

Virgin Islands Waste Management Authority

Procurement Policy, Procedures, Rules & Regulations

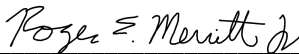
SUBJECT:	VIWMA Procurement Policies
Version Number	2
Revised Date	October 4, 2022
Effective Date	October 4, 2022
Approved by the Governing Board	
APPROVAL:	
	11/04/22
Roger E. Merritt Jr. Executive Director	Date

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SECTION I – POLICY AND GENERAL PROVISIONS

A. Policy

The Virgin Islands Waste Management Authority (“VIWMA”) shall procure goods and services in a timely manner and on the most favorable terms consistent with the law and these rules and procedures and, when appropriate after careful consideration of competing offers. The Authority shall at all times seek to minimize the cost of goods and services, the cost of carrying inventory and the cost of stock-outs, without unduly sacrificing quality and performance.

B. Authority

The rules and regulations set forth in this manual are promulgated pursuant to the authority granted under the enacting statute, Title 29 VIC 496, 498, and 500 (j). V.I. Code tit. 29, § 496 (2019); V.I. Code tit. 29, § 498 (2019); V.I. Code tit. 29, § 500j (2019)

C. Application

This Policy applies to all procurement actions of the VIWMA, regardless of the source of funds, except as noted under exclusions, below. However, nothing in this Policy shall prevent the VIWMA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with the law. When procuring property and services under a grant, the VIWMA will follow the same policies and procedures it uses for procurements from its non-federal funds. The VIWMA will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.

D. Purpose

The purpose of this manual is to establish rules and procedures for procurement and property activities within the Virgin Islands Waste Management Authority.

E. Definitions

As used in this manual, certain words and terms shall have the following meanings unless the context denotes otherwise:

“Bid Bonds”. A monetary assurance of the bidder’s seriousness of purpose. Bid Bonds provide financial assurance that the bidder submitting a bid has been qualified by the surety to perform the work and that the bidder will enter into a contract with the VIWMA at the bid price and provide the required performance and payment bonds, should the bidder become the apparent awardee.

“Brand Name” or *“Equal Description”* is as defined in Section V(C);
“Confidential information” means any information which is available to an employee only because of the employee’s status as an employee and is not a matter of public knowledge or available to the public on request.

“Competitive Negotiations” is as defined in Section IV(F);

“Construction” means the process of building, altering, repairing, improving or demolishing a public structure or building, or public improvements commonly known as *“capital improvements”*. It does not include the routine maintenance of existing structures, buildings or public real property;

“Contract” means a written agreement for the procurement of goods and services;

“Contractor” means an entity or an individual who is a party to a contract with the VIWMA;

“Debarment” means a shutting out or exclusion from contracting with the VIWMA for cause as an awardee;

“Direct or indirect participation” means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, review, investigation, auditing or in any other advisory activity;

“Director of Procurement and Property” means the chief procurement officer within VIWMA.

“Dispute” is as defined in Section IV(E);

“Emergency Purchase” is as defined in Section IV(H);

“Employee” means an individual receiving a salary from the VIWMA;

“Entity” means a sole proprietorship, partnership, joint venture, corporation, other unincorporated association, or a private legal organization;

“Executive Director” means the Chief Executive of the VIWMA;

“*Fidelity Bonds*” means honesty assurance and loss recovery. Fidelity Bonds provide coverage for employee dishonesty, including stolen physical and intellectual property, cash, checks, or securities

“Financial interest” means (i) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive compensation; (ii) or holding a position in a business such as an officer, director, trustee, partner, employee or the like, or holding any position of management;

“Gratuity” means a payment, loan, subscription, advance, deposit of money, services or anything, including favors, of more than nominal value, present or promised, including instances in which consideration of substantially equal or greater value is received;

“Goods” means all real or personal property, including but not limited to equipment, materials, supplies, printed documents, plans, specifications, and other tangible property of any kind or nature;

“Immediate family” means a spouse, child, parent, sibling, live in companion,

“Common Law”-like relationship or domestic partners;

“*Maintenance Bonds*” means third-party written financial assurances, that provide for the upkeep of the project for a specified period of time after

the project is completed. These bonds provide financial guarantee against defective workmanship or materials. These bonds may occasionally include a guarantee of "efficient or successful operation" or other obligations;

“Invitation for Bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

“*Material and Payment Bonds*” means third Party written financial assurances that the Contractor will pay his or her subcontractors, laborers, and material suppliers. If any of these are not paid, the surety shall respond to their claims.

“MFD vendor.” an MFD vendor means any entity that engages in commercial transactions and is at least fifty-one percent owned and controlled by one or more minority, female, or disabled persons;

“Minority individual.” For purposes of this section, minority individuals are limited to members of the following groups: African Americans, Asians (including Pacific Islanders), Hispanics, and Native Americans. For reporting purposes, African American refers to all persons having origins in and of the black racial groups of Africa; Hispanics refers to all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; Asian includes all persons having origins in any of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands except Hawaii; and Native American includes all persons of American Indian, Eskimo, Aleut, and Native Hawaiian descent;

“Mentally or physically disabled.” For purposes of this section, mentally or physically disabled means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, as defined in the Americans with Disabilities Act of 1990 as it may be amended from time to time;

“Newspapers” means print, electronic, video, and internet media outlets.

“Non-competitive Negotiations” is as defined in Section IV(G);

“Occasional Goods and Services” means discrete services which are needed due to particular or unique circumstances;

“*Performance Bonds*” means third part written financial assurances which protect the VIWMA from potential financial losses resulting from the contractor's failure to perform his or her work in accordance with the contract specifications. Failure to perform may result from any number of reasons, including cash flow limitations, bankruptcy, insolvency, cessation of operations, and the like;

“Procurement” means buying real or personal Property, renting, leasing or acquiring goods or services. It also includes all functions that pertain to the obtaining of goods or services, including description of requirements, selection of solicitation sources, evaluation of proposals or bids, preparation and award of contracts.

“Purchase order (PO)” is a commercial document and first official offer issued by a buyer to a seller, indicating types, quantities, and agreed prices for products or services.

“Reasonable Bid” means a bid that is timely submitted, compliant with bid specifications, equitable, fair and suitable, and is not excessive or inappropriate in any material respect;

“Recurring or Routine Goods and Materials” is as defined in Section VI;

“Recurring or Routine Services” is as defined in Section VII;

“Responsible Bidder” means an individual or an entity which has the capability in all respects to fully perform each requirement of a contract should one be awarded, and the integrity and reliability to assure good faith in performance of the contract;

“Responsive Bid” means a properly submitted bid which conforms in all material respects to the invitation for bids;

“Services” means the furnishing of time, manpower, labor, or effort by an entity or a person, other than an employee, in any activity resulting in an economic benefit to VIWMA;

“Specialized Service” is as defined in Section IX;

“Specifications” is as defined in Section V;

“Specification” means a clearly defined description of the physical or functional characteristics, or nature of a good, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing goods, service, or construction item for delivery;

“Subcontractor” means any entity that has a contract to supply labor or materials to the prime contractor to which the contract was awarded, or to any subcontractor in the performance of the work provided for in such contract;

“Vendor” means a prospective bidder, offered, proposer, or one who sells goods or service.

F. Errors, Conflicts and Lack of Procedure

General

The VIWMA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct is consistent with applicable Federal and Territorial laws.

