



**Washington Suburban  
Sanitary Commission**

# PROCUREMENT REGULATIONS



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Effective August 1, 2012

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## **ARTICLE 1 – GENERAL PROVISIONS**

### **§1-101 Authority, Rules of Construction, and Purposes.**

#### **1-101.01 Authority and Construction**

These Procurement Regulations (“Regulations”) are issued pursuant to the Maryland Code Annotated, Public Utilities Article § 17-403. Further, these Regulations are subject to all relevant provisions of: the Public Utilities Article; the Washington Suburban Sanitary Commission (WSSC) Delegation of Authority (adopted May 10, 2010, effective July 1, 2010), including sub-delegations by the General Manager/Chief Executive Officer; the WSSC Code of Ethics (as amended); any and all amendments and revisions to the Public Utilities Article, Delegation of Authority and Code of Ethics that may be enacted or adopted from time to time; and any generally accepted interpretation of the foregoing authorities by a court or by the Maryland Attorney General's Office. All of the aforementioned may be hereinafter collectively or individually referred to as the “Legal Authorities.” To the extent any provision of these Regulations conflicts in any manner with the Legal Authorities, the Legal Authorities shall control.

#### **1-101.02 Purposes and Policies**

The underlying purposes and policies of these Regulations are:

- A. Streamlining - to simplify, clarify, and modernize the regulations governing procurement by WSSC;
- B. Continuous Improvement - to permit the continued development of procurement policies and practices by WSSC;
- C. Consistency - to promote consistency with and among the procurement laws and regulations of WSSC;
- D. Confidence - to provide for increased public confidence in the procedures followed in public procurement;
- E. Equity - to ensure the fair and equitable treatment of all persons who deal with the procurement system of WSSC;
- F. Cost Effectiveness - to provide increased economy in WSSC procurement activities and to maximize the purchasing value of public funds entrusted to WSSC to the fullest extent practicable;
- G. Competition - to foster effective broad-based competition within the free enterprise system;
- H. Integrity - to provide safeguards for the maintenance of a procurement system of quality and integrity; and
- I. Transparent Efficiency - to obtain in a transparent, cost-effective, and responsive manner the goods and supplies, services, professional services, architectural and engineering services, and construction services required by WSSC to better serve all rate payers in the Washington Suburban Sanitary District.

### **§1-102 Requirement of Good Faith and Ethics.**

.01 These Regulations require all parties involved in the negotiation, performance, or administration of contracts and procurement by WSSC to act in good faith and to strive at all times to give every appearance of acting in good faith.

**.02** All employees of WSSC and all persons participating in WSSC procurement processes are required to practice ethical behavior at all times, and are required to comply with all applicable provisions of the WSSC Code of Ethics.

### **§1-103 Application of These Regulations.**

These Regulations apply only to contracts solicited or entered into on or after the effective date of these Regulations. Nothing in these Regulations, or in instructions or procedures promulgated hereunder, shall prevent WSSC from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

### **§1-104 Severability.**

If any provision of these Regulations or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of these Regulations which can be given effect without the invalid provision or application. The provisions of these Regulations are declared to be severable.

### **§1-105 Repealer.**

On the effective date set forth in §1-106, the WSSC Standard Procedures listed in Exhibit A hereto shall be repealed. The Chief Procurement Officer reserves the right to add Standard Procedures to Exhibit A from time to time, and shall make all reasonable efforts to provide public notice of changes to Exhibit A.

### **§1-106 Effective Date.**

These Regulations shall become effective on August 1, 2012.

### **§1-201 Definitions.**

The words defined in this section shall have the meanings set forth below whenever they appear in these Regulations, unless the context in which they are used clearly requires a different meaning;

**.01** *Architectural and Engineering Services* means professional services of an architectural or engineering nature; or required to be performed or approved by a person licensed, registered, or certified to provide such services; or related to research, planning, development, design, construction, alteration, or repair of real property; or incidental services, which such individuals perform, including studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

**.02** *Bidders List* means the list of sources of supply for each category of goods and supplies, services, or construction purchased by WSSC.

**.03** *Bidding Time* is the period of time between the date of distribution of the Invitation for Bids and the time and date set for receipt of bids.

**.04** *Bridge Contract* means a WSSC contract that piggybacks on terms and prices of contracts or portions of contracts from another public purchasing agency.

**.05 Business** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

**.06 Bylaws** means those updated Bylaws, Rules and Regulations adopted by the Commission pursuant to Resolution No. 2010-1866, dated February 17, 2010 and effective March 17, 2010, as amended.

**.07 Capability** means capability at the time of award of the contract.

**.08 Change Order** means a unilateral written order signed by the Chief Procurement Officer or designee, directing the contractor to make changes without the consent of the contractor. The Chief Procurement Officer will not normally be precluded from seeking the consent of a contractor to a change order.

**.09 Chief Procurement Officer** means the person holding the position created in §2-101, as the head of the central procurement and supply chain management function of WSSC.

**.10 Commission** means the Washington Suburban Sanitary Commission (WSSC).

**.11 Construction** means the process of building, altering, repairing, improving, or demolishing any public facility, including any public structure, public building, pipelines, plants, infrastructure, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public facility, including structures, buildings, plants, pipelines, infrastructure, or real property.

**.12 Contract** means all types of WSSC agreements for the procurement or disposal of goods and supplies, services, professional services, architectural and engineering services, or construction, regardless of what they may be called.

**.13 Contract Amendment** means any revision or alteration of the specific contract or its conditions whether it is a mutually agreed upon bilateral contract modification or a unilateral change order.

**.14 Contract Manager** means certain employees of a WSSC Using Department and so designated by the head of the Using Department and acceptable to the Chief Procurement Officer, possessing required qualifications and training, who are assigned to assist the Using Department and the Office of the Chief Procurement Officer in the monitoring and administration of contracts.

**.15 Contract Modification** means any bilateral written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action and consent of the parties to the contract.

**.16 Contracting Officer** means the Chief Procurement Officer, or person delegated by the Chief Procurement Officer, to enter into contracts.

**.17 Contracting Officer's Representative** means a WSSC employee nominated by the head of the Using Department to which they belong, possessing specified training and qualifications, and so designated by the Chief Procurement Officer, to engage in such duties as monitoring and administering certain contracts, assisting in the evaluation and award of certain contracts, reporting on contract requirements and performance, and authorized to discuss certain contract matters with contractors.

**.18 Contractor** means any person having a contract with WSSC.

**.19 Cost-Reimbursement Contract** means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of these Regulations, and a fee or profit, if any.

**.20** *Data* means recorded qualitative or quantitative information, regardless of form, that can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

**.21** *Days* mean calendar days. In computing any period of time prescribed by these Regulations, the first day shall not be counted, but the last day shall be counted. If the last day falls on a Saturday or Sunday, the party shall have the following Monday as the applicable time period. When the last day falls on a holiday observed by WSSC, the party shall have the next business day as the applicable time period.

**.22** *Design-Bid-Build* means a project delivery method in which WSSC sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

**.23** *Design-Build* means a project delivery method in which WSSC enters into a single contract for design and construction of an infrastructure facility.

**.24** *Design-Build Contract* means a contract that provides for both architectural and engineering design services and construction services as a part of a single contract.

**.25** *Design-Builder* means a person who has been awarded a contract with WSSC for the design and construction (or alteration, repair, improvement, or demolition) of any Infrastructure Facility using the design-build project delivery method.

**.26** *Design Requirements* mean the written description of the Infrastructure Facility or service to be procured under this Article, including: required features, functions, characteristics, qualities, and properties that are required by WSSC; the anticipated schedule, including start, duration, and completion; and estimated budgets (as applicable to the specific procurement) for design, construction, operation, and maintenance. The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

**.27** *Designee* means a duly authorized representative of a person.

**.28** *Designer* means a person who has been awarded a contract with WSSC for the design (or alteration, repair, improvement, or demolition) of any Infrastructure Facility.

**.29** *Discussions*, as used in the source selection process, mean an exchange of information or other manner of negotiation during which the offeror and WSSC may alter or otherwise change the conditions, terms, and price of the proposed contract.

**.30** *Electronic* means electrical, digital, magnetic, optical, electromagnetic or any other similar technology.

**.31** *Employee* means an individual receiving a salary from WSSC except for WSSC Commissioners.

**.32** *Engineer* means the WSSC engineer assigned to a contract.

**.33** *Evaluated Bid Price* means the price of a bid after adjustment in accordance with objective measurable criteria.

**.34** *Facilities Construction Contract* means a contract that provides services for the construction of infrastructure facilities.

**.35** *General Manager/Chief Executive Officer* means the most senior manager in the WSSC organization chart, who is referred to as "General Manager" in Title 18 of the Public Utilities Article and in certain WSSC Standard Procedures and other official WSSC documents, and any successor position thereto irrespective of name.

**.36** *Goods* mean all supplies, equipment, materials, and all tangible personal property, excluding real property.

**.37** *Governmental Body* means any unit that is part of a federal, state, county, or municipal government, including regional entities and public utilities such as WSSC.

**.38** *Independent Peer Reviewer* means a person who has been awarded a contract with WSSC for an independent, contemporaneous review of the design services provided to WSSC by another Designer.

**.39** *Independent Peer Reviewer Services* mean additional architectural and engineering services provided to WSSC for any contract. The function of the independent peer reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the Designer or Design-Builder are in conformance with any applicable standards.

**.40** *Infrastructure Facilities* mean any structure, building, pipelines, plants, infrastructure, or other improvements of any kind to real property.

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

**.42** *Invitation for Prequalification* means all documents, whether attached or incorporated by reference, utilized for prequalifying potential bidders.

**.43** *Legal Authorities* shall mean: (1) the Maryland Code Annotated, Public Utilities Article § 17-403; (2) all other provisions of the Public Utilities Article relating either to the Commission's power to enact regulations and/or to the Commission's procurements actions and activities; (3) the WSSC Delegation of Authority (adopted May 10, 2010, effective July 1, 2010), including sub-delegations by the General Manager/Chief Executive Officer, (4) the WSSC Code of Ethics (as amended); (5) any and all amendments, revisions, additions, deletions or corrections to the foregoing authorities, without limitation, that may be enacted, adopted, or implemented from time to time; and (6) any generally accepted interpretation of the foregoing authorities by a court or by the Maryland Office of Attorney General.

