

# **PROCUREMENT POLICY**

Washington County Service Authority

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**CHAPTER I**  
**ADMINISTRATION AND PROCEDURE**

**A. Purpose**

This Procurement policy, adopted by the Washington County Service Authority(the "Authority") in connection with its purchase of goods, services, insurance or construction from individuals and companies, is intended to ensure that the Authority will obtain high quality goods and services at reasonable cost, that all procurement procedures will be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, and that all qualified vendors will have access to the business of the Authority. This policy further reflects the Authority's desire to ensure that no offeror will be arbitrarily or capriciously excluded and that full and open competition consistent with the standards of the Virginia Public Procurement Act, Title 2.2, § 4300 *et seq.* of the 1950 Code of Virginia, as amended, and other requirements will be sought to the maximum feasible degree. It is the intent of the Authority that the rules governing contract awards will be made clear in advance of the competition and that specifications will reflect the procurement needs of the Authority rather than being drawn to favor a particular vendor.

The term "procurement" includes both contracts and modifications (including change orders) for construction or services, as well as purchases, lease or rental of supplies and equipment.

**B. Procurement Authority and Administration**

1. All procurement transactions shall be administered by the Contracting Officer, who shall be the General Manager, or by another individual whom the General Manager has authorized in writing.
2. The duties of the Contracting Officer shall be to ensure the following:
  - a. That each proposed procurement is reviewed by the division director responsible for originating the procurement with the goal of avoiding purchase of unnecessary or duplicative items; that consideration be given to the consolidation or separation of procurement in order to obtain a more economical purchase; and that an analysis of lease options versus purchase alternatives be considered in order to ensure the most economical approach;
  - b. That contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including the method of procurement chosen, the selection of the

contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;

- c. For procurements other than small purchases (as defined in Chapter III), that public notice of the Invitation to Bid or the Request for Proposal is given at least ten (10) days prior to the date set for receipt of bids or proposals. See Chapter III, Sections C.1 and C.2 hereof.
- d. That solicitation procedures are conducted in compliance with the Virginia Public Procurement Act.
- e. That the contract award is made to the responsive and responsible bidder offering the lowest price (in the context of competitive sealed bidding) or to whose proposal offers the greatest value to the Authority, considering price, technical, and other factors as specified in the Request for Proposal (in the context of competitive negotiation);
- f. That contracts are only awarded to responsible bidders who possess the ability to perform successfully under the terms and conditions of the proposed contract; that factors to be considered in making such a determination include contractor integrity, compliance with public policy, record of past performance, and financial and technical resources; that any determination of non-responsibility is fully documented and copies of such documents are placed in the contract file; that bidders and offerors who are found to be non-responsible are informed of the reasons for such a finding;
- g. That each contract indicates the schedule of payments to be made to the contractor, and that payment is promptly made for contract work performed and accepted.

**CHAPTER II**  
**ETHICS IN PUBLIC CONTRACTING**

**A. Definitions**

1. "Immediate family" shall mean (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee
2. "Official responsibility" shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.
3. "Pecuniary interest arising from the procurement" shall mean a personal interest as defined in the State and Local Government Conflict of Interests Act, Va. Code Ann. § 2.2-3100 *et seq.*
4. "Procurement Transaction" shall mean all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

**B. Conflicts of Interest**

No employee, agent, or officer of the Authority shall participate in any procurement transaction if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer, or agent is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or
2. The employee, officer, agent, any member of his/her immediate family or his/her partner holds a position with a bidder, offeror, or contractor such as an officer, trustee, director, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or
3. The employee, officer, agent, any member of his/her immediate family, his/her partner or any organization which employs, or is about to employ, any of the foregoing has a pecuniary interest arising from the procurement transaction; or

4. The employee, officer, agent, any member of his/her immediate family, or his/her partner is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror, or contractor; or
5. Other violation of the Virginia State and Local Government Conflict of Interests Act, Va. Code Ann. § 2.2-3100 *et seq.*