Conflicts of Interest

No employee, officer, Board member or agent of the VIWMA shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. Failure to notify the Authority of or knowledge of intentional conflict will result in disciplinary action up to and may include termination of employee. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

1. An employee, officer, Board member, or agent involved in

making the award.

His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, firstcousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister).

2. His/her partner; or an organization which employs or is negotiating to employ or has an arrangement concerning prospective employment of any of the above.

SECTION II – RESPONSIBILITY

The responsibility for the purchasing and procurement of goods and services is vested in the Division of Procurement and Property. The Division will serve all the procurement needs of the VIWMA with the following supporting Divisions and elements:

A. The Chief Financial Officer

Serves as the Chief Financial Officer (CFO) of the Authority and head of the Division of Finance (DOF) and shall certify as to the availability of funding for all requisitions involving the expenditure of VIWMA funds, irrespective of source, after receipt of the requisition. The DOF shall prepare the fiscal year budget for the Authority under the direction of the Executive Director.

B. Division of Procurement and Property

1. All purchases, rights, powers, duties and authority relating to the procurement of goods and services, including construction services, and the management, control, warehousing, sale and disposal of goods and services shall be directed by the Division of Procurement and Property in conjunction with the User Division where applicable.

The Director of Procurement and Property shall develop, issue and maintain procedures governing the initiation, preparation, and final disposition of contracts, purchase orders and requisitions.

2. Director of Procurement and Property

The Procurement and Property Director shall procure or supervise the procurement of all goods and services needed by VIWMA; exercise general supervision and control over all inventories of goods belonging to VIWMA; sell, and trade or otherwise dispose of goods surplus to the VIWMA.

C. Director of Engineering

The Director of Engineering shall be responsible for the development of all plans and specifications for construction or capital improvement projects; and shall be responsible for the administration of all contracts for architectural, engineering, construction, and construction administration awarded for construction or capital improvement projects.

D. General Counsel

The General Counsel shall assist in the preparation of and shall approve all VIWMA contracts as to legal sufficiency prior to execution by the Executive Director, regardless of the delegated authority for execution and administration.

E. Heads of VIWMA Divisions

All Division heads are responsible for initiating requisitions for the goods, materials, supplies, equipment or services to be used in the general operation of their divisions.

SECTION III – PROCUREMENT PLANNING

It shall be the policy of VIWMA to adequately plan and budget to determine the procurement and property needs of the Authority on an annual basis prior to the start of each fiscal year.

It shall be the responsibility of each Division head or other appropriate personnel to determine the annual needs of each Division for goods and services, such as

materials, equipment, office supplies, professional services, and construction materials and services. Each Division head shall submit to the Director of Procurement and Property, by July 15 of each year, a list of planned purchases for goods and services (other than small, routine items) for the succeeding fiscal year including:

- (1) A description of the goods or services to include, where appropriate, plans, specifications, and operating requirements;
- (2) Estimated dollar amount of each purchase;
- (3) Required delivery date; and
- (4) Estimated date for initiation of the requisition.

The list of planned purchases shall be updated on a quarterly basis by the head of each Division initiating the requisitions.

The Procurement and Property Director shall analyze routine stock or inventory materials to determine usage rates, order quantities, re-order points, surplus items, and obsolete items by July 15 of each year.

This process of determining the procurement and property needs of the VIWMA in advance of the fiscal year shall be conducted according to the following guidelines:

- (1) Purchases shall be planned in quantities that are adequate, at prices that are reasonable, and of the quality that is desired;
- (2) When necessary, planned purchases shall be submitted with specifications, plans, and operating requirements;
- (3) Purchases shall be planned to allow for timely receipt of the goods or services;
- (4) Purchases shall be planned to avoid disruption of operations and stock-out of materials and supplies;
- (5) Purchases shall be planned to avoid potential losses, including loss of the use of cash, and high carrying costs caused by excessive inventories;
- (6) Purchases shall be planned to avoid the purchase of unnecessary or duplicative goods and services;
- (7) Purchases shall be planned to accommodate consolidation and bulk orders;
- (8) Purchases shall be planned to achieve an inventory turnover limit of not more than forty-five (45) days.

Purchases shall follow the competitive bidding procedures (Section IV); and the requirements and procedures established for stock and recurring goods and materials (Section VI), recurring services (Section VII), and construction and capitalized maintenance (Section VIII), specialized services (Section IX), occasional goods and services (Section X).

Unauthorized Obligations

Under no circumstances, are funds to be obligated by VIWMA and members of its staff unless authorized through the proper procurement process as outlined in this Policy or the accompanying Operational Procedures. The Procurement & Property Director will take appropriate positive and/or corrective action, where warranted, to ensure authority-wide compliance and adherence to said Policy and Procedure developed pursuant to the Policy.

SECTION IV – COMPETITIVE BIDDING

A. Solicitation

The Virgin Islands Waste Management Authority reserves the right to waive any non-substantive informalities, technicalities or irregularities, or to reject any or all qualifications and proposals/bids; or to re-advertise for proposals/bids, and to award or refrain from awarding the contract for work. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft plans, specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements derived from any action taken above.

The VIWMA has five (5) Purchasing Methods to procure goods and services:

- Petty Cash
- Corporate Credit Card
- Prepaid Cards
- Purchase Orders (Micro Purchases, Small Purchases and Blanket Purchases)
- Intergovernmental Agreements and Formal Procurement
- Formal Procurement
 - Invitation for Sealed Bids (IFB's)

- Competitive Proposals; Request for Proposals (RFP's) / Architectural & Engineering Services,
- Request for Qualifications (RFQ's)
- Non-Competitive Bids or Proposals (NCPs).

Any contract not exceeding the simplified small purchase threshold may be awarded in accordance with the procedures authorized in this Section. Requirements, services or material shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Assistance to Small and Other Businesses referenced in this Policy). The practice of dividing purchases unnecessarily to force the use of small purchase procedure is prohibited.

The VIWMA shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedure or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.

SECTION V – PETTY CASH or PREPAID CARDS PURCHASES

A. Petty Cash Purchases

Petty Cash funds shall be used for emergency purchases or if otherwise authorized in the applicable Petty Cash threshold. The maximum amount of each purchase shall not exceed One Thousand Dollars (\$1,000.00). Each Petty Cash Fund shall not exceed Two Thousand Dollars (\$2,000.00). The Petty Cash Custodian shall ensure that:

1. The account is established in an amount sufficient to cover purchases made during a reasonable period (e.g., one month).
2. Security is maintained and only authorized individuals have access to the account.
3. The account is reconciled periodically, but not less than monthly, and replenished by submission of a voucher to the

Chief Financial Officer or designee.

4. The account is audited quarterly by the Chief Financial Officer or designee to validate proper use and to verify that the account total equals cash on hand plus the total accumulated vouchers.