**.44** *May* denotes the permissive.

**.45** *Minority Business Enterprise (MBE)* shall have the meaning set forth in WSSC Standard Procedures MBE 11-01 (approved March 16, 2011) and SLBE 12-01 (approved June 20, 2011) and any successor Standard Procedures thereto.

**.46** *Objective Measurable Criteria* means standards that enable WSSC to compare the economy, effectiveness, or value of the subject of the bids.

**.47** *Operations and Maintenance* means a project delivery method whereby the Procurement Office enters into a single contract for the routine operation, routine repair, and routine maintenance of an Infrastructure Facility or at specific types of equipment located in one or more Infrastructure Facilities.

**.48** *Operator* means a person who has been awarded, through competitive sealed bidding, a separate contract with WSSC for the routine operation, routine repair, and routine maintenance of any Infrastructure Facility.

**.49** *Person* means any business, individual, union, committee, club, other organization, or group of individuals.

**.50** *Prequalification* means that the bidder or offeror has completed a formal process whereby the capacity, skills, personnel, and ability to undertake certain tasks or provide certain services was demonstrated to the Office of Chief Procurement Officer and certain Using Departments.



**.51** *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any goods and supply services related to those goods and supplies, and any kind of professional services, including consultants, architectural and engineering services, or construction. It also includes all functions under the Chief Procurement Officer, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

**.52** *Procurement Officer* means any WSSC employee duly authorized to enter into and administer contracts and make written determinations with respect thereto.

**.53** *Proposal Development Documents* mean drawings and other design related documents that are sufficient to describe the size and character of an Infrastructure Facility as to architectural, structural, mechanical, and electrical systems; materials; and such other elements as may be appropriate to the applicable project delivery method.

**.54** *Public Notice* means the distribution or dissemination of information to interested parties using methods that are reasonably available, including newspapers, electronic or paper mailing, and web sites.

**.55** *Purchase Description* means the words used in a solicitation to describe the goods and supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

**.56** *Regulations* means these Procurement Regulations except where the context indicates otherwise (see, e.g., Article 3, *infra*), in which case Regulations shall have the meaning set forth in Maryland Code Annotated, State Government Article, § 10-101(g).

**.57** *Request for Proposals* means all documents, whether attached or incorporated by reference, utilized for soliciting proposals;

**.58** *Responsible Bidder* or *Offeror* means a person who has the capability in all respects to perform fully the requirements stated in the Invitation for Bids and Request for Proposals, respectively, and the integrity and reliability which will assure good faith performance. Bidders respond to Invitations for Bids. Offerors respond to Requests for Proposals.

**.59** *Responsive Bidder* or *Offeror* means a person who has submitted a bid or a proposal which fully conforms to the Invitation for Bids or Request for Proposals.

**.60** *Services* mean the furnishing of labor, time, or effort not involving the delivery of a tangible material product other than reports which are merely incidental to the required performance. This term excludes employment agreements and collective bargaining agreements, but includes without limitation consulting, personal, professional, technical, and advisory services.

**.61** *Shall* denotes the imperative.

**.62** *Signature* may be either physical or electronic.

**.63** *Small, Local and Minority Business Enterprise (SLBE)* shall have the meaning set forth in WSSC Standard Procedures MBE 11-01 (approved March 16, 2011) and SLBE 12-01 (approved June 20, 2011) and any successor Standard Procedures thereto.

**.64** *Small, Local and Minority Business Enterprise Office/Supplier Diversity Office* is the office responsible for planning, managing, coordinating, and monitoring the Commission's Minority Business Enterprise Program, in accordance with State Law (hereinafter "SLMBE Office/Supplier Diversity Office").

**.65** *Solicitation* means an Invitation for Bids, a Request for Proposals, a request for quotations, an invitation for qualification, or any other document issued by WSSC for the purpose of soliciting bids or proposals to perform a WSSC contract.

**.66** *Supplier* means any firm or individual or entity (public or private) which provides to WSSC goods and supplies, services, professional services, architectural and engineering services, or construction.

**.67** *Supplies* mean all property, including but not limited to, equipment, raw materials, and finished products.

**.68** *Time-and-Material Contract* means a contract providing for the acquisition of services or materials on the basis of (1) direct labor hours at specified fixed hourly rates that include wages; overhead, general, and administrative expenses; and profit and (2) materials at cost.

**.69** *Unsolicited Offer* is any offer other than one submitted in response to a solicitation.

**.70** *Using Department* means any team, department, office or designated unit within WSSC that utilizes any goods and supplies, services, professional services, architectural and engineering services, or construction procured under these Regulations.

## **ARTICLE 2 – PROCUREMENT ORGANIZATION**

### **§2-101 Office of the Chief Procurement Officer.**

The Office of the Chief Procurement Officer is headed by the Chief Procurement Officer.

### **§2-102 Authority of the Chief Procurement Officer.**

#### **2-102.01 Principal Contracting Officer of WSSC.**

The Chief Procurement Officer shall serve as the principal Contracting Officer of WSSC in accordance with these Regulations and subject to the Legal Authorities.

#### **2-102.02 Authority.**

- A. The Chief Procurement Officer will manage and direct the Office of the Chief Procurement Officer, contract for WSSC, and issue instructions on the management and operations of the procurement process as directed by the General Manager/Chief Executive Officer.
- B. Except as provided in this Article and subject to the Legal Authorities, the Chief Procurement Officer shall have authority to solicit and enter into contracts for the procurement of goods and supplies, services, construction, professional, or architectural and engineering services for all Using Departments of WSSC.
- C. Under the authority of the Chief Procurement Officer, the Procurement Officers, Contracting Officer Representatives, or any designee of the Chief Procurement Officer shall execute responsibilities within the Office of the Chief Procurement Officer.
- D. Except as provided in this Article, no WSSC employee shall order the procurement of goods and supplies, services, construction, professional services, or architectural and engineering services or make any contract other than through the Office of the Chief Procurement Officer.
- E. The Chief Procurement Officer may designate a senior level Procurement Officer to execute contracts on behalf of the Chief Procurement Officer once the Chief Procurement Officer has reviewed and approved said contracts. The Chief Procurement Officer shall assume ultimate responsibility to solicit and enter into contracts for the procurement of goods and supplies, services, construction, professional, or architectural and engineering services for all Using Departments of WSSC.
- F. Subject to the approval of the General Manager/Chief Executive Officer the Chief Procurement Officer shall establish written procedures for the execution of contracts for the procurement of goods and supplies, services, construction, professional, or architectural and engineering services for all Using Departments of WSSC. Such procedures shall include policies, instructions, and/or guidelines for all WSSC procurement and shall be promulgated by the Chief Procurement Officer to implement and execute these Regulations.

- G. The Chief Procurement Officer shall monitor the preparation and use of all Solicitation specifications including those for goods and supplies, services, professional services, architectural and engineering services, and construction required by WSSC Procurement Office and WSSC Using Departments. The Chief Procurement Officer shall obtain expert advice and assistance from personnel of Using Departments in the development of Solicitation specifications and may delegate to a Using Department the authority to prepare and utilize its own Solicitation specifications.

## **ARTICLE 3 – SOCIO-ECONOMIC PROGRAMS**

### **§3-101 Socio-Economic Programs.**

The Chief Procurement Officer shall include as a part of any Solicitation specifications that the Chief Procurement Officer publicly distributes a notice that all bidders or offerors are required to comply with certain duly authorized WSSC Socio-Economic Regulations and Programs.

### **§3-201 Statement of Policy and Its Implementation.**

It shall be the policy of WSSC to require compliance with its Small, Local and Minority Business Enterprise (“SLMBE”) Regulations. The Chief Procurement Officer shall be responsible for implementing this policy in consultation with WSSC’s SLMBE Office/Supplier Diversity Office.

### **§3-202 Socio-Economic Duties of the Chief Procurement Officer.**

#### **3-202.01 Assistance to SLMBE Office/Supplier Diversity Office.**

Where feasible, the Chief Procurement Officer shall ensure that:

- A. WSSC Using Departments assist Minority Business Enterprises (MBEs) and Small Local Business Enterprises (SLBEs) in learning how to do business with WSSC;
- B. WSSC Procurement Office and procurement process actively promote equal opportunity for all segments of the contracting and business community to participate in WSSC contracts; and
- C. WSSC procurement process supports the activities and mandates of WSSC SLMBE policies, including, but not limited to, policies associated with the MBE and SLBE Programs.

#### **3-202.02 Special Publications.**

The Chief Procurement Officer shall assist the SLMBE Office/Supplier Diversity Office to give special publicity to procurement procedures and issue special publications designed to assist MBEs and SLBEs in learning how to do business with WSSC.

#### **3-202.03 MBE and SLBE Source Lists.**

The Chief Procurement Officer shall support the SLMBE Office/Supplier Diversity Office in its efforts to compile, maintain, and make available source lists of MBEs and SLBEs for the purpose of encouraging procurement from these businesses.

#### **3-202.04 Solicitation Mailing Lists.**

To the extent deemed by the Chief Procurement Officer to be appropriate and as may be required by Regulation, the Chief Procurement Officer shall include MBEs and SLBEs on Solicitation mailing lists.

#### **3-202.05 Solicitation of MBEs and SLBEs.**

The Chief Procurement Officer shall assure that MBEs and SLBEs receive Solicitations for each Procurement for which such businesses may be ready, willing and able to participate.

### **3-202.06 Training Programs.**

The Chief Procurement Officer shall support SLMBE Office/Supplier Diversity Office efforts to develop special training programs to be conducted by WSSC to assist MBEs and SLBEs in learning how to do business with WSSC.

### **§3-203 Discretionary Duties of the Chief Procurement Officer.**

#### **3-203.01 Bonding.**

Subject to the Legal Authorities, the Chief Procurement Officer may reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent reasonably necessary to encourage procurement from MBEs and SLBEs.

