

# **WAC BMP PROCUREMENT PROCEDURE**

June 9, 2009

R.3

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## DEFINITIONS

1. **Average Cost Tables:** Refers to a list of material costs and the average cost of implementation based upon local rates for services, equipment and materials and are developed and reviewed annually.
2. **BMP:** Those practices listed in Table I of The Agricultural Management Practices Catalogue for Non-Point Source Pollution Prevention and Water Quality Protection in New York State, the NRCS National Handbook of Conservation Practices, those practices approved by the Watershed Agricultural Council as a component of an approved Whole Farm Plan, or any discreet projects or modifications thereto, as approved by the WAC from time to time.
3. **Contracting Officer (CO):** The person designated by WAC to supervise BMP procurement.
4. **Implementation Staff:** Those individuals WAC authorizes or delegates to administer, plan and design BMPs, including the Project Designer, Project Certifier, Project Inspector and Contracting Officer.
5. **Landowner:** Person or persons who own(s) the farm (may also be “Producer”).
6. **Operation and Maintenance Requirements:** Schedule of activities that a Participant(s) agrees to carry out to ensure the proper operation and maintenance of a BMP.
7. **Participant(s):** Person(s) that sign WAC’s WFP-0: Voluntary Participation Agreement, WFP-2: Whole Farm Plan Summary and WFP-1: BMP Funding Agreements. If they are different, both the “Participant”(Landowner) and “Producer” shall sign the agreements.
8. **Planner:** Person hired by WAC directly or under subcontract with NRCS, Cornell Cooperative Extension, SWCD or a private consultant who works with the Participant(s) to develop a Whole Farm Plan.
9. **Practice:** Same as BMP.
10. **Producer:** Person or persons who own(s) and manages(s) the farm (may also be “Landowner”).
11. **Project:** Either one BMP or a group of BMPs that are being procured at the same time pursuant to a WFP.
12. **Project Designer:** The person with the authority to develop drawings and specifications.
13. **Project Certifier:** The individual with the authority to approve the final BMP design package, approve BMP construction, and provide BMP certification.
14. **Project Inspector:** Person authorized by WAC directly or under subcontract with NRCS, SWCD or a private consultant to insure that BMPs are installed according to certain drawings, standards and specifications.
15. **Projected Performance Time:** The estimated time to complete the implementation of a BMP, which is determined by the Project Designer and is included in the bid packets.

16. **Whole Farm Plans:** Plans developed on watershed farms to address environmental concerns, without adversely affecting the farm business.

## **I-A. General Requirements**

The following Best Management Practices Procurement Procedure (herein after referred to as the “Procedure”) was developed by the Watershed Agricultural Council, Inc. (WAC), for the purpose of providing a competitive and cost-effective procedure for the implementation of Best Management Practices (BMPs). The intent of this Procedure is to ensure that Watershed Agricultural Program (WAP) funds purchase the highest quality product at the lowest possible cost. The Procedure also provides administrative guidance to assist the Participant(s), WAC, USDA Natural Resources Conservation Service (NRCS), Cornell Cooperative Extension, and Soil and Water Conservation District (SWCD), or other Implementation Staff.

All BMPs funded by WAC will be procured and implemented according to this Procedure. The provisions in this Procedure shall not create any contractual relationship between the Participant(s) and the City of New York. The acceptance of this Procedure by Participant(s) shall constitute and operate as a general release, to the City of New York and to the WAC, from any and all claims of liability arising out of the performance of this Procedure.

The WAC retains the discretion to exempt a Participant(s) from the technical requirements and the procurement procedures outlined in this document. Exemptions shall be approved by the WAC Executive Director and documented by resolution of the WAC Executive Committee. The decision of the Watershed Agricultural Council is final.

The general requirements listed below, are applicable to all methods of procurement.

1. Individual sub-components of a BMP may not be contracted separately. Exceptions may be made and must be justified and documented as having the approval of the Participant(s), WAC, Project Designer and/or Project Certifier. Exemptions shall be approved by the WAC Executive Director and documented by resolution of the WAC Executive Committee. The decision of the Watershed Agricultural Council is final.
2. The grouping of BMPs may be required under a single contract when the BMPs are of the same type, and/or such grouping will result in a cost-efficient and timely implementation of the Whole Farm Plan.
3. In the event that a Participant(s) implements(s) and receive(s) payment for parts of a NRCS system, such as Waste Management System and does not complete the remaining BMPs in the system, the Participant(s) may be required to reimburse WAC as per the terms of his/her WFP-1: BMP Funding Agreement and the WAC BMP Procurement Procedure.

## **I-B. STANDARDS & SPECIFICATIONS**

### **1. General**

- a. It is the policy of the Watershed Agricultural Council to undertake the procurement of agricultural BMPs in accordance with nationally accepted standards and specifications, as selected by the WAC from time to time, to ensure that the Practice is technically sound and

effective. For the purposes of this Procedure, the design and construction of BMPs shall meet the standards and specifications of the USDA-Natural Resource Conservation Service (NRCS), when applicable.

- b. When USDA-NRCS standards and specifications are not available for a BMP, the design and construction will meet alternative, nationally recognized standards. Organizations such as the American Concrete Institute, National Fire Protection Association, National Electrical Code, and others, have adopted recognized standards and specifications that cover most areas of construction. In the event a standard is not available for a particular item of work, Implementation Staff shall document the review and approval of the design standards by a licensed engineer or a WAC approved professional. In some cases, a manufacturer's shop drawings may provide adequate documentation of the BMP design.

## **2. Product Brand Names**

- a. When developing specifications for the purchase of BMPs or equipment, the Project Designer and Project Certifier should avoid the use of specific brand names. Specifications shall allow competitive bidding by all suppliers and avoid proprietorship.
- b. Under certain circumstances, it may be necessary to specify a brand name for the purpose of uniformity and/or consistency with existing equipment or operations. When a WFP requires the purchase of a specific brand of equipment, the reasons for the selection of that brand name must be documented by the Project Designer and or Project Certifier and approved by the Contracting Officer.

