

Watershed Agricultural Program Guideline

WAC BMP PROCUREMENT PROCEDURE

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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 Best Management Practice Systems Catalogue in New York State and the NRCS National Handbook of Conservation Practices, or their current approved equivalent, 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. **Procurement and Contracts Coordinator (PCC) :** The person designated by WAC to supervise BMP procurement.
4. **Agricultural Program Manager (APM):** The person designated by WAC to oversee the Watershed Agricultural Program
5. **Implementation Staff:** Those individuals WAC authorizes or delegates to administer, plan and design BMPs, including the Project Designer, Project Certifier, Project Inspector and Procurement and Contracts Coordinator.
6. **Landowner:** Person or persons who own(s) the property (may also be " Producer").
7. **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.
8. **Participant(s):** Person(s) that sign WAC's WFP-1: Voluntary Participation and Funding Agreement, WFP-2: Whole Farm Plan Summary and Projected BMP Implementation If they are different, both the " Participant"(Landowner) and "Producer" shall sign the agreements.
9. **Planner:** Person designated 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 and/or a Comprehensive Nutrient Management Plan.
10. **Practice:** Same as BMP.
11. **Producer:** Person or persons who own(s) and manages(s) the farm (may also be " Landowner).
12. **Project:** Either one BMP or a group of BMPs that are being procured at the same time pursuant to a WFP.
13. **Project Designer:** The person with the authority to develop drawings and specifications.

14. **Project Certifier:** The individual with the authority to approve the final BMP design package, approve BMP construction, and provide BMP certification.
15. **Project Inspector:** Person authorized by WAC directly or under subcontract with NRCS, SWCD or a private consultant to ensure that BMPs are installed according to certain drawings, standards and specifications.
16. **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.
17. **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 Agricultural Program Manager or WAC Executive Director. 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 WAP BMP 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: Voluntary Participation and Funding Agreement and the WAC BMP Procurement Procedure.

I-B Standards and Specifications

1. General

- a. The Watershed Agricultural Council will undertake the procurement of 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 and the APM. 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, or WAC approved alternative, for the purpose of 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 PCC.

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 PCC and/or APM must review and approve the choice of a sole-source provider.

I-C. Roles and 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 BMPs for projected, potential implementation & initial cost estimates.
- b. Providing funding to pay contractors on behalf of Participants for BMP implementation.
- c. Setting guidelines by which BMPs are procured.
- d. Adopting life spans for BMPs and guidelines 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:
 - 1. Preparing specifications
 - 2. Preparing surveys & designs
 - 3. Developing bid packages
 - 4. Providing bid announcements
 - 5. Conducting site showings and bid openings
 - 6. Providing Program forms
 - 7. Maintaining bidder's log & other bid records
 - 8. Providing construction inspection
 - 9. Preparing "as built" drawings
 - 10. Maintaining Participant(s) implementation records
 - 11. Preparing Operation and Maintenance Requirements
 - 12. Preparing other special provisions as necessary
- b. Ensuring that the Participant's choice of responsive and responsible Contractor(s) for simple purchase and written quote methods of procurement 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. Ensuring design and construction specifications meet applicable 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, specifications and Operation and Maintenance agreements prior to advancing a BMP to procurement.
- b. In coordination with WAC, seeking competitive prices and approving a responsive and responsible contractor in accordance with this Procedure.
- 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 agreements and guidelines.

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 under the direction of the Project Certifier. 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. Procurement and Contracts Coordinator (PCC)

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

- a. Coordinating BMP procurement and contract implementation under the direction of the APM and applicable program guidelines.
- b. Providing interpretations of this Procedure upon request.
- c. Reviewing all BMP Procurement packages for consistency with procurement and general policies, guidelines and procedures.
- d. Arranging for the administrative and contracting procedure portion of site showing for projects requiring a sealed bid process.
- e. In coordination with the APM, approving Design Estimates for Contract Modifications as per Section III: Modifications of Design Cost Estimates and Contracts.
- f. Reviewing and certifying 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 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: \$34,999.99 or less
2. Written Quotes - BMP design cost estimate is: \$35,000 to \$99,999.99
3. Sealed Bids - BMP design cost estimate is: \$100,000 or greater

I-E. Implementation and Funding Agreements

Upon approval of a BMP or Project for implementation 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: Voluntary Participation and 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, operation and maintenance for all BMPs planned, designed and implemented.