### **§3-204 MBE and SLBE Procurement Assistance.**

**.01** The Chief Procurement Officer will support efforts of the SLMBE Office/Supplier Diversity Office in carrying out its objectives as set forth in the Public Utilities Article, §§20-201 *et seq.* and 20-301 *et seq.*, and all relevant Standard Procedures.

**.02** Subject to the approval of the General Manager/Chief Executive Officer, the Chief Procurement Officer has the final authority to promulgate procurement policies, instructions, and procedures that support the efforts, goals, and mandate of the SLMBE Office/Supplier Diversity Office to actively promote equal opportunity for all segments of the contracting and business community to participate in WSSC contracts provided that such policies, instructions and procedures are in accordance with and cause no conflicts with MBE and SLBE Standard Procedures adopted by the Commission or with applicable law.

### **§3-205 Report to General Manager/Chief Executive Officer and the Commission.**

The Chief Procurement Officer shall annually, as directed, assist the SLMBE Office/Supplier Diversity Office with a report in writing to the General Manager/Chief Executive Officer and the Commission concerning the awarding of contracts to MBEs and SLBEs during the preceding fiscal year.

### **§3-301 Meeting Green Goals and Environmental Compliance.**

**.01** It is the goal of WSSC to operate in an environmentally friendly manner that protects and enhances our natural resources and environment.

**.02** If a specific Procurement impacts the environment, the Chief Procurement Officer shall comply with all applicable federal and state laws.

**.03** The Chief Procurement Officer in consultation with the General Manager/Chief Executive Officer will define and incorporate duly authorized and appropriate environmental criteria into the procurement process to ensure that WSSC meets duly authorized environmental goals set by WSSC.

## **ARTICLE 4 – SOURCE SELECTION AND CONTRACT FORMATION**

### **§4-101 General Provisions for Source Selection for Goods, Supplies and Services.**

The provisions of this Article shall apply to all procurements of goods and supplies and services, including architectural and engineering, undertaken by WSSC except for design-build and construction, which will be governed by Article 5 of these Regulations.

### **§4-102 Extension of Time for Bid or Proposal Acceptance.**

After opening bids or proposals, the Procurement Officer may request bidders or offerors to extend the time during which WSSC may accept their bids or proposals.

### **§4-103 Extension of Time on Indefinite Quantity Contracts.**

The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided that the Chief Procurement Officer or the head of a Using Department determines that it is not practical to award another contract at the time of such extension.

### **§4-104 Only One Bid or Proposal Received.**

#### **4-104.01 One Bid Received.**

If only one responsive bid is received in response to an Invitation for Bids (including multi-step bidding), an award may be made to the single bidder if the Procurement Officer finds that the price submitted is fair and reasonable and that the bidder is responsible; alternatively, the bid may be rejected and:

- A. new bids or offers may be solicited after the solicitation is cancelled; or
- B. if the Chief Procurement Officer so determines, an emergency procurement may be made, as appropriate.

#### **4-104.02 One Proposal Received.**

If only one proposal is received in response to a Request for Proposals, the Procurement Officer may make an award, or it may cancel the Solicitation and re-solicit for the purpose of obtaining competitive sealed proposals with concurrence of the Using Department.

### **§4-105 Multiple or Alternate Bids or Proposals.**

Unless multiple or alternate bids or proposals are specifically requested in the Solicitation, they may not be accepted.

### **§4-106 Bid and Performance Bonds for Supply Contracts or Service Contracts.**

Bid and performance bonds or other security may be required on contracts for Goods and Supplies and Services as the Chief Procurement Officer or designee deems advisable to protect the interests of WSSC. Any such requirements shall be set forth in the Solicitation.

## **§4-107 Unsolicited Offers.**

### **4-107.01 Processing of Unsolicited Offers.**

The Chief Procurement Officer may consider an unsolicited offer in accordance with these Regulations and subject to the Legal Authorities.

### **4-107.02 Conditions for Consideration.**

A. To be considered for evaluation an unsolicited offer, the unsolicited offer must be:

- (1) in writing;
- (2) innovative or unique;
- (3) independently originated and developed by the offeror;
- (4) prepared without WSSC's supervision; and
- (5) sufficiently detailed to permit a determination that the proposed product, services, or work could benefit WSSC's mission or allow it to meet its responsibilities.

B. An unsolicited offer may not be an advance proposal for a known or anticipated WSSC requirement that can be procured by competitive methods.

C. Unsolicited offers may be the basis of a competitive procurement if deemed to be in the best interests of WSSC or where competitive procurement is required by law or regulation.

D. An offeror may designate portions of its unsolicited offer to be confidential if they include proprietary information or contain sensitive personnel information. Disclosure of such information by WSSC will be subject to the Maryland Public Information Act.

### **4-107.03 Disposition upon Rejection.**

An unsolicited offer shall be returned to an offeror, citing reasons, when the proposal does not meet the criteria in §4-107.02 above, or is not deemed to be advantageous to WSSC.

## **§4-108 Novation or Change of Name.**

### **4-108.01 No Assignment.**

No WSSC contract is transferable or otherwise assignable without the written consent of the Chief Procurement Officer provided, however, that a contractor may assign monies receivable under a contract after due notice in writing to WSSC.

### **4-108.02 Recognition of a Successor in Interest; Novation.**

A. Subject to a determination by the Chief Procurement Officer that the novation is in WSSC's best interests, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that:

- (1) the transferee assumes all of the transferor's obligations;
- (2) the transferor waives all rights under the contract against WSSC; and
- (3) the transferee shall, if required by WSSC, furnish a satisfactory performance bond.



#### **4-108.03 Change of Name.**

When a contractor requests to change the name in which it holds a contract with WSSC, the Chief Procurement Officer may, upon receipt of a legally sufficient document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. No other terms and conditions of the contract are thereby changed.

#### **§4-109 Conditioning Bids or Proposals Upon Other Awards.**

Any bid or proposal that is conditioned upon receiving award of both the particular contract being solicited and another WSSC contract shall be deemed nonresponsive.

#### **§4-110 Purchase of Items Separately from Construction Contract.**

The Chief Procurement Officer or designee, in consultation with the relevant Using Department head, is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

#### **§4-111 Intergovernmental and Cooperative Purchasing.**

WSSC may participate in, sponsor, conduct, administer, or enter into a cooperative purchasing contract for the procurement of any goods and supplies, services, or construction, or the cooperative use of goods and supplies, services, or construction with a public entity. The cooperative procurement may include joint contracts or multi-party contracts.

#### **§4-112 Public Entity Contracts.**

WSSC may, without competition, enter into a contract for the procurement, use, or sale of goods and supplies, services, or construction with a public entity when it is in the best interests of WSSC.

#### **§4-113 Bridge Contracts.**

**.01** WSSC may, without competition, enter into a contract with a person if:

A. the Chief Procurement Officer determines that:

- (1) the person has an existing contract with another public entity for the goods and supplies, services, or construction which WSSC would like to procure;
- (2) a bridge contract is in the best interests of WSSC; and
- (3) the contract between the person and the other public entity was awarded as the result of a competitive selection process acceptable to the Chief Procurement Officer; and

B. the person agrees to:

- (1) provide WSSC materially the same specifications being provided the other public entity;
- (2) provide WSSC the same prices being charged the other public entity; and
- (3) additional terms and conditions, if any, proposed by WSSC.

## **§4-201 Methods of Source Selection.**

.01 Unless otherwise authorized by law or directed by the Commission, all WSSC contracts may be awarded by one of the following methods:

- A. Competitive Sealed Bids;
- B. Competitive Sealed Proposals;
- C. Small Purchases;
- D. Sole Source Procurements;
- E. Emergency Procurements; or
- F. Special Procurements.

## **§4-202 Competitive Sealed Bidding.**

### **4-202.01 Conditions for Use.**

Contracts may be awarded by competitive sealed bids.

### **4-202.02 Invitation for Bids.**

- A. If a contract is awarded based on competitive sealed bids, the Commission shall seek bids by issuing an Invitation for Bids.
- B. An Invitation for Bids shall:
  - (1) include the contract specifications, including any applicable race or gender-neutral remedies, or MBE or SLBE participation as determined in accordance with the governing Standard Procedures;
  - (2) state whether the contract will be awarded based on the lowest bid price or the lowest Evaluated Bid Price; and
  - (3) set forth contractual terms and conditions.
- C. If a contract will be awarded based on an Evaluated Bid Price, the Invitation for Bids shall include the Objective Measurable Criteria by which the lowest Evaluated Bid Price will be determined.
- D. WSSC shall award contracts based on competitive sealed bids to the responsive and responsible bidder who submits the lowest bid price or lowest Evaluated Bid Price, as appropriate.
- E. If WSSC determines that an initial preparation of specifications for price bids is impractical, then WSSC:
  - (1) may issue an Invitation for Bids that includes a request for an unpriced technical offer or sample and directs a bidder to submit:
    - (a) a sealed price bid with the unpriced technical offer or sample; or
    - (b) a price bid after WSSC:
      - (i) evaluates the technical offer or sample; and
      - (ii) finds that the offer or sample is acceptable under the criteria set forth in the Invitation for Bids.

(2) in cases where the Invitation for Bids described in §4-202.02.E.1 is issued, WSSC shall:

- (a) consider the price bid of a bidder whose technical offer or sample is acceptable;
- (b) return unopened the price bid of a bidder whose technical offer or sample is unacceptable; and
- (c) award the contract to the responsive and responsible bidder whose technical offer or sample is acceptable and who submits the lowest bid price or lowest Evaluated Bid Price, as specified in the Invitation for Bids.

#### **4-202.03 Public Notice.**

Invitations for Bids or notifications of the availability of Invitations for Bids shall be furnished to a sufficient number of potential bidders for the purpose of securing competition. Every procurement in excess of a standard minimum amount as specified by the Chief Procurement Officer shall be well publicized in a suitable manner as determined by the Chief Procurement Officer. A copy of the Invitation for Bids shall be made available for public inspection at the Office of the Chief Procurement Officer and/or at the WSSC website and/or at other publicly-available electronic dissemination facility.

#### **4-202.04 Bidding Time.**

The Chief Procurement Officer may specify a minimum Bidding Time for Competitive Sealed Bids.

#### **4-202.05 Bidder Submissions.**

A. Bid Form.

The Invitation for Bids may provide an appropriate form.