## **3. Sole-Source Contracts**

Due to the unique nature of many agricultural BMPs, and under limited circumstances, a BMP or a BMP component may be found to be available from only a single source. When a BMP is to be implemented using a sole-source contract, the following procedure must be followed:

- a. The Project Designer and/or Project Certifier shall document the reasons why the BMP was available only from the single-supplier/manufacturer.
- b. When a sole-source contract is to be used, the Contracting Officer must review and approve the choice of a sole-source provider.

## **I-C. ROLES & RESPONSIBILITIES**

Implementation Staff and the Participant(s) are charged with certain responsibilities for the implementation of BMPs. This section defines the roles and responsibilities of each group.

### **1. Watershed Agricultural Council of the New York City Watersheds, Inc.**

WAC provides the authority under which the WAP is administered. WAC's role in the procurement of BMPs includes, but is not limited to the following:

- a. Approving Whole Farm Plans to include scheduled BMPs & cost estimates.

- b. Providing funding to pay contractors on behalf of Participants for BMP implementation.
- c. Setting policy by which BMPs are procured.
- d. Adopting life spans for BMPs and policies regarding long-term maintenance requirements.
- e. Providing oversight and coordination for the purpose of implementing this Procedure.
- f. Dispute resolution.

## **2. Implementation Staff**

The primary function of the Implementation Staff is to assist the Participant(s) with the functions associated with this Procurement Procedure and to monitor BMP operation and maintenance. Activities include, but are not limited to, the following:

- a. Assisting the Participant(s) with administrative functions to include but not be limited to:
  - i. Preparing specifications
  - ii. Preparing surveys & designs
  - iii. Developing bid packages
  - iv. Providing bid announcements
  - v. Conducting site showings and bid openings
  - vi. Providing Program forms
  - vii. Maintaining bidder's log & other bid records
  - viii. Providing construction inspection
  - ix. Preparing "as built" drawings
  - x. Maintaining Participant(s) implementation records
  - xi. Preparing Operation and Maintenance Requirements
  - xii. Preparing other special provisions as necessary
- b. Ensuring that the Participant's choice of Contractor(s) and method of procurement used are consistent with this Procedure.
- c. Providing technical justification for contract modifications.
- d. Ensuring completed jobs are properly certified as meeting the design criteria.
- e. Assuring design and construction specifications meet applicable national standards.

## **3. Participant(s)**

For the purpose of the WAP, the Participant(s) is the contracting entity and shall comply with this Procedure. This includes but is not limited to:

- a. Reviewing and approving all designs and specifications prior to procurement and signing the design.
- b. Seeking competitive prices and approving a responsive and responsible contractor.

- c. Assisting with the coordination of construction activities.
- d. Approving the completed BMP(s) prior to final payment.
- e. Performing proper operation and maintenance of the BMPs as set forth in **WAC: BMP Operation & Maintenance policies**.

#### **4. Project Designer**

For the purpose of BMP procurement under the WAP, the Project Designer is the person with the authority to develop drawings and specifications. The Project Designers will follow **NRCS or WAC BMP Design Standards & Specifications** when preparing drawings, specifications, materials lists, inspection plans, operation & maintenance (O&M) requirements, and other design items.

#### **5. Project Certifier**

For the purpose of BMP procurement under the WAP, the Project Certifier is the individual with the authority and/or professional license to approve the final BMP design package, approve BMP construction, and provide Practice certification.

#### **6. Contracting Officer (CO)**

In order to maintain a high level of consistency when implementing BMPs under this Procedure, it is the responsibility of the CO to provide coordination, training and assistance to the Implementation Staff, contractors and the Participant(s). The CO shall also be responsible for the following:

- a. Coordinating BMP implementation.
- b. Providing interpretations of this Procedure upon request.
- c. Reviewing all BMP Procurement packages for consistency with procurement and general policies.
- d. Arranging for the administrative and contracting procedure portion of site showing for projects requiring a sealed bid process.
- e. Approving Design Estimate of Contract Modifications as per **Section III: Modifications of Design Cost Estimates and Contracts**.
- f. Reviewing and certify as correct, the procedure used to solicit quotes and bids and the choice of the lowest responsive and responsible bidder, for all BMPs.
- g. Ensuring quality control of the Procedures by periodically checking Implementation Staff procurement records, site showing activities and other procurement functions.
- h. Coordinating administrative and technical needs pertaining to contracting.

## I-D. PROCUREMENT METHODS

Three methods are available for the procurement of BMPs. The method to be used is based on the Design Cost Estimate for the Practice. All of the methods are described, in detail, in **Section II. Procurement Methods**.

1. Simple Purchase - BMP design cost estimate is: \$14,999.99 or less
2. Written Quotes - BMP design cost estimate is: \$15,000.00 to \$29,999.99
3. Sealed Bids - BMP design cost estimate is: \$30,000 or greater

**Note:** For contracts over \$100,000 see Section II-C Bid Approval Process, paragraph 7, p.23.

## I-E. IMPLEMENTATION & FUNDING AGREEMENTS

Upon approval of a WFP by WAC, the Participant(s), where applicable, and Implementation Staff will complete the following forms to initiate the procurement of the BMPs. Each form is completed only once for each Participant(s), and includes the implementation of all phases of the Whole Farm Plan.

### 1. WFP-1: BMP Funding Agreement

#### a. Purpose

This serves as a formal agreement among the Participant and WAC and sets forth the roles and responsibilities of each party in regards to BMP procurement, implementation, and operation and maintenance.

#### b. Suspension

Under the following circumstances, the Participant(s) and WAC may suspend a Funding Agreement.

- i. Failure by any of the parties to the Funding Agreement to follow the provisions of the Procurement Procedure and/or the Operations and Maintenance Requirements.
- ii. Failure by any of the parties to the Funding Agreement to make reasonable progress in implementing the BMPs on his/her WFP-2.