The VIWMA shall utilize petty cash funds or prepaid cards to facilitate purchases of small items and for convenience of operations. The Executive Director and the Chief Financial Officer are the Petty Cash Custodians and petty cash management is delegated to the Comptroller or designed subordinates. The funds shall be managed as follows:

1. The petty cash funds shall be used to purchase single or multiple items costing no more than \$1,000. The prepaid cards shall be used to purchase single or multiple items costing no more than \$1,000.
2. A sequentially numbered Petty Cash Voucher shall be prepared and signed by each person receiving petty cash. All vouchers; used, damaged or voided, must be retained for a period to be determined by the Chief Financial Officer.
3. Invoices or receipts representing the cost of goods purchased from the petty cash funds shall be returned to the Petty Cash Custodian within 48 hours of disbursement.
4. Petty cash funds shall not be used to reimburse travel expenses that require the submission of a Travel Expense Report.
5. Transactions shall not be subdivided in order to circumvent the \$1,000 (Petty Cash) or \$1,000 (Prepaid Card) maximum limit.
6. To replenish the funds, the Custodians shall (a) prepare a Petty Cash Replenishment Request, showing amounts charged to the various cost centers and expense classifications, (b) attach individual Petty Cash Vouchers in numerical sequence with supporting documents, (c) verify cash on hand and the amount to be replenished, (d) submit Petty Cash Replenishment Request and attached Petty Cash Vouchers and supporting documents to the Accounts Payable.
7. The submitted documents shall be audited and initialed by the Accounts Payable.
8. The Custodian will receive a replenishment check to restore the fund to its original balance. The check must be cashed promptly and the funds secured to prevent theft or loss.

9. The fund shall be replenished only by check, and never from cash receipts not yet deposited.
10. All custodians and recipients of cash shall be bonded at the expense of the Authority.
11. An authorized signature by a designated employee must accompany all petty cash transactions.

B. Credit Card Purchases

Credit Card usage shall follow the rules outlined in the Board approved Credit Card Policy. See attached.

SECTION VI-PURCHASE ORDERS

A. Purchase Orders -Micro Purchases

Micro purchases are for any amount over One Thousand Dollars (\$1,000.00) to Ten Thousand Dollars (\$10,000.00)

For micro purchase amounts which are between One Thousand Dollars (\$1,000.00) and Ten Thousand Dollars, (\$10,000.00) the VIWMA shall obtain at least three (3) quotes. To the greatest extent feasible, and to promote competition, micro purchases should be distributed among qualified sources. Quotes shall be solicited by telephone or in writing or e-procurement. The VIWMA may conduct its public procurements through the Internet using e-procurement system. However, all e-procurements must otherwise be in compliance with local requirements and VIWMA's policy.

All purchase orders require the use of VIWMA Request for Procurement Action form (PAF). When creating a Requisition/Purchase Order, all necessary supporting documentation must be attached including the required quotes and/or a justification letter if needed. Purchase orders do not need a firm fixed price contract.

B. Small Purchase Orders

1. Small purchases are for any amount over Ten Thousand Dollars (\$10,000.00) and up to Two Hundred-Fifty Thousand Dollars (\$250,000.00).
2. For all small purchases between Ten Thousand Dollars (\$10,000.00) and up to Two Hundred-Fifty Thousand Dollars (\$250,000.00) for goods and/or services readily available from three (3) or more independent sources within the public and/or private market sectors, generally a minimum of three (3) quotes shall be solicited. Quotes shall be solicited in writing with a brief scope or description of goods/services and only written responses will be accepted.
5. A firm fixed -price contract or purchase order may be awarded to the qualified vendor that provides the best value to the VIWMA. If award is made for reasons other than lowest price, a written justification shall be provided in the contract file. The names, addresses, telephone numbers of offerors and persons contacted, and any other relevant data shall be maintained in the procurement file.
 - a. All purchases that do not need a firm fixed price contract, require the use of VIWMA Request for Procurement Action form (PAF). When creating a Requisition/Purchase Order, all necessary supporting documentation must be attached including the required quotes and/or a justification letter if needed.

C. Intergovernmental Agreements

The VIWMA may enter into Territorial intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency 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. The VIWMA may use Federal or Territorial excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The threshold for interagency agreements shall be \$250,000.00. If interagency agreement is expected to exceed this amount, board approval shall be obtained.

If the cost of the goods or services does not exceed two hundred and fifty thousand dollars (\$250,000), advertisement is waived.

D. Formal Procurement

All procurement actions over Two Hundred-Fifty Thousand Dollars (\$250,000.00) except for vehicle purchases shall be conducted using contracting methods, by sealed bids, or competitive proposals or non-competitive proposals where appropriate. Vehicle purchases should be budgeted on an annual basis and if the budgeted amount exceeds \$250,000 a justification to the Executive Director and a Request for Board Action shall be accompanied by the quotes and quotation evaluation form.

Competitive procurement shall be used for contracting processes that exceed the small purchase threshold of two hundred-fifty thousand dollars (\$250,000.00). This shall include :

- Invitation for Bids
- Requests for Proposals
- Requests for Price Quotation

E. Sealed Bids

Under sealed bids, VIWMA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the most responsive, responsible and lowest in price.

Sealed bidding is the preferred method for procuring construction, supply, and non- complex service contracts that are expected to exceed \$250,000.00.

Request for Proposal or Price Quotation is the preferred method for procuring professional service contracts. The Authority shall have the discretion to select the appropriate method according to the scope of work provided.

1. Conditions for Use

VIWMA shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work,

specification, or purchase description is available; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest responsive, responsible bidder. If only one responsive bid is received from a responsible bidder, award can be made if the price can be determined to be reasonable, based on the engineer's estimate or cost estimate and cost/price analysis.

2. Solicitation and Receipt of Bids

An Invitation for Bid (IFB), which includes the specification(s) and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation, will be issued. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids date and time shall be recorded once received and stored unopened in a secure place. No information regarding the bids received shall be disclosed until public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

3. Bid Opening and Award

Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and only the abstract will be made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by evaluating bidder qualifications. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.

4. Mistakes in Bids

Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bids have been received, and the Evaluation Committee discovers a discrepancy in the price calculation, corrections in bids may be permitted only if the

bidder can show by clear and convincing evidence that a mistake was made, the nature of the mistake, and the bid price intended.

F. Competitive Proposals

Unlike sealed bidding, the competitive proposal method permits consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; and limited revisions of proposals in accordance with the published scope of work before the final contractor selection. Award is normally made based on the proposal that represents the best overall value to the VIWMA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

1. Conditions for Use

Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold but can be used for construction contracts as well.

2. Form of Solicitation

Competitive proposals shall be solicited through the issuance of a Request for Proposal (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub factors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. The VIWMA may assign the price a specific weight in the evaluation criteria or the VIWMA may consider the price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

3. Evaluation

The proposals shall be evaluated only on the criteria stated in the solicitation. The criteria shall not be amended unless issued in an

addendum prior to receiving the proposals. Where not apparent from the evaluation criteria, the VIWMA shall establish an Evaluation Rating Sheet for each solicitation request. Generally, all solicitation requests shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Conflict of Interest and Confidentiality Statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract. No information regarding the proposals received shall be disclosed until the evaluation.

4. Negotiations

Negotiations on behalf of the Authority shall only be initiated or authorized in writing by the Executive Director. The Evaluation Committee shall recommend to the Executive Director the highest qualified firm(s) or person(s) with whom the contract or contracts shall be negotiated. If negotiations are unsatisfactory, negotiations will be commenced with the next most qualified firm(s) or person(s). This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals.