**C. Prohibited Activity**

1. The employees, agents, or officers of the Authority who participate in procurement transactions shall comply with all applicable requirements of the Virginia State and Local Government Conflict of Interests Act, Va. Code Ann. § 2.2-3100 *et seq.* and the Ethics in Public Contracting Article of the Virginia Public Procurement Act, Va. Code § 2.2-4367 *et seq.*
2. No employee, agent, or officer of the Authority having official responsibility for procurement transactions shall accept employment with any bidder, offeror, or contractor with whom the employee dealt with in an official capacity concerning procurement transactions for a period of one year from the cessation of employment with the Authority, unless the employee or former employee provides written notification to the Authority, prior to commencement of employment by that bidder, offeror or contractor.
3. No employee, agent, or officer of the Authority who is participating in a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services of anything of more than nominal or minimal value (\$25 or less), present or promised, unless consideration of substantially equal or greater value is exchanged. The Authority may recover the value of anything conveyed in violation of this section.
4. No bidder, offeror, contractor, or subcontractor shall confer upon any employee, agent, or officer involved in a procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.
5. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

6. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement no to compete on a contract of the Authority.
7. Should a subcontractor or supplier make a kickback or other prohibited payment as described in this section, the value thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the Authority. However, the Authority reserves the right to recover the value of the kickback from both the maker and the recipient. In the exercise of this right, recovery from one offending party shall not preclude recovery from other offending parties.
8. No building materials, supplies, or equipment for any building or structure constructed by or for the Authority shall be sold by or purchased from:
  - a. Any person employed as an independent contractor by the Authority to provide architectural or engineering (but not construction) services, for such building or structure or any partnership association or corporation in which such architect or engineer has a pecuniary interest; or
  - b. Any entity which has provided, or is currently providing, design services specifying a sole source for such materials, supplies or, equipment to be used in such building or structure.
9. No employee, agent, or officer of the Authority having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.
10. The Authority reserves the right to require from its employees, agents, or officers who have participated in procurement transactions written certification that they complied with the provisions of this section.



**CHAPTER III**  
**PROCUREMENT METHODS**

**A. General**

1. Definitions:

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

“Responsible bidder” or “offeror” means a person who has the capability, in all respects, to perform fully the contract requirement and the moral and business integrity and reliability that will assure good faith performance, and who has been pre-qualified, if required.

“Responsive bidder” means a person that has submitted a bid that conforms in all material respects to the Invitation to Bid.

2. The following methods of procurement shall be used by the Authority:

a. Small Purchases. Where the value of professional services to be procured is not expected to exceed \$60,000 annually, or where the value of goods or services other than professional services to be procured is not expected to exceed \$100,000, the Authority may proceed in accordance with the Small Purchase Contract Procedures set forth below. Requirements for goods and services expected to exceed \$60,000/\$100,000 in the aggregate shall not be broken down into several purchases of less than the threshold amount merely to permit contract awards under the Small Purchase Contract Procedures.

b. Competitive procurement. Where the value of professional services to be procured is expected to exceed \$60,000, or where the value of goods or services other than professional services to be procured is expected to exceed \$100,000, the Authority shall proceed using competitive procurement measures (competitive sealed bidding or competitive negotiation). See Competitive Procurement Procedures, set forth below.

c. Cooperative procurement. The Authority may participate in cooperative procurement agreements in conjunction with one or more other public bodies or public agencies to purchase or use common goods and services. If used, the cooperative procurement agreement shall stipulate who is authorized to purchase on behalf of the participating

parties and shall specify inspection, acceptance, termination, payment and other relevant terms and conditions.

d. Non-competitive procurement. Non-competitive procurement may be used only when there is a written determination by the Contracting Officer, which sets forth the reasons for the decision and is approved by the Board of Commissioners, that there is only one source practicably available for that which is to be procured (sole source procurement) or an emergency exists which will not permit a delay resulting from competition procurement (emergency procurement). See Non-Competitive Procurement Procedures, set forth below.

3. The Authority will not make an award to any contractor or individual, it knows to be suspended or debarred from Federal or State contracts.

**B. Small Purchase Contract Procedures**

The Authority has adopted a Small Purchases Policy that complies with Va. Code §2.2-4303.

1. Purchases not exceeding \$5,000: The Contracting Officer or designee may purchase goods or services costing in the aggregate \$5,000 or less upon the receipt of one written quote. The Authority may request quotations verbally or in writing.
2. Purchases exceeding \$5,000, but not expected to exceed \$30,000; purchases of goods and services other than professional services exceeding \$30,000 but not expected to exceed \$100,000:
  - a. Where the cost of goods or services to be procured by single or term contract is expected to be greater than \$5,000 but not greater than \$30,000, the Contracting Officer shall take such steps as are reasonably necessary, considering the nature and magnitude of the contract, the administrative time and costs involved, and all other relevant factors, to ensure that the price to be paid for such goods or services, the quality of same, and the source from which they are to be obtained are in the best interests of the Authority. Wherever practicable, the procurement shall be made after a solicitation of written bids or proposals from three (3) valid sources.
  - b. Where the cost of goods or services other than professional services to be procured by single or term contract is expected to be greater than \$30,000 but not greater than \$100,000, the Contracting Officer shall take such steps as are reasonably necessary, to ensure that the price to be paid for such services, the quality of same, and

the source from which they are to be obtained are in the best interests of the Authority. At a minimum, the steps shall include the written informal solicitation of a minimum of four (4) bidders or offerors