#### c. Termination Procedure

- i. Prior to termination of a Funding Agreement, WAC must provide the Participant(s) with a thirty (30) day written notice of termination, which shall include the specific reasons for the termination and the right to appeal the termination pursuant to the Dispute Resolution Policy, adopted by the WAC.
- ii. Upon notice of termination of a Funding Agreement WAC may immediately suspend all contractual obligations, pending the resolution of the termination of the funding agreement. Final termination of the funding agreement will result in severing all WAC contractual obligations with the Participant(s).

iii. If WAC funding has been provided prior to the termination under this clause, the Participant(s) may be obligated to reimburse WAC for all or part of the payments received as specified by the terms of **WAC Agricultural Policy: Failure to Operate and Maintain BMPs (See Section I-H: BMP Operation & Maintenance)**.

**2. WFP-2: BMP Budget & Projected Implementation Schedule**

- a. The WFP-2 provides a budget and projected implementation schedule. The implementation schedule can be changed by WAC in consultation with the Whole Farm Planner based upon staffing and funding availability for the year scheduled, unforeseen circumstances or upon a reasonable request by the Participant. The master BMP implementation database will be adjusted each January to reflect any changes in the implementation schedule that will be required. Participants will be notified when any BMP in their WFP-2 is rescheduled.
  
- b. Subsequent Funding Approvals (SFAs) Prior to Signing a Contract (WFP-5c): When the cost of a BMP exceeds the funds approved by WAC the request for additional funds must be documented on a SFA form and submitted to WAC's Executive Director for WAC approval.

**I-F. PROCUREMENT RECORDS**

WAC will be responsible for keeping accurate and current records on BMP procurement activities. Procurement Records include, but are not limited to, individual Participant(s) case files and project implementation files.

**1. Participant(s) Project Records:**

As part of the individual Participant(s) implementation file, Procurement records for each project shall be maintained. Records should include, but are not limited to, the following items:

- a. Original WFP-1: BMP Funding Agreement
- b. Original WFP-2: BMP Budget and Projected Implementation Schedule
- c. Original survey and post construction (as-built) drawings and specifications & site notes
- d. Original WFP-3: BMP Procurement Record
- e. Original WFP-5c or 5p: BMP Participant(s)-Contractor Contract or Participant(s)Contract for the Implementation of BMPs by Participant(s)
- f. Original Bidding Documents, i.e.; WFP-6l: Bid Log, WFP-6: Bid Sheet; Legal Notices
- g. Original WFP-4: Consultant Engineer's Certification if applicable
- h. Original signed Operation & Maintenance Requirements
- I. Original WFP-5m: Contract Modification documentation when applicable
- j. Original receipts, invoices or bills to determine payment
- k. Progress/Partial Payment documentation
- l. All other correspondence and related documents

## **2. Watershed Agricultural Council Records:**

Implementation Staff will provide to WAC Monthly Reports on the status of Whole Farm Plan implementation and copies of any designated agreements and forms.

- a. Copies of the following documents where applicable, will be provided to WAC and will be maintained in a project file at the WAC office:
  1. WFP-O: Voluntary Participation Agreement
  2. WFP-1: BMP Funding Agreement
  3. WFP-2: BMP Budget & Projected Implementation Schedule
  4. WFP-3: BMP Procurement Record
  5. WFP-4: Consultant Engineer's Certification
  6. WFP-5c: Participant(s)-Contractor Contract
  7. WFP-5p: Participant(s) Contract
  8. WFP-5m: Contract Modification
  9. WFP-7: BMP Inspection Report
  10. WFP-8: Project Evaluation Form
  11. WFP-9: Subsequent Approval Request
  12. BMP Operation and Maintenance Requirement
  13. Any other forms or documents requested

## **I-G. AVERAGE COST TABLES**

WAC shall adopt Average Cost Tables (ACTs) each year, which will serve as the basis for preparing engineering estimates for all procurement methods. The ACT shall be based on local rates for services, equipment and materials. The ACT shall be reviewed annually by WAC's Executive Director and submitted to WAC's Executive Committee for approval.

## **I-H. BMP OPERATION & MAINTENANCE**

To ensure the effective implementation of WFPs, the Participant(s), where applicable, assumes certain responsibilities regarding the operation and maintenance of BMPs funded by the WAC. Failure to comply with the operation and maintenance provisions may obligate the Participant(s) to reimburse WAC. Refer to WAC Agricultural Policy: BMP Operation and Maintenance. WAC shall promulgate, from time to time, implementation policies regarding the operation and maintenance of BMPs.

### **BMP Operation & Maintenance Requirements**

- a. Operation and Maintenance Requirements are an important component of the Whole Farm Plan and BMP design specifications. During the development of the design package for a BMP, the Implementation Staff shall develop, with the Participant(s)'s concurrence, a schedule of Operation and Maintenance Requirements for each BMP.

- b. In some cases (i.e. equipment purchases), the Operation & Maintenance Requirements would include the manufacturer's recommended operation instructions and maintenance schedules. The contractor will be responsible for providing this information to the Participant(s).
- c. Participant(s) certify their responsibility to follow Operation & Maintenance Requirements for BMPs on **WFP-1: BMP Funding Agreement**. (See **I-E: Implementation & Funding Agreement**)

## **2. Practice Life Spans**

- a. For the purpose of establishing the length of time the Participant, where applicable, is responsible for the operation and maintenance of a BMP, the WAC shall adopt and periodically review a policy that sets a designated life span for each BMP implemented under this Procedure. Refer to **WAC Agricultural Policy: Operation & Maintenance of BMPs**.
- b. BMP(s) shall be operated and maintained for their designated life span(s). Refer to **WAC Agricultural Policy: Operation & Maintenance of BMPs**.