5. Award

After evaluation or negotiation of the proposals, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the VIWMA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

VIWMA reserves the right to enter into a contract(s) based on the initial offers received without further discussion of the bids/proposals submitted. VIWMA reserves the right to contract for all or a partial list of services offered in the bids/proposals. VIWMA reserves the right to negotiate reduced payment terms with the awarded Proposer(s).

G. Advertisement

- 1.) A notice inviting bids, proposals or quotations shall be published in at least one newspaper in general circulation in the Virgin Islands , once per week for four (4) consecutive weeks; for a period of thirty (30) days, prior to the date set for the opening of bids. (This may be subject to change to accommodate the urgency of the solicitation and budget constraints). However, the Executive Director may allow for a shorter period under extraordinary circumstances. The notice shall also be placed on the Authority's website.) The notice shall include a general description of the goods or services to be procured, shall state where bid forms and specifications are available for pick up, and shall state the time and place for the submission and opening of bids.

- 2.) Bid deposits may be required as stated in the Invitation for Bids.
 - (a) Responses to the solicitation shall be submitted to the Procurement and Property Director in accordance with the instructions as stated in the solicitation document.

 - (b) The VIWMA in all solicitation packages shall reserve the right to reject any and all bids, proposals, quotations, or parts thereof , or to waive any technicality or non-substantive irregularity or error in the bidding procedure or solicitation documents when the Authority's best interests will be served thereby.

 - (c) A pre-bid conference with prospective bidders shall be optional.

 - (d) Advertisement for bids may not be required when:
 - (1) The cost of the goods or services does not exceed two hundred and fifty thousand dollars (\$250,000);
 - (2) an emergency or exigent circumstance require immediate delivery of materials, supplies, equipment, or performance of services, or
 - (3) repair parts, accessories, or supplemental equipment or services are required for equipment, supplies, or services previously furnished or contracted for;
 - (4) professional, financial (including financial printing), legal or other expert services or work are required and VIWMA deems that, in the

interest of good administration and security, it is best that such contracts be made without advertisement;

- (5) prices are noncompetitive because there is only one source of supply of the goods or service, or because prices are regulated under law.
- (6) The Board of Directors, by resolution, the cost notwithstanding, authorizes the non-bid as necessary and convenient for public purposes pursuant to the VIWMA Act; 29 VIC 500 (j)(4)

Evaluation of Submittals

1. The VIWMA Procurement and Property Division shall be responsible for overseeing all proposals for WMA goods and services. The Director of Procurement and Property and the head of the user Division, or his designee, shall in each instance appoint an “Evaluation and Negotiation Committee” (“ENC”) composed of not less than three (3) voting persons from within the Authority who shall variously possess knowledge, training and experience in the subject regarding the scope of work or services.
2. The Director of Procurement and Property shall assign a representative from his or her Division to be a non-voting coordinator of the ENC. Any person assigned to the ENC who is not an employee of the Authority shall be a non-voting advisory member of the ENC to which he or she is appointed.
3. The ENC shall report its findings and recommendation of a successful bidder, or not, to the Director of Procurement and Property who shall forward the report and recommendations to the Executive Director.
4. The Executive Director may submit the ENC’s report and the P & P Director’s recommendation to a “Bid Evaluation Committee” (“BEC”) for further review and decision. The BEC shall consist of the Director of Procurement and Property and the head of the user Division or his designee, and another person who may be the Director of Engineering, in the case of construction or capital improvement projects or where technical services and/or equipment are involved. The BEC shall review the ENC and P & P Director’s reports and recommendations and thereafter make recommendations to the Executive Director as to the award of a contract. The results of the BEC evaluation shall be documented and included in the

“Invitation for bid” or Request For Proposal files. In each instance the recommendation of the ENC or the BEC shall be by majority vote.

The BEC will be used to evaluate the ENC recommendation only when:

- (a) the cost of the goods or services to be procured is greater than \$250,000;
- (b) the goods or services to be procured is of a highly technical or is complex in nature;
- (c) the Governing Board or the Executive Director specifically authorized the use of a BEC.

H. Competitive Negotiations

Competitive negotiations may be used if the VIWMA conditions are not appropriate for the use of formal advertising, or the group of all qualified suppliers is small and all the qualified suppliers are known to the VIWMA. In competitive negotiations, proposals are requested from a number of prospective suppliers through the distribution of a Request for Proposal (RFP). The VIWMA shall evaluate all responses to the Request for Proposal using, in addition, formal presentations by respondents, interviews with respondents, negotiations with respondents, and any other means appropriate and at the discretion of VIWMA. Either a fixed-price or cost-reimbursed type contract will be awarded to the finalist with the best offer.

If competitive negotiation is used for a procurement, the following requirements shall apply:

- (1) Proposals shall be solicited from three (3) or more qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. If the Request for Proposals is publicized, reasonable requests from other sources to compete shall be honored to the maximum extent practicable.
- (2) The Request for Proposals must have a complete description of the goods or services being procured, indicate the time of delivery or performance, and must request all other information pertinent to the evaluation of the offers.

- (3) The Authority shall provide a mechanism for the evaluation of proposals of a highly technical nature, using the ENC or the BEC, together with outside experts, if necessary.
- (4) A contract shall be awarded to the responsive, responsible party whose proposal will be the most advantageous to VIWMA, prices and other factors considered. Successful and unsuccessful parties shall be notified promptly of the Authority decision.

I. Non-competitive Negotiation or Sole Source

Non-competitive negotiations are procurement through solicitation of a proposal from only one source, or if after solicitation of a number of sources, competitive responses is determined inadequate. Non-competitive negotiations may be used when the award of a contract is infeasible through competitive bidding or competitive negotiation. Circumstances under which a contract may be awarded under non-competitive negotiation are limited to the following:

- (1) The item is available only from a single source.
- (2) Public exigency or emergency.
- (3) The Federal grantor agency, under a grant, authorizes non-competitive negotiations.
- (4) After solicitation of a number of sources and times, the responses are determined inadequate.
- (5) The use of non-competitive negotiations is authorized by a resolution of the Governing Board.

J. Emergency and Exigency Purchases

An emergency or exigency is defined as any circumstance or condition which exists, and under which the failure to take immediate action would result in harm to life, property, health or substantial inconvenience to the residential, commuting or traveling public.

When emergency or exigent situations arise, the following procedures shall be followed:

- (1) During normal working hours, proper notification and documentation of the emergency shall be submitted to the

- Procurement and Property Division to expedite action to procure the needed materials, supplies, equipment or service.
- (2) Employees authorized to handle emergencies and exigencies after normal working hours, on weekends, or on holidays shall prepare emergency or exigency purchase orders for suppliers.
 - (3) A memorandum documenting the emergency or exigency and a confirming order shall be submitted to the Procurement and Property Division within 48 hours.
 - (4) The authorized signature of the Executive Director or the Director of Procurement and Property is required for emergency and exigent purchases and shall be submitted on a Justification Memo duly signed and approved by the Executive Director.

When the emergency or exigent situation cannot be handled by inhouse staff the following procedures shall be followed:

- (1) The Project Engineer shall contact at least 3 vendors that are familiar and experienced with the type of services to be performed.
- (2) The Project Engineer shall prepare an emergency scope, establish the time for site visit and submission and forward to Contractors.
- (3) Contractors shall submit their response electronically to the Procurement Division and the Project Engineer only by date and time specified.
- (4) Once the selection is made, the Project Engineer shall request approval from the Executive Director to issue a NTP to the successful Contractor.
- (5) The NTP and a justification memo approved by the Executive Director along with the invoice shall be forwarded to the Finance Division for payment of the Services.
- (6) When the cost to provide the emergency service is in excess of 250,000.00, the Executive Director will authorize the work to performed and a Board Staff Summary will be prepared for Poll Vote.

