined in the Virginia Public Procurement Act and which are so marked as "TRADE SECRET", "CONFIDENTIAL", OR "PROPRIETARY". WATA shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, with limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids or proposals that indiscriminately identify all or most of the bid or proposal as exempt from disclosure without justification may be found technically unacceptable.

B. Procedures

1. Independent Cost Estimate

An independent cost estimate shall be performed on all FTA-funded procurements prior to receiving bids or proposals. The extent of the cost estimate will depend on the type of procurement being pursued. For example, a cost estimate for a micro purchase (see explanation below) may only involve phone calls to obtain price quotes; while a cost estimate for the procurement of a commuter bus would require a more involved process to assess the market and to develop a reasonably accurate estimate. The cost required to research and prepare the

estimate should not outweigh the potential benefits of the estimate. An independent estimate can be obtained from different sources including the following:

- a) Published competitive prices.
- b) Results of competitive procurements.
- c) Estimates by in-house estimators.
- d) Outside estimators.

2. Cost Analysis

In all FTA-funded procurements, a price or cost analysis shall be used to determine the reasonableness of the bid price.

The Executive Director may conduct a price analysis in evaluating a bid price. If a valid price analysis cannot be completed, a cost analysis of the bid price may be conducted.

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

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

As compared to price analysis, cost analysis involves a more detailed review of the bidder's proposal. 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.
- 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.
- e) The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

Normally, cost analysis may be accomplished through the following:

- a) Verify the Contractor's cost data.
- b) Evaluate specific elements of costs and project these elements to determine the effect on prices:
 - (1) The necessity for certain costs;
 - (2) The reasonableness of amounts estimated for the necessary costs;
 - (3) Allowances for contingencies; and
 - (4) 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:
 - (1) Actual costs previously incurred by the Contractor;

- (2) The Contractor's last prior cost estimate for the same or similar estimates;
 - (3) Current cost estimates from other possible sources; and
 - (4) Prior estimates or historical costs of other contractors manufacturing the same or similar items.
- d) Forecasting future trends in costs from historical experience:
- (1) In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
 - (2) In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area: (1) Is the cost allowable in accordance with guidelines in Section 31 of the Federal Acquisition Regulations (FAR); (2) Is the cost allocable to the particular project? ; (3) is the cost reasonable?

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. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

3. Best Value

"Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

4. Tag-on

"Tag-on" is defined as the addition of work (supplies, equipment, or services) – beyond the scope of the original contract – that amounts to a cardinal change, as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-on.

The use of tag-on is prohibited and applies to the original buyer as well as to others.

5. Piggybacking

"Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.

Piggybacking is permissible when the solicitation document and resultant contract contain a clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed, and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represents need. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

6. Use of Brand Name

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

7. Options

WATA may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the Contract, or may elect to extend the term of the Contract. If WATA chooses to use options, the requirements below apply:

a) Evaluation of Options

The option quantities or periods contained in the Contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered sole source procurement.

b) Exercise of Options

(1) WATA must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

(2) An option may not be exercised unless WATA has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

8. Advance Payments

WATA does not authorize, and will not participate in, funding payments to a contractor prior to the incurrence of costs by the Contractor, unless prior written concurrence is obtained from FTA. There is no prohibition on WATA's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

9. Progress Payments

WATA may use progress payments provided the following requirements are followed:

a) Progress payments are only made to the Contractor for costs incurred in the performance of the Contract.

b) WATA must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit, or equivalent means to protect the WATA interest in the progress payment.

10. Procurement by Micro Purchases

Purchases below \$3,000 may be made without obtaining competitive quotations if it is determined by the Budget Administrator that the price is fair and reasonable. The Budget Administrator will document how this determination was derived. The Davis-Bacon Act applies to public works/construction contracts exceeding \$2,000.

11. Small Purchases

For procurements between \$3,000 and \$30,000 for professional services, goods, and other services, at least three written quotations from vendors are required. Oral quotes will be accepted with written confirmation received in 24 hours. The Executive Director is responsible for soliciting quotations. Appropriate documentation, including but not limited to, a list of the vendors contacted, a fair and reasonable price determination, and the quotes received, shall be filed with the project documentation.

12. Competitive Procurement Process

Competitive procurement procedures are used for procurement of professional services, goods, and other services valued greater than \$30,000 and public works/construction projects valued at greater than \$30,000. The two types of competitive procurements are the Request for Proposals and the Invitation for Bids. The following procedures describe each type in detail.

Invitation for Bids (IFB)

The Invitation for Bids (IFB) competitive procurement process is used for public works/construction projects whose cumulative value will exceed \$30,000, and, if appropriate, purchases of goods and services whose cumulative value will exceed \$30,000. The Executive Director coordinates the IFB process.

- a) The IFB method of procurement is employed when all of the following apply:
 - (1) A complete, adequate, and realistic specification or purchase description is available;
 - (2) Two or more responsible suppliers are willing and able to compete effectively for the Contract;
 - (3) The procurement lends itself to a firm-fixed price contract;
 - (4) Selection of the successful bidder can be made on the basis of price;
 - (5) Scope of the work is clearly defined; and
 - (6) No discussion with bidder is needed.

- b) The following general rules apply to scopes of work and specifications:
 - (1) A common basis for bidding must be provided. Scopes of work and specifications should set out the essential characteristics of the items or services to be procured. Whenever possible, the expected quality of services to be provided or the performance characteristics of the item should be specified.
 - (2) Specifications and scopes of work should not call for features or quality levels, which are not necessary to meet the bid requirements.
 - (3) All optional items should be identified by WATA, and the solicitation documents should set forth the expected needs and the manner in which the related bid prices will be considered.
 - (4) In order to foster free and open competition, specifications may not require a "brand name" product without allowing an "or equal" product to be offered. The specifications would, accordingly, describe the performance or other salient characteristics of the brand name product.
 - (5) Because standard specifications and requirements allow for more efficient operations and result in lower prices, they should be used wherever suitable. Maximum use should be made of industry, federal, state and local government specifications and requirements.

Issuance of IFB

- a) The Project Manager shall initiate a purchase requisition, in accordance with the procedures set forth in Chapter III.B.18, at the start of the IFB process.
 - (1) A notice of an IFB will be prepared by the Executive Director, and will be advertised, and, if the value of the procurement is over \$30,000 for public works/construction or \$30,000 for goods and other services, must be published in a newspaper of general circulation no less than two weeks prior to the date set for bid closing. The notice must include the following minimum information:
 - (2) A general description of the services or goods to be purchased;
 - (3) Where to request an IFB;
 - (4) The location, day, and time of the Pre-Bid Conference (if one is scheduled);

- (5) The location, last day, and hour bids will be accepted (deadline);
- (6) Bid Acceptance Period; and
- (7) Whether Federal funds are being used for the procurement.

IFB Packet

The Executive Director will coordinate the release of the IFB packet. The IFB packet will include the following:

- a) Instructions To Bidders - General instructions concerning the bid format, pre-contractual expenses, contract conditions, pre-bid conferences, and other information.
- b) Submittal Documents – Required forms to be completed by the bidder and submitted with the bid.
- c) Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the bidders to properly respond to the IFB.
- d) General Terms and Conditions - General provisions concerning the IFB process.
- e) Special Terms and Conditions – Provisions unique to each IFB, if applicable, will be included (e.g., special terms of the resulting contract; any modifications to general terms and conditions; milestones; and special payment procedures).
- f) Technical Specifications - Specifications shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Specifications shall also seek to promote overall economy for the purposes intended, and encourage competition in satisfying WATA needs. Descriptions shall not contain features that unduly restrict competition. The description shall include a statement of the qualitative nature of the material, product, or service to be procured. When necessary, the description shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- g) Overly detailed product specifications should be avoided. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description will be used.
- h) A “brand name or equal” description can be used only when an adequate specification or more detailed description cannot be provided, without performing an inspection and analysis, in time for the acquisition under consideration. If “brand name or equal” is used, the IFB must carefully identify the minimum needs, and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.
- i) A control record will be maintained by the Executive Director as IFB packets are distributed to prospective bidders.
 - (1) The control record profiles the following information:
 - (a) Date and time IFB packets are distributed; and
 - (b) Names and addresses of bidders receiving bid invitations and attending pre-bid conferences.
 - (c) The control record has two primary purposes:
 - (d) Serves as a mailing list for the issuance of addenda; and
 - (e) Provides a record for verification in cases of vendor protests and other issues.

Pre-Bid Conference

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

The pre-bid conference shall be chaired by the Executive Director, and shall follow the format below:

- a) Discuss basic requirements such as instructions to the bidders, funding, contract type, and specific points that should be addressed in each bid;
- b) Discuss the participation requirements for Disadvantaged Business Enterprises (DBE);
- c) Discuss the scope of work and have the appropriate staff available to answer technical questions; and
- d) Conclude by announcing when and where the bids are due.

Amendments to Invitation for Bids

If after issuance of an IFB, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, opening dates, etc., or to correct or clarify a defective or ambiguous IFB, such changes shall be accomplished by the issuance, in writing, of an amendment to the IFB. Before issuing an amendment to an IFB, the period of time remaining until the time set for bid submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective bidders of an extension of time by facsimile or telephone. Such notification should be confirmed in the amendment. The amendment shall be sent to each prospective bidder to whom the IFB was furnished and shall provide:

- a) Amendment number and date;
- b) Number, date, and the title of the IFB concerned; and
- c) Instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge and return the amendment.

Cancellation of IFB

Invitations for bids shall not be canceled unless cancellation is clearly in WATA's interest (i.e., where there is no longer a requirement for the material or service, or where amendments to the invitation would be of such magnitude that a new invitation is desirable). When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

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 openings, this fact shall be recorded in the control file, with a statement of the number of entities invited to bid and the number of bids received.

Receipt of Bids

Bids shall be submitted so as to be received at the location designated in the invitation for bids no later than the exact time set for the receipt of bids. The only acceptable evidence to

establish the time of receipt at WATA offices is the time/date stamp of WATA, which shall be placed on the bid wrapper immediately upon receipt. The designated project manager receiving the bid shall sign the exterior of the bid package to verify the date and time received and the person receiving the bid. The timeliness of bids is the sole responsibility of the bidder.

Withdrawal of Bids

Any bidder may withdraw their bid, either personally or by written request and received by WATA, at any time prior to the time fixed for the receipt of the bids. Negligence on the part of bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for a period of 60 days following bid opening.

Bid Opening

Upon receiving the bids, it is the designated project manager responsibility to record their receipt and keep them unopened and secure, except as stated below.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to WATA representatives who have a proper need for such information, as determined by the Executive Director.