## **3. BMP Repair & Replacement**

- a. For the purpose of determining the responsibility for the repair or replacement of BMP(s), the WAC shall adopt and periodically review an implementation policy on BMP Repair and Replacement Payments. Refer to **WAC Agricultural Policy: BMP Repair & Replacement Payments**.
- b. Payments for the repair or replacement of BMP(s) will be made in accordance with the **WAC Agricultural Policy: BMP Repair and Replacement Payments**.

## **4. Reimbursement of WAC BMP Funding**

- a. Under certain circumstances, a Participant(s), where applicable, may be responsible for refunding all or part of the funding provided for a BMP.
- b. For the purpose of determining the Participant's responsibility for such reimbursement, WAC shall adopt and periodically review an implementation policy that will set forth the conditions under which a reimbursement will be required.
- c. The reimbursement amount shall be determined in accordance with **WAC Agricultural Policy: Failure to Operate and Maintain BMPs**.

## **I-I. PARTICIPANT'S ROLE AS THE CONTRACTOR**

Any Participant(s) that would like to complete a given BMP will be treated as a contractor and is subject to the following additional restrictions:

1. The Participant(s) may only complete those BMPs that meet the limits for a Simple Purchase (less than \$15,000).
2. The CO must approve the Participant(s) request to implement the BMP. This approval will be based on the Participant(s)'s ability to implement the BMP and adequate reasons why this is advantageous to WAP.
3. No partial construction by the Participant(s) will be allowed. The Participant(s) may not use subcontractors to complete the entire Practice.
4. To avoid a conflict of interest, Participant(s) are strictly prohibited from acting as subcontractors on their own BMPs for any project requiring a written quote or sealed bid procurement.

## **I-J. DESIGN/BUILD CONTRACTS**

In some cases, WAP may not have adequate staff resources to provide a complete design for a BMP. A solicitation for quotes or bids may be structured to require the selected contractor to submit a detailed design and specifications for approval by a Project Certifier, prior to the awarding of a contract.

### **1. Design Package**

The Implementation Staff will develop any maps, drawings or specifications that will be required for the design/build contracts. Adequate information must be given to contractors to ensure that they can accurately develop quotes/bids and submit designs that will meet the approval of the Participant(s), Project Designer and Project Certifier. Information that should be provided includes, but may not be limited to the following:

- a. A time frame for submission of a design package by the contractor and for the design's review and approval by the Project Certifier.
- b. Site or project-specific details that may be required for the development of the design. Site surveys may be conducted by implementation staff or included as a requirement of the contractor's design.
- c. Copies of standards and specifications that must be met as applicable.

## 2. Design Approval

Under a design/build contract, there are two (2) levels of review and approval for designs submitted by the contractor.

- a. **Project Certifier** - Responsible for developing contractor's design package and approving designs submitted by the contractor. The appropriate implementation staff completes the **WFP-3: BMP Procurement Record**. The Project Certifier reviews the submitted designs for compliance with Program standards and specifications. Design approval is required prior to award of a contract and the initiation of construction.
- b. **Contractor's Engineer** - To protect the interests of WAC, all designs submitted by contractors must have the approval of a licensed engineer retained by the contractor. All designs submitted to the Project Certifier must be signed and stamped by the Contractor's Engineer. The Contractor's Engineer will also be responsible for submitting "as built" drawings and completing the **WFP-4: Consultant Engineer's Certification**, in order to certify that the Practice was properly constructed.

If the design submitted does not meet the approval of the Participant(s), and where applicable, the Project Certifier, it may be returned to the contractor for revision. If the contractor does not submit a satisfactory design in a reasonable period of time, the contractor may be rejected for non-performance.

The Project Designer will maintain copies of the contractor's design as part of the Participant(s) project record.

## I-K. QUALITY OF WORK & WARRANTIES

To protect the investment of WAP funding, all BMPs will be constructed of quality materials and shall meet or exceed the standards of good workmanship. The following conditions apply:

1. The contractor is obligated to correct any work that fails to conform to the specifications and is not eligible for an extra payment.
2. Contractors will warranty all work as part of Form WFP-5c: Participant -Contractor Contract and Form WFP-5m: Contract Modification for a minimum of one (1) year from the date of the BMPs certification. This does not supersede any warranties on manufactured or constructed items that usually extend beyond one (1) year. Any repairs or replacements during this period that are the result of inferior materials or workmanship shall be the responsibility of the contractor.
3. Contractors must provide the Participant(s) with written documentation of any and all warranties covering equipment or other items associated with the implementation of a BMP. Copies of all warranties should be part of each farm file.

### Used Equipment

Under certain circumstances, retailers or manufacturers may not be willing to provide warranties for items, such as used equipment, or the provision of a warranty may add additional, unjustified costs to the item.

When a Participant(s) uses WAP funding to purchase equipment or other items not covered by a warranty, the Participant(s) assumes the responsibility for approving the used equipment and for the repair and replacement costs. The Participant(s) agreement to assume this responsibility shall be included as a special provision to **the WFP-5c: Participant – Contractor Contract or the WFP-5p: Participant Contract for the Implementation of BMPs by the Participant(s)**. All purchases of used equipment or materials must have the prior approval of the CO.

## **I-L. BMP APPROVAL & CERTIFICATION**

Prior to issuing payment for a BMP, the Project Certifier will notify the CO that the completed BMP has been inspected and is approved for payment. Final certification must be made by the Project Certifier or their designee. While it is preferable to have the project approved by the original designer, and certifier, certification may be made by an alternate with the appropriate approval authority. Documentation of BMP certification should be maintained in the Participant(s)'s project record.

### **1. Certification by Implementation Staff**

The Project Designer, Project Certifier and CO will complete and sign the certification section on **WFP-3: BMP Procurement Record**.

### **2. Certification by Consulting Engineers**

When the Project Designer is a consultant engineer, certification will also require a properly executed **WFP-4: Consultant Engineer's Certification**. Consultant engineers may provide construction certification.