- c. In all cases where multiple bids or proposals are sought, the invitations or requests extended and the offers received shall be documented by memorandum or other writing and shall be placed in the contract file.
- d. When multiple proposals are received, the award shall be made to the lowest responsive and responsible bidder, or best value as specified in the request for quotations or proposals.
- e. The name and address of each vendor contacted, the name of the individual providing the quote, the date, FOB point (if goods are being acquired), delivery date (or goods) or start date (for services), payment terms and the amount of each bid quoted shall be recorded and maintained as a public record. If bids are not obtained, a statement of the reasons why bids were not received, to the extent known, shall be recorded and maintained as a public record.

## **C. Competitive Procurement**

There are two methods of competitive procurement available to the Authority: competitive sealed bidding and competitive negotiation.

### **1. Competitive Sealed Bidding**

- a. Competitive sealed bidding shall be used in the following circumstances: (1) the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are expected to be willing and able to compete effectively for the work/business; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price; and (2) construction contracts, except as provided for in Section C.2.a. below.
- b. The procedure for competitive sealed bidding is as follows:
  - 1. A written **Invitation to Bid** shall be prepared defining the terms or services to be procured and containing or incorporating by reference the specifications and

contractual terms and conditions which are to apply to the proposed procurement. Unless there has been a pre-qualification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. Where possible, the Invitation to Bid shall lend itself to the formation of firm, fixed- price contracts so that the selection of the successful bidder can be made principally on the basis of price.

2. The Invitation to Bid shall be posted in the main lobby of the Authority's Central Office and published in The Bristol Herald Courier or other newspaper having general circulation in Washington County, Virginia, at least ten (10) days prior to the date set for receipt of bids. In addition, copies of the Invitation to Bid may be sent directly to an adequate number of known potential contractors.
3. The bids shall be opened publicly and announced on the date set forth in the Invitation to Bid. Each bid shall be date-time stamped upon receipt in order to document its timeliness. Sealed bids shall be stored in a safe place until the appointed time for bid opening to ensure that they are not tampered with. When the bids are opened the bidders' names and the bid prices shall be read aloud. This information shall be recorded and made available to the public. No commitments shall be made to any bidder at the bid opening, although the apparent low bidder may be announced at the time of bid opening. Any disputes or questions concerning the bids, which must be submitted to the Contracting Officer in writing, shall be deferred until such time as the Contracting Officer has had ample opportunity to review all the pertinent facts.
4. Bids shall be evaluated on the basis of the requirements set forth in the Invitation to Bid. No bid shall be considered for award if the bid is not responsive or is submitted by a non-responsible bidder. The Contracting Officer shall examine bids to ensure that bidders do not attempt to impose conditions or additional terms to their bids.
5. The contract shall be awarded to the lowest, responsible bidder whose bid conforms with all material terms of the Invitation to Bid, provided that the bidder has the capability, in all respects, to fully perform the contract requirements. Such bidder shall also have the integrity and

business reliability which will assure good faith performance of the contract.

6. Rejection of any bid during the evaluation process shall be fully documented, stating all reasons for the rejection. Copies of such documentation shall be placed in the contract file.
- c. Negotiation with the low bidder. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Contracting Officer may negotiate with the apparent low bidder to obtain a contract price with available funds. The following procedure shall be used by the Contracting Officer in negotiating with the low bidder:
1. The low bidder shall be notified in writing by the Contracting Officer that his bid is the lowest but that his price exceeds available funds. The Officer shall certify in the notification the amount of funds available and the basis for the limitation on funding. The notification shall require the low bidder to advise the Officer by a date stated in the notification as to whether he wishes to undertake negotiations for a lower contract price within available funds.
  2. If negotiations are desired by the bidder, the Contracting Officer shall promptly meet with the low bidder and attempt to negotiate a new contract price. No **material** changes in the specifications or other requirements contained in the Invitation to Bid shall be made during this negotiation process. Minor changes may be permitted.
  3. Agreement on a new bid price must be reached within thirty (30) days from the date bids were originally opened. If agreement is not reached within this time, or if the low bidder does not indicate his willingness to undertake negotiations at all, then all bids shall be rejected and the procurement procedure shall be recommenced.