B. Electronic Bids.

The Invitation for Bids may either permit or require bids by electronic means.

C. Bid Samples or Descriptive Literature.

Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

#### **4-202.06 Bidders Lists.**

Bidders lists may be compiled by WSSC with the names of businesses that may be interested in competing for various types of WSSC contracts. Inclusion or exclusion of the name of a business on the Bidders list does not indicate whether the business is responsible or qualified for any contract. Names and addresses on bidders lists may be available for public inspection but will not be used by WSSC for private, promotional, commercial, or marketing purposes.

#### **4-202.07 Pre-Bid Conferences.**

The Procurement Office may, with due notice, conduct Pre-Bid Conferences to explain WSSC procurement requirements. Nothing stated at the Pre-Bid conference shall change the Invitation for Bids unless a change is made by written amendment.

#### **4-202.08 Amendments to Invitations for Bids.**

A. Form.

Amendments to Invitations for Bids shall be identified as such and may require that the bidder acknowledge receipt.

B. Distribution.

Amendments may be sent to prospective bidders or publicized as appropriate. Amendments shall be sent to bidders that have responded to the Invitation for Bids and shall require acknowledgement or proof of receipt.

#### **4-202.09 Pre-Opening Modification or Withdrawal of Bids.**

A. Procedure.

Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening.

B. Disposition of Bid Security.

If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.

#### **4-202.10 Untimely Bids, Withdrawals, and Modifications.**

A. Definition.

Any bid received after the time and date set for receipt of bids is untimely. Any attempt by a bidder to withdraw or modify its bid after the time and date set for opening of bids is untimely.

B. Treatment.

WSSC shall disregard all untimely bids, modifications, and withdrawals.

#### **4-202.11 Opening and Recording of Bids.**

Bids shall be opened in an appropriate manner determined by the Chief Procurement Officer. Appropriate information shall be recorded; the record may be open to public inspection pursuant to the requirements and exceptions of the Maryland Public Information Act.

#### **4-202.12 Mistakes in Bids.**

A. Mistakes Discovered Before Opening.

A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid.

B. Confirmation of Bid.

When the Procurement Officer knows or has reason to conclude that a mistake has been made, such officer may request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted.

C. Mistakes Discovered After Opening but Before Award.

Mistakes in bids that are discovered after the time and date set for bid opening but before award shall be resolved as follows:

- (1) *Minor Informalities*. 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, the effect on price, quantity, quality, delivery, worker and/or public safety or contractual conditions is negligible. The Procurement Officer may waive such informalities or allow the bidder to correct them depending on what is in the best interests of WSSC.
- (2) *Mistakes Where Intended Correct Bid Is Evident*. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
- (3) *Mistakes Where Intended Correct Bid Is Not Evident*. A bidder may be permitted to withdraw a low bid if:
  - (a) a mistake is clearly evident on the face of the bid document but the intended correction is not similarly evident; or
  - (b) the bidder submits objective proof which clearly and convincingly demonstrates that a mistake was made.

D. Mistakes Discovered After Award.

Mistakes shall not be corrected after award of the contract except where the Chief Procurement Officer or the head of a WSSC Using Department makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

E. Determinations.

Depending on whether the bid is corrected or withdrawn, the Chief Procurement Officer or designee or the head of a Using Department shall prepare a written determination showing whether the relief was granted or denied.

**4-202.13 Tie Bids.**

If two or more offerors are tied in price while otherwise meeting all required Solicitation specifications, the tie will be broken using the following methods and in the following order:

- A. Offerors located in Prince George's County or in Montgomery County.
- B. Offerors located in Maryland.
- C. Offerors with the earliest delivery terms.
- D. Finally, offerors who provide WSSC with the greater opportunity for broadening its supplier base.

**4-202.14 Documentation of Award.**

Following award, a record showing the basis for determining the successful bidder shall be made a part of the Procurement file.

#### **4-202.15 Publicizing Awards.**

Notice of award shall be conveyed to the successful bidder. In procurements over a minimum amount specified by the Chief Procurement Officer, each unsuccessful bidder may be notified of the award in writing or through electronic means. Notice of award shall be made available to the public through electronic means.

#### **4-202.16 Multi-Step Sealed Bidding.**

##### **A. Definition.**

Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by WSSC and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. At the Chief Procurement Officer's discretion, a "best and final offer" stage may be included whereby bidders of acceptable quality are invited to improve or adjust the quality of their offers, or reduce the price.

##### **B. Conditions for Use.**

Multi-step sealed bidding may be used:

- (1) to invite and evaluate technical offers to determine their acceptability;
- (2) to discuss technical offers and requirements, obtain information, and permit amendments;
- (3) to conduct technical evaluations prior to soliciting priced bids;
- (4) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures;
- (5) to award the contract to the best quality bid, ensuring that the best quality bid is reasonably priced; and/or
- (6) to invite discussions and final stage price competition among bidders of acceptable quality.

#### **4-202.17 Procedure for Multi-Step Sealed Bidding.**

##### **A. Form.**

Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids that may state:

- (1) that unpriced technical offers are requested;
- (2) whether separate priced bids are to be submitted at the same time as unpriced technical offers;
- (3) that it is a multi-step sealed bid procurement, and the rules to be followed;
- (4) the criteria to be used in the evaluation of the unpriced technical offers;
- (5) that the Chief Procurement Officer or designee may conduct oral or written discussions of the unpriced technical offers; and/or
- (6) that priced offers may be subject to negotiation.

##### **B. Amendments to the Invitation for Bids.**

After receipt of unpriced technical offers, amendments to the Invitation for Bids may be distributed.

#### **4-202.18 Awards.**

Award shall be made to the most responsible and responsive bidder whose bid offers the lowest price or the lowest Evaluated Bid Price, as applicable, in conformance with the Invitation for Bids.

## **§4-203 Competitive Sealed Proposals.**

### **4-203.01 Use of Competitive Sealed Proposals.**

Competitive Sealed Proposals may be used when the Chief Procurement Officer determines that the use of competitive sealed bidding is either not practicable or not advantageous to WSSC.

### **4-203.02 Content of the Request for Proposals.**

The Request for Proposals shall be prepared in accordance with the procedures used for Invitation for Bids, provided that it shall also include a statement that WSSC may or may not conduct discussions with some offerors; and a statement of the selection process WSSC intends to follow.

### **4-203.03 Proposal Preparation Time.**

Proposal preparation time shall be set at the Chief Procurement Officer's discretion to provide offerors a reasonable time to prepare their proposals.

### **4-203.04 Form of Proposal.**

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

### **4-203.05 Public Notice.**

Request for Proposals or notifications of the availability of Request for Proposals shall be furnished to a sufficient number of potential offerors for the purpose of securing competition. Every procurement in excess of a standard minimum amount as specified by the Chief Procurement Officer shall be well publicized in a suitable manner as determined by the Chief Procurement Officer. A copy of the Request for Proposals shall be made available for public inspection at the Office of the Chief Procurement Officer and/or at the WSSC website and/or at other publicly-available electronic dissemination facility.

### **4-203.06 Offerors Lists.**

Offerors lists may be compiled by WSSC with the names of businesses that may be interested in competing for various types of WSSC contracts. Inclusion or exclusion of the name of a business on the Offerors list does not indicate whether the business is responsible or qualified for any contract. Names and addresses on Offerors lists may be available for public inspection but will not be used by WSSC for private, promotional, commercial, or marketing purposes.

### **4-203.07 Pre-Proposal Conferences.**

WSSC may, with due notice, conduct Pre-Proposal Conferences to explain WSSC procurement requirements. Nothing stated at the Pre-Proposal Conference shall change the Request for Proposal unless a change is made by written amendment.

### **4-203.08 Amendments to Requests for Proposals.**

#### **A. Form.**

Amendments to Request for Proposals shall be identified as such and may require that the offeror acknowledge receipt.

B. Distribution.

Amendments may be sent to prospective offerors or publicized as appropriate. WSSC may issue Amendments to Requests for Proposals prior to or after submission of proposals. Amendments shall be sent to offerors that have responded to the Request for Proposals and shall require acknowledgement or proof of receipt.

**4-203.09 Modification or Withdrawal of Proposals.**

Proposals may be modified or withdrawn prior to the established due date. The established due date is either the time and date stated in the Request for Proposal for receipt of the proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the time and date by which Best and Final Offers, as explained below in §4-203.13.E., must be submitted. Only offerors who submitted proposals by the time announced for receipt of proposals may submit Best and Final Offers.

**4-203.10 Late Proposals, Late Withdrawals, and Late Modifications.**

Any proposal, withdrawal, or modification received after the established due date at the place designated for receipt of proposals is untimely.

Untimely proposals, modifications, and withdrawals will not be considered.

**4-203.11 Receipt of Proposals.**

Proposals shall be opened by an appropriate process. Proposals and modifications shall be time-stamped upon receipt.

**4-203.12 Evaluation of Proposals.**

A. Evaluation Factors in the Request for Proposals.

The Request for Proposals shall state all of the evaluation factors, including price, and their relative importance.

B. Evaluation.

The evaluation of the Request for Proposals shall be based on the evaluation factors set forth in the Request for Proposals.

**4-203.13 Discussions with Offerors after Receipt of Proposals.**

A. Award without Discussions.

Award may be made without discussions if the solicitation states that WSSC intends to evaluate proposals and make an award without discussions.

B. Discussions.

(1) *Purpose.* Discussions may be conducted to:

- (a) enhance WSSC's understanding of submitted proposals;
- (b) allow reasonable interpretation of the submitted proposals; and
- (c) facilitate WSSC's evaluation process.



- (2) *Scope*. Discussions may include bargaining with respect to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

C. Primary Objectives.

The primary objectives of discussions are to obtain the best price for WSSC and to ensure full understanding of WSSC's requirements, as set forth in the Request for Proposals and in the submitted proposals.

D. Fair and Equitable Treatment.

During Discussions, WSSC shall treat all responsible and responsive offerors fairly.

E. Best and Final Offer.

WSSC may allow each responsible and responsive offeror to revise their initial proposal and submit a Best and Final Offer.