### **3. Construction Inspections**

The certification of a BMP will require inspection at certain phases during the construction process. Under some circumstances, the Project Certifier will develop a written inspection plan as a component of the design specifications and it will be the joint responsibility of the Participant(s) and Implementation Staff to coordinate inspection activities with the contractor.

The Project Designer and/or Project Certifier will review the inspection requirements with the Contractor and Participant(s), prior to the start of construction.

### **4. Projects That Are Not Certified**

All BMPs must meet design specifications and be properly installed before payments are made to the contractor on behalf of the Participant(s). If a BMP is not properly constructed and certified, WAC will withhold payment until the contractor properly completes the BMP or remedies the defects that have been identified by the Project Certifier.

If a Project Certifier will not certify a BMP that the Participant(s), or Contractor believes is complete, the Participant(s) may appeal this decision to WAC (**See Section I-R: Disputes & Appeals**).

## **I-M. PAYMENT SCHEDULE**

Payment is made to the contractor on behalf of the Participant(s) for BMPs that have been properly constructed and certified within the approved funding limits. Participants are limited to funding levels approved for that BMP. The Participant(s) will be responsible for any additional costs that do not have the written approval of the Project Certifier and C.O.

Payments are issued to the contractor on behalf of the Participant(s) under the following conditions:

1. Payment will be made after all appropriate signatures in Section V. of the WFP-3 – BMP Procurement Record are obtained.
2. Progress payments may be made for completed work, if the projected performance time as set forth in the WFP-5c (Participant(s) - Contractor Contract) or WFP-5p (Participant(s) Contract) is expected to be more than 30 days. Progress payments will be made up to 90% of approved work completed and materials delivered to the site.
3. When the project is delayed due to circumstances beyond the control of the contractor, or for other reasons deemed appropriate by the CO, a partial payment will be made for completed work provided money is withheld for the completion of the remaining items. The CO will approve payment for up to 90% of approved work completed and materials delivered to the site.
4. In the case of default and failure to perform on the part of a contractor, the contractor shall not be entitled to compensation for completed work, and the contractor remains responsible for the cost of removal or correction of defective work or materials. Contractors may only be paid upon successful completion of a contract. When a contractor defaults on a contract, the CO shall be notified.
5. Upon certification of the completed BMP, payment will be issued to the contractor on behalf of the Participant(s) within thirty (30) calendar days.
6. WAC will also issue Internal Revenue Service (IRS) form: *1099- Miscellaneous*.

## **I-N. BID & PERFORMANCE SECURITY**

In order to reduce the cost of BMP implementation and maximize the opportunities for contractors to participate, WAP does not generally require that contractors provide bid bonds, performance bonds or performance security deposits.

Under some conditions, it may be advisable to require bid and/or performance security or include liquidated damages in the contract in order to guarantee that a project will be completed in a timely manner. With the approval of the Participant(s), WAC may develop project specifications that require a bid bond and/or performance bond or a performance security deposit.

Generally, performance security deposits up to 20 percent of the project cost is considered adequate while performance bonds should secure 100 percent of the project's cost.

## I-O. CONTRACT TERMINATION

Under this procedure WAC, or the Participant(s) may terminate a contract for the following reasons:

1. The contractor fails to comply with all Federal, State and local regulations.
2. The contractor fails to meet contracted performance dates (including the commenced implementation date).
3. Contractor performance does not meet standards and specifications.

## I-P. CONTRACTOR INSURANCE

All Contractors and Participant(s) that elect to implement BMPs on their own farm shall be adequately insured for liability as required under standard practices. Contractors must certify their insurance as a provision of WFP-5c: Participant(s)-Contractor Contract and Participant(s) must certify their insurance as a provision of the WFP-5p: Participant Contract for all projects and furnish a Certificate of Insurance demonstrating General Liability insurance coverage for a minimum of \$1 million per occurrence.

All Contractors shall procure Worker's Compensation Insurance in accordance with the Laws of the State of New York. Contractors must certify this insurance as a provision of the WFP-5c: Participant(s)-Contractor Contract. If the Contractor is not required by law to obtain Worker's Compensation Insurance, a statement of Exemption of Worker's Compensation Requirements shall be signed and submitted as a provision of the WFP-5c: Participant(s)-Contractor Contract.

WAC and/or SWCD, the Participant(s) may also require the Contractor and/or Participant(s) to include them as an "additional named insured" as a provision of the WFP5c or WFP-5p. Under certain circumstances, WAC and/or SWCD, the Participant(s) or another party (i.e. Town Highway Dept.) involved in the BMP implementation, may set minimum requirements for insurance levels. Requests for specific insurance requirements shall be included as a special provision to **WFP-5c: Participant(s)-Contractor Contract** or **WFP-5p: Participant(s) Contract**.

Note: Participant(s) are exempt from the insurance requirement when implementing agronomic BMPs that are part of their Whole Farm Plan. Any BMP that does not have an NRCS Standard and/or any BMP that does not require the lead discipline to be a design, construction, environment, hydraulic, water management, or soils engineer as defined by USDA-NRCS shall be considered agronomic.

## I-Q. CONTRACTOR REGISTER

The Watershed Agricultural Program shall prepare and maintain a register of prospective contractors including their name, address, telephone number, available equipment, and the types of construction in which they have expertise. Inclusion on the register will be available to any interested contractor. This list does not imply endorsement by the Watershed Agricultural Council and/or any of its sub-contracted agencies.

The use of the Contractor's Register for the solicitation of Sealed Bids does not release the Participant(s) from publishing a bid announcement in the local paper as required under **II-C: Sealed Bids**.

## **I-R. DISPUTES & APPEALS**

Under this Procedure, the Participant(s), Contractor, or others may request the review of items that are disputed during the implementation of BMPs.