- b. Participant(s) Withdrawal:

A Participant(s) may withdraw from the WAP and WFP:1 Voluntary Participation and Funding Agreement at any time and for any reason.

- i. In accordance with the WAC Participant Status Guideline and procedure, the APM will prepare a withdrawal agreement that includes a list of all implemented BMPs within their lifespan, detailing the implementation cost, lifespan end date, potential reimbursement owed, and the process for re-applying for future participation.
- ii. Upon notice of withdrawal from the WAP, WAC may immediately suspend all contractual obligations, pending the resolution of the withdrawal of the funding agreement. Final termination of the funding agreement will result in severing all WAC contractual obligations with the Participant(s).

- c. Participant(s) Suspension:

WAC may suspend a Participant(s) and the respective Participant and Funding Agreement(s) in accordance with WAC Participant Status Guideline and procedure at

any time. Circumstances under which this may occur include but are not limited to:

- i. Failure by the Participant(s) to follow the WFP-1: Voluntary Participation and Funding Agreement or follow the provisions of the Procurement Procedure and/or the Operations and Maintenance Requirements.
- d. Participant(s) Termination Procedure:
- i. Prior to termination of a Participant from the WAP and the respective Voluntary Participation and 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 Participant(s) and the WFP-1: Voluntary Participation and 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 parts of the payments received as specified by the terms of WAC Agricultural Guideline: Operation and Maintenance of BMPs (See Section 1-H: BMP Operation & Maintenance), or the current approved equivalent.

2. WFP-2: Whole Farm Plan Summary and Projected BMP Implementation

- a. The WFP-2 provides a summary of resource concerns classified by pollutant category, the approved BMP to mitigate the resource issue and initial cost estimate for implementation. The projected workload for BMP implementation will be updated annually in accordance with WAC BMP prioritization guidelines and procedures.
- b. Subsequent Funding Approvals (SFAs) Prior to Signing a Contract (WFP-5c): When the cost of a BMP exceeds the funds approved by WAC, subsequent funds will be documented on a SFA form and submitted to the APM. Approvals will be determined in accordance with the WAC Guideline: Agricultural BMP Subsequent Funding Approval procedure, or the current approved equivalent.

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: Voluntary Participation and Funding Agreement

- b. Original WFP-2: Whole Farm Plan Summary and Projected BMP Implementation
- 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-61: 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:

The APM will provide to WAC Quarterly Reports on the status of Whole Farm Plan implementation and programmatic deliverables consistent with WAC guidelines and procedures.

- a. Copies of the following documents where applicable are managed by WAC and will be maintained/scanned in a project file on a WAC system or service.:
 - a. WFP-1: Voluntary Participation and Funding Agreement
 - b. WFP-2: Whole Farm Plan Summary and Projected BMP Implementation
 - c. WFP-3: BMP Procurement Record
 - d. WFP-4: Consultant Engineer's Certification
 - e. WFP-5c: Participant(s)-Contractor Contract
 - f. WFP-5p: Participant(s) Contract
 - g. WFP-5m: Contract Modification
 - h. WFP-7: BMP Inspection Report
 - i. WFP-8: Project Evaluation Form
 - j. WFP-9: Subsequent Approval Request
 - k. BMP Operation and Maintenance Requirement
 - l. Any other forms or documents requested

I-G. Average Cost Tables

WAC shall adopt a consistent and accurate methodology for preparing engineering estimates applicable to all procurement methods. This procedure will include the use of the Average Cost Tables (ACT), or an effective alternative, to be approved by the WAC Agricultural Committee annually, ensuring that estimates are based on reliable and relevant data.

I-H. BMP Operation and 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 Guideline: BMP Operation and Maintenance, or the current approved equivalent. WAC shall promulgate, from time to time, implementation policies regarding the operation

and maintenance of BMPs.

1. 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: Voluntary Participation and Funding Agreement. (See 1-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 applicable guidelines and procedures that sets a designated life span for each BMP implemented under this Procedure. Refer to WAC Agricultural Guideline: Operation & Maintenance of BMPs, or the current approved equivalent.
- b. BMP(s) shall be operated and maintained for their designated life span(s) in accordance with the Operation and Maintenance Agreements. Refer to WAC Agricultural Guideline: Operation & Maintenance of BMPs, or the current approved equivalent

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 guideline on BMP Repair and Replacement Payments. Refer to WAC Agricultural Guideline: BMP Repair & Replacement, or the current approved equivalent.