K. Procurement Utilizing Federal Funds

VIWMA will use its own procurement procedures as set forth under this Policy which reflect applicable Territorial laws and regulations providing for full and open competition. In the event of any conflict between the provisions

of Federal and local procurement regulations and this Policy, the most restrictive provision may prevail.

L. Contract Awards

(A) Contracts shall be awarded to the lowest responsive and responsible bidder. In determining the lowest responsive and responsible bidder, the following shall be considered in addition to prices:

- (1) the ability, capacity and skill of the proposer to perform the work on the provision of the contract;
- (2) the ability of the proposer to perform the work according to specifications, including requirements for timely delivery;
- (3) the quality of performance on previous projects;
- (4) the sufficiency of the proposer's financial resources in relation to performing the contract;
- (5) the character, integrity, reputation, judgment, experience and efficiency of the proposer;
- (6) the ability of the proposer to perform future maintenance and services for the completed project, if required.

(B) When the award is not made to the lowest proposer, a complete statement of the reasons for awarding the contract or placing an order elsewhere shall be prepared, approved by the Executive Director, and made a part of the proposal record.

(C) The Procurement and Property Division shall provide a written summary of all submittals received for a solicitation.

M. Disputes and Appeals

1. Dispute means any disagreement between contractors or potential contractors, suppliers or potential suppliers and the VIWMA regarding a decision on mistakes-in-bidding, source selection, contract interpretation, termination for convenience, or default.
2. All such disputes shall be submitted in writing to the Executive Director who will acknowledge receipt of the dispute within five (5) working days after receiving the dispute, and shall render a decision within 60 days of

receiving the dispute. An appeal of the Executive Director's decision shall be made to the Governing Board. Such appeal must be submitted in writing to the Governing Board. The Governing Board shall review such appeals and take appropriate action.

ASSISTANCE TO SMALL AND OTHER BUSINESSES

Required Efforts

All feasible efforts shall be made to ensure that small and minority-owned businesses, women -owned business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the VIWMA project are used when possible.

Definitions

The following are definitions of terms as they relate to VIWMA's required efforts to assist small businesses, women-owned business enterprises, and minority-owned businesses and other local entities.

1. A "small business" is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation.
2. A "minority-owned business" is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
3. A "woman-owned business enterprise" is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

N. Anti-Discrimination Program

Purpose:

The Authority's Anti-Discrimination Program seeks to ensure that all vendors, including minority, female or disabled owned vendors (MFDs), have the same opportunities to succeed or fail in pursuing purchases as any other potential vendor absent the effects of discrimination. The Anti-Discrimination Program also addresses the treatment of MFDs when performing work for the Authority.

Policy:

It is the policy of the VIWMA that:

- a. VIWMA shall not be an active or passive participant in discrimination against any minority, female, or disabled-owned vendors (MFDs).
- b. No bidder seeking to contract with the VIWMA shall discriminate in the selection of subcontractors on VIWMA projects, nor have a documented history of such discriminatory practices.
- c. MFDs shall not be discriminated against in performance of work for the VIWMA by the VIWMA nor its contractors.

Applicability:

All vendors awarded VIWMA purchase orders or contractors shall not discriminate against any employee or applicant for employment because of age, gender, sex, sexual orientation, race, religion, creed, national origin, or disability. If a vendor is determined by a final order of an administrative agency or a court to be in violation of Federal, State, Territorial or VIWMA anti-discrimination laws, rules or regulations, any agreement entered into by the VIWMA with the vendor may be terminated or suspended in whole or in part by the VIWMA, and the vendor may be debarred from future sales to or contracts with the VIWMA.

O. Preferred Bidders

All VIWMA's bidding advertisement are public and not only to a preferred bidders list. All companies shall complete and submit to VIWMA's Procurement & Property Division, a Preferred Bidder's List Form that asks for important information on the company and identification of the commodities or services the company provides. In addition, the company shall complete and submit a federal W-9 form. There is no charge to gain entry onto the bidders

list. Bonds submitted by Preferred Bidders shall be applicable in accordance to Title 31 section 236a of the V.I. Code.

P. Terminations

Purpose:

In certain instances, the VIWMA may terminate a contract with a vendor due to the vendor's breach of contract. Termination may also occur if the VIWMA no longer needs the item or service or lacks the funds to compensate the vendor. The types of terminations include but are not limited to: termination for convenience, termination for lack of appropriations, termination for default, partial terminations in the interest of the VIWMA, and termination by mutual consent.

1. Termination for Convenience or Lack of Appropriations:

- a. Termination for Convenience occurs when the VIWMA determines that the contract for goods, services, or construction, in whole or in part, is no longer required.
- b. Termination for Lack of Appropriations when the VIWMA determines that it does not have sufficient funds appropriated to cover the cost of the goods, services, or construction, in whole or in part, as required by the contract or purchase order.
- c. Procedure:
 - (1) A Purchase Order or contract may be cancelled in whole or in part for the VIWMA's convenience or for lack of appropriation by notifying the contractor in writing by the Executive Director. This notice specifies the extent to which performance under the Purchase Order or contract is terminated and the date of termination. The written notification to the contractor may be sent via certified mail or delivered in person, notice of receipt requested.
 - (2) If the date of termination is not practical, (for example pouring concrete or being in transit) the contractor shall immediately notify the VIWMA. The contractor and VIWMA shall then seek to establish a mutually acceptable termination date. If an agreement cannot be reached, the VIWMA, in its sole discretion, establishes the effective date of the termination.

- (3) If the Purchase Order or contract is for items being produced exclusively for the use of the VIWMA, and the contractor must secure raw materials from other sources, the contractor shall not order additional materials or services except as may be necessary for completion of any portion of the work that was not terminated.
- (4) The VIWMA may direct the delivery of fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the contractor to sell them, subject to the VIWMA's approval as to price. The contractor may, with the VIWMA's approval, retain them, and apply a credit to a compensation claim, if applicable. The contractor shall complete performance on any part of the Purchase Order or contract that was not terminated. Note: The VIWMA will only pay for work completed to the effective date of termination.
- (5) The contractor shall not have the right to protest a termination for convenience but must submit any termination claim within sixty calendar days after receipt of the notice of termination, unless the VIWMA approves in writing an extension of this period. The Procurement and Property Division shall determine the information required in the claim.