### **1. Participant(s) - Contractor Disputes**

- a. In the case of a Participant(s) - Contractor dispute during the implementation of a BMP, all claims shall be submitted in writing to the other party and must document the nature of the claim and other relief as sought by the Participant(s) or Contractor.
- b. If the dispute can not be equitably settled by the Participant(s) and Contractor, either party may refer it to WAC for a determination. If the payment agency cannot provide a solution that is satisfactory to the Participant(s) and Contractor, the dispute shall be submitted in writing to the Watershed Agricultural Council for settlement. The decision of WAC is final.

### **2. Participant(s) - SWCD Disputes**

If a Participant(s) dispute(s) an action of the SWCD during the implementation of their BMPs, the Participant(s) may request a review by WAC. The Participant(s) should provide WAC and SWCD with a written explanation of the items being disputed. In all cases, the decision of WAC is final. See #5 below.

### **3. Participant(s) – WAC Disputes**

In the event that a Participant(s) disputes the action(s) of the WAC Contracting Officer, the Participant may request Implementation Staff to submit their concerns to WAC for consideration. The decision of WAC is final. See #5 below.

### **4. WAC - SWCD Disputes**

- a. If SWCD disputes an action of WAC the general policy on dispute resolution should be followed (See #5 below).

### **5. Dispute Resolution by the Watershed Agricultural Council**

- a. WAC has adopted a general policy on dispute resolution (**See WAC Agricultural Policy: Dispute Resolution**).
- b. Any dispute submitted in writing to be brought to WAC must first be presented to the WAC's Agricultural Program Manager and/or Executive Director.

## II. PROCUREMENT METHODS

**Note: Only those BMPs that meet the limit for Simple Purchase procurement (Less than \$15,000) may be completed by the Participant(s).**

### II-A. SIMPLE PURCHASES

#### Applicability

Simple purchases may be used for BMPs that do not exceed \$14,999.99.

#### Procedure

1. Implementation Staff shall inform the Participant(s) of the estimated cost of the project utilizing WFP-3: BMP Procurement Record. Design estimates shall be provided by the Implementation Staff.
2. The Participant(s) is responsible for obtaining a minimum of one quote that is within the limits of the design estimate. If Participant(s) obtains additional quotes, the Participant(s) must select the lowest responsible quote. Every effort should be made to obtain a quality product that meets standards and specifications for the least cost. Engineering estimates should remain confidential.
3. The CO verifies the solicitation of quotes and the choice of a contractor. The CO may approve a quote that exceeds the design estimate if the quote is within the approved funding.
4. The Participant(s) will use **WFP-5c: Participant(s)-Contractor Contract or WFP-5p: Participant(s) Contract** for all BMPs that involve construction or other professional services.
5. Costs exceeding the approved funding will be addressed according to **Sec I.E.2b. Subsequent Funding Approvals Prior to Signing a Contract**
6. Additional project costs that result during implementation of the BMP shall be addressed by using the procedure set forth in **Section III. Contract Modifications**.
7. The Participant(s) shall sign the payment verification section of **WFP-3: BMP Procurement Record** and provide appropriate invoices or receipts as the basis for payment.
8. The Implementation Staff and CO shall complete Section V - BMP Certification section of **WFP-3: BMP Procurement Record**. When BMPs are designed by consultant engineers, construction certification will be on **WFP-4: Consultant Engineer's Certification**. The CO may require the completion of a **WFP-7: BMP Inspection Report**.
9. After certification of a BMP, WAC will make payment to the contractor on behalf of the Participant(s) according to **Section I-M: Payment Schedule**.

## II-B. Written Quotes

### Applicability

This method of procurement shall be used when the design estimate cost is  $\geq$ \$15,000 but less than \$30,000.00.

### Procedures

1. The Implementation Staff shall inform the Participant(s) of the design estimate of the project and method of procurement utilizing the **WFP-3: BMP Procurement Record**. The CO and the Implementation Staff shall review the Procurement Procedure with the Participant(s).
2. The CO and Implementation Staff shall prepare the BMP Written Quote design packages.
3. The CO, Implementation Staff and Participant(s) shall establish the Written Quote deadline.
4. The CO and/or designated Procurement Staff on behalf of the Participant(s) shall mail a minimum of four (4) design packages to contractors of the Participant(s) choice or to qualified contractors willing and able to complete the BMP(s) according to the drawings and specifications. The quote deadline shall allow a minimum of fourteen (14) days from the date bid packages are mailed to contractors to the deadline date.
5. The CO and/or designated Procurement Staff shall record names of contractors who receive bid packages on the **WFP-6L: Bid Log**.
6. The CO on behalf of the Participant(s) shall open and record the written quotes on the **WFP-3: BMP Procurement Record and WFP-6L: Bid Log** at the time and date specified on the design package.
7. The Participant(s) and/or CO shall reject any written quotes from contractors determined to be non-responsible. In general a responsible contractor is one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of a contract funded by public dollars. Factors to be considered in assessing responsibility may include (among others): a satisfactory record of past performance; financial resources; technical qualifications; experience, organization, material, equipment, facility and personnel resources and expertise; a satisfactory record of business integrity.
8. The CO in coordination with the Implementation Staff and Participant(s) shall review the solicitation of written quotes for adherence to the Procedures and shall approve the selection of the lowest responsive, responsible contractor.
9. The CO may approve a written quote that exceeds the design estimate but is within the approved funds.
10. If all written quotes exceed the design estimate and approved funds the subsequent funds shall be requested according to Sec. I-E 2.b or all written quotes shall be rejected and new written quotes may be solicited.

11. Upon CO approval of the lowest responsible and responsive bidder, **WFP-5c: Participant(s)-Contractor Contract** will be completed by Implementation Staff and given to the Participant(s) for execution with the contractor.
12. Upon completion of the BMP the Project Designer and/or Project Certifier will provide certification of the BMP on the **WFP-3: BMP Procurement Record, WFP-4: Consultant Engineer's Certification (if applicable) and the WFP-7: Inspection Report.**
13. **A WFP-8: Project Evaluation Report** must be completed by the Project Designer and/or Project Certifier.
14. After Certification of a BMP, WAC will make payment to the contractor on behalf of the Participant(s) according to Section I-M: Payment Schedule.