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

The Executive Director shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received prior to the time set for receipt shall then be publicly opened and when practical, read aloud by the Executive Director to the persons present. The bids received shall be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read.

A second WATA representative shall be present to witness the opening and reading of the bids and, along with the Executive Director, shall sign the recording document to verify its accuracy.

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

The original bid form shall not be allowed to pass out of the hands of the Executive Director. The original bids may not be removed from the office, except for official review and evaluation by WATA legal counsel. A copy of each bid must be maintained in WATA procurement files in lieu of such originals for the interim period.

All bids will be open to public review after award has been made. All bids, including attachments and envelopes, shall be retained for the official files.

Recording of Bids

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 official WATA record and shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the IFB number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record shall be completed as soon as practical after bids have been opened and read aloud. The Executive Director shall be responsible for maintaining files of these records and abstracts.

The file of the IFBs shall show the distribution that was made and the date thereof. The names and addresses of prospective bidders requesting the IFBs who were not included on the original solicitation list shall be added and made a part of the record.

Tabulation of Bids

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

Mistakes in Bids

General. Technicalities or minor irregularities in bids may be waived if the Executive Director determines that it shall be in the best interest of WATA. The Executive Director may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency if it is to WATA's advantage to do so.

Mathematical Errors. Errors in extension of unit prices or in mathematical calculations shall be corrected by WATA prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed.

Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing the original bid and submitting a new bid prior to the time and date set forth for bid opening.

Confirmation of Bid. If the Executive Director knows or has reason to conclude that a mistake has been made, the bidder shall be requested to confirm the bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the bid, or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid will be corrected or withdrawn if any of the following conditions are met:

If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and must not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transportation errors, and arithmetical errors.

A bidder will be permitted to withdraw a low bid if:

- a) A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- b) The bidder submits proof of evidential value, which clearly and convincingly demonstrates that a mistake was made.

Determination Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Executive Director shall prepare a determination showing that the relief was granted or denied.

Minor Irregularities in Bids

- a) A minor irregularity is one that is merely a matter of form and not of substance, or pertains to some immaterial or inconsequential defect or variation in a bid from the exact requirement of the solicitation. If such a situation exists, the correction of the irregularity or waiver of the requirement may be made if it would not be prejudicial to other bidders.

- b) A defect or variation in a bid is considered immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or would be eligible when contracted with the total cost or scope of the procurement.
- c) The Executive Director may either give the bidder an opportunity to cure any deficiency resulting from minor informality or irregularity in a bid, or waive the deficiency, whichever is to the advantage of WATA.

Multiple or Alternate Bids

Unless multiple or alternate bids are requested in the solicitation, these types of bids will not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder. These provisions shall be set forth in the solicitation and, if multiple or alternate bids are allowed, it shall specify their treatments.

Analysis of Limited Bid Response

If less than three bids have been received, the Executive Director may examine the reasons for the small number of bids received. The purpose of this examination is to ascertain whether the small number of responses is attributable to an absence of any of the prerequisites of formal advertising. A price or cost analysis shall be performed to establish the reasonableness of the bid price before an award is made.

Determination of Responsiveness

Any bid which fails to conform to the essential requirements of the IFBs, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

A bid shall be rejected when the bidder imposes conditions, which modify requirements of the IFBs. Bids may be rejected in cases, including but not limited to, those in which the bidder:

- a) Fails to state a price and, in lieu thereof, states that price shall be "price in effect at time of delivery."
- b) States a price, but qualifies such price as being subject to "price in effect at time of delivery". Where not authorized by the IFB, conditions or qualifies the 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.
- c) Limits rights of WATA under any contract clause.
- d) Fails to comply with all of the requirements of the IFB.

A bid shall be rejected if a bid bond is required and a bidder fails to furnish it in accordance with the requirement of the IFB.

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

After submitting a bid, if a bidder transfers all of his assets or the part of his assets related to the bid during the period between the bid opening and the award, WATA may accept or reject the bid at its sole discretion.

Responsible Bidder Evaluation

Before awarding the Contract, WATA shall determine that a prospective contractor is responsible and that prices are reasonable. Bidders may be asked to provide any information required to determine the responsibility of the bidder. A responsible bidder is one who meets the standards set forth below:

- a) Bidder has adequate financial resources, or the ability to obtain such resources, as required during performance of the Contract.

- b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
- c) Has a satisfactory record of performance. Contractors who are or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, may be considered to be non-responsible bidders. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
- d) Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
- e) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.
- f) Is otherwise qualified and eligible to receive an award under applicable laws and regulations.

Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

- a) A list of debarred, suspended, or ineligible firms or individuals.
- b) From the prospective contractors' bids and proposals; replies to questionnaires; financial data – such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the Contractor and affiliated concerns; current and past production records, lists of tools, equipment, and facilities, and written statements or commitments concerning financial assistance and subcontracting arrangements.
- c) Publications, including credit ratings, trade and financial journals, and business directories and registers.
- d) References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
- e) Documented past performance on contracts with WATA.

Rejection of All Bids

Any time prior to the bid opening date and time, WATA may cancel or postpone the bid opening or cancel the IFB in its entirety.

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

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

As a general rule, after opening, an IFB should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the IFB and the additional quantity should be treated as a new procurement.

IFBs may be canceled, and all bids rejected, after opening but prior to award where it is consistent with Federal and State procurement regulations. A written determination must be included in the IFB file stating that cancellation is in the best interest of WATA for reasons, including but not limited to, the following:

- a) Inadequate, ambiguous, or otherwise deficient specifications were cited in the IFB.

- b) The supplies or services are no longer required.
- c) The IFB 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 in writing and reported to WATA legal 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.

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

Rejection of Individual Bids

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

- a) Any attempt to protect itself 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 the 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.
- g) Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.
- h) Low bids received from firms determined to be not responsible pursuant to Federal or State procurement regulations shall be rejected in accordance with the procedures set forth in this Chapter.
- i) A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.
- j) 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.
- k) After submitting a bid, if a bidder transfers all of its assets or that part of its assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus WATA may reject the bid.

Award of the Contract

Unless all bids are rejected, award shall be given by written notice within the time for acceptance specified in the bid, or extension thereof, to the responsible and responsive bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price. Award shall be made by mail or personal delivery to the successful bidder of a notice of award and the proper contract documents. WATA will finalize the execution of the Contract and send a copy to the successful bidder.

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 the Contract.

In addition, WATA will notify all unsuccessful bidders of its intent to award a contract to the successful bidder at the same time it notifies the successful bidder if WATA Board approval is not required, and at the same time as the publication of the WATA Board agenda if Board approval is required.

Final Award

The Contract will be drafted by the Executive Director and reviewed by legal counsel for appropriate language and terms. The Executive Director will ensure that the Contract is executed at the approval level required in these procedures.

Four original signed copies of each contract will be executed by WATA and the Contractor. The Executive Director will maintain one original of the Contract and distribute additional copies to appropriate parties.

Project Completion

All original documentation related to any procurement such as the IFB, bid, control file, board report, background data, evaluation criteria and scores, meeting reports/notes, as well as the logs documenting bid opening dates and bid receipt dates will be submitted to the Executive Director for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of 4 years after the project is closed out and completed, unless a different time period is mandated by a funding entity.

a) Request for Proposals (RFP)

- (1) The Request for Proposals (RFP) competitive procurement process is used when conditions are not appropriate for the use of an IFB. The latter is generally the case in the purchase of services such as lease agreements, maintenance and service contracts, rental contracts, and professional service contracts. The RFP process is coordinated by the Executive Director.
- (2) The RFP process is a competitive negotiated procurement process that requires evaluation of the Proposer's costs and understanding of the Contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest. An RFP generally includes:
 - (a) Project, department and agency background;
 - (b) Purpose of the engagement;
 - (c) General firm qualifications desired;
 - (d) Scope of work;
 - (e) Project schedule;
 - (f) Proposal requirements;
 - (g) Criteria for selection; and
 - (h) Payment terms.

Issuance of RFP

The Project Manager shall initiate a purchase requisition, in accordance with the procedures set forth in Chapter III.B.18, at the start of the RFP process.

A notice of an RFP will be prepared by the Executive Director and advertised as a public notice. If the value of the procurement is over \$30,000 for professional services, goods and other services, it must be published in a newspaper of general circulation no less than two weeks prior to the date set for receipt of proposals. The notice must include, at a minimum, the following information:

- a) A general description of the services or goods to be purchased;
- b) Where to request an RFP;
- c) The location, day, and time of the Pre-Proposal Conference (If one is held);
- d) The location, last day, and last hour proposals will be accepted (deadline); and
- e) Whether Federal funds are being used for the procurement.

RFP Packet

The Executive Director will coordinate the release of the RFP packet. The RFP packet will include the following:

Instructions To Proposers - General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information.

Attachments - Required forms to be completed by the proposer and submitted with the proposal.

Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the proposers to properly respond to the RFP.

Scope of Work - Each RFP will contain a statement or scope of work, prepared by the Project Manager, which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of WATA, and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:

- a) A detailed description of the work to be performed, outlining various tasks or phases to be performed and defining the limits of the proposed project;
- b) A requirement for periodic reporting or progress on the project, if the procurement involves consultant or professional services;
- c) A proposed delivery schedule and a proposed contract period.

Evaluation Criteria – Each RFP will contain the criteria and method that will be used to select the successful proposer. If the selection is to be made by lowest price, that will be stated in the solicitation documentation. If the selection process will be a “best value” determination, the solicitation will state so and the relative significance of each criteria will also be included in the solicitation document.

A control record will be maintained by the Executive Director as RFP packets are distributed to prospective proposers. The control record profiles the following information:

- a) Date and time RFP packets are distributed.
- b) Names and addresses of vendors receiving the RFP and attending the pre-proposal conference.

The control record has two primary purposes:

- a) Serves as a mailing list for the issuance of addenda.
- b) Provides a record for verification in cases of vendor protests and other issues.

Pre-Proposal Conference

A pre-proposal conference (the "Conference") may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The Conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by prospective proposers is not mandatory. Minutes of the Conference, and the list of attendees, will be issued to all prospective proposers who attended the Conference.

The Conference shall be chaired by the Executive Director and shall follow the guidelines below:

- a) requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal;
- b) Discuss the participation requirements for disadvantaged business enterprises (DBE);
- c) Discuss the scope of work; and
- d) Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

RFP Amendments

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

Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective proposer to whom the RFP was furnished.

Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an addendum to the RFP. No award shall be made on the request unless such addendum has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.

The RFP will indicate that WATA is not bound by any oral representations, clarifications, or changes made in the written specification by WATA employees, unless such clarification or change is provided to potential proposers in written addendum form from WATA.