2. Competitive Negotiation

- a. Competitive negotiation shall be used in the following circumstances: (1) procurement of professional services, except legal services as provided by Va. Code § 2.2-4344(A)(2); (2) construction contracts where the contract

is not expected to cost more than \$1,000,000, and the Authority has determined, in writing, in advance that competitive sealed bidding is either not practicable nor fiscally advantageous to the public; and (3) the Authority has determined, in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.

- b. The procedure for competitive negotiation is as follows:
  1. A written **Request for Proposal** (“RFP”) or **Request for Statement of Qualifications** (“RFQ”) shall be prepared. Such RFP/RFQ shall (i) indicate what is sought to be procured, (ii) specify the factors to be used in evaluating the proposal and, (iii) contain, or incorporate by reference the other applicable contractual terms and conditions including any unique capabilities or qualifications which will be required of the contractor.
  2. The RFP/RFQ shall be posted in the main lobby of the Authority's Central Office and published in The Bristol Herald Courier or other newspaper having general circulation in Washington County, Virginia at least ten (10) days prior to the date set for receipt of proposals/qualifications. In addition, proposals/qualifications may be directly solicited from an adequate number of known potential contractors.
  3. Prior to the issuance of the RFP/RFQ a method for evaluating the technical capabilities and, in the case of non-professional services, proposals shall be established. Proposals or qualifications shall be conducted in a manner to prevent disclosure of the number of offerors, the identity of the offerors and the contents of the proposals/qualifications. The proposals/qualifications shall be evaluated only with regard to the criteria stated in the RFP/RFQ.
- c. When competitive negotiation is used for professional services:
  1. When the contract is for professional services, the negotiating process shall begin with individual discussions between appropriate Authority staff members and two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses (with emphasis on professional competence) to provide the required services. Several interviews with each offeror may be required and are permitted. The discussions should be wide-ranging, with the offerors being encouraged to elaborate on their qualifications and special expertise. Nonbinding estimates of total project costs may be requested, as well as the basis to be used for arriving at the price. Care should be taken to prevent the

disclosure of proprietary information from competing offerors to the public or competitors.

2. At the conclusion of these preliminary discussions, the Contracting Officer shall select in order of preference two or more offerors whose professional qualifications and proposed services are deemed most advantageous to the program. The basis of selection shall be limited to the evaluation factors published in the RFP/RFQ.
  3. Negotiations shall begin with the offeror ranked first. If a contract, satisfactory and advantageous to the Authority, can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be terminated. Negotiations will then commence with the offeror ranked second, and so on until a contract can be negotiated at a fair and reasonable price.
  4. Should the Contracting Officer conclude that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the other offerors, then a contract may be negotiated and awarded to that offeror. Such a determination shall be in writing.
- d. When competitive negotiation is used for procurement for goods or services other than professional services:
1. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Authority shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror.
  2. Should the Authority determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

**D. Non-competitive Procurement.**

- a. Non-competitive procurement is appropriate **only** (a) for legal services, as provided by Va. Code § 2.2-4344(A)(2) or (b) upon a written determination by the Contracting Officer, and approved by the Board of Commissioners, that competitive procurement is not feasible and (1) there is only one source practicably available for that which is to be procured, (2) an emergency exists which will not permit a delay resulting from competitive procurement, (3) extensions of certain (uncompleted) service contracts, or (4) insurance is procured through an association of public bodies for that purpose.
1. Sole source procurement. Upon a determination in writing by the Contracting Officer that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Authority shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in the main lobby of the Authority's Central Office or published in The Bristol Herald Courier or other newspaper having general circulation in Washington County, Virginia on the day the Authority awards or announces its decision to award the contract, whichever comes first.
  2. Emergency procurement. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor, by the Contracting Officer, shall be included in the contract file. The Authority shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in the main lobby of the Authority's Central Office or published in The Bristol Herald Courier or other newspaper having general circulation in Washington County, Virginia on the day the Authority awards or announces its decision to award the contract, whichever comes first, or as soon thereafter as is practicable.
  3. The Authority may, without competition, extend the term of an existing contract for services to allow completion of any work



undertaken but not completed during the original term of the contract.

4. The Authority may, without competition, enter into contracts for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the Authority has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.
- b. When non-competitive procurement is used, the Contracting Officer must take appropriate steps to assure that the best available price is obtained. The Contracting Officer must place in the contract file a written explanation of the decision to use non-competitive procurement, including the basis for that decision.