F. Limits on Discussions.

WSSC personnel involved in the procurement shall not engage in conduct that: favors one offeror over another; reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to benefit another offeror; reveals an offeror's price without that offeror's permission; or reveals the names of individuals providing reference information about an offeror's past performance.

**4-203.14 Mistakes in Proposals.**

A. Confirmation of Proposal.

When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, such Officer may request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth below are met.

B. Mistakes Discovered After Receipt of Proposals but Before Award.

This subsection sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

(1) During Discussions; Prior to Best and Final Offers.

Once discussions are commenced with any offeror or after Best and Final Offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of Best and Final Offers.

(2) After Best and Final Offers.

If discussions are not held or if the Best and Final Offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

- (a) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or
- (b) the mistake is not clearly evident on the face of the proposal, but the offeror submits objective evidence which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

(3) Withdrawal of Proposals.

If discussions are not held, or if the Best and Final Offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

- (a) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;
- (b) the offeror submits objective evidence which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or
- (c) the offeror submits objective evidence which clearly and convincingly demonstrates the intended correct offer, but to allow correction would be contrary to the fair and equal treatment of the other offerors.

(4) Mistakes Discovered After Award.

Mistakes shall not be corrected after award of the contract except where the Chief Procurement Officer finds it would be unconscionable not to allow the mistake to be corrected.

**4-203.15 Awards.**

Award shall be made to the most responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to WSSC, taking into consideration the evaluation factors set forth in the Request for Proposals.

**§4-204 Small Purchases.**

**4-204.01 Policy.**

Any procurement not exceeding an amount established by the Chief Procurement Officer may be made under no competition or limited competition requirements in accordance with Small Purchase procedures provided herein; however, those procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section. The Chief Procurement Officer shall set the Small Purchases threshold limits for (1) goods and supplies and/or services; (2) professional services; and (3) architectural and engineering services.

**4-204.02 Exceptions to Procurements under Small Purchases.**

A. Existing WSSC Contract for Item.

Goods and supplies or services which may be obtained under current WSSC contracts shall be procured under such existing agreements unless WSSC interests are better served by making Small Purchases.

B. Available from One Person Only.

If the supply or service is available from only one person, the sole source procurement method may be used even if the procurement is a Small Purchase.

## **§4-205 Sole Source Procurements.**

### **4-205.01 Policy.**

A contract may be awarded for a supply or service item without competition when the Chief Procurement Officer, the head of a Using Department, or designee determines that there is only one source for the required supply or service.

### **4-205.02 Conditions for Use of Sole Source Procurement.**

A. Sole source procurement is not permissible unless a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item.

B. The following are examples of circumstances which could necessitate sole source procurement:

- (1) where the compatibility of equipment, accessories, software, or replacement parts is the paramount consideration;
- (2) where only one source can meet the timeliness of the requirement;
- (3) where a sole supplier's item is needed for trial use or testing; or
- (4) where public utility services are to be procured.

C. The determination as to whether a procurement shall be made as a sole source shall be made by the Chief Procurement Officer in conjunction with the head of a Using Department or designee.

### **4-205.03 Negotiation in Sole Source Procurement.**

The Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

## **§4-206 Emergency Procurements.**

### **4-206.01 Policy.**

Notwithstanding any other provision of these Regulations, the Chief Procurement Officer, the head of a Using Department or their respective designee(s) may make or authorize others to make emergency procurements when an emergency exists and has been declared pursuant to Article 4 of WSSC's Bylaws.

### **4-206.02 Definition of Emergency.**

An emergency means a sudden, unexpected occurrence or condition which creates an immediate need for goods and supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one or more of the following:

- A. the health, safety, or welfare of any person;
- B. the preservation, protection, or mitigation of loss of property;
- C. the continuation of essential WSSC functions; or
- D. the continuation of essential WSSC services.

#### **4-206.03 Scope of Emergency Procurements.**

Emergency procurements shall be limited to those goods and supplies, services, or construction items necessary to meet the emergency.

#### **4-206.04 Authority to Make Emergency Procurements.**

In the event of an emergency, the Chief Procurement Officer or designee shall have the signatory authority for all agreements or changes to such agreements concerning the emergency without regard to dollar value.

### **§4-207 Special Procurements.**

Notwithstanding any other provision of these Regulations, the Chief Procurement Officer may initiate a Procurement above the Small Purchase amount where he/she determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest and such Procurement does not technically qualify as a Sole Source Procurement. If determined as appropriate by the Chief Procurement Officer, any special Procurement under this section shall be made with such competition as is practicable under the circumstances; provided, however, that the Chief Procurement Officer may determine under appropriate circumstances that there is only one logical choice as to a contractor to provide the goods and supplies or services necessitated by the Special Procurement. A written determination of the basis for the Procurement and for the selection of the particular contractor shall be included by the Chief Procurement Officer in the Procurement file. Any rights accorded to the Chief Procurement Officer by this §4-207 are expressly subject to and limited by the Legal Authorities.

### **§4-301 Cancellation of Invitations for Bids or Requests for Proposals.**

#### **4-301.01 Policy.**

An Invitation for Bids, a Request for Proposals, or any other type of Solicitation, without limitation, may be cancelled, or any or all bids or proposals may be rejected in whole or in part when the Chief Procurement Officer deems it to be in the best interests of WSSC. Notice of such a decision must be made in writing and provided to all bidders or offerors.

#### **4-301.02 Rejection of Individual Bids or Proposals.**

##### **A. General.**

This section applies to rejections of individual bids or proposals in whole or in part. For any Solicitation, any bid or proposal may be rejected in whole or in part when in the best interests of WSSC.

##### **B. Reasons for Rejection.**

##### **(1) Bids.**

Reasons for rejecting a bid include, but are not limited to:

- (a) the business that submitted the bid is non-responsible;
- (b) the bid is not responsive; or
- (c) the supply, service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications, permissible alternates, reasonable price, or other acceptability criteria set forth in the Invitation for Bids.

(2) Proposals.

Unless the Solicitation states otherwise, proposals may be accepted subject to conditions. Reasons for rejecting proposals may include but are not limited to:

- (a) the business that submitted the proposal is non-responsible;
- (b) the proposal fails to meet the announced requirements of WSSC in some material respect such as quality or specifications; or
- (c) the proposed price is deemed unreasonable.

**4-301.03 "All or Nothing" Bids or Proposals.**

Only when authorized by the Solicitation may a bid or proposal limit acceptance to the entire bid or proposal offering. Otherwise, WSSC may deem such "limited acceptance" bids or proposals to be non-responsive.

**4-301.04 Disposition of Bids or Proposals.**

When bids or proposals are rejected, or a Solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file; or, if unopened, returned to the bidders or offerors upon request.

**§4-401 Responsibility of Bidders and Offerors.**

**4-401.01 Determination of Non-Responsibility.**

The Procurement Officer may determine that a bidder or offeror is non-responsible. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility.

**4-401.02 Application.**

A determination of responsibility or non-responsibility shall be governed by these Regulations.

**4-401.03 Factors of Responsibility.**

When determining whether a bidder or offer is non-responsible, the Procurement Officer will consider whether the bidder or offeror has:

- A. the appropriate financial, material, equipment, facility, and personnel resources and expertise available, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- B. a satisfactory record of performance;
- C. a satisfactory record of integrity;
- D. qualified legally to contract with WSSC; and
- E. supplied all necessary information in connection with the inquiry concerning responsibility.

**4-401.04 Information Pertaining to Responsibility.**

The bidder or offeror shall supply information requested by the Procurement Officer concerning the responsibility of such bidder or offeror. If such bidder or offeror fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the bidder or offeror non-responsible if such failure is unreasonable.

#### **4-401.05 Ability to Demonstrate Responsibility.**

The bidder or offeror may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- A. evidence that such contractor possesses such necessary items;
- B. acceptable plans to subcontract for such necessary items; or
- C. a documented commitment from or explicit arrangement with a satisfactory source to provide the necessary items.

#### **4-401.06 Duty Concerning Responsibility.**

Before awarding a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible.

#### **4-401.07 Written Determination of Non-responsibility Required.**

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Chief Procurement Officer in conjunction with the Using Department. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the procurement file.

### **§4-402 Prequalification of Suppliers.**

#### **4-402.01 Policy.**

The Chief Procurement Officer, in consultation with the Using Department, may determine that it is in the best interests of WSSC to prequalify suppliers (bidders or offerors) for particular types of goods and supplies, services, construction, and professional and consultant services. Prequalification standards may be imposed by the Chief Procurement Officer that must be met by any supplier in order to qualify to respond to an Invitation for Bids, a Request for Proposals or other types of Solicitations. Suppliers shall be required to submit information to the Chief Procurement Officer to allow a determination of whether a supplier has met such prequalification standards.

#### **4-402.02 Public Notice.**

Invitations for Prequalification or notifications of the availability of Invitations for Prequalification shall be furnished to a sufficient number of potential suppliers for the purpose of securing competition.

#### **4-402.03 Procedures for Prequalifying Offerors.**

The Chief Procurement Officer and Using Department for which a Solicitation is being performed shall review all information submitted by suppliers, and, if necessary, additional information may be required. If the Chief Procurement Officer, in consultation with the Using Department and any other affected Using Department, determines that the supplier meets all of the prequalification standards established under this §4-402, the Chief Procurement Officer shall prequalify the supplier as qualified to submit a bid or proposal for the particular solicitation for which the prequalification was performed. The supplier shall be notified in writing of prequalification.

#### **4-402.04 Failure to Prequalify.**

If a supplier is found not to meet the prequalification standards established under this Article, a written determination setting forth the basis for such finding shall be prepared by the Chief Procurement Officer and delivered to the supplier.

#### **4-402.05 Requirement for Prequalification.**

When prequalification is required, only those suppliers who submit the required prequalification information and who are actually prequalified to submit a bid or proposal for a particular solicitation shall be allowed to submit bids or proposals.

### **§4-403 Substantiation of Offered Prices.**

#### **4-403.01 Policy.**

In cases where two or fewer bids or proposals are submitted or where the submitted price or cost is not based on established catalogue or market prices, the Chief Procurement Officer or designee may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable.