Each amendment issued to a RFP shall:

- a) Be serially numbered and dated;
- b) Include the number, date, and a description of the original RFP concerned;
- c) Clearly state the changes made in the RFP and the extension of the due date, if any; and
- d) Include instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the amendment.

Cancellation of RFP

WATA has the right to cancel RFPs at any time.

Receipt of Proposals

Proposals shall be submitted so as to be received at the location designated in the RFP no later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at WATA's offices is the date stamp of WATA which shall be placed on the proposal wrapper immediately upon receipt. The WATA staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of proposals is the sole responsibility of the proposer.

Withdrawal of Proposals

Any proposer may withdraw its proposal, either personally or by written request, received by WATA at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of a proposer in preparing the proposal confers no right of withdrawal of the proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following the proposal deadline.

Format of Proposal

The response to each RFP must be made in accordance to the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance regarding the inclusion of conditions, limitations, or misrepresentations may be cause for rejection of a proposal.

Evaluation and Selection Process

Proposals submitted in response to the RFP will be evaluated by an Evaluation committee established by WATA in accordance with the criteria set forth in the RFP. The Evaluation committee shall score the proposals and make a recommendation to the Transit Administrative Oversight Committee and the Executive Director as to which proposers are within the competitive range. Executive Director will notify proposers in writing whether or not they are in the competitive range.

Interviews and Best and Final Offers (BAFOs)

Interviews and negotiations will be held by the Executive Director, or his/her designee, and/or his/her representatives with all proposers determined to be in the competitive range. The Executive Director, or his/her designee, and/or his/her representatives shall have the right to conduct a cost/price analysis, to review and audit all business records and related documents of any and all proposers (including any affiliate or parent company, partner, or joint venture member) to determine the fairness and reasonableness of the proposal, to contact any and all client references, and to conduct site visits and investigations. An interview and presentation may be required. At the conclusion of this process, proposers in the competitive range will be asked to submit BAFOS, which will include final price proposals. After the submittal of BAFOs, the Evaluation committee will score the BAFOs and prepare its recommendation for Agreement Award.

Notwithstanding the above, WATA reserves the right to make the award under the RFP based upon the initial proposals submitted, without establishment of a competitive range or discussions and submission of BAFOs.

WATA Board Makes Final Determination

After the review and scoring of the BAFOs, the Executive Director, or his/her designee, shall submit the Evaluations Committee's recommendation for Agreement Award to the WATA Board of Directors (the "Board"). After review and consideration of this recommendation, the Board shall have the discretion to: 1) award the Agreement to the proposers whose proposal is most advantageous to WATA, price and other evaluation factors specified in the RFP considered, or

2) reject any and all proposals. The Board is not bound by the recommendation of the Evaluation committee.

Debriefing of Unsuccessful Proposers

Unsuccessful proposers shall be notified of WATA's award of Agreement to the successful proposers within 5 working days of the decision.

When a contract is to be awarded on some basis other than price alone, unsuccessful proposers shall be debriefed upon their written request submitted to the Executive Director within a reasonable time. Debriefings shall be provided at the earliest time after the Executive Director makes a final determination recommending the award of the Contract. The debriefing shall be conducted by the Executive Director, or his/her designee familiar with the rationale for the selection decision and contract award.

Debriefing shall:

- a) Include discussion of the unsuccessful proposer's proposal and must not include specific discussion of a competing bidder's proposal.
- b) Be factual and consistent with the evaluation of the unsuccessful bidder's proposal; and provide information on areas in which the unsuccessful bidder's technical proposal was deemed weak or deficient.

Notice of Contract Award

A notice of award with the proper contract documents shall be made by mail or personal delivery to the successful bidder. WATA will finalize the execution of the Contract and send a copy to the successful bidder. In addition, WATA will notify all unsuccessful bidders of its intent to award a contract to the successful bidder

Final Contract Draft

The Contract will be drafted by the Executive Director and reviewed by legal counsel for appropriate language and terms. The Executive Director, or his/her designee, will ensure that the Contract is executed at the approval level required in these procedures.

Three or more original signed copies of each contract will be executed by WATA and the Contractor. The Executive Director will maintain one original of the Contract and distribute the others to appropriate parties, including at least one original to the successful bidder.

Project Completion

All original documentation related to procurement such as the RFP, successful proposal, BAFO, control record, agenda report, background data, evaluation criteria and scores, and meeting reports/notes will be submitted to the Executive Director for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of 4 years after the project is closed out and completed, unless a different time period is mandated by a funding entity.

Negotiated procurement records or files should provide, at a minimum, the following pertinent information: justification for the use of negotiation in lieu of competitive bidding; contractor selection; justification for contract type; determination and findings; record of negotiations; and cost or price analysis.

13. A/E Services Request for Proposal

The Architectural / Engineering Request for Proposal qualifications-based process will be used for the procurement of A/E services and related services such as program management,

construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services.

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. Negotiation is conducted with only the most qualified. This method of procurement cannot be used to obtain other types of services, even through a firm that provides the above types of services is also a potential source to perform other services.

a) Issuance of an A/E RFP

The Project Manager shall initiate a purchase requisition, in accordance with the procedures set forth in Chapter III.B.18, at the start of the RFP process.

A notice of a RFP will be prepared by the designated project manager and advertised as a public notice. If the value of the procurement is over \$30,000, it must be published in a newspaper of general circulation no less than 3 weeks prior to the date set for receipt of proposals. The notice must include, at a minimum, the following information:

- (1) A general description of the services;
- (2) Where to request a RFP;
- (3) The location, day, and time of the Pre-Proposal Conference (If one is held);
- (4) The location, last day, and last hour proposals will be accepted (deadline); and
- (5) Whether Federal funds are being used for the procurement.

b) A/E RFP Packet

The Executive Director will coordinate the release of the RFP packet. The RFP packet will include the following:

Instructions To Bidders - General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information;

Attachments - Required forms to be completed by the bidder and submitted with the proposal;

Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the services needed in order for the proposers to properly respond to the RFP;

Scope of Work - Each RFP will contain a statement or scope of work prepared by the Project Manager which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of WATA, and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:

- (1) A detailed description of the work to be performed outlining various tasks or phases to be performed, and defining the limits of the proposed project;
- (2) A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services;
- (3) A proposed delivery schedule; and
- (4) A proposed contract period.

A control record will be maintained by the Executive Director as RFP packets are distributed to prospective bidders. The control record profiles the following information:

- (1) Date and time RFP packets are distributed.
- (2) Names and addresses of vendors receiving the A/E RFP and attending the pre-proposal conference.

The control record has two primary purposes:

- (1) a mailing list for the issuance of addenda; and
- (2) Provides a record for verification in cases of vendor protests and other issues.

c) Pre-Proposal Conference

A pre-proposal conference (the "Conference") may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The Conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by prospective bidders is not mandatory. Minutes of the Conference and the list of attendees will be issued to all prospective bidders who attended the Conference.

The Conference shall be chaired by the Executive Director, and shall follow the guidelines below:

- (1) Discuss basic requirements such as instructions to the bidders, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal;
- (2) Discuss the participation requirements for disadvantaged business enterprises (DBE);
- (3) Discuss the scope of work; and,
- (4) Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

d) Amendments of A/E RFPs

If after issuance of the RFP, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP; such changes shall be accomplished by issuance, in writing, of an addendum to the RFP. Before issuing an addendum to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective bidders of an extension of time by facsimile or telephone. Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective bidder to whom the RFP was furnished.

Any information given to a prospective bidder concerning an RFP shall be furnished promptly to all other prospective bidders as an addendum to the RFP. No award shall be made on the request unless such addendum has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their proposals.

The RFP will indicate that WATA is not bound by any oral representations, clarifications, or changes made in the written specification by WATA employees, unless such clarification or change is provided to potential bidders in written addendum form from WATA.

Each addendum issued to a RFP shall:

- (1) Be serially numbered and dated;
 - (2) Include the number, date, and a description of the original RFP concerned;
 - (3) Clearly state the changes made in the RFP and the extension of the due date, if any;
and
 - (4) Include instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the amendment.
- e) Cancellation of an A/E RFP
WATA has the right to cancel RFPs at any time.
- f) Receipt of Proposal
Proposals shall be submitted so as to be received at the location designated in the RFP no later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at WATA's offices is the date stamp of WATA, which shall be placed on the proposal wrapper immediately upon receipt. The WATA staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and the person receiving the proposal. The timeliness of proposals is the sole responsibility of the bidder.
- g) Withdrawal of Proposals
Any bidder may withdraw their proposal, either personally or by written request, received by WATA at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of bidders in preparing their proposal confers no right of withdrawal of their proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following the proposal deadline.
- h) Format of Proposal
The response to each RFP must be made in accordance to the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance regarding the inclusion of conditions, limitations or misrepresentations may be cause for rejection of a proposal.

Evaluation and Contract Negotiation

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

- (1) An evaluation committee shall be established by the Project Manager to review eligible firms and all responses to a RFP.
- (2) Evaluation committee evaluates the firms based on:
 - (a) Professional qualifications for performance of the required services;
 - (b) Specialized experience and technical competence in the type of work required;
 - (c) Capacity to accomplish the work in the required time; and
 - (d) Past performance in terms of cost control, quality of work and compliance with performance schedules.
- (1) Evaluation committee holds discussions with the most highly qualified firms ("short list").
- (2) Evaluation committee prepares a selection report for the Executive Director recommending, in order of preference, those firms that are considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the Executive Director to review the basis upon which the recommendations were made. The Executive Director shall not add firms to the selection report. If recommended firms are deemed to be unqualified or the report is inadequate, the Executive Director shall document the

reasons therefore and return the report to the evaluation committee for appropriate revision.

- (3) The final selection shall be made by the Executive Director from a list of the most highly qualified firms prepared by the evaluation committee. The Executive Director will list those firms in order of preference for negotiating a contract.
- (4) After the final selection has taken place, WATA may release information identifying only the A/E firm with which an attempt will be made to negotiate a contract. If negotiations are terminated without awarding a contract to the highest rated firm, WATA may release information that negotiations will take place with the next highest rated firm.
- (5) The final selection authorizes negotiations to begin with the most qualified firm, which will be requested to submit a proposal that includes fees and cost estimates.
- (6) The negotiation of compensation to the Contractor should represent a fair and equitable payment for the services performed.
- (7) In determining the amount of compensation and the method of payment, consideration shall be given to:
 - (a) Scope and complexity of designs, surveys, and other work and the skills necessary for these services;
 - (b) Quality and quantity of data provided to the A/E by WATA;
 - (c) Location of, and conditions under which, the services will be performed; and
 - (d) Date services to begin and time allowed for performance.
- (8) Costs should be negotiated taking into consideration:
 - (a) Direct Labor
 - (b) Overhead
 - (c) General and administrative expenses
 - (d) Materials
 - (e) Other direct costs
 - (f) Profit, which is further influenced by:
 - (i) Degree of A/E's risk
 - (ii) Level of effort
 - (iii) Level of talent or expertise A/E must furnish
 - (iv) Amount of subcontracting
 - (v) Amount of top level A/E management involved Subcontracts
 - (vi) Contractor's investment
- (9) When the Contract is negotiated and signed, the negotiations are documented and placed in the file.
- (10) 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.
- (11) 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.