2. Termination for Default:

- a. Termination for default may occur:
 - (1) when a contractor has failed to perform/deliver the required goods, services, or construction in the specified time;
 - (2) when a contractor has failed to comply with the terms and conditions of the contract; or
 - (3) when a contractor has failed to make timely progress in the provision or completion of the required goods, services, or construction.
- b. Procedure:
 - (1) A contractor may be considered in default if it fails to perform in accordance with the terms of the purchase order or contract. Factors to be considered prior to declaring a default include:
 - i. the specific reasons for the contractor's failure; and

- ii. The period of time needed to obtain the goods or services from other sources compared to the time that the delinquent contractor could accomplish delivery or performance.
- (2) If a contractor fails to perform, the VIWMA Project Manager should notify the contractor via certified mail, electronic mail or in person with returned receipt requested. This notice to the contractor must be approved by the Executive Director prior to it being sent or delivered. If the Project Manager and the Contractor cannot reach a satisfactory solution, the VIWMA may issue a letter to the contractor itemizing the conditions of default.
- (3) If the matter is still not resolved, a "Show Cause Letter" approved by the Executive Director shall follow. The notice must be given in writing advising the contractor that non-delivery or nonperformance is a breach of contract and, if the deficiency is not corrected within a specified number of days, the VIWMA will terminate the contract for default and hold the contractor liable for any excess costs associated with completing the work.
- (4) If a "cure" notice is given orally, it must be confirmed in writing within 24 hours. Upon the expiration of the cure period, if a satisfactory resolution has not been reached, the Executive Director shall send the contractor a "Termination for Default" Letter and take repurchase action by awarding to the next lowest bidder or re-soliciting for bids, as recommended by the Procurement and Property Division.
- (5) If the repurchase results in increased costs to the VIWMA, the VIWMA shall invoice the original contractor for the excess costs, with a payment date specified. Until the excess costs repayment has been received, the contractor shall not be allowed to bid on future procurements until the matter is resolved. If repayment has not been made by the end of the specified period of time, collection action may be taken. In addition, concurrent action to debar the defaulted contractor may be initiated. The contractor has the right to protest a termination for default but must submit any default claim or protest within 30 days after receipt of the notice of default.
- (6) Contractors shall not be liable for any excess costs if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to

their fault or negligence. Failure of a contractor's source to deliver is not considered to be an unavoidable cause.

5. Termination by Mutual Consent:

Termination by mutual consent may occur when, under special circumstances, both parties agree to contract termination without fault or further costs to either party. If the termination is by mutual consent, the contractor may not protest or appeal the termination.

Q. Debarment

The VIWMA may for cause, debar a contractor who has had prior or existing contract relationships with the VIWMA and/or a contractor who has submitted a bid or proposal for a new contract with the VIWMA.

The VIWMA may also debar a contractor who has been suspended or debarred from doing business with another Territorial or Federal governmental agency.

R. Bonds

Purpose:

To preserve and increase capital and to receive dependable interest income due to predictable stream of payments and repayment of principal.

Different types of bonds may be used are “bid bonds”, certified checks, or other negotiable instrument accompanying a bid as assurance, “performance bonds”, “material and payment bonds”, “fidelity bonds”, and “maintenance bonds”. Bond requirements may be waived by the Executive Director.

Policy:

- a. A proposer shall provide financial assurance that it is submitting a bid which has been qualified by the surety to perform the work.
- b. A proposer shall guarantee that it will fulfill his or her commitment according to specifications in the construction contract once issued.
- c. A provider shall guarantee that it will assume in writing the contractual obligation on which he or she bid.

- d. A provider shall guarantee that it will pay his or her subcontractors, laborers, and material suppliers in a timely manner.
- e. Preferred Bidder's shall submit required bond in accordance to VI Code ANN. Title 31§ 236a_H

SECTION VII – SPECIFICATIONS

A. Responsibility

The head of the user division within this Authority, or the head of the division charged with the responsibility for the goods or services shall develop specifications for the goods or services to be procured. The specifications shall be submitted to the Procurement and Property Director, who is responsible for procuring the goods or services. If a specific vendor or supplier possesses an exclusive product or service or expertise that is needed, that information shall also be provided to the Procurement and Property Director prior to procurement.

The Engineering Division shall be consulted on specifications and for recommendations before a request is made for the procurement of special or technical equipment or construction related services, including architectural design, engineering, contracting, sub-contracting, and construction management. Any technical equipment not within the expertise of the Engineering Division may require specifications from the requesting department and/or consultation from a recommended outside source.

B. Use of Specifications

All specifications shall be written to promote overall economy for the purposes intended, and encourage maximum competition in satisfying the needs of the VIWMA.

Specifications shall not be written so as to specify a particular product or service, or a particular feature of a product or service peculiar to one manufacturer or supplier unless that particular product or service or particular feature of a product or service is essential to VIWMA's requirements, and the products or services of other suppliers would not meet the minimum requirements of the VIWMA.

Specifications shall, whenever practicable, include a description of the qualitative nature of the good or service to be procured and, when necessary, set forth those minimum standards and characteristics to which the goods or services must conform to satisfy its intended use.

C. Brand Name or Equal Provision

When it is impractical to make a clear and accurate description of the required good or service, a “brand name or equal” description may be used.

When used in specifications, a “brand name or equal” description shall set forth those salient physical, functional, or other characteristics of the referenced product or service which are determined to be essential to meet the minimum needs of VIWMA. Such descriptions shall include:

- (1) complete identification of the product or service required;
- (2) applicable model, make, or catalog number for each brand name referenced, and identity of the commercial catalog in which it appears;
- (3) name and address of manufacturer, producer, supplier or distributor of each brand name product or service referenced;
- (4) instructions for bidders and suppliers to furnish an “equal” product or service by providing the name of the product or service, manufacturer or supplier, model number, and all other information required for the VIWMA to determine that the offered product or service fully meets the salient characteristics and requirements listed in the “brand name or equal” description.

D. Specifications Prepared by Architects, Engineers, and other Outside Consultants

The requirements of this section shall also apply to specifications prepared by outside architects, engineers, consultants or other experts contracted by VIWMA.

SECTION VIII–RECURRING OR ROUTINE GOODS AND MATERIALS

Recurring or routine goods or materials are items of general and recurring use throughout the operations of the Authority. These items include for example, stationery, office supplies, cleaning and household supplies, automotive parts and supplies, plumbing supplies, electrical supplies, and carpentry supplies. To prevent disruption of operations and to take advantage of economies in bulk Property, the VIWMA shall procure these recurring or routine goods and materials for inventory or stores.

A. Responsibility

The Procurement and Property Director is responsible for the procurement of recurring or routine goods and materials, and for the management and control of the inventory of recurring or routine goods and materials.

B. Determining Quantities and Order Points

The Procurement and Property Director with input from the heads of user divisions shall determine the order quantity of each recurring or routine item. The Procurement and Property Director, by carefully studying usage rates or patterns, shall establish re-order points for each recurring or routine item held in inventory. Establishing order quantities and re-order points shall be a periodic process with a frequency of at least once per year. The determination of order quantities and re-order points must meet the following objectives:

- (1) to provide for efficiency of VIWMA operations by having items of routine and recurring use readily available;
- (2) to prevent disruption in operations caused by stockout of materials and supplies;
- (3) to take advantage of bulk purchases;
- (4) to minimize the cost of obsolescence;
- (5) to avoid overstocking of materials and supplies;
- (6) to minimize the carrying cost of inventory.

C. Receiving

The Procurement and Property Director shall be responsible for the receipt of all recurring or routine goods and materials into inventory. Section XIII provides the protocol for receipt and documentation of all goods and materials.

D. Requisitions and Use

User divisions shall submit requisitions to the Procurement and Property Director for items held in inventory as per Section XI.

E. Inventory Management

The Procurement and Property Division shall use a perpetual inventory system to record and account for each item of inventory and to constantly monitor inventory levels and re-order points. The Procurement and Property Division shall conduct a physical inventory at least once per year. The results of the physical inventory shall be used to make adjustments, if any, to the inventory records.