#### **4-403.02 Submission of Substantiating Data.**

##### **A. Time and Manner.**

When factual information is requested by the Procurement Officer to substantiate that the price or cost offered, or some portion of such price or cost, is reasonable, the bidder or offeror shall submit such data to the Procurement Officer prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the Procurement Officer. Such information shall either be actually submitted or specifically identified in writing.

##### **B. Refusal to Submit Data.**

A refusal by the bidder or offeror to supply the requested information may be grounds to disqualify the bidder or offeror or to defer award pending further review and analysis.

### **§4-501 Types of Contracts.**

#### **4-501.01 Policy.**

Subject to the limitations of this Section, any type of contract which will promote the best interests of WSSC may be used provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only if the Chief Procurement Officer determines in writing that such a contract is likely to be less costly to WSSC than any other type or that it is impracticable to obtain the goods and supplies, services, or construction required except under such a contract.

#### **4-501.02 Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting.**

Except for a cost-plus-a-percentage-of-cost contract which is prohibited by §4-501 of these Regulations, the use of any type of contract is permissible. Permitted contract types include, but are not limited to, the following:

- A. Fixed-Price Contracts (with contract-specified adjustments);
- B. Firm Fixed-Price Contracts;
- C. Cost-Reimbursement Contracts;
- D. Allowable-Cost Contracts;
- E. Cost-Plus-Fixed Fee Contracts;
- F. Cost Incentive Contracts;
- G. Fixed-Price Cost Incentive Contracts;
- H. Cost-Reimbursement Contracts with Cost Incentive Fee;
- I. Performance Incentive Contracts;
- J. Time-and-Materials Contracts;
- K. Labor-Hour Contracts;
- L. Definite-Quantity Contracts;
- M. Indefinite-Quantity Contracts;
- N. Indefinite-Delivery Indefinite-Quantity Contracts; and
- O. Requirements Contracts;

#### **4-501.03 Option Provisions.**

##### **A. Contract Provision.**

When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the Solicitation. Exercise of an option is always at WSSC's discretion.

##### **B. Exercise of Option.**

Before exercising any option for renewal, extension, or purchase, the Procurement Officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to WSSC than renewal or extension of the existing contract.

##### **C. Lease with Purchase Option.**

A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals, or the leased supply or facility is the only supply or facility that can meet WSSC requirements, as determined in writing by the Chief Procurement Officer. Before exercising such an option the Procurement Officer shall:

- (1) investigate alternative means of procuring comparable goods and supplies or facilities;
- (2) compare estimated costs and benefits associated with the alternative means and the exercise of such option; for example, the benefit of buying new, state-of-the-art equipment compared to the estimated, initial savings associated with exercise of a purchase option; and
- (3) obtain approval of the Chief Financial Officer for the original lease with purchase option contract.

#### **4-501.04 Provision to Extend Contract for Ninety (90) Days.**

##### **A. General.**

Under certain procurement circumstances, WSSC may find it advantageous to obtain the option of a unilateral contract extension to extend the contract ninety (90) days past its termination date.



#### B. Contract Provision.

When a contract is to contain an option for unilateral contract extension for ninety (90) days, notice of such provision shall be included in the Solicitation. If WSSC intends to exercise the extension, it shall provide written notice to the contractor at least thirty (30) days prior to the contract termination date. The exercise of the extension is at WSSC's sole discretion.

#### **4-501.05 Policy Regarding Selection of Contract Types.**

##### A. General.

The selection of an appropriate contract type depends on factors such as the nature of the goods and supplies or services to be procured, the uncertainties which may be involved in contract performance, and the extent to which WSSC or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor.

Among the factors that may be considered in selecting any type of contract are:

- (1) limitations on contract types stated in Maryland Annotated Code, Public Utilities, §§20-101 through 20-106;
- (2) the type and complexity of the supply or service being procured;
- (3) the difficulty of estimating performance costs due to WSSC's inability to: develop definitive specifications; identify risks to the contractor inherent in the nature of the work to be performed; or otherwise establish clearly the requirements of the contract;
- (4) the administrative costs to both parties;
- (5) the degree to which WSSC must provide technical coordination during the performance of the contract;
- (6) the effect the contract type may have on the amount of competition to be expected;
- (7) the stability of material or commodity market prices or wage levels;
- (8) the urgency of the requirement; and
- (9) the length of contract performance.

#### **§4-502 Multi-Year Contracts.**

##### **4-502.01 Policy.**

The Chief Procurement Officer is authorized to enter into multi-year contracts when it is in the best interests of WSSC provided WSSC retains the right to cancel such contracts after the first fiscal period (or one year) due to unavailability of funds.

##### **4-502.02 Specified Period.**

Unless otherwise provided by law, a contract for goods and supplies or services may be entered into for any period of time deemed to be in the best interests of WSSC provided the terms of the contract and conditions of renewal or extension, if any, are included in the Solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

#### **4-502.03 Use.**

A multi-year contract is authorized where:

- A. estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- B. such a contract will serve the best interests of WSSC by encouraging effective competition or otherwise promoting economies in WSSC procurement.

#### **4-502.04 Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.**

When funds are not appropriated or otherwise not made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the goods and supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

#### **4-502.05 Award.**

Award shall be made as stated in the Solicitation and permitted under the Source Selection method utilized.

#### **4-502.06 Cancellation.**

- A. As used in multi-year contracting, cancellation means the cancellation of the total requirements for the remaining portion of the contract because funds were not appropriated or otherwise made available. The contract for the first fiscal period (or one year) shall not be cancelled. Cancellation results when the Procurement Officer notifies the contractor in writing of the non-availability of funds for contract performance for any fiscal period subsequent to the first period or the first year.
- B. These provisions on cancellation of multi-year contracts do not limit the rights of WSSC or the contractor under any termination clause of the contract, if the contract is terminated pursuant to that clause rather than cancelled as provided in this subsection.

### **§4-503 Multiple Awards.**

#### **4-503.01 General.**

A multiple award is an award of an indefinite-quantity contract for one or more similar goods and supplies or services to more than one bidder or offeror.

#### **4-503.02 Limitations on Use.**

A multiple award may be made when award to two or more bidders or offerors for similar products is necessary or convenient, or to ensure adequate delivery, service, or product compatibility. Multiple awards may not be made when a single award will meet WSSC needs without sacrifice of economy or service.

#### **4-503.03 Intent to Use.**

If a multiple award is anticipated prior to issuing a solicitation, WSSC may reserve the right to make such an award.

#### **4-503.04 Incremental Award.**

##### **A. General.**

An incremental award is an award of portions of a definite-quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.

##### **B. Intent to Use.**

If an incremental award is anticipated prior to issuing a solicitation, WSSC may reserve the right to make such an award and the criteria for award shall be stated in the Solicitation.

#### **§4-601 Right to Inspect Plant and Facilities.**

WSSC may, at reasonable times, inspect the part of a plant or facilities or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by WSSC.

#### **§4-602 Right to Audit Records.**

##### **4-602.01 Audit of Cost or Pricing Data.**

WSSC may, at reasonable times and places, audit the books and supporting documents of any person who has submitted data in substantiation of offered prices to the extent that such books and supporting documents relate to that data. Any person who receives a contract, change order, or contract modification for which such data is required, shall maintain such books and records that relate to such cost or pricing data for a number of years as specified by the Office of the Chief Procurement Officer. All such books and supporting documents must be retained for at least five years after the contract expiration date or after the acceptance of work, whichever is last.

##### **4-602.02 Contract Audit.**

WSSC shall be entitled to audit the books and supporting documents of a contractor or any subcontractor under any negotiated contract or subcontract to the extent that such books and supporting documents relate to the performance of such contract or subcontract. Such books and supporting documents shall be maintained by the contractor for a number of years specified by the Office of the Chief Procurement Officer. All such books and supporting documents must be retained for at least five years after the contract expiration date or after the acceptance of work, whichever is last. WSSC reserves the right to audit any and all contracts to ensure compliance with SLMBE participation goals.

##### **4-602.03 Independent Peer Reviewer**

For any Architectural and Engineering or Design-Build contracts, an Independent Peer Reviewer may be selected through competitive sealed proposals to provide Independent Peer Reviewer Services, as these terms are defined in §1-201 above.

## **§4-701 Project Delivery Methods.**

### **4-701.01 Chief Procurement Officer Authority**

For procurements relating to Infrastructure Facilities projects, the Chief Procurement Officer shall have authority to:

- A. set forth criteria to be used in determining which project delivery method is to be used for a particular project,
- B. grant to the designee(s) of the Chief Procurement Officer or to the head of WSSC Using Department responsible for carrying out the project the discretion to select and apply an appropriate project delivery method for a particular project;
- C. describe the bond, insurance, and other security provisions contained in these Regulations that apply to each project; and
- D. describe the appropriate contract clauses and fiscal responsibility requirements in these Regulations that apply to each project.

## **§4-801 Bid Security.**

### **4-801.01 Requirement for Bid Security.**

Bid security may be required for all competitive sealed bidding for construction contracts when the price is estimated by the Chief Procurement Officer to exceed a threshold amount. Bid security shall be a bond provided by a surety company authorized to do business in the State, or the equivalent in cash, or otherwise supplied in a form satisfactory to WSSC. Nothing herein prevents the requirement of such bonds on such contracts under the threshold amount.

### **4-801.02 Amount of Security.**

Bid security shall be in an amount equal to at least a specified percentage of the amount of the bid, as specified by the Chief Procurement Officer.

- A. Rejection of Bids for Noncompliance with Bid Security Requirements.

Failure to submit the required bid security shall result in the rejection of the bid.

- B. Withdrawal of Bids.

After bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids, except as provided in §4-202.12. If a bidder is permitted to withdraw its bid before award or is excluded from the competition before award, no action shall be taken against the bidder or the bid security.

## **§4-802 Contract Performance and Payment Bonds.**

### **4-802.01 When Required - Amounts.**

When a construction contract is awarded in excess of a threshold amount established by the Chief Procurement Officer, the Chief Procurement Officer may stipulate that bonds or security shall be delivered to WSSC and shall become binding on the parties upon the execution of the contract by providing:

- A. a performance bond satisfactory to WSSC, executed by a surety company authorized to do business in Maryland or otherwise secured in a manner satisfactory to WSSC, in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance; and
- B. a payment bond satisfactory to WSSC, executed by a surety company authorized to do business in Maryland or otherwise secured in a manner satisfactory to WSSC, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract.