## II-C. SEALED BIDS

### Applicability

This method of procurement shall be used when the project Design Cost Estimate is \$30,000 or greater.

### Procedures

The following procedure will be followed when using the Sealed Bid procurement method:

1. Implementation Staff will notify the Participant(s) of the estimated cost of the project and that the Sealed Bid method of procurement will be used.
2. The CO and Implementation Staff will prepare a detailed BMP Design Package that includes Technical and Administrative Documents. The design package will be prepared and must provide adequate detail to allow interested contractors to fairly and accurately prepare a bid proposal. The following are lists of the required technical and administrative documents:

#### Technical Documents

- a. Construction Drawings
- b. Construction Standards & Specifications
- c. Erosion & Sediment Control Plan
- d. Inspection Plan
- e. Engineer's Project Cost Estimate
- f. Operation & Maintenance Requirements

#### Administrative Documents

- a. WFP-3: BMP Procurement Record
- b. WFP-6: Bid Sheet
- c. WFP-4: Consultant Engineer's Certification
- d. WFP-5c: Landowner-Contractor Contract

The CO and Implementation Staff shall approve the **WFP-6: Bid Sheet** before it is included in the bid package.

3. The CO and Implementation Staff prepare an invitation for bids, which must be placed in a newspaper with general circulation within the watershed. Letters will also be mailed to prospective contractors on WAC's Contractor Register. The invitation for bids shall allow a

minimum of **fourteen (14) days** from the date bid packages are available to contractors to the date of the bid opening.

4. Implementation Staff prepares multiple copies of the bid package for distribution to contractors on behalf of the participant. A single copy of the bid package will be provided to the CO.
5. Implementation Staff maintains a log of all prospective bidders that receive a bid package on **WFP-6L: Bid Log**.
6. A site showing will be held at the location, date and time specified in the invitation for bids and on **WFP-6: Bid Sheet**. The Participant(s), the CO, the Project Designer or their designee and Project Certifier should be present at the site showing.
7. Bid Package Modifications - Any modifications to the design details, special provisions or administrative documents shall be provided to all prospective bidders who are in possession of a bid package. The CO ensures that all plan holders receive notice of any addendum and this will be documented by mailing certified letters with a return receipt requested.
8. The CO determines the lowest responsible and responsive bidder. (See Bid Approval Process below.)
9. Upon CO approval of the lowest responsible and responsive bidder, **WFP-5c: Participant(s)-Contractor Contract** will be completed by Implementation Staff and given to the Participant(s) for execution with the contractor.
10. Prior to the start of construction, the CO, Project Designer, Project Certifier, Participant(s), and Contractor will hold a pre-construction meeting. A Pre-Construction Checklist shall be reviewed and completed.
11. Any modifications to the project after work starts shall be done in accordance with **Sec. III: Contract Modifications**.
12. Upon completion of the BMP the Project Designer, Project Certifier will provide certification of the BMP on the **WFP-3: BMP Procurement Record, WFP-4: Consultant Engineer's Certification** (if applicable) and the **WFP- 7: BMP Inspection Report**.
13. A **WFP-8 - Project Evaluation Report** must be completed by the Project Designer and/or Project Certifier.
14. After certification of a BMP, WAC will make payment to the contractor on behalf of the Participant(s) according to **Section I-M: Payment Schedule**.

### **Bid Approval Process**

Bids will be received, opened, and accepted according to the following policy:

1. All bids shall be submitted in a sealed envelope marked as indicated on the **WFP-6: Bid Sheet** and at the location specified.

2. WAC and/or SWCD office clock will be the official time for bid submissions. Any bid submitted after the stated time will not be accepted. Contractors are not permitted to alter their bids after the bid deadline.
3. All bids will be opened by the CO or designee.
4. Implementation Staff will keep accurate records of the bid offers on the **WFP-6L: Bid Log** and shall check the name and address of the bidder, the date and time of receipt of the bid, the amount of the bid, and conformity with the bidding procedures and contract terms.
5. If bids exceed the approved funding WAC's Executive Director shall determine if additional funding maybe sought from the Council or other funding source.
6. In consultation with the Implementation Staff the Participant(s) shall determine which bid offer is the responsible low bid and notify the CO. The CO verifies the solicitation of bids and choice of a contractor.
7. For contracts of \$100,000 or more, (with the exception of government or quasi-government entities as described in Section 99-r of General Municipal Law), or prior to the award of any subcontract which, when aggregated with the value of all other subcontracts awarded to the same contractor for the implementation of an individual Participant(s) Whole Farm Plan during the immediately preceding twelve (12) month period is valued at \$100,000 or more. WAC shall require the proposed contractor to submit to WAC any and all information necessary to conduct a background investigation in accordance with the City of New York's Vendor Information Exchange System (VENDEX). The CO shall submit the completed VENDEX for approval to the Mayor's Office of Contracts (MOCs). The DEP will attempt to issue its approval/disapproval within thirty (30) days of said submission by WAC. Vendex may result in disqualification of an otherwise qualified contractor bid.
8. If the correct procedure has been followed and the selected bid is in order, the Implementation Staff shall prepare a **WFP-5c: Participant(s)-Contractor Contract** and forward it to the Participant(s) for the proper signatures.
9. The Participant, with the approval of the CO, may waive or allow the bidder to correct minor informalities, which are in the best interest of WAC. Minor informalities are matters of form, rather than substance, evident from the bid document or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, effect on price, quantity, quality, delivery, or contractual conditions is negligible.

## **Rejecting Bids**

The CO has the authority to reject any and all bids and re-bid at their discretion. If all bids exceed the approved funding, WAC shall determine whether to approve additional funding or reject all bids.