14. Sole Source Procurements

A sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable. This documentation is normally furnished by the originating department and verified by the Executive Director, who is responsible for making the final determination on sole source procurements.

The following areas must be considered in sole source determinations:

- a) A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement.
- b) Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
 - (1) The item is available only from a single source;
 - (2) The public exigency or emergency (i.e., a threat to public health, welfare, safety, property, or other substantial loss to WATA, or a situation requiring immediate action by WATA, as determined by WATA) for the requirement will not permit a delay resulting from competitive solicitation.
 - (3) After solicitation of a number of sources, competition is determined inadequate; or
 - (4) The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of such item is not higher than the price for such item by like customers.

A cost analysis, i.e., verifying the proposed cost data, the projection of the data, and the evaluation of the specific elements of costs and profit, is required.

The Executive Director shall conduct negotiations, as appropriate, to determine price, delivery, and terms.

15. Emergency Procurements

Emergency procurements (defined as purchases immediately necessary for the preservation of life or property, or to prevent an immediate termination of a critical WATA function or activity) will be handled immediately and expedited as required. The Executive Director has the authority to approve the purchase of all goods and services in emergency conditions. If the Executive Director is unavailable to authorize an emergency procurement, the Director of Planning and Development may provide the necessary authorization. Upon completion of the emergency procurement, the Executive Director will document the actions taken and execute a proper requisition.

16. Amendments and Change Orders

- a) An amendment is any change to a contract, task order, or work order for any professional services – including all A/E services – that alters the terms and conditions of the original document. Any change in the scope of a contract that increases the cost of the contract must follow the sole source procurement procedures. Amendments are formal changes that must be approved at the same signature authority level as the original document.
- b) WATA shall have the right, based on a clause contained in each contract for construction or the delivery of goods and services other than those listed in subsection (a) above, to issue a change order to correct errors, omissions, or discrepancies; to cover acceptable overruns; to

expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory, or market conditions. All change orders must be approved in advance in accordance with the value of the change order or the calculated value of the time extension. In addition, WATA shall have the unilateral right, based on a clause contained in each contract, to issue an immediate change order and negotiate cost and price for time and materials after the issuance of the change order.

- c) All amendments and change orders shall be submitted to the Executive Director complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.
- d) The Executive Director will verify all amendments and change orders as to the:
 - (1) Appropriateness of the modification of the contract and whether it is unreasonable to do a separate bid for the item under consideration.
 - (2) The methods of calculating the amount of the amendment or change order are in conformance with the terms of the contract.
- e) The issuance of change orders for each individual contract shall be handled by the Executive Director.

17. Blanket Purchase Orders

The Executive Director will issue a blanket purchase order for goods or services based, if possible, on competitive quotations to procure items on an as-needed basis.

18. Purchase Requisition/Order

a) Purchase Requisition

All purchases above the small purchase threshold begin with a purchase requisition. The Project Manager shall prepare and submit the purchase requisition to the Executive Director, completing all sections – including unit cost and total cost.

A purchase requisition must be completed before a Purchase Order can be prepared. The Project Manager is responsible for its completeness and accuracy. The Project Manager is also responsible for ensuring the availability of funds in the proper account. To ensure a need exists for the item to be requisitioned, before a purchase is made, a complete and accurate description of the item must be provided, along with all other information necessary to make the procurement decision.

A properly completed purchase requisition includes: a description of the item to be procured, the quantity needed, unit cost, total cost, and all vendor quotations, where appropriate. 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.

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

b) Approval of Purchase Order

- (1) Purchase Order numbers may only be assigned by the accountant, or his/her designee, and only following receipt of a completed Purchase Requisition. The Accountant, or his/her designee, will review the purchase requisition and all documentation to ensure its completeness and accuracy.

- (2) Following the above review, the Accountant, or his/her designee, will assign the next consecutive Purchase Order number. Purchases are handled by orally notifying the vendor of the approved Purchase Order number. Written confirmation will be sent to the vendor, if appropriate. The method of purchase shall be specified on the Purchase Requisition.
- (3) Vendors shall be told to include their Purchase Order number on all correspondence – including packages, invoices, credit memos, etc.
- c) Receipt of Goods/Services and Authorization to Pay
 - (1) Receipt of Goods: The Project Manager is responsible for receipt of the physical merchandise ordered. Upon receipt, the packing slip shall be compared to the goods received. If correct, the Project Manager, or his/her designee, will forward the resulting invoice to the Accountant to authorize payment.
 - (2) Receipt of Services: The Project Manager is responsible for the receipt of services. Upon completion, the Project Manager shall match and approve all invoices that confirm the proper completion of services performed and forward the approved invoice to the Accountant to authorize payment.
 - (3) The Project Manager, or his/her designee, must approve all payments.

19. Vendor Protest Procedures

- a) Purpose: These procedures are to be utilized by WATA when considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract – whether before or after award.
- b) General: In order for a bid protest to be considered by WATA, it must be submitted by an interested party (as defined below in accordance with the procedures set forth herein). A protest which is submitted by a party which is not an interested party, or which is not in accordance with the procedures, shall not be considered by WATA and will be returned to the submitting party without any further action by WATA.
- c) Definitions For Purposes of these bid protest Procedures:
 - (1) The term “Bid” includes any bid or offer submitted by a bidder in response to an IFB or a proposal submitted by an interested party in response to a RFP.
 - (2) The term “contract” means that document to be entered into between WATA and the successful bidder.
 - (3) The term “days” refers to normal business days of WATA staff offices.
 - (4) The term “interested party” means any person: (a) who is an actual or prospective proposer, bidder, or in the procurement involved; and (b) whose direct economic interest would be affected by the award of the contract or by failure to award a contract.
 - (5) The term “solicitation” means an IFB, RFP, or other form of document used to procure equipment or services.
- d) Grounds for Protest: Any interested party may file a bid protest with WATA on the grounds that:
 - (1) WATA has failed to comply with applicable Federal or State Law;
 - (2) WATA has failed to comply with its procurement procedures;
 - (3) WATA has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable;
 - (4) WATA has issued restrictive or discriminatory specifications; or

- (5) Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.
- e) Contents of Protest: A bid protest must be filed in writing and must include:
- (1) The name and number of the procurement solicitation;
 - (2) A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of WATA procurement procedures, or specific term of the solicitation alleged to have been violated;
 - (3) Any relevant supporting documentation the protesting party desires WATA to consider in making its decision; and
 - (4) The desired relief, action, or ruling sought by the protestor.
- f) Protests must be filed with:
- Executive Director
Williamsburg Area Transit Authority
7239 Pocahontas Trail
Williamsburg, VA 23185
- (1) All protests must be received at the WATA address listed above during the normal office hours of 8:00 a.m. to 5:00 p.m., Eastern Standard or Daylight Time.
 - (2) If any of the information required by this section is omitted or incomplete, WATA will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.
- g) Timing Requirements and Categories of Protests: WATA will consider the following categories of bid protests within the time period set forth in each category:
- (1) Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than 5 days prior to the scheduled bid opening or deadline for submittal of proposals, as appropriate, in order to be considered by WATA. Any protest based on such grounds not filed within this period will not be considered by WATA. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
 - (2) Any bid protest regarding the evaluation of bids or proposals by WATA, or improprieties involving the approval or award or proposed approval or award of a contract, must be filed with WATA no later than 72 hours after the protestor's receipt of WATA's written notice of its decision or intended decision to award a contract. Any protest filed after such date which raises issues regarding the bid proposal evaluation, or the contract approval or award, will not be considered by WATA.
- h) Review of Protest
- (1) WATA will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.
 - (2) In the notification, WATA will inform the protestor of any additional information required for evaluation of the protest by WATA, and set a time deadline for submittal of such

information. If WATA requests additional information and it is not submitted by the stated deadline, WATA may either review the protest based on the information before it or decline to take further action on the protest.

- (3) In its sole discretion, WATA may give notice of any bid protest to other bidders for the procurement involved in the protest, as appropriate, and permit such bidders or s to submit comments to WATA relative to the merits of the bid protest. WATA will set a time deadline for the submittal of such comments, which will be no less than 5 days after WATA provides notification of the protest.
- (4) In its sole discretion, WATA may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by WATA in deciding the bid protest if it is submitted to WATA, in writing, within 3 days after the conference.
- (5) WATA will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.

i) Effects of Protest on Procurement Actions

- (1) Upon receipt of a timely protest regarding the solicitation process of the solicitation documents in the case of sealed bids, WATA will postpone the opening of bids until resolution of the protest. The filing of the protest will not change the date on which bids are due unless WATA determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
- (2) Upon receipt of a timely protest regarding evaluation of bids or proposals, or the approval or award of a contract, WATA will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder may not recover costs as a change order.

Notwithstanding the tendency of a bid protest, WATA reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:

- (a) Where the item to be procured is urgently required;
- (b) Where WATA determines, in writing, that the protest is vexatious or frivolous;
- (c) Where delivery or performance will be unduly delayed, or other undue harm to WATA will occur, by failure to make the award promptly; or
- (d) Where WATA determines that proceeding with the procurement is otherwise in the public interest.

j) Summary Dismissal of Protests: WATA reserves the right to summarily dismiss all or any portion of a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by WATA in a previous bid protest by any interested party in the same solicitation or procurement action.

k) Protest Decisions

- (1) After review of a bid protest, the Executive Director shall make a recommendation to the WATA Board regarding the appropriate disposition of such protest.
- (2) The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and WATA's own investigation and analysis. If the protest is upheld, WATA will take appropriate action to correct the procurement process and protect the rights of the protestor – including re-solicitation, revised evaluation of bids or proposals or WATA's determination, or termination of the contract.

- (3) If the protest is denied, WATA will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.
- l) Judicial Appeals: A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court of the Commonwealth of Virginia.
- m) FTA Appeals: This type of appeal is permissible only if Federal funds are used in the procurement.

A protestor adversely affected by a bid protest decision of the Executive Director may submit a protest to the FTA in accordance with the provisions of FTA Circular 4220.1 F, currently in effect as of the date of WATA's decision on the bid protest.