Payments for the repair or replacement of BMP(s) will be made in accordance with the applicable guidelines and procedures. Refer to WAC Agricultural Guideline: BMP Repair and Replacement, or the current approved equivalent.

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 guideline that will set forth the conditions under which a reimbursement will be required.

- c. The reimbursement amount shall be determined in accordance with respective Operation and Maintenance Agreement(s) and WAC Agricultural Guideline Operation and Maintenance of BMPs, or the current approved equivalent.

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 \$34,999.99).
2. In consultation with the APM, the PCC 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 method of procurement.

I-J. Design/Build Contracts

In some cases, WAP may rely on external resources to complete designs 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 the 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 and 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 include but are not limited to:

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 identified and documented 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 PCC and/or APM.

I-L. BMP Approval and Certification

Prior to issuing payment for a BMP, the Project Certifier will notify the PCC 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 PCC 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 PCC and APM

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. For all progress payments, 10% of the completed work approved by the Project Certifier and invoiced by the contractor will be withheld until the project is certified. This withholding will be included in the final payment.
3. When the project is delayed due to circumstances beyond the control of the contractor, or for other reasons deemed appropriate by the PCC and APM, a partial payment will be made for completed work provided money is withheld for the completion of the remaining items. The PCC and APM will approve payment for up to 90% of the 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 be entitled to compensation for completed work that is certifiable, and meeting required standards and specifications. The contractor remains responsible for the cost of removal or correction of defective work or materials. When a contractor defaults on a contract, the PCC and APM shall be notified by the Participant(s) and/or Implementation Staff.
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 for any/all payments made directly to the Participant(s).

I-N. Bid and 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, WAC may 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 by providing a 10-day written notice to the Contractor 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 dates).
3. Contractor performance does not meet standards and specifications.
4. A determined result through the Dispute Resolution process in accordance with this Procedure and WAC Guidelines.

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. Contractors must certify this insurance 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 by area of expertise including their name, address, and telephone number. Inclusion on the register will be available to any interested contractor. This list does not guarantee a Contractor will be deemed responsible or responsive, and 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 11-C: Sealed Bids.

I-R. Disputes and 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 Dispute

- 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 cannot 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 PCC or WAC Agricultural Program Staff, the Participant may submit their concerns to APM for consideration in accordance with the WAC Dispute Resolution Policy. 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).

Any dispute submitted in writing to be brought to WAC must first be presented to the WAC's Agricultural Program Manager.

II. PROCUREMENT METHODS

Note: Only those BMPs that meet the limit for Simple Purchase procurement (Less than \$34,999) may be completed by the Participant(s).

II-A. Simple Purchases

Applicability

Simple purchases may be used for BMPs with a design estimate does not exceed \$34,999.99.

Procedure

1. Implementation Staff shall inform the Participant(s) of the bidding threshold requirement(s).
2. The Participant(s), in coordination with the Project Designer, Project Certifier and PCC shall obtain a minimum of one quote that is within the limits of the design estimate. If Participant(s), and/or the designated WAP staff, 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 PCC verifies the solicitation of quotes and the choice of a contractor. The PCC 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 certifying the BMP(s) costs are accurate.
8. The Implementation Staff and PCC 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 PCC or APM 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 greater than \$35,000 but less than \$99,999.99.

Procedures

1. Implementation Staff shall inform the Participant(s) of the bidding threshold requirements.
2. The PCC and Procurement Staff shall prepare the BMP Written Quote design packages.
3. The PCC and/or designated Procurement Staff on behalf of the Participant(s) shall mail and/or digitally send 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.
4. The PCC and/or designated Procurement Staff shall record names of contractors who receive bid packages on the WFP-6L: Bid Log.
5. The PCC 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.
6. The Participant(s) and/or PCC 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 and meeting of contractually stipulated performance dates; financial resources; technical qualifications; experience, organization, material, equipment, facility and personnel resources and expertise; a satisfactory record of business integrity.
7. The PCC 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.
8. The PCC may approve a written quote that exceeds the design estimate but is within the approved funds.
9. If all written quotes exceed the design estimate and approved funds the subsequent funds shall be requested according to WAC Guideline: Subsequent Funding Approvals for BMPs, or the current approved equivalent, or all written quotes shall be rejected, and new written quotes may be solicited.
10. Upon PCC 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)

and Contractor for execution.