#### **4-802.02 Reduction of Bond Amounts.**

Subject to the Legal Authorities, the Chief Procurement Officer may reduce the amount of performance and payment bonds when it is in the best of interest of WSSC.

#### **4-802.03 Suits on Payment Bonds - Right to Institute.**

The right to institute suit on a payment bond is governed by Maryland Annotated Code, State Finance and Procurement, §§17-108 and 17-109.

### **§4-803 Insurance.**

Offerors must provide appropriate insurance to cover services as indicated in the Solicitation documents.

### **§4-901 Exceptions to Competitive Procurement Procedures.**

#### **4-901.01 Policy.**

Non-competitive procurement procedures may be utilized for certain categories of goods and supplies and services only upon a determination that such procedures are in WSSC's best interests. The following categories of goods and supplies or services may be purchased using non-competitive procedures upon written approval of the Chief Procurement Officer.

- A. Purchase, rent, or lease of land or other interest in real property;
- B. Personal property sold at an auction by a licensed auctioneer;
- C. Legal services;
- D. Medical services;
- E. Research and educational items and services;
- F. Standardized item or service from a single source or several selected sources when such standardization is deemed in the best interests of WSSC;
- G. Confidential investigative goods and supplies and/or services;
- H. Samples for testing purposes;
- I. Repair, maintenance, reconditioning, and/or overhaul of equipment, devices, or software by the manufacturer or the manufacturer's sole agent; and
- J. Services incidental to debt and debt issuances.

## **ARTICLE 5 – CONSTRUCTION AND DESIGN/BUILD CONTRACTS**

### **§5-101 Application of Maryland Annotated Code.**

Construction and design/build procurement is governed specifically by Maryland Annotated Code, Public Utilities, §§20-101, *et seq.*

### **§5-102 Application of Regulations.**

These Regulations are applicable to construction and design/build procurement unless: they conflict with any provision(s) of Maryland Annotated Code, Public Utilities, §§ 20 -101 *et seq.*; the application of a Regulation(s) would be inconsistent with any provision(s) of Maryland Annotated Code, Public Utilities, §§ 20-101, *et seq.*; or there is a provision(s) in Maryland Annotated Code, Public Utilities, §§ 20-101, *et seq.* that specifically addresses a matter included in the Regulations.

## **ARTICLE 6 – LEGAL AND CONTRACTUAL REMEDIES**

### **§6-101 Protests of Solicitations and Awards.**

#### **6-101.01 Right to Protest.**

Any actual or prospective bidder or offeror who is aggrieved in connection with a Solicitation or an award of a contract may protest to the Chief Procurement Officer. The protest shall be in writing and filed with the Office of the Chief Procurement Officer within seven (7) days after such aggrieved person knows or should have known of the facts giving rise to the protest. A protest shall be considered untimely if it is not received by the Office of the Chief Procurement Officer within the time period stated above. A bidder or offeror is aggrieved only if the bidder or offeror can demonstrate that, should the protest be sustained, the bidder or offeror may be eligible for the award.

#### **6-101.02 Form of Protest.**

The written protest shall include, at minimum, the following:

- A. name and address of the protestor;
- B. Solicitation or contract number;
- C. statement of reasons for the protest;
- D. supporting exhibits, evidence, or documents to substantiate any claims; and
- E. a filing fee in the amount specified in WSSC's Approved Fees and Charges Schedule. The filing fee shall be in the form of a check payable to WSSC.

#### **6-101.3 Authority to Resolve Protests.**

The Chief Procurement Officer, after consultation with the General Counsel's Office, shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder or offeror concerning the solicitation or award of a contract.

#### **6-101.04 Award of Contract During a Protest.**

In the event of a timely protest, WSSC shall not proceed further with a Solicitation or with the award of a contract until after a written decision on the protest has been issued by the Chief Procurement Officer, unless the Chief Procurement Officer, after consultation with the General Counsel's Office and the appropriate Using Department, determines in writing that awarding a contract without delay is necessary to protect the interests of WSSC.

#### **6-101.05 Final Decision.**

If the protest is not resolved by mutual agreement, the Chief Procurement Officer must adjudicate the protest on the record and issue a final written decision within twenty-one (21) days of receiving the protest. The decision must:

- A. state the reasons for the action taken; and
- B. inform the bidder or offeror of its right to appeal the written decision pursuant to §6-101.06 of these Regulations.

#### **6-101.06 Appeal to Court.**

The aggrieved bidder or offeror may appeal the written decision of the Chief Procurement Officer to the Circuit Court for Montgomery County or the Circuit Court for Prince George's County under the Maryland rules governing administrative mandamus actions.

#### **6-101.07 Entitlement to Costs.**

If a protest is sustained by the Chief Procurement Officer and the protesting bidder or offeror should have been, but was not, awarded the contract under the Solicitation, the aggrieved bidder or offeror shall be entitled to the reasonable costs incurred in connection with the Solicitation, including bid preparation costs. The aggrieved bidder or offeror shall not be entitled to recover any attorneys' fees incurred in connection with the Solicitation or protest. The protesting bidder or offeror shall also be entitled to a refund of the protest filing fee.

### **§6-102 Debarment or Suspension.**

#### **6-102.01 Debarment.**

After reasonable notice to the contractor or prospective contractor involved and reasonable opportunity for that contractor or prospective contractor to be heard, the Chief Procurement Officer, after consultation with the appropriate Using Department and the General Counsel's Office, shall have authority to debar a contractor or prospective contractor for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years.

##### **A. Causes for Debarment.**

The causes for debarment may include:

- (1) conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (2) conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, kickbacks, or any other offense indicating a lack of business integrity;
- (3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) a violation of WSSC contract provisions of a character which is regarded by the Chief Procurement Officer to be so serious as to justify debarment action. These provisions may include, but are not limited to, the following:
  - (a) failure without good cause to perform under the specifications or within the time limit provided in the contract;
  - (b) a record of failure to perform or of unsatisfactory performance under the provisions of one or more contracts; however, failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor are not a basis for debarment; or
  - (c) failure to meet contractual indemnification obligations under the provisions of one or more contracts.
- (5) any other serious cause the Chief Procurement Officer determines to be so compelling as to affect the competency or integrity of a contractor, including debarment or suspension by another public entity; and
- (6) a determination by WSSC's Board of Ethics of a violation of one or more ethical standards set forth in WSSC's Code of Ethics; or



- (7) a record of noncompliance with or unsatisfactory performance of the requirements set forth in WSSC Standard Procedures MBE 11-01 (approved March 16, 2011), SLBE 12-01 (approved June 20, 2011) and any successor Standard Procedures thereto.

B. Initiation of Debarment Action.

Written notice of the proposed debarment action shall be sent by certified mail (return receipt requested) to the contractor or prospective contractor. This notice shall:

- (1) state that debarment is being considered;
- (2) set forth the reasons for the action;
- (3) state that if the contractor or prospective contractor so requests a hearing will be held, provided a written request is received by the Chief Procurement Officer within ten (10) days after the contractor or prospective contractor receives notice of the proposed action; and
- (4) state that the contractor or prospective contractor may be represented by counsel.

C. Failure to Timely Request a Hearing.

The Chief Procurement Officer, after consultation with the appropriate Using Department and the General Counsel's Office, may immediately issue a final written decision and order on the debarment action if the contractor or prospective contractor fails to timely request a hearing in writing.

D. Appointment of Hearing Officer and Notice of Hearing.

If a hearing is timely requested, the Chief Procurement Officer may:

- (1) act as the sole Hearing Officer; or
- (2) in consultation with the General Counsel's Office, appoint a Hearing Officer, preferably a private practice attorney or retired judge with expertise and experience in the relevant subject matter.

The Hearing Officer shall send a written notice of the time and place of the hearing. Such notice shall be sent by certified mail, return receipt requested, and shall state the nature and purpose of the proceedings.

E. Authority of Hearing Officer and Hearing Procedure.

The authority of the Hearing Officer and the hearing procedure shall be governed by WSSC Standard Procedure L-07-02 (Procedure for Adjudicatory Hearings), as amended, revised or superseded by another Standard Procedure relating to adjudicatory hearing procedure, unless any provisions contained therein conflict with these Regulations. In such an instance, these Regulations govern.

F. Proposed Decision and Order.

- (1) If the Chief Procurement Officer appoints a Hearing Officer, the Hearing Officer, after the hearing has concluded and the record closed, shall issue a proposed decision and order to the Chief Procurement Officer and to the contractor or prospective contractor. The proposed decision and order shall be in writing, including separate findings of fact and conclusions of law. The findings of fact shall concisely state the resolution of each contested issue of fact and shall be based exclusively on the evidence of record and matters officially noticed. The proposed decision and order shall use as its standard of proof the preponderance of the evidence.

- (2) Upon receipt, the Chief Procurement Officer shall review the proposed decision and order. In addition, the Chief Procurement Officer may request that the parties to the hearing submit exceptions to the proposed decision and order. Based thereon, the Chief Procurement Officer may affirm, reverse, or modify the proposed decision or order, by issuing a final decision and order (see below). Alternatively, the Chief Procurement Officer may remand the case to the appointed Hearing Officer for further proceedings and issuance of a further proposed decision and order.

#### G. Final Decision and Order.

- (1) The Chief Procurement Officer shall issue a final decision and order after the hearing has concluded and the record has closed. The final decision and order shall be in writing, including separate findings of fact and conclusions of law. The findings of fact shall concisely state the resolution of each contested issue of fact and shall be based exclusively on the evidence of record and matters officially noticed. The final decision shall use as its standard of proof the preponderance of the evidence.
- (2) The contractor or prospective contractor shall be provided a copy of the final decision and order and informed of the right to appeal the final decision and order pursuant to § 6-102.01.H of these Regulations.

#### H. Appeal to Court.

The contractor or prospective contractor may appeal the final decision and order to the Circuit Court for Montgomery County or the Circuit Court for Prince George's County under the Maryland rules governing administrative mandamus actions.