Under the provision of the FTA Circular as amended, FTA will only review protests regarding:

- (1) The alleged failure of WATA to have written protest procedures or the alleged failure to have followed such protest procedures; or
- (2) The alleged failure to review a complaint or protest; or
- (3) Alleged violations of Federal law or regulation.

In accordance with the FTA Circular as amended, such protest must be filed no later than 5 days after the protestor knew or should have known of WATA's alleged failure listed above.

Under the following conditions, WATA may proceed with the procurement in spite of a pending protest to the FTA:

- (1) The items to be procured are urgently required;
- (2) Delivery or performance will be unduly delayed by failure to make the award promptly; or,
- (3) Failure to make prompt award will otherwise cause undue harm to WATA or the Federal Government.

CHAPTER IV

Contract Administration

A. Contract Administration Guidelines

1. A Notice to Proceed will be issued on all projects that must start work before a contract is executed.
2. Letter agreements are sufficient for projects with a specific scope of work and are \$30,000 or less. A full contract agreement will be done for all other projects.
3. All agreements will be assigned a contract number, which must be referred to on the Purchase Order and the Contractor's invoices.
4. Once the Notice to Proceed or agreement is signed, the Executive Director will originate the Purchase Order.
5. The Executive Director or Project Manager will approve all invoices before payment is issued.
6. The Executive Director or WATA Board Chair will sign all contracts unless unavailable, in which case contracts will be signed in accordance with the adopted Procurement Policies and Procedures.
7. A contract amendment is necessary for a change in scope of work, term, or compensation and must be completed before additional work or payment is authorized.
8. A copy of the procurement document must be included with the contract files, including an explanation of the process used in procuring the goods or services.
9. The Executive Director will issue a letter of completion to the Contractor.

B. Federal Procurement Requirements

Since WATA receives FTA operating and capital assistance, federal procurement requirements apply to all federally funded, operating and capital procurements undertaken in support of WATA's mass transportation operations. Some of these requirements are unique and pertain only to federally funded procurements. Listed below are those specific contract terms and/or regulatory or administrative requirements that only apply when federal funds are being utilized for the procurement. Note that the requirements of the Americans with Disabilities Act, the equal opportunity provisions of the Civil Rights Act of 1964, as amended, and the FTA's Drug and Alcohol Testing Requirements (49 CFR Parts 655) apply to all procurements (if applicable) even if federal funds are not utilized.

1. State or local geographic preferences, except those expressly mandated or encouraged by Federal statute, are prohibited.
2. For procurements over \$100,000, the Buy America requirements set forth in 49 CFR Part 661 apply.
3. Any procurement involving equipment, materials, or commodities suitable for transport by ocean vessel shall contain the clauses required by 49 CFR Part 381: Cargo preference - U.S. Flag Vessels.
4. In the procurement of rolling stock, the requirements of 49 CFR Part 663 concerning Pre-Award and Post-Delivery Audits apply.
5. In the procurement of buses, the requirements of 49 CFR Part 665 concerning Bus Testing apply.

6. For public works/construction projects, the requirements of 49 CFR Part 41 (specifically Part 41.117: Seismic safety) apply.
7. For public works/construction projects or activities exceeding \$2,000, the requirements of the Davis-Bacon Act (40 U.S.C. 276a - 276a (7)) and implementing Department of Labor regulations apply.
8. For public works/construction projects exceeding \$2,000, the provision of the Copeland Anti-Kickback Act (40 U.S.C. 276c) and implementing Department of Labor regulations apply.
9. For public works/construction projects, the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-222) and implementing Department of Labor regulations apply.
10. For any contract over \$100,000, the third party contractor will be required to complete and submit certification forms, and, if appropriate, lobbying disclosure forms concerning compliance with 31 U.S.C. 1352.
11. Each third party contractor must acknowledge that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose penalties under the Program Fraud Civil Remedies Act of 1986.
12. Each third party contractor is required to acknowledge the mandatory standards and policies related to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et. seq.).
13. For public works/construction projects, each third party contractor must agree to comply with any federal environmental and resource conservation requirements that apply to the construction activities under the terms of the contract. The Contractor is required to report any violation of standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. 7401 et. seq.) or the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) resulting from any activity of the Contractor in connection with the performance of the contract to FTA and to the appropriate U.S. EPA regional office. The Contractor is responsible for the disposal of hazardous materials, in accordance with applicable federal, state, and local law and guidelines.
14. For contracts exceeding \$30,000 each third party contractor must certify that they will not enter into contracts exceeding \$30,000 with suspended or debarred contractors (Executive Order 12549; 49 CFR part 29).
15. Each third party contractor must comply with Civil Rights requirements concerning nondiscrimination and equal employment opportunity (29 U.S.C. 623; 42 U.S.C. 2000, 6102, 12112, 12132; 49 U.S.C. 5332; 29 C.F.R. Part 1630; 41 C.F.R. Parts 60 et. seq.).
16. Each third party contractor must comply with appropriate Patent and Rights in Data requirements (37 C.F.R. Part 401 and 49 C.F.R. Part 18).
17. Each third party contractor must comply with the Department of Transportation "DOT" Disadvantaged Business Enterprise (DBE) regulations (49 C.F.R. Part 26).
18. Fly America: Each third party contractor must comply with 49 U.S.C. 40118 in accordance with the General Service Administration's regulations at 41 CFR Part 301-10.

C. Bonding Requirements

Purpose

To ensure uniform and equitable application of bonding requirements, in compliance with state and federal regulations, to protect the interests of WATA.

1. Responsibility and Review

It shall be the responsibility of the Executive Director to ensure that these guidelines are followed and applied impartially. The Executive Director may waive the bond, unless required by law. Legal counsel shall review all bonds.

2. Types of Bonds

- a) **Bid Guarantee:** This shall consist of a firm commitment, such as a bid bond, certified or cashier's check, or other negotiable instrument accompanying a bid as assurance the bidder will, upon acceptance of the bid by WATA, execute such contractual documents as may be required within the time specified. WATA will require bid bonds for all public works/construction projects, for any equipment or services contract of a critical nature to the operations of WATA, or for any equipment contract in which the equipment is specifically manufactured for WATA. Public works/construction projects require a bid bond of 10% of the amount bid. Equipment purchases and service projects requiring a bid bond will have a bond requirement of up to 10% of the amount bid. WATA will require proposal bonds for any equipment or services contract critical to the operations of WATA. Service projects requiring a proposal bond will have a bond requirement of up to 10% of the amount bid. Failure of bidders to comply with these requirements will result in a determination by the Executive Director that the bid is non-responsive.
- b) **Performance:** This is a bond executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract. Performance bonds shall be written by a corporate surety registered in the Commonwealth of Virginia. WATA will require performance bonds for all public works/construction projects, for any equipment or services contract critical to the operations of WATA, or for any equipment contract in which the equipment is specifically manufactured for WATA. Public works/construction projects require a performance bond of 100% of the amount of the contract. Equipment purchases requiring a bond will have a bond requirement of up to 20% of the amount of the contract. Service projects requiring a bond will have a bond requirement of up to 100% of the amount of the contract.
- c) **Payment:** This is a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bonds shall be written by a corporate surety registered in the Commonwealth of Virginia. WATA will require a bond for public works/construction contracts exceeding \$100,000 when the contract is issued. The required payment bond will be 100% of the amount of the contract.

3. Procedures

Bid guarantees and performance bonds are required by WATA for all public works/construction projects exceeding \$100,000. Payment bonds are required by the Commonwealth of Virginia for all public works/construction projects exceeding \$100,000 when the contract is issued.

Bid guarantees and/or performance bonds are not required unless the procurement involves equipment or services critical to the operations of the agency and/or is specifically manufactured for the agency thereby, making procurement from another source difficult or time consuming. Payment bonds are not required under these circumstances.

Bonding levels are:

Type of Project	Type of Bond		
	Bid	Performance	Payment
Public Works/Construction (as applicable)	10%	100%	100%
Materials and Equipment	up to 10%	up to 20%	up to 100%
Services (except for personal or professional)	up to 10%	up to 100%	up to 100%

4. Forfeiting of Bonds: All contracts that contain bonding requirements shall contain a clause allowing termination on default of the Contractor and providing that in such cases the surety company shall bear the responsibility for the completion of the contract, or if no surety company has provided a performance bond, WATA will claim the alternate to the performance and payment bond and use such funds for the completion of the contract.

D. Insurance Requirements

Insurance requirements vary depending on the project type. They may include provisions for personal injury, environmental liability, and other areas. The insurance requirements for each project are established by the WATA Board.

In assessing risk management, WATA will consider the following project information:

1. Scope of work;
2. Contract amount;
3. Whether the project requires the Contractor to operate on WATA property;
4. The ultimate use of the good or service provided by the contractor; and
5. Previous experience associated with similar or related projects.

Once the insurance requirements are defined, they must be included in the procurement document.

Prior to issuing the final contract, WATA Legal Counsel, or his/her designee, shall approve the insurance certificate. A copy of the insurance certificate is to be kept in the project file.

The Executive Director shall not allow any contract to continue without proper insurance in effect after notification of the lapse of requisite insurance.

E. Liquidated Damages

The Executive Director and the Project Manager will determine whether the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages must be reasonable, shall be set at a specific rate for each day of overrun in contract time for a public works/construction contract or for delivery of goods, or for each instance of an incident giving rise to imposition of liquidated damages in a service contract; and the rate must be specified in the contract.

A liquidated damages clause, may be used if it is determined that:

1. The time of delivery of goods or services to WATA is critical, and WATA can expect to suffer damage if the delivery is delinquent; or
2. The extent or amount of such damage would be difficult or impossible to determine.

F. Indemnification

All contracts shall provide that the Contractor shall indemnify and save harmless WATA, its officers, agents, and employees from any injuries or damages received by any person during any operations connected with the contract, by use of any improper materials, or by any act or omission of the Contractor or his subcontractor, agents, servants, or employees. The contract provision may read as follows:

The Contractor (or Consultant) agrees to protect, defend, indemnify, and hold WATA, its members, WATA Board members, management consulting staff, officers, and agents, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character including Worker's Compensation suits, liability or expenses (hereinafter collectively "claims") in connection with or arising directly or indirectly out of the Contract or the performance hereof by the Consultant (or Contractor) or any sub-consultant (or sub-contractor). Without limiting the generality of the foregoing, any and all such claims, relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Consultant (or Contractor) further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, at its sole expense and agrees to bear all other costs and expenses related thereto, whether or not it is alleged or determined that the Consultant (or Contractor) was negligent, and without regard to whether such claim is groundless, false, or fraudulent."