**E. Cooperative Procurement.**

The Authority may enter into State and local intergovernmental agreements to purchase or use common goods and services. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions.

**CHAPTER IV**  
**PROCEDURAL REQUIREMENTS**

**A. Receipt of Comments on Invitations to Bid, Requests for Proposal, or Requests for Qualifications**

Prospective offerors shall be permitted to submit comments on specifications or other provisions in Invitations to Bid or Requests for Proposal or Qualifications in accordance with the following procedure:

1. Comments shall be accepted in writing by the person designated in the Invitation or Request at any time up to 4:30 p.m. eastern time on the third business day prior to the date set for the receipt of bids or proposals. The person so designated shall be an employee of the Authority who is familiar with the goods or services being procured and with the Authority's requirements therefor.
2. On receipt of any such comment, the Authority employee receiving it shall promptly consult with the Contracting Officer or a third person designated by the Contracting Officer as to whether, in light of the comment, any change should be made in the Invitation or Request in order that the Invitation or Request accurately reflect the Authority's requirements and provide a sufficient basis for responsive bids or proposals. If a change is deemed necessary, all bids or proposals shall be rejected, a new Invitation or Request shall be prepared, and the procurement procedure shall be recommenced. If, despite the matters raised by the comment, the Invitation or Request is deemed by the Authority to be sufficiently accurate to provide a basis for responsive bids or proposals, the offeror submitting the comment shall be so advised in writing at or prior to the opening of bids or proposals.
3. Every Invitation to Bid or Request published by the Authority shall contain the following statement: "Comments on specifications or other provisions in this Invitation to Bid [or Request may be submitted in writing to \_\_\_\_\_ [insert name of person designated to receive comments] at the main office of the Authority at 25122 Regal Drive, Abingdon, Virginia, before 4:30 p.m. eastern time on \_\_\_\_\_ [insert date of third business day prior to the date set for opening of bids or proposals]."

**B. Cancellation and Modification of Solicitations**

Any Invitation to Bid, Request, or other solicitation of offers may be canceled by the Authority, provided a written statement of the reason for the cancellation or

modification is placed in the contract file and copies are sent to all potential bidders who were originally sent the Invitation, Request, or other solicitation.

Modifications or amendments to solicitations made by the Authority by the issuance of an addendum prior to the time set for receipt of responses. Copies of the addenda will be sent to all potential bidders who were sent the original solicitation.

**C. Rejection of Offers**

Any or all bids, proposals, or other offers received by the Authority in response to an Invitation to Bid, a Request for Proposal, or other solicitation may be rejected, provided a written statement of the reasons for rejection is placed in the contract file.

**D. Waiver of Informalities**

The Contracting Officer may waive a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid or Request for Proposal, provided that such waiver does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured. A “minor defect” or “variation” is one that does not affect the price, quality, quantity, etc.

**E. Mistakes in Bids; Withdrawals of Bids**

This section applies to all bids submitted in response to an Invitation for Bids, or proposals for construction projects submitted in response to a Request for Proposals.

1. Withdrawal before bids are opened: Any bidder for an Authority contract may withdraw its bid for any reason up to one (1) hour before the time at which bids are to be opened, as stated in the Invitation to Bid. Withdrawal shall be accomplished by mailing or delivering to the Authority a written statement that the bid is withdrawn, signed by a person authorized to represent the bidder; the withdrawal must be received by the Authority no less than one hour before the scheduled bid-opening. A bidder who withdraws a bid may submit another bid, or a revised bid, if that bid is received by the Authority by the deadline for receipt of bids.
2. Withdrawal after bids are opened, or less than one hour before the time at which bids are to be opened: A bidder for an Authority contract may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the following:
  - a. The bid was made in good faith;

- b. (i) The mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or other material made directly in the compilation of the bid; or (ii) If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid; and
- c. The mistake can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn.

The procedure for withdrawal shall be stated in the Invitation for Bids. If the procedure for withdrawal is not specified in the Invitation for Bids, the bidder may withdraw the bid in accordance with the procedure outlined in Va. Code Ann. § 2.2-4330(A)(i).

- 3. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the withdrawing bidder or to another bidder in which the ownership of the withdrawing bidder is greater than five percent.
- 4. If a bid is withdrawn under this section, the lowest remaining bid shall be deemed to be the low bid.
- 5. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- 6. Should the Authority deny the withdrawal of any bid under this section, it shall notify the bidder in writing, stating the reasons for the denial, and may award the contract to such bidder at the bid price, provided such bid is the low bid, and such bidder is a responsible and responsive bidder.