F. Bidding and Specifications

The procurement of recurring and routine goods and materials shall follow the established procedures for competitive bidding using specifications for the goods or materials where appropriate.

SECTION IX – RECURRING OR ROUTINE SERVICES

Recurring or routine services are contracted services commonly used in the day to day operations of the VIWMA. These are services which are of a relatively low technical nature and do not involve highly sensitive areas of the VIWMA's operations. Recurring or routine services include activities such as maintenance and service contracts on office equipment, maintenance and service agreements on computer software security services and exterminating services.

Requisitions for recurring and routine services shall be prepared by the user division or the division responsible for the services. The requisitions shall be submitted along with specifications, where appropriate, to the Procurement and Property Director. The Procurement and Property Director is responsible for procuring recurring and routine services.

The procurement of recurring and routine services shall follow established competitive bidding procedures with the following exceptions:

- (1) when maintenance and service are provided by the supplier of the equipment and were included in the bid package for the equipment;
- (2) when the supplier is the only provider of maintenance and service on the equipment;
- (3) when there is only one authorized provider of maintenance and service on the equipment.

SECTION X—CONSTRUCTION AND CAPITALIZED MAINTENANCE

A. Responsibility

The Engineering Division is responsible for the management of all construction and capital improvement projects of the VIWMA, including the management of all contracts for architectural and engineering services, construction services, and construction management.

B. Scope of Work and Specifications

The Engineering Division shall develop or cause to be developed the scope of work and specifications for each of the services necessary for construction or capital improvement projects for formal procurements. The Engineering Division shall also develop or cause to be developed specifications for materials and equipment to be used.

C. Bidding

The Engineering Division shall develop bid packages as appropriate and include the scope of work and specifications. The bidding process shall follow the procedures outlined in Section IV. All bids shall be evaluated by the Director of Engineering in conjunction with the Director of Procurement and Property or by the Evaluation & Negotiation Committee (ENC). Following bid evaluation, a recommendation shall be made to the Executive Director. After approval, the ENC shall enter into negotiations with the approval proposer.

SECTION XI – PROFESSIONAL, FINANCIAL or EXPERT SERVICES

Professional, financial or expert services are services which require a particular expertise in determining scope, and in evaluating potential providers. Such services include insurance, accounting and auditing, legal, advertising and marketing, financial and investment, computerized information systems services, maintenance services on highly specialized equipment, including but not limited to conveyor belts, air conditioning, and elevators.

The VIWMA officers authorized to secure such specialized services for VIWMA may initiate requisitions or Requests for Proposals for such services (see Section IV-F). The responses to the Request for Proposals shall be reviewed

and evaluated by the authorized officer and the Director of Procurement and Property, or by the Bid Evaluation & Negotiation Committee if the projected cost for the service is more than \$250,000. A contract shall be awarded to the service provider with the best proposal.

SECTION XII– PLACEMENT OF ORDERS

All pertinent information will be entered into the computerized system which automatically assigns a Purchase Order number and prints the Purchase Order. The printed Purchase Order is verified and signed by the Procurement and Property Director up to \$5,000.00. Purchase Orders up to \$10,000.00 may be signed by the Chief Financial Officer. Purchase Orders in excess of \$10,000.00 must be signed by the Executive Director.

A. Distribution

The Purchase Order will be forwarded to the requestor, who will send the selected vendor for filling the order. Once the order has been received, the receiver of the goods or services shall sign the Purchase Order, and forward the signed document along with the invoice to the Procurement Division. The Procurement Division will review the documents for accuracy and forward to the Finance Division for payment.

B. Replacement Purchase Order

The supplier of goods or services to the VIWMA shall not be allowed to make changes to any terms or conditions of the Purchase Order without the approval of the Procurement and Property Division. If the original amount of the Purchase Order changes (increase or decrease in quantities, price or delivery instructions) the Procurement Division may allow payment if changes in the original order do not exceed \$2000 or 10% above the initial price (whichever is less). If this value is exceeded, a justification letter/memo approved by the Executive Director shall be submitted along with the PO and invoice for payment.

SECTION XIII – RECEIVING

All goods, materials, supplies, equipment purchased by VIWMA shall be delivered to the end user Division. The Division shall be responsible for the following:

- (1) Use of copy of the Purchase Order and perform a physical count of the items received.
- (2) If the items are back-ordered, indicate the items that are on back order on the Purchase Order.
- (3) When the back- ordered items are received, document receipt of items on the Purchase Order for payment of the vendor's invoice for the back- ordered items to the Accounting Department.
- (4) Perform a visual inspection of all packages received to determine if there is any damage. The packages should be opened in the presence of a witness. All packages must be opened and inspected immediately, when it is possible to do so, but not later than three (3) working days from receipt. Any evidence of damage shall be noted on the bill of lading or delivery ticket and on the Receiving Report, and the damaged items shall not be accepted for use.
- (5) The Purchase Order must be signed and dated by the Receiving Department and submitted to the Procurement Division for review prior to sending Purchase Order to the Finance Division.
- (6) A copy of the Purchase Order shall be retained for the files in the Procurement and Property Division.
- (7)

The Requestor shall be responsible for following-up on items received and payment of the Purchase Order once it has been forwarded to Finance.

SECTION XIV – RETURN OF GOODS

The Procurement and Property Division is responsible for returning unacceptable merchandise to the vendor. A memorandum shall be prepared by the sender stating the reasons for the return. If the items being returned were already recorded as received, a correcting or reversing entry shall be made in the Property records.

Credit cards shall be issued to the Executive Director, the Chief Financial Officer, Governing Board Designee, and the Chief Operation Officer. The use of the credit cards shall be managed in accordance with the credit card policy.

SECTION XV – RECORD KEEPING AND FILES

A. Contract File Documentation

File documentation will be retained for a period of 5 years after the end of the project.

For each contract awarded, an official contract file shall be established by the Procurement and Property Division and shall contain the following information:

- (1) Public notice
- (2) List of bidders
- (3) Invitation for bids, request for proposals or request for qualifications/proposals
- (4) Engineer's Estimate
- (5) Bid abstract or record
- (6) Determination of non-responsible bidder, when applicable
- (7) Determination of inadequate response to bid, when applicable
- (8) Evaluation Committee Report/Negotiation Report
- (9) Notice of award to successful companies and unsuccessful companies
- (10) Contract, VI Business License, Insurance Worker's Comp. Insurance
- (11) Bid Bond and Performance Bond when applicable
- (12) Noncompetitive determination, when applicable
- (13) Emergency procurement determination, when applicable
- (14) Cost-reimbursement contract determination, when applicable
- (15) Basis for cost or price

B. Vendor Files

The vendor file shall include a listing of all vendors with whom the VIWMA does business. The listing shall contain the following information for each vendor:

- (1) Address
- (2) Telephone and facsimile numbers
- (3) Goods and services supplied
- (4) Contact person

C. Purchase Order File

This file shall contain the following:

- (1) Open Purchase Orders
- (2) Closed Purchase Orders
- (3) Unprocessed Purchase Orders

SECTION XVI – INSURANCE, LICENSES, and PERMITS

Insurance:

Prior to execution of a contract by the Authority, the successful contractor shall provide the Authority with copies of all insurance certificates or policies providing coverage for the work to be performed under the contract. The policies of insurance so provided must cover all risks expected to arise during or from performance of the contract(s). Failure to provide such insurance certificate or policies shall constitute a refusal to enter into the contract(s). Said insurer(s) shall have a minimum rating of A.