G. Termination

1. Termination for Convenience

All contracts shall contain a provision allowing for the termination of the contract for convenience by WATA and prescribe methods in which the Contractor may calculate cost of work already performed and termination settlement costs. Federal grants that exceed \$10,000 and that stipulate the manner by which termination will be made, the contract provisions read as follows:

- a) The performance of work (i.e. professional services) under the Contract may be terminated by WATA in accordance with this Section in whole, or from time to time, in part, whenever WATA determines that such termination is in the best interest of WATA. Any such termination shall be effected by delivery to the Consultant (or Contractor) of a notice of termination specifying the extent to which performance of the work under the Contract is terminated and the date upon which such termination becomes effective.
- b) Upon receipt of a notice of termination, and except as otherwise directed by WATA, the Consultant (or Contractor) shall (1) stop work under the Contract on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work (or professional services) to be provided under the Contract as are not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of professional services terminated by the notice of termination; (4) assign to WATA in the manner, at the times, and to the extent directed by WATA, all of the right, title, and interest of the Consultant (or Contractor) under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of WATA, to the extent that WATA may require, which approval or ratification shall be final for all the purposes of this Section; (6) transfer title to WATA and deliver in the manner, at the times, and to the extent, if any, directed by WATA, supplies, equipment, and other material produced as a part of or acquired in connection with the performance of the work (or professional services)

terminated, and any information and other property which, if the Contract had been completed, would have been required to be furnished to WATA; (7) complete any such part of the work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as WATA may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Consultant (or Contractor) and in which WATA has or may acquire an interest. Payments by WATA to the Consultant (or Contractor) shall be made by the date of termination but not thereafter. Except as otherwise provided, settlement of claims by the Consultant (or Contractor) under this termination section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.”

c) Termination for Default

All contracts shall contain a provision allowing for the termination of the contract for default by WATA. All contracts supported by federal grants that exceed \$10,000 are to include provisions that allow WATA to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement. The contract provisions read as follows:

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, WATA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by WATA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or beyond the control of the Contractor, WATA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.”

H. Dispute Resolution

All contracts shall contain provisions providing that any dispute, between the Contractor and WATA, relating to the implementation or administration of the contract be resolved in accordance with a dispute resolution process set out in the contract. The contract provisions read as follows:

1. Any dispute between the Consultant (or Contractor) and WATA relating to the implementation or administration of the Contract shall be resolved in accordance with this Section.
2. The parties shall first attempt to resolve the dispute informally in meetings or communications between the Consultant (or Contractor) and the Project Manager (for each individual contract). If the dispute remains unresolved 15 days after it first arises, the Consultant (or Contractor) may request that the Project Manager issue a recommended decision on the matter in dispute. The Project Manager shall issue the recommended decision in writing and provide a copy to the Consultant.
3. The recommended decision of the Project Manager shall become final unless, within 15 days of receipt of such recommended decision, the Consultant (or Contractor) submits a written request for review to the Executive Director. In connection with any such review, the Consultant (or Contractor) and the Project Manager shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the Executive Director, either party may seek judicial resolution of the dispute in an appropriate Court of the Commonwealth of Virginia.

4. Pending final resolution of a dispute under this Section, the Consultant (or Contractor) shall proceed diligently with performance in accordance with the Contract and the Project Manager's recommended decision."

I. Final Contract Approval and Distribution

1. Contract Approval

Certain approval levels may be required as outlined in Chapter II. If WATA Board approval is required, the Project Manager should draft the Agenda Report in such a manner as to authorize the Executive Director, or his/her designee, to negotiate and execute the final contract terms.

All contracts requiring WATA Board approval must be approved by the Executive Director. The process for final contract approval is as follows:

- a) Board authorization (if required) is received;
- b) Draft contract is developed and approved by the Executive Director, or his/her designee, legal counsel, and the Contractor and
- c) Final contract is signed by all parties and distributed.

2. Contract Distribution

- a) The Executive Director has the responsibility for final contract distribution and issuance of the Notice-to-Proceed.
- b) Copies of the final contract are sent to the following:
 - (1) Project Manager
 - (2) Contractor
 - (3) Project Control File

J. Written Record of Procurement History (Project Control File)

The project control file shall be maintained by the Executive Director during the procurement process, throughout the term of the contract, and for 3 years following completion of all work.

The control file consists of the following sections:

1. Vendor list,
2. Rationale for type of procurement used,
3. Rationale for selection of contract type,
4. Independent Cost Estimate,
5. List of all vendors responding to the procurement,
6. All documentation relating to the selection process including, but not limited to, evaluation score sheets, bids, rationale for selection and/or rejection of respondents, the basis for the contract price, and the source selection plan,
7. Notice to proceed Final contract,
8. WATA Board report, if required,
9. Purchase requisition All correspondence Proof of insurance Bond documents Notice of Solicitation Legal advertisement,
10. Original procurement document and all addenda,
11. Original responses to the procurement,
12. DBE information, and
13. Returned mail.

K. Vendor File

The Vendor File consists of a listing of businesses, organizations, and enterprises that could provide quality goods and services specific to WATA.

A vendor may be declared “not responsible” and removed from the Vendor File if the vendor:

1. Repeatedly misses deadlines in deliveries of goods and services; or
2. Provides unsatisfactory goods and services.

Before declaring a vendor to be “not responsible”, the Executive Director will make every effort to give the vendor an opportunity to correct the problem. The following steps must be followed:

1. Notify vendor of possible disqualification from vendor list;
2. If no response to the first notice is received, issue a second notice; and
3. If no response to the second notice is received, the third notice will be issued informing the vendor that it has been deemed “not responsible” and removed from the Vendor file effective 10 days from the date of the third notice.

A file will be kept of all activity and communications with the vendor. All actions must be fully documented and the file will be retained for a period no less than 2 years.

In order for a vendor to be reinstated into WATA’s Vendor File, the vendor must file a request with the Executive Director in writing declaring to be a “responsible vendor.”

The reinstatement letter must include the following:

1. Reason vendor failed to respond to procurement requests,
2. Reason vendor provided slow or unsatisfactory deliveries,
3. Steps vendor has taken to eliminate slow or unsatisfactory deliveries,
4. Statement why vendor should be reconsidered as a responsible vendor, and
5. Promise to maintain their responsible vendor status.

CHAPTER V

Types of Contracts

Except as provided in this section, any type of contract that will promote the best interest of WATA may be used.

A. Fixed Price Contracts

1. Firm-Fixed Price

A firm-fixed price contract establishes a price that is not subject to any adjustment on the basis of the Contractor's cost experience in performing the contract.

2. Fixed Price Contracts With Economic Price Adjustment

Fixed price contracts may provide for price adjustments (upward or downward) when specified contingencies occur. These contracts are typically used when there is serious doubt about the stability of selected costs or prices over an extended period of contract performance.

B. Cost Reimbursement Contracts

A cost reimbursement contract is one in which the Contractor is paid its reasonable, allocable, and allowable costs of performance regardless of whether the work is completed.

1. The Executive Director shall use a cost reimbursement contract only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.
2. The Executive Director may use cost reimbursement contracts only when the following circumstances apply:
 - a) The Contractor's accounting system is adequate for determining costs applicable to the contract;
 - b) Appropriate WATA oversight during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and
 - c) The Executive Director determines, based upon discussions with the Project Manager, that the lack of precision of the statement of work or the difficulty of accurately estimating the costs make the use of a fixed-price contract impractical.
3. Each cost reimbursement contract shall contain the following:
 - a) A clause, approved by the Executive Director indicating that only those costs determined to be reasonable and allocable will be reimbursable; and
 - b) A clause, approved by Executive Director, establishing a stated limitation of cost.
4. Cost plus percentage of cost contracts are prohibited.

C. Indefinite Delivery Contracts and Task Orders Contracts

1. The Executive Director may use an Indefinite Delivery type of contract (either a requirements contract or an indefinite quantity contract/Task order) when the exact quantities of supplies or services are not known at the time of contract award. The contract may also specify maximum or minimum quantities that WATA may order under each individual order and the maximum that WATA may order during a specified period of time.

There are several types of indefinite delivery contracts:

- a) Requirements contracts,
- b) Indefinite quantity (IQ) contracts (commodities), and

- c) Task Order contracts (services).
- 2. Indefinite Delivery type contracts are used when the Executive Director anticipates recurring requirements but cannot predetermine the precise quantities for supplies or services. The Executive Director shall include the following in each contract and solicitation for a requirements contract:
 - a) A realistic estimate of the total quantity or dollar amount that will be ordered, based on the most current information available; and
 - b) A clause, approved by the Executive Director, stating that the estimate is not a representation to a bidder, or contractor that the estimated quantity will actually be required or ordered, or that conditions affecting the requirements will be stable or normal.
- 3. If feasible, a requirements type contract shall state the maximum limit of the Contractor's obligation to deliver and the maximum limit of WATA's obligation to order.
- 4. The Executive Director, or his/her designee, executing orders under a requirements type contract shall obligate funds when each individual order is issued and may order from a requirements type contract within the limits of the user department's budget authority for the items or services covered by the contract.
- 5. The Executive Director may use an Indefinite Quantity type of contract when the Executive Director cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period, and the Executive Director determines that it is inadvisable to commit WATA for more than a minimum quantity.
- 6. An Indefinite Quantity type contract shall require WATA to order and the Contractor to furnish at least the stated minimum quantity of supplies. The Contractor shall also be required to furnish, if and as ordered, any additional quantities, not to exceed a stated maximum. The Executive Director shall ensure that the contract obligates the amount of budget authority needed to cover WATA's minimum required order under the contract.
- 7. The Executive Director shall include in the schedule of each requirements and Indefinite Quantity type of contract the names of WATA employees authorized to issue orders under the contract. When determined appropriate by the Executive Director, authorization for placing facsimile orders may be included in the contract, provided that WATA shall establish procedures for obligating funds and confirming all such orders.
- 8. Each Indefinite Delivery contract issued must include a fixed dollar ceiling that represents the target "not to exceed" cost authorizations for the work specified.
- 9. In cases where multiple suppliers are awarded contracts, the file shall include Task Order/Delivery Order source selection and price justification to document negotiations, price reasonableness, and/or source selection decision.
- 10. Each order placed under an Indefinite Task Order/Delivery Order contract shall contain required minimum information needed for a contract.

D. Time and Materials Contracts

A time and material contract can be used only:

- 1. After a determination by the Executive Director that no other type of contract is suitable; and
- 2. If the contract specifies a ceiling price that the Contractor shall not exceed, except at its own risk.

E. Labor Hour Contracts

Labor hour contracts are a variation of the time and materials contract, differing only in that materials are not supplied by the Contractor. WATA should use this type of contract only when no other would be suitable.