#### I. Effect of Debarment Decision.

A debarment determination will take effect when the final decision and order is issued. After the debarment decision takes effect, the contractor or prospective contractor will be debarred from consideration for award of contracts until the debarment period specified in the written decision expires.

### **6-102.02 Suspension.**

The Chief Procurement Officer, after consultation with the appropriate Using Department and the General Counsel's Office, shall have authority to suspend a person from consideration for award of contracts if probable cause exists for debarment. The suspension shall be co-extensive with initiation and implementation of the debarment procedures set forth in this §6-102 but shall not exceed six (6) months.

#### A. Notice of Suspension.

Written notice of the suspension shall be sent by certified mail (return receipt requested) to the contractor or prospective contractor. This notice shall:

- (1) state that possible debarment is being investigated;
- (2) set forth the reasons for the action;
- (3) state that the suspension shall be coextensive with the initiation and implementation of the debarment procedures set forth in this §6-102 but shall not exceed six (6) months; and

- (4) state that bids or proposals will not be solicited from the suspended contractor or prospective contractor, and, if they are received will not be considered during the period of suspension.

**B. Effect of Suspension.**

A contractor or prospective contractor is suspended upon issuance of the notice of suspension. If bids or proposals are received, they will not be considered during the period of suspension.

## **§6-103 Solicitations or Awards in Violation of Law.**

### **6-103.01 Remedies Prior to an Award.**

If the Chief Procurement Officer, after consultation with the General Counsel's Office, determines that a Solicitation or proposed award is in violation of any provision of these Regulations or other applicable laws or regulations, including but not limited to the Legal Authorities, the solicitation or proposed award shall be:

- A. cancelled; or
- B. revised to comply with these Regulations, the Legal Authorities, or other applicable laws.

### **6.103.02 Remedies After an Award.**

If the Chief Procurement Officer, after consultation with the General Counsel's Office, determines that a Solicitation or award is in violation of any provision of these Regulations, the Legal Authorities, or other applicable laws or regulations, then:

- A. If the person awarded the contract has not acted fraudulently or in bad faith:
  - (1) If the violation can be waived without prejudice to WSSC or other bidders or offerors, the preferred action is to ratify and affirm the contract.
  - (2) If the violation cannot be waived without prejudice to WSSC or other bidders or offerors, and performance has not begun, and if there is time for resoliciting bids or offers, the contract shall be terminated. If there is no time for resoliciting bids or offers either formally or informally under emergency authority, the contract may be ratified and affirmed.
  - (3) If the violation cannot be waived without prejudice to WSSC or other bidders or offerors and if performance has begun, the Chief Procurement Officer, after consultation with the General Counsel's Office, shall determine whether it is in the best interests of WSSC to terminate the contract or, alternatively, to ratify and affirm the contract. The best interest factors include, but are not limited to, the costs to WSSC in terminating and resoliciting and the progress made toward performing the whole contract.
  - (4) If the contract is terminated, the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination. If there are no applicable termination provisions in the contract, settlement shall be made on the basis of actual costs directly or indirectly allocable to the contract up to the time of termination. Such costs shall be established in accordance with generally accepted accounting principles. Profit shall be proportionate only to the performance completed up to the time of termination. Anticipated profits are not allowed.

- B. If the person awarded the contract has acted fraudulently or in bad faith:
- (1) The contract may be declared null and void. In all cases where a contract is voided, no further payments shall be made under the contract and WSSC may pursue legal action and claim damages under any applicable legal theory; or
  - (2) The contract may be ratified and affirmed if such action is in the best interests of WSSC, and such action does not prejudice WSSC's right to pursue legal action and damages as may be appropriate. The best interest factors include, but are not limited to, the costs to WSSC in voiding the contract and resoliciting, and the progress made toward performing the whole contract. WSSC shall be entitled to any damages it can prove under any theory including, but not limited to, contract and tort, regardless of its ratification and affirmation of the contract.

## **§6-104 Contract Dispute Resolution.**

### **6-104.01 Construction and Architectural & Engineering Contracts.**

#### **A. Applicability.**

This Section applies to claims by a contractor against WSSC which arise under, or by virtue of, a construction, architectural & engineering, or design/build contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

#### **B. Time and Form.**

All claims by a contractor must be filed in writing with the designated Engineer for the contract within thirty (30) days of the event giving rise to the controversy, dispute, or other matter. The claim must include the following:

- (1) explanation of claim and identification of contract number, including reference to contract provisions upon which it is based upon;
- (2) amount of claim;
- (3) facts upon which claim is based; and
- (4) copies of any and all documents relevant to the claim.

#### **C. Engineer's Final Decision and Appeal.**

Unless otherwise agreed by the parties, the Engineer will issue a Final Decision of the Engineer in writing. The Engineer's decision shall be final and binding upon the parties unless, within thirty (30) days of receipt of the Final Decision of the Engineer, a contractor serves both the Engineer and the Chief Procurement Officer with a written, internal appeal setting forth in detail the basis of the appeal, the contract provision or provisions relied upon, specific designation of all documents and witnesses that support the internal appeal, and the relief sought.

#### **D. Response.**

The Engineer must file a written response to the internal appeal with the Chief Procurement Officer within thirty (30) days of receipt of the appeal. The Engineer must also provide a copy of the written response to the appeal to the contractor.

E. Authority.

The Chief Procurement Officer, after consultation with the General Counsel's Office, is authorized, prior to commencement of an action in a court concerning the controversy, to attempt to settle a timely submitted internal appeal. The Chief Procurement Officer may delegate this authority to a Hearing Officer who the Chief Procurement Officer appoints in consultation with the General Counsel's Office and who, preferably, is a private practice attorney or retired judge with expertise and experience in analyzing and resolving these types of disputes.

F. Informal Hearing.

The Chief Procurement Officer, in consultation with the General Counsel's Office, or the Hearing Officer appointed pursuant to §6-104.01.E., may convene an informal hearing upon seven (7) days' notice to both parties for the purpose of either facilitating a settlement or assisting preparation of a final decision. If the informal hearing is held before a Hearing Officer, then, the Hearing Officer shall prepare proposed findings of fact and conclusions of law, which shall be submitted to the Chief Procurement Officer within fifteen (15) days of the conclusion of the hearing.

G. Final Decision.

If the internal appeal is not settled, the Chief Procurement Officer, will issue a final decision in writing within forty-five (45) days after receipt of the Engineer's written response or within sixty (60) days of the conclusion of an informal hearing. The final decision shall:

- (1) state the reasons for the action taken; and
- (2) inform the contractor of his right to appeal to Circuit Court the written decision pursuant to § 6-104.01.H of these Regulations.

H. Appeal to Court.

The contractor may appeal the final decision to the Circuit Court for Montgomery County or the Circuit Court for Prince George's County under the Maryland rules governing administrative mandamus actions.

**6-104.02 All Other Contracts.**

A. Applicability.

This Section applies to claims by a contractor against WSSC which arise under, or by virtue of, a contract that is not a construction, Architectural and Engineering, or Design/Build contract. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

B. Time and Form.

All claims must be filed in writing with the Chief Procurement Officer within thirty (30) days of the event giving rise to the controversy, dispute, or other matter. The claim must include the following:

- (1) explanation of claim and identification of contract number, including reference to contract provisions upon which it is based upon;
- (2) amount of claim;
- (3) facts upon which claim is based; and
- (4) copies of any and all documents relevant to the claim.

C. Response.

A written response to the claim must be filed by the appropriate Using Department with the Chief Procurement Officer within thirty (30) days of receipt of the claim. The Using Department must also provide a copy of the written response to the contractor.

D. Authority.

The Chief Procurement Officer, after consultation with the General Counsel's Office, is authorized, prior to commencement of an action in a court concerning the controversy, to settle a timely submitted claim. The Chief Procurement Officer may delegate this authority to a Hearing Officer who the Chief Procurement Officer appoints in consultation with the General Counsel's Office and who, preferably, is a private practice attorney or retired judge with expertise and experience in analyzing and resolving these types of disputes.

E. Informal Hearing.

The Chief Procurement Officer, in consultation with the General Counsel's Office, or the Hearing Officer appointed pursuant to §6-104.02.D., may convene an informal hearing upon seven (7) days' notice to both parties for the purpose of either facilitating a settlement or assisting preparation of a final decision. If the informal hearing is held before a Hearing Officer, then, the Hearing Officer shall prepare proposed findings of fact and conclusions of law, which shall be submitted to the Chief Procurement Officer within fifteen (15) days of the conclusion of the hearing.

F. Final Decision.

If the claim is not settled, the Chief Procurement Officer will issue a final decision in writing within forty-five (45) days after receipt of the Using Department's written response or within sixty (60) days of the conclusion of an informal hearing. The final decision shall:

- (1) state the reasons for the action taken; and
- (2) inform the contractor of his right to appeal the written decision pursuant to §6-104.02.G of these Regulations.

G. Appeal to Court.

The contractor may appeal the final decision to the Circuit Court for Montgomery County or the Circuit Court for Prince George's County under the Maryland rules governing administrative mandamus actions.

## **§6-105 Contract Terminations.**

### **6-105.01 Termination Methods.**

A contract may be terminated in three ways:

- A. A contract may be terminated for default. If the contractor materially breaches the contract, WSSC, at its option, may cancel, in whole or in part, work under the contract. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

- B. A contract may be terminated for convenience at the option of WSSC if the termination is in the best interests of WSSC. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor shall not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.
- C. In special circumstances, a contract may be terminated by mutual consent of the parties.

#### **6-105.02 Authority to Terminate.**

Only the Chief Procurement Officer may terminate a contract. The General Counsel's Office must approve each contract termination.

#### **6-105.03 Termination for Default.**

- A. The Using Department must provide the Chief Procurement Officer with documentation demonstrating a material breach of the contract by the contractor.
- B. If the Chief Procurement Officer finds that the contractor is in default, the Chief Procurement Officer must provide the contractor with a written notice to cure the default. If the Chief Procurement Officer determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Chief Procurement Officer may terminate the contract immediately by issuing an oral or written notice to the contractor without giving any prior notice or opportunity to cure.
- C. The General Counsel's Office must