11. 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.
12. A WFP-8: Project Evaluation Report must be completed by the Project Designer and/or Project Certifier.
13. 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 \$100,000 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 bidding threshold requirements.
2. The PCC 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:
 - a. Technical Documents:
 - i. Construction Drawings
 - ii. Construction Standards & Specifications
 - iii. Erosion & Sediment Control Plan
 - iv. Inspection Plan
 - v. Engineer's Project Cost Estimate
 - vi. Operation & Maintenance Requirements
 - vii. Permits
 - b. Administrative Documents:
 - i. WFP-3: BMP Procurement Record
 - ii. WFP-6: Bid Sheet
 - iii. WFP-4: Consultant Engineer's Certification
 - iv. WFP-5c: Participant-Contractor Contract

The PCC and Implementation Staff shall approve the WFP-6: Bid Sheet before it is included in the bid

package.

3. The PCC, Procurement 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 and/or digitally sent 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. Procurement Staff prepares multiple copies of the bid package for distribution to contractors on behalf of the participant(s). A single copy of the bid package will be provided to the PCC.
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 APM, PCC, the Project Designer or their designee and Project Certifier should be present at the site showing. Under certain circumstances, the APM may approve a virtual site showing if the site is not accessible, the responsible, responsive bidders are not located in reasonable proximity to the site, or if the Technical and Administrative documents provide adequate information for a remote presentation (i.e., riparian area tree planting).
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 PCC ensures that all plan holders receive notice of any addendum, and this will be documented by email confirmation and/or by phone.
8. The PCC determines the lowest responsible and responsive bidder. (See Bid Approval Process below.)
9. Upon PCC 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) and Contractor for execution.
10. Prior to the start of construction, the PCC, Project Designer, Project Certifier, Participant(s), and Contractor will hold a pre-construction meeting. A Pre-Construction Checklist shall be reviewed and signed by all parties present. This form shall include performance dates and will be a saved component of the project file.
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 procedure:

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 and will be returned unopened. Contractors are not permitted to alter their bids after the bid deadline.
3. All bids will be opened by the Participant(s) if they choose, or by the PCC or their designee on behalf of the Participant(s).
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 all bids exceed the design estimate and approved funding, the PCC may advance a request for additional funds to the APM in accordance with the WAC Agricultural BMP Subsequent Funding Approval Procedure, or its current approved equivalent.
6. In consultation with the Participant(s) and Implementation Staff, the PCC shall determine which bid offer is the responsible low bid and notify the APM. The PCC verifies the solicitation of bids and choice of a contractor.
7. 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.
8. The Participant, with the approval of the PCC, 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 PCC, with the approval of the APM, has the authority to reject any and all bids and re-bid at their discretion. If all bids exceed the approved funding, the APM shall determine whether to reject all bids or request additional funding through the WAC Agricultural BMP Subsequent Funding Approval Procedure, or its current approved equivalent.

Responsible Bids

Approved: 11/12/2024

In consultation with the Participant(s), the PCC and APM 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 performance and meeting of contractually stipulated performance dates; 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

In consultation with the Participant(s), the PCC and APM 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 also 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 PCC, and where necessary the Project Designer and/or Project Certifier, will review the Participant(s)'s determination and selection of bids. If the PCC does not concur with the selection of the lowest responsible and responsive bidder, the Participant(s) must select a bidder that is acceptable to the PCC. If a dispute shall occur between the Participant(s), and the CO over a choice of bidders, it shall be settled according to Section 1-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 PCC, 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 PCC may approve contract modifications subject to APM approval or delegation. In all cases when additional funding is requested a subsequent funding approval form must be filled out in accordance with WAC Agricultural BMP Subsequent Funding Approval Procedure or the current approved equivalent.

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 Project Certifier with the approval of the PCC and APM. 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 PCC or APM. 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 PCC and APM. 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 1-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 APM, PCC, Project Certifier, Participant and Contractor will agree on a payment, based on work completed, and alternative BMPs will then be considered with the Participant(s) and Implementation Staff.

III-C. Contract Procedures

1. The APM may allow a Project Designer, in consultation with the Participant(s), to 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 PCC 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 PCC must confirm the availability of funds and obtain approval from the APM prior to authorizing a modification.
3. The PCC and APM 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 shall be assigned the original BMP number followed by the Qualifier Code and Qualifier Version.

IV INDEX OF FORMS

WFP 1: Voluntary Participation and Funding Agreement
WFP-2: Whole Farm Plan Summary & Project BMP Implementation
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