F. Revenue Contracts

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA-funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. In accordance with FTA Circular 4220.1 F section 7(n) as amended, the extent of and type of competition required is within the discretionary judgment of the Executive Director.

G. Contract Term Limits

Contract term limits are specified below:

1. A contract for rolling stock or replacement parts funded with FTA funds may be entered into for any time period not to exceed five years.
2. Contracts for supplies and services may be entered into for any time period considering that the time period is based on sound business practices and is consistent with the "full and open competition" principle expressed in FTA Circular 4220.1 E, as amended
3. Revenue contracts may have a period of performance beyond 5 years if WATA believes it is in WATA's best interest.
4. Options are permitted provided the extensions, if any, are included in the solicitation.

Appendix List

Federal Clauses	Appendix A
FTA Required Clauses Checklist	Appendix B
Federal Certificates	Appendix C
Determination of Price Reasonableness	Appendix D
Procurement Documentation Checklist	Appendix E
Addendum Receipt Form	Appendix F
WATA Certification Forms	Appendix G
Procurement Manual Addenda	Appendix H

**APPENDIX A
FEDERAL CLAUSES
FEDERAL CLAUSES AND OTHER REQUIREMENTS**

A. Federal Clauses

1. Fly America Requirements

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 their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately 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.

2. Buy America

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless 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 waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60% domestic content.

A bidder or must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

3. Charter Bus Requirements and School Bus Requirements

a) Charter Bus Requirements:

The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub recipients 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 under one of the exceptions at 49 CFR 604.9. Any charter service provided under, one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

b) School Bus Requirements:

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, Contractors and sub recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub recipients may not use federally funded equipment, vehicles, or facilities.

4. Cargo Preference - Use of United States-Flag Vessels

The Contractor agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50% 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;
 - b) 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 leading 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
 - c) 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.
5. Seismic Safety
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 DOT 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.
6. Energy Conservation
The Contractor agrees to comply 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, 42 U.S.C. §§ 6321 *et seq.*
7. Clean Water
a) 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 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.
8. Bus Testing
The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:
a) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
b) A manufacturer who releases a report under paragraph a above shall provide notice to the operator of the testing facility that the report is available to the public.
c) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

- d) If the manufacturer represents that the vehicle is "grand fathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

9. Pre-Award and Post-Delivery Audit Requirements

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

a) Buy America Requirements:

The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/ certifies compliance with Buy America, it shall submit documentation which lists: 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin, and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point, and the cost of final assembly.

c) Solicitation Specification Requirements:

The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

- c) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit: 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS; or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

10. Lobbying Restrictions

The Contractor agrees to:

- a) Refrain from using federal assistance funds to support lobbying;
- b) Comply, and assure the compliance of each third party contractor at any tier and each subcontractor at any tier, with U.S. DOT regulations, with "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
- c) Comply with federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

11. Access to Records

The following access to records requirements apply to this Contract:

- a) Where the Purchaser is not a State, but a local government and is the FTA's Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. 633.17, to provide the FTA Administrator or his authorized representatives, including any PMO contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, The Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311. By

definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

- c) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital, or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, The Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers, and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- d) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)(1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General, or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- e) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- f) The Contractor agrees to maintain all books, records, accounts, and reports required under this Contract for a period of not less than 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 the Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.36(i)(11).
- g) FTA does not require the inclusion of these requirements in subcontracts.

12. Federal Changes

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 DOT, Federal Transit Administration, Master Agreement (FTA MA (10) dated October, 2003), between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

13. Bonding Requirements

Bid Bond Requirements (Construction)

a) Bid Security:

A Bid Bond must be issued by a fully qualified surety company acceptable to WATA and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described there under.

b) Rights Reserved:

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by WATA 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 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 his bid within 90 days after the bid opening without the written consent of WATA, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable

insurance, as provided above, he shall forfeit his bid security to the extent of WATA damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by WATA as provided in Item a "Bid Security" of the Instructions to bidders) 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 security and WATA's total damages, so as to make WATA whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

a) Performance bonds

- (1) The penal amount of performance bonds shall be 100% of the original contract price, unless WATA determines that a lesser amount would be adequate for the protection of WATA.
- (2) WATA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100% 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.

b) Payment bonds

The penal amount of the payment bonds shall equal:

- (1) 50% of the contract price if the contract price is not more than \$1 million;
- (2) 40% of the contract price if the contract price is more than \$1 million, but not more than \$5 million; or
- (3) Two and one half million if the contract price is more than \$5 million.

If the original contract price is \$5 million or less, WATA may require additional protection as required by subparagraph (1) if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect WATA's interest.

The following situations may warrant a performance bond:

- a) WATA property or funds are to be provided to the Contractor for use in performing the contract, or as partial compensation (as in retention of salvaged material).
- b) A contractor sells assets to or merges with another concern, and WATA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
- c) Substantial progress payments are made before delivery of end items starts.
- d) Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

- a) The penal amount of performance bonds shall be 100% of the original contract price, unless WATA determines that a lesser amount would be adequate for the protection of WATA.
- b) WATA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100% 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.

A payment bond is required only if a performance bond is required and the use of payment bond is in WATA's interest.

When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

- a) The penal amount of payment bonds shall equal:
 - (1) 50% of the contract price if the contract price is not more than \$1 million;
 - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. WATA shall determine the amount of the advance payment bond necessary to protect WATA.

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. WATA shall determine the amount of the patent indemnity to protect WATA.

Warranty of the Work and Maintenance Bonds

- a) The Contractor warrants to WATA, the Architect, and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new, unless otherwise specified by WATA, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- b) The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial, and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one year after Final Payment by WATA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to WATA. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment furnish separate Maintenance (or Guarantee) Bonds in form acceptable to WATA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one year after Final Payment and shall be written in an amount equal to 100% of the contract sum, as adjusted (if at all).

14. Clean Air

- a) 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 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the

Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000, financed in whole or in part with Federal assistance provided by FTA.

15. Recycled Products

To the extent applicable, the Contractor agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and otherwise provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient.

16. Davis-Bacon and Copeland Anti-Kickback Acts

- a) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the Work (or, under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1 321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification, and wage rate and fringe benefits therefore, only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and

- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification, and wage rate and fringe benefits therefore, only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and

- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the Contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer, or will notify the contracting officer within the thirty day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- a. **Withholding** - 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 the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, WATA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- b. **Payrolls and Basic Records** - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work, and preserved for a period of three years thereafter, for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that

the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii)(A) The Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to WATA for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of and section 231 of title 31 of the United States Code.
- (iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the

required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- c. **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or sub-contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job

site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity - The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- d. **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- e. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in C9 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- f. **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- g. **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- h. **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- i. **Certification of eligibility** - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.1 2(a)(1).
 - (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.1 2(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

17. Contract Work Hours and Safety Standards Act

The Contractor agrees to comply, and assures the compliance of each third party Contractor and each Sub Contractor at any tier of the Project, with the following employee protection requirements for contract employees.

Overtime requirements - No contractor subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- a) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and any 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 forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- b) **withholding for unpaid wages and liquidated damages** – The Contractor 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 monies 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 in paragraph (2) of this section.
- c) **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.

18. [Reserved]

19. No Government Obligation to Third Parties

- a) 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.
- b) 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.

20. Program Fraud and False or Fraudulent Statements or Related Acts.

- a) 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.

- b) 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.
- c) 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.

21. Termination

Upon written notice, Contractor agrees that the Federal Government may suspend or terminate all or part of the Federal financial assistance provided herein if Contractor has violated the terms of the Grant Agreement or Cooperative Agreement, or if the Federal Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of the Grant Agreement or Cooperative Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement. Termination of any Federal financial assistance for the Project will not invalidate obligations properly incurred by the Contractor before the termination date, to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Contractor has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable and appropriate use of the Project real property, facilities, or equipment, or has failed to comply with the terms of the Grant Agreement or Cooperative Agreement, the Federal Government reserves the right to require the Contractor to refund the entire amount of Federal funds provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant.

Agreement or Cooperative Agreement

- a) Termination for Convenience: WATA may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to WATA to be paid to the Contractor. If the Contractor has any property in its possession belonging to WATA, the Contractor will account for the same, and dispose of it in the manner as WATA directs.

- b) Termination for Default: If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, WATA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by WATA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or beyond the control of the Contractor, WATA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c) Termination for Cost-Type Contracts: WATA may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of WATA or is for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from WATA, or property supplied to the Contractor by WATA. If the termination is for default, WATA may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of the work performed up to the time of termination. The Contractor shall promptly submit its termination claim to WATA and the parties shall negotiate the termination settlement to be paid the Contractor.

22. Government-wide Debarment and Suspension (Non-procurement)

The Contractor agrees to comply, and assures the compliance of each third party contractor and subcontractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Non-procurement)," within 49 C.F.R. Part 29.

23. Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor, or its employees, operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- b) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. Civil Rights

The following requirements apply to the underlying contract:

- a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
- (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, 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.
 - (2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 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.
 - (3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- c) 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.

25. Breaches and Disputes

- a) Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of WATA. This decision shall be final and conclusive unless within 10 days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to WATA. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of WATA shall be binding upon the Contractor and the Contractor shall abide by the decision.
- b) Performance During Dispute - Unless otherwise directed by WATA, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- c) Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

- d) Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between WATA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the Commonwealth of Virginia.
- e) Rights and Remedies - The duties and obligations imposed by the Contract Documents, and the rights and remedies available there under, shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by WATA, Architect, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

26. Patent and Rights in Data.

Rights in Data

The following requirements apply to each contract involving experimental, developmental, or research work:

- a) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- b) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - (1) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government 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.
 - (2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, 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 in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "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.
 - (a) Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - (b) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - (3) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that

work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added 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 that 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 the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- (4) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree 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 Purchaser or 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. Neither the Purchaser nor 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.
 - (5) 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.
 - (6) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - (7) Unless FTA determines otherwise, 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 provided by FTA.
- c) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - d) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

- a) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
- b) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- c) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

28. Transit Employee Protective Arrangements.

- a) The Contractor agrees to comply with applicable transit employee protective requirements as follows:
 - (1) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection a., however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) of this clause.
 - (2) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
 - (3) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to

comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

- b) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

28. Disadvantaged Business Enterprise

The Contractor agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

- a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in DOT Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10 %. The agency's overall goal for DBE participation is ___ % A separate contract goal **[of ___ % DBE participation has] [has not]** been established for this procurement.
- b) The Contractor 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 this DOT-assisted contract. 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 {insert agency name} deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c) **{If a separate contract goal has been established, use the following}** Bidder/s are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:
 - (1) The names and addresses of DBE firms that will participate in this contract;
 - (2) A description of the work each DBE will perform;
 - (3) The dollar amount of the participation of each DBE firm participating;
 - (4) Written documentation of the bidder/'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 prime Contractor's commitment; and
 - (6) If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][s] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/ will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- d) 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 the {insert agency name}. 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 the {insert agency name} and Contractor's receipt of the partial retainage payment related to the subcontractor's work.]