1. The following types of insurance coverage and coverage amounts must be specifically provided and certified with no internal subtleties. All contractors shall maintain in full force and effect insurance as follows:
 - a. Workers' Compensation Insurance coverage shall be kept in full force during the performance of the contract.
 - b. Professional Liability Insurance if appropriate.
 - c. Comprehensive General Liability Insurance, including Public Liability and Property Damage Insurance, in an amount sufficient to protect the interest of the Authority; both as to project completion and civil liability.
 - d. Automobile liability insurance, if appropriate.
2. The Contractor shall not commence work until receipt of a notice to proceed, or a Provisional Notice to Proceed has been issued.

Permits and Licenses:

1. Proposers must possess and assume the cost of all applicable permits and licenses required to perform under the contract as stated in the solicitation package.

Contractors and Vendors shall provide evidence of proper licensing and good standing with the Virgin Islands and Federal licensing agencies. If the Contractor is a corporation, it shall provide evidence that it is organized pursuant to the laws of any state or territory, as applicable, and that it is authorized to do business in the U.S. Virgin Islands, either as a domestic corporation or a foreign corporation authorized to do business in the Virgin Islands.

SECTION XVII - ETHICAL CONDUCT STANDARDS

A. Policy

Public employment is a public trust. In the process of VIWMA contracting, employees shall discharge their duties impartially so as to assure fair competitive access to VIWMA procurement by responsible persons and contractors, and they shall conduct themselves in a manner so as to foster public confidence in the integrity of the Authority.

B. Ethical Standards for Employees

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. In order to fulfill this ethical standard, employees must meet the requirements of this Section.

C. Ethical Standards for Contractors

Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section is also a breach of ethical standards.

D. Employee Disclosure Requirements

Disclosure of benefit received from contract: Any VIWMA employee who has or obtains any benefit from any VIWMA contract with a business in which the employee has a financial interest shall report such benefit to the Executive Director or her designee.

Failure to disclose benefit received: Any VIWMA employee who knows or should have known of the receipt of a prohibited benefit and fails to report such benefit is in breach of the ethical standards of this Section.

E. Employee Conflict of Interest

It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

- (1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.
- (2) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- (3) Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

Upon discovery of an actual or potential conflict of interest, or the appearance of a conflict of interest, an employee shall promptly file a written statement of disclosure and disqualification and shall withdraw from further participation in the transaction involved.

F. Use of Confidential Information

It shall be a breach of ethical standards for any VIWMA employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.

G. Prohibition Against Gratuities and Kickbacks

- 1) **Gratuity:** It shall be a breach of ethical standards for any person to offer, give or agree to give any VIWMA employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard,

- rendering advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other subcontract, or to any solicitation or proposal therefore.
- 2) **Kickback:** It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith to a VIWMA employee as an inducement for the award of a subcontract or order.
 - 3) **Contract Clause:** The prohibition against gratuities and kickbacks prescribed in this Subsection shall be conspicuously set forth in every contract and solicitation therefor.

H. Prohibition Against Contingent Fees

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a VIWMA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies, for the purpose of securing business.

Every person, before being awarded a VIWMA contract, shall represent, in writing, that such a person has not retained anyone in violation of this Subsection. Failure to do so constitutes a breach of ethical standards and shall constitute a refusal to enter into the contract.

The representation prescribed in this Subsection shall be conspicuously set forth in every contract and solicitation therefor.

I. Restrictions on Employment

It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with VIWMA by whom the employee is employed.

It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the VIWMA in connection with any:

- (1) judicial or other proceeding, application, request for a ruling, or other determination;
- (2) contract;
- (3) claim; or
- (4) charge or controversy,

in which the former employee participated personally and substantially through decision, approval, disapproval, recommendation, processing of contract documents rendering of advice, investigation or otherwise while an employee, where the VIWMA is a party or has a direct and substantial interest.

It shall be a breach of ethical standards for any former employee, within twelve months after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the VIWMA in connection with any:

- (1) judicial or other proceeding, application, request for a ruling, or other determination;
- (2) contract;
- (3) claim; or
- (4) charge or controversy,

in matters which were within the former employee's official responsibility, where the VIWMA is a party or has a direct or substantial interest.

It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the VIWMA, in connection with any:

- (1) judicial or other proceeding, application, request for a ruling, or other determination;
- (2) contract;
- (3) claim; or
- (4) charge or controversy,

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, processing of contract documents, the rendering of advice, or investigation.

It shall be a breach of ethical standards for any former employee to engage in selling or attempting to sell supplies, services, or construction materials to the Authority for one year following the date employment ceased.

The term “sell” as used herein means signing a bid, proposal, or contract; negotiating a contract; contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost, allowances, or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person; provided, however, that this Subsection is not intended to preclude a former employee from accepting employment with a private industry solely because the former employee’s employer is a contractor with the VIWMA, nor shall a former employee be precluded from serving as a consultant to the Authority.

J. Collusion Between Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders as against the Authority in the awarding of contracts is prohibited. The Authority may declare the contract void if it finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusion or secret agreement among the bidders to the disadvantage of the Authority.

Every person, before being awarded a VIWMA contract, shall represent, in writing, that such person has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competition in connection with the bid or proposal submitted.

The representation prescribed in this Subsection shall be conspicuously set forth in every contract and solicitation therefor.

K. Prohibition Against Employee Use and Contractor Acceptance of Purchase Requisitions

Only valid purchase orders and contracts awarded pursuant to this manual constitute legal and binding documents between the VIWMA and its contractors. The Authority shall not make payment to a contractor who delivered goods or

services as a result of receipt and acceptance of a purchase requisition, unless such purchase was authorized.

Unless otherwise authorized, any employee who uses or attempts to use a purchase requisition to obtain goods or services directly from a contractor without first obtaining a valid purchase order or contract may be held personally liable and responsible for the amount of the goods and services, and may be disciplined up to and including dismissal from employment.

Employee purchases for the Authority without the use of a valid purchase order or contract are unauthorized. Such actions may be ratified by the Governing Board in exceptional circumstances when such action is determined to be in the best interest of the Authority. However, such ratification shall not serve as a waiver of the Authority's right to discipline the offending employee, nor as a waiver

of the Authority's right to initiate civil and criminal actions against the offending employee and the contractor/business which sought to benefit from the employee's unauthorized acts.

L. Civil and Criminal Penalties

An employee who violates a provision of this manual is subject to adverse action, including but not limited to reprimand, suspension without pay, termination of employment, and/or civil and criminal prosecution as appropriate.

A person other than an employee who violates a provision of this manual shall be subject, by the Executive Director, to written warning or reprimand, termination of contract or transaction or suspension or permanent prohibition from being a contractor or subcontractor under a VIWMA contract. Such persons or entities shall also be subject to civil and/or criminal prosecution as appropriate.

All proceedings under this section shall be in accordance with due process requirements, including but not limited to reasonable notice and opportunity for hearing, and must be conducted in accordance with the hearing procedures prescribed by the Administrative Procedures Act, except those activities which may be criminal in nature and therefore subject to the rules of criminal procedures.