### **Responsible Bids:**

The Participant(s) shall reject any bids from contractors determined to be non-responsible and non-responsive. In general, a responsible contractor is one, which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of a contract funded by tax dollars. Factors to be considered in assessing responsibility may include (among others): financial resources; technical qualifications; experience, organization, material, equipment, facility and personnel resources and expertise; a satisfactory record of past performance; a

satisfactory record of business integrity. If the contract includes provisions for reimbursement of contractor costs, the contractor must have adequate accounting and auditing procedures; and be compliant with requirements (if any) for utilization of Small Business Enterprises (SBEs), Minority Owned Business Enterprises (MBEs), and Women Owned Business Enterprises (WBEs) as subcontractors.

**Responsive Bids:**

The Participant(s) shall reject any bids from contractors determined to be non-responsible and/or non-responsive. In general, a bid is responsive if it complies with all material terms and conditions of the solicitation and all the material requirements of the specifications. Factors affecting the responsiveness of the bids include; compliance with all the material requirements of the specification; compliance with all the material terms and conditions of the solicitation; submission of bids in the form specified in the solicitation, including all required signatures in ink, and all required pricing information; if altered, all alterations being initialed in ink by the bidder; submission of the bid by the time and date and at the place specified in the solicitation; submission of all the required bonds and/or security; submission of samples or other information, if required by the solicitation; submission of all required disclosure statements; and attendance at any pre-bid conference or site visit if mandatory.

The Participant(s) is encouraged to check previous work examples of the low bidder to ensure conformance to contract requirements and adherence to performance times. The landowner may reject bidders that have a record with the contracting agency for poor performance on similar projects or failure to complete projects within the stated performance time.

The CO, and where necessary the Project Designer and/or Project Certifier, will review the Participant(s)'s determination and selection of bids. If the CO does not concur with the selection of a lowest responsible and responsive bidder, the Participant(s) must select a bidder that is acceptable to the CO. If a dispute shall occur between the Participant(s), and the CO over a choice of bidders, it shall be settled according to **Section I-R: Disputes and Appeals**.

**Re-bidding**

If it is necessary to re-bid a project that has been partially completed, revised bid documents can be sent to the contractors that requested the original bid documents in lieu of advertising. This procedure can only be used if it is documented that the timely completion of the project is essential. The Participant(s), with the approval of the CO, may waive minor inconsistencies where no advantage is offered.

### **III. MODIFICATIONS**

#### **III-A. GENERAL REQUIREMENTS**

Under all circumstances, the approval of additional funding for BMP implementation must include adequate technical justification for the increase and confirmation of the availability of the additional funding. The CO may approve contract modifications subject to WAC approval or delegation. In all cases when additional funding is requested a subsequent funding approval form must be filled out and submitted to WAC's Executive Director and/or designee.

During the implementation of any given BMP, unanticipated site conditions or other factors may result in project changes that will require contract modifications. Contracts may be modified only upon the documentation of technical justification by the Project Designer and with the approval of the Project Certifier, CO and/or WAC. The execution of a modification without the proper approvals does not guarantee the Participant(s), or Contractor any additional funding.

### **III-B. CONTRACT MODIFICATIONS**

The following conditions apply when project changes require a contract modification after a price, quote or bid has been accepted, and/or construction has started:

1. The Project Designer and/or Project Certifier will review the proposed changes with the Participant(s), Contractor, and the CO. The Project Designer and Project Certifier will evaluate the changes and certify if they are necessary for the safe and/or effective implementation of the BMP. New drawings and specifications will be developed as necessary. A contract modification is approved by the CO. Disagreement over the cost of the modification does not relieve the contractor of performing the modification. A dispute over the value of the modification will be handled in accordance with **Section I-R: Disputes and Appeals**.
2. In the event of modifications proposed by the Participant(s) that are not approved as being necessary from a "technical" standpoint, the Participant(s) may elect to assume responsibility for the cost of additional work and that the additional work must meet or exceed the design standards and specifications.
3. Under extremely rare circumstances, problems arising during construction may be severe enough to prevent the completion of the BMP. When a technical modification to the original BMP is not possible, the BMP may need to be suspended and a new BMP selected. In the event this occurs the CO, Project Designer, Project Certifier, Planner, Participant and Contractor will agree on a payment, based on work completed, and alternative BMPs will then be considered.

### **III-C. CONTRACT PROCEDURES**

1. The CO and/or Project Designer in consultation with the Participant(s) may approve or disapprove the modification at the local level. The Project Designer and Project Certifier will review the proposed modifications with all parties, including the Contractor.
2. Upon technical approval of the modification, the CO will either confirm the availability of additional funds or direct a reduction in the contract price (for less work). If the modification will increase the cost of the BMP, the CO must confirm the availability of funds prior to authorizing the modification.
3. The CO approves **WFP-5m: Contract Modification** with adequate documentation of changes and the associated costs.

### **III-D. BMP MODIFICATIONS AFTER A CONTRACT IS CLOSED**

A new **WFP-3** and a **WFP-5c** or **WFP-5p** shall be used for additional work (i.e. BMP failure due to design flaw or “Act of God”), if a modification is made after final payment to the contractor or a different contractor is secured to make the change to the BMP. BMP Modifications fall within two categories:

1. BMPs that are within 5 years of closing the contract should use the original BMP number.
2. BMPs that were completed more than 5 years ago will be assigned a new BMP number

### **IV. INDEX OF FORMS**

WFP-O: Voluntary Participation Agreement  
WFP 1: BMP Funding Agreement  
WFP-2: BMP Budget & Projected Implementation Schedule  
WFP-3: BMP Procurement Record  
WFP-4: Consultant Engineer’s Certification  
WFP-5c: Participant(s)-Contractor Contract  
WFP-5p: Participant(s) Contract  
WFP-5m: Contract Modification  
WFP-6: Bid Sheet  
WFP-6l: Bid Log  
WFP-7: BMP Inspection Report  
WFP-8: Project Evaluation Report