- e) The Contractor must promptly notify **{insert agency name}**, 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 **{insert agency name}**.

29. [Reserved]

Incorporation of FTA 4220.1 F Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 f, 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 request, which would cause WATA to be in violation of the FTA terms and conditions.

30. Substance Abuse

The Contractor agrees to comply with the following Federal substance abuse regulations:

- a) Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 et seq.
- b) Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable. 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 DOT or its operating administrations, the Department of Rail and Public Transportation of the Commonwealth of Virginia, or WATA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before February 15 and to submit the Management Information System (MIS) reports before February 15 to the Grants/Budget Administration, 7239 Pocahontas Trail, Virginia 23785. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements," which is published annually in the Federal Register.

APPENDIX B
FTA REQUIRED CLAUSES CHECKLIST

CONTRACT NO: _____

Federal Transit Administration Required Clauses

If an item on the following Table of Contents is marked “**All**”, it is a required clause for any subsequent contract and, if applicable, the corresponding certification must be completed and submitted with the bid or proposal in order to be determined “responsive”. **Please check items that apply and are included.**

Sec.	Contract Clause	Applicability to Type of Contract	Cert.
1	Fly America Requirements	When Transportation Paid by FTA Funds	
2	Buy America Requirements	Value > \$100 K for Construction, Goods, Rolling Stock	Any
3	Charter Bus and School Bus Requirements	Operational Service	
4	Cargo Preference Requirements	Equipment/Material/Commodities Transported by Ocean	
5	Seismic Safety Requirements	New Building Construction / Additions	
6	Energy Conservation Requirements	All	
7	Clean Water Requirements	Value > \$100 K	
8	Bus Testing	Rolling Stock / Turnkey Acquisition	Any
9	Pre-Award and Post Delivery Audit Requirements (include FMVSS Cert)	Rolling Stock / Turnkey Acquisition	Any
10	Lobbying	All	>\$100K
11	Access to Records and Reports	All	
12	Federal Changes	All	
13	Bonding Requirements	Construction > \$100 K and at discretion of FST for others	
14	Clean Air	Value > \$100 K	
15	Recycled Products	Value > \$10 K in Fiscal Year	
16	Davis Bacon Act and Copeland Anti-Kickback Act	Public Works / Construction > \$2000	
17	Contract Work Hours and Safety Standards Act	Construction > \$2000, Rolling Stock, Operational > \$3,000	
18	[Reserved]		
19	No Government Obligation to Third Parties	All	
20	Program Fraud and False or Fraudulent Statements and Related Acts	All	
21	Termination	Value > \$10 K	
22	Government-Wide Debarment and Suspension (Non-procurement)	Value > \$25 K	Any
23	Privacy Act	All	
24	Civil Rights Requirements	All	
25	Breaches and Dispute Resolution	Value > \$100 K	
26	Patent and Rights in Data	Research Projects Only	
27	Transit Employee Protective Agreements	Transit Operations	
28	Disadvantaged Business Enterprise (DBE)	All	(?)
29	[Reserved]		
30	Incorporation of FTA Terms	All	
31	Drug and Alcohol	Operational Service / Safety Sensitive	Any

APPENDIX C
FEDERAL CERTIFICATES

**BUY AMERICA CERTIFICATION REQUIREMENT FOR PROCUREMENT OF
STEEL, IRON, OR MANUFACTURED PRODUCTS**

Certificate of Compliance with 49 U.S.C. 5323(j) (1)

The bidder or hereby certifies that it will meet the requirements of 49 U. S.C. 5323 (j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S. C. 5323(j) (1)

The bidder or hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it 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 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS
FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

Certificate of Compliance:

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11.

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance:

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

**CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING
REQUIREMENTS**

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665. 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 DOT'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: _____

Signature: _____

Company Name: _____

Title: _____

FEDERAL MOTOR VEHICLE SAFETY STANDARD CERTIFICATION

I, _____, certify on behalf of
_____ that the vehicles to be manufactured comply
with Federal Motor Vehicle Safety Standards as specified in 49 CFR 26.

Date _____

Signature _____

Company Name _____

Title _____

LOBBYING CERTIFICATION

The undersigned _____ 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 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.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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.*)]

(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 subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was 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. 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 _____

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

Instructions for Certification:

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, WATA may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to WATA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "persons", "lower tier covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact WATA for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by WATA.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which

it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, WATA may pursue available remedies including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date _____

Signature _____

Company Name _____

Title _____

**Certification Disadvantaged Business
Enterprise Program/Equal Employment Opportunity**

In accordance with Title 49, Code of Federal Regulations, Part 23, California Public agreements Code Section 10115, and other applicable Disadvantaged Business Enterprise ("DBE") and Equal Employment Opportunity ("EEO") rules and regulations, the Contractor declares that it had made a good faith effort to comply with established DBE goals, and that it has made a good faith effort meet established EEO goals, as evidenced below:

1. Contractor's overall DBE participation rate: _____

2. Names/Locations of DBEs contacted by Contractor:

3. Names/Locations of DBEs selected by Contractor:

4. Contractor's work force breakdown by race and gender:

TOTAL EMPLOYEES as of _____

JOB CATEGORIES	# EMPLOYEES							
	Male				Female			
	White	Black	Asian	Native Am.	White	Black	Asian	Native Am.
Officials & Managers:								
Professional:								
Technical:								
Sales:								
Office/Clerical:								
Craftsmen:								
Laborers:								
Service:								

Note: The above DBE/EEO Affidavit is part of Contractor's Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this DBE/EEO Affidavit.

SIGNATURE _____ DATE _____

TITLE _____ COMPANY NAME _____

Certification Regarding Alcohol Misuse and Prohibited Drug Use

1) As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the undersigned certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and prohibited Drug Use in Transit Operations," 49 CFR part 655.

2) The undersigned 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 DOT, Federal Transit Administration, Master Agreement (FTA MA (9)), between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. The undersigned's failure to so comply shall constitute a material breach of contract.

Signature _____

Name _____

Date _____

Company Name _____

Title _____

APPENDIX D
DETERMINATION OF PRICE REASONABLENESS

DETERMINATION OF PRICE REASONABLENESS

Purchase Order Number (If applicable): _____

Vendor: _____

Items Purchased: _____

The price(s) paid for item(s) received under this purchase are determined to be fair and reasonable, based on the following (as checked):

- _____ Adequate competition
- _____ Current price lists
- _____ Catalog price
- _____ Prices found reasonable on recent previous purchases _____

Advertisements

- _____ Similar items in a related industry
- _____ Independent price estimate
(based on a good understanding of what the item should cost)
- _____ Other basis. Explain Below:

Prepared By: _____

Date: _____

APPENDIX E
PROCUREMENT DOCUMENTATION CHECKLIST

Procurement Documentation Checklist

Project Name: _____

Project Number (If applicable): _____

Project Manager: _____

Purchase Order Number (If applicable): _____

Procurement Method: _____

The following documentation for this Purchase Order is in the procurement file (as checked):

- _____ 1. Purchase Requisition
- _____ 2. FTA Waivers
- _____ 3. Independent Cost Estimate
- _____ 4. Pre-Qualification of Suppliers
- _____ 5. Qualified Products List
- _____ 6. Approval to Solicit
- _____ 7. Scope of Work / Specification
- _____ 8. Rationale for Procurement Method / Contract Type
- _____ 9. Public Announcement (Solicitation)
- _____ 10. Proof of Advertisement
- _____ 11. Addenda
- _____ 12. Source List / Vendor Contact List
- _____ 13. List of Bids / Proposals / Offers
- _____ 14. Cost or Price Analysis
- _____ 15. Determination of Responsibility
- _____ 16. Bid / Proposal / Offer Evaluation
- _____ 17. Sole Source Justification
- _____ 18. Bonds (Bid/Performance/Payment)
- _____ 19. Summary of Negotiations
- _____ 20. Determination of Price Reasonableness
- _____ 21. Rolling Stock (Pre-Award Audits)
- _____ 22. Approval of Award
- _____ 23. Contract
- _____ 24. Insurance Documents
- _____ 25. Change Requests
- _____ 26. Approved Change Requests/Modifications
- _____ 27. Rejected Change Requests
- _____ 28. Rolling Stock (Post-Delivery Audits)
- _____ 29. Protest and Protest Resolution
- _____ 30. Contract Monitoring Documentation
- _____ 31. Purchase Order, Invoices and Approval for payment
- _____ 32. Contract Completion and Close Out Documentation
- _____ 33. Letters
- _____ 34. Memos
- _____ 35. E-mails
- _____ 36. Accepted Bid / Proposal / Offer
- _____ 37. Other: _____

APPENDIX F
ADDENDUM RECEIPT FORM

ADDENDUM RECEIPT

_____ (Name of Contractor) acknowledges it has received and read the following Addenda:

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

SIGNATURE _____ DATE _____

TITLE _____ COMPANY NAME _____

APPENDIX G
WATA CERTIFICATION FORMS

APPENDIX G
WATA CERTIFICATION FORMS
WATA NON-COLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____ ,

Being first duly sworn, deposes and says:

That he is _____ of the firm of:

(Firm Name)

the party making the foregoing Bid Proposal, that such Bid Proposal is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any bidder or person, to put in a sham Bid or to refrain from bidding or proposing, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the Bid Proposal price of affiant or of any other proposer, or to fix any overhead, profit or cost element of said Bid Proposal price, or of that of any other proposer, or to secure any advantage against the WATA or any person interested in the proposed contract; and that all statements in said Bid Proposal are true.

That neither any officer, director or employee of WATA is in any manner interested, directly or indirectly, in the Bid Proposal to which this Non-Collusion Affidavit is attached, nor in the Contract which may be made pursuant to said Bid Proposal, nor in any expected profits which may arise there from.

Dated: _____

Name of proposer _____

Official Address: _____

By: _____

Title _____

Subscribed and sworn to before me this _____ day of _____ , 200__.

By: _____
Notary Public

My Commission Expires: _____

WATA
ELIGIBLE PROPOSER CERTIFICATION

The Proposer hereby certifies that he/she is not on the Comptroller General of the United States of America list of ineligible bidders.

Date _____

Name of Proposer: _____

By: _____

Title: _____

By: _____

Title: _____

Official Address:

APPENDIX H
PROCUREMENT MANUAL ADDENDA