**F. Mistakes in Proposals; Correction of Proposals; Withdrawal of Proposals**

This section applies to all proposals submitted in response to a Request for Proposal, except those proposals for construction contracts for which a Request for Proposal was issued.

1. If it is apparent on its face that the proposal contains a mistake, the proposal may be corrected or withdrawn during any negotiations that are held. If negotiations are not held, or if best and final offers have been received, the offeror may be permitted to correct a mistake in his/her proposal and the intended correct offer may be considered if the following conditions are met:
  - a. The mistake and the intended correct offer are clearly evident on the face of the proposal;
  - b. The offeror submits written evidence which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer; and
  - c. Such correction would not be contrary to fair and equal treatment of other offerors.
2. Mistakes discovered after an award shall not be corrected unless the Contracting Officer makes a written determination that it would be disadvantageous to the Authority not to allow the mistake to be corrected.
3. The Contracting Officer shall ensure that all decisions to allow correction or withdrawal of mistakes in bids or proposals must be properly documented in the contract file.

**G. Bonds - Bid Bonds; Performance Bonds; Payment Bonds; Alternate Forms of Security**

1. General

Construction contracts in excess of \$100,000 require, unless otherwise specified, three types of bonds: a bid bond, a performance bond and a payment bond. The purpose of these bonds is to ensure the integrity of the procurement system and the successful completion of the contract.

2. Bond Requirements

- a. Except in cases of emergency, and as set forth in subparagraph (c) below, and subject to paragraph 5 of this section G, all bids and proposals for construction contracts in excess of \$100,000 shall be accompanied by a **bid bond** from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

- b. Upon the award of any construction contract exceeding \$100,000, except as set forth in subparagraph (c) below, the prime contractor shall furnish to the Authority (i) a **performance bond** in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract, and (ii) a **payment bond** in the sum of the contract amount, conditioned upon the prompt payment for all material furnished or labor supplied or performed in furtherance of the work provided for by the contract. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia, shall be made payable to the Authority, and shall be filed with the Authority.
3. Contracts for the furnishing of goods or services other than construction, or for construction projects less than \$100,000.

The Contracting Officer may require bid, performance and/or payment bonds for contracts for goods or services other than construction or for construction projects less than \$100,000. If such bond or bonds is/are to be required, the Invitation to Bid or Request for Proposal shall so state.

4. Action on Bonds
  - a. No forfeiture under a **bid** bond shall exceed the lesser of the following:
    - (1) The difference between the bid for which the bond was written and the next low bid, or
    - (2) The face amount of the bid bond.
  - b. An action against the surety on a **performance** bond must be brought within one year after either completion of the contract (including the expiration of all warranties and guarantees) or discovery of the defect or breach of warranty that gave rise to the action.
  - c. Any claimant who has performed labor or furnished material in accordance with the contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and

have execution on the judgment. The obligee named in the bond need not be named a party to such action.

5. **Alternate Forms of Security**

In lieu of a bid, payment, or performance bond, a bidder may, furnish a certified check or cash escrow in the full amount required for the bond.

**H. Public Inspection of Certain Records**

Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.). Any competitive sealed bidding bidder or competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect bid or proposal records within a reasonable time after the opening of all bids or the evaluation and negotiation of proposals but prior to award, except in the event that the public body decides not to accept any of the bids or proposals and to reopen the contract. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract. **Exceptions** to this rule are as follows:

1. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection;
2. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records; and
3. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); **however**, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

**I. Brand Names**

Unless otherwise provided for in the Invitation to Bid or Request for Proposal, the name of a certain brand, make, or manufacture does not restrict bidders to the specific brand, make, or manufacture named; rather, it conveys the general style, type, character, and quality of the article desired, and any article which the Authority in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

Brand name or equal specifications **shall not** be used unless the Contracting Officer determines in writing that one of the following apply: no other design or performance specification or qualified products list is available; there is a bona fide need for consistency or standardization of inventory; time does not permit the preparation of another form of purchase description (other than a brand name-only specification); the nature of the Authority's requirements make use of a brand name or equal specification suitable for the procurement; **or** use of a brand name or equal specification is in the Authority's best interests.

**If used**, brand name or equal specifications **shall** seek to designate as many brands as are practical as "or equal" references and **shall** further state that products that are substantially equivalent to those designated will be considered for award.

**J. Tie Bids**

In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Authority may rely on an updated list on the website of the Virginia Department of General Services, of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts.

Notwithstanding the above provisions, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.



**CHAPTER V**  
**CONTRACT FORM AND ADMINISTRATION**

**A. Contract Types**

Unless otherwise noted in this Policy, any type of contract which is appropriate to the procurement and which will promote the best interests of the Authority may be used. In the case of procurement of professional services, standard contracts developed by the Engineers Joint Contract Documents Committee (“ECJDC Contracts”) are preferred.

**B. Contract Terms and Clauses**

All contracts shall include the clauses and provisions necessary to define the rights and responsibilities of the parties.

**C. Administration**

1. Inspection: It is the policy of the Authority to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. To that end, performance of ongoing work shall be periodically inspected and carefully monitored, and goods shall be inspected on arrival, to assure compliance with contract requirements. Any defaults, insufficiencies, or defects shall be reported immediately in writing to the contractor, with a demand for prompt corrective action as appropriate.
2. Payment: It is also the policy of the Authority to insure the prompt payment for goods and services rendered by contractors and subcontractors. Therefore, payment shall be made for goods delivered or services rendered by the **required payment date**. Such payment is conditioned on the following:
  - a. The **required payment date** shall be either:
    - (1) The date upon which payment is due as set by the contract, or
    - (2) If such date is not set by the contract, not more than forty-five days after goods and services are received or after the invoice is rendered, whichever is later.
  - b. Separate payment dates may be specified in the contract under which goods and/or services are to be rendered in a series of partial

executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

- c. Within twenty (20) days after the receipt of the invoice or goods or services, the Authority shall notify the supplier of any defect or impropriety which would prevent payment by the payment date.
  - d. Unless otherwise provided under the terms of the contract, the Authority shall pay any finance charges assessed by the business concern should it fail to pay by the payment date, provided that such charge does not exceed one (1) percent per month.
3. Modification of Contracts: Terms permitting modification of a contract during performance may be included in the contract, but no fixed-price contract may be increased by more than 25 percent of the amount of the contract or \$50,000, whichever is greater, without prior written approval of the Board of Commissioners of the Authority.
4. Termination: The Contracting Officer may terminate a contract or purchase order for default or for convenience, provided that written notice is given to the contractor. Such notice shall be sent by certified mail, return receipt requested.
- a. The required notice of termination shall contain the following:
    - (1) That the contract is being terminated for the convenience of the Authority or for the default of the contractor;
    - (2) Whether the contract is being terminated in whole or in part;
    - (3) If terminated for default, the acts or omissions constituting the default, the Contracting Officer's determination that failure to perform is not excusable, the Authority's rights to charge excess costs of reprocurement to the contractor, and the contractor's appeal rights;
    - (4) The effective date of the termination;
    - (5) The contractor's right to proceed under the unterminated portion (if any) of the contract;
    - (6) Any special instructions.
  - b. Settlement of contract terminations shall be handled as follows:

- (1) Settlement of contracts terminated for convenience shall be handled by negotiated agreement between the Contracting Officer and the contractor. The contractor shall submit a settlement proposal promptly to the Contracting Officer for the amount claimed as a result of the termination. Any negotiated settlement **shall not** allow for the expected profit of the contractor should the Contracting Officer determine that the contractor would have suffered a loss had the contract been completed.
- (2) Under a termination for default, the Authority is not liable for the contractor's costs on undelivered work and is entitled to the repayment of any progress payments already paid.

**CHAPTER VI**  
**PROTESTS AND CONTRACT DISPUTES**

**A. Protests**

1. Any actual or prospective contractor may protest the award of a contract or decision to award a contract. Any protest against the award of a contract or the decision to award must be received by the Authority within ten (10) days after the contract award, except when the protest depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under Va. Code § [2.2-4342](#), then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § [2.2-4342](#).
2. All protests shall be in writing and shall be submitted to the Authority in care of the Contracting Officer. The written protest shall include the basis for the protest and the relief sought.
3. The Contracting Officer shall issue a written decision on the matter within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of the written decision.
4. No protest shall be available for a claim that the selected bidder or offeror is not a responsible bidder or offeror. However, prior to the issuance of a written determination of nonresponsibility, the Authority shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Authority shall issue its written determination of responsibility based on all information in the possession of the Authority, including any rebuttal information, within five business days of the date the Authority received the rebuttal information. At the same time, the Authority shall notify, with return receipt requested, the bidder in writing of its determination. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by instituting legal action as provided in Va. Code § [2.2-4364](#).

**B. Contract Disputes**

All Authority contracts shall contain the following provision for contract disputes:

1. Contractual claims for money or other relief arising out of contracts awarded pursuant to these procurement procedures shall be submitted in writing to the Authority no later than sixty (60) days after final payment is made on the contract; however, **written notice** of the contractor's intention to file such a claim must be given to the Contracting Officer at the time of the occurrence or at the beginning of the work on which the claim is based.
2. Acceptance of final payment on the part of the contractor shall not constitute a waiver of his right to file a claim in accordance with this subsection.
3. Within five (5) days of receipt of the written claim, the Contracting Officer shall refer it to a committee consisting of the Authority employee in charge of administering the contract out of which the claim arose, the Resource Management Director, and one other member of the administrative staff of the Authority who has not previously been involved with the contract. The committee shall promptly proceed to investigate the claim and shall report its conclusions and recommendations to the Contracting Officer in writing within thirty (30) days from the date of the initial receipt of the claim. As a part of its investigation, the committee shall meet with the contractor who submitted the claim.
4. The Contracting Officer shall review the claim and conduct such investigation as the Contracting Officer deems appropriate. The Contracting Officer shall then rule on the claim in writing and forward a copy to the contractor not more than ninety (90) days after the date of his initial receipt of the claim.
5. The decision of the Contracting Officer shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final decision on the claim by instituting legal action as provided in Va. Code § 2.2-4364.
6. A contractor may not institute legal action prior to the receipt of the Authority's decision on the claim, unless the Authority fails to render such decision within the time specified in this section.

**C. Legal Action**

Prospective or actual bidders, offerors, or contractors may bring legal action against the Authority only as specified by Virginia statutes. Persons wishing to bring

legal action against the Authority should refer to the Code of Virginia regarding legal actions. Please note that Virginia law typically provides for legal action after the exhaustion of available or required administrative remedies. Nothing in this section shall be construed to prevent the authority from instituting legal action against a contractor.

**D. Alternative Dispute Resolution**

1. The Authority is authorized to enter into agreements to submit disputes arising from contracts entered into pursuant to this policy to arbitration, mediation, and other alternative dispute resolution procedures.
2. Any such procedures, however, shall be non-binding and subject to Va. Code § 2.2-514.

**CHAPTER VII**  
**PREFERENCES IN PUBLIC CONTRACTING**

**A. Small Business/Women and Minorities**

1. In the solicitation or awarding of contracts, the Authority shall not discriminate because of race, religion, color, sex, age, disability or national origin of the bidder.
2. The Authority shall endeavor to include small businesses, minority-owned businesses, and women-owned businesses on solicitation lists.

**B. Geographic Preference; Preference for Recycled Goods**

In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Authority may rely on an updated list on the website of the Virginia Department of General Services, of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts.

Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

**CHAPTER VIII**  
**DISPOSITION OF AUTHORITY-OWNED PERSONAL PROPERTY**

**A. Policy**

Property owned by the Authority shall be carefully monitored and periodically inspected to determine that which should be declared as excess, obsolete or unusable or otherwise scheduled for replacement. Such property shall then be disposed of at not less than its fair market value. It is the purpose of the following procedures to assure that reasonable efforts are made to determine and obtain a fair market price when Authority-owned personal property is sold or exchanged.

**B. Real Property**

In accordance with Va. Code § 15.2-1800(B), real property owned by the Authority, whether improved or unimproved, may be sold at public or private sale, exchange, leased, or otherwise disposed of after a public hearing concerning such disposal. Public hearing is not required for (A) the leasing of real property to another public body, political subdivision of authority of the Commonwealth, or (B) conveyance of site development easement across public property that are consistent with the local capital improvement program, involving improvement of property owned by the Authority, the County, or the Commonwealth.

**C. Personal Property**

Obsolete or unusable personal property may be sold, transferred, traded, or otherwise disposed of by the General Manager.

Surplus personal property may be sold by competitive bids, public auction, or firm price offered to all persons wishing to participate in the sale. The General Manager shall select the method he believes will raise the highest revenue for the Authority. The Board of Commissioners may direct the General manager to dispose of surplus personal property by donation or transfer to other public entity, public or private not-for-profit organization, or civic or community groups or organizations.

**D. Other Dispositions Without Consideration**

Where the procedures for sale set forth above generate no offers to purchase the property, the General Manager may appropriately dispose of the property (for recycling, if feasible) and report that disposition to the Board of Commissioners of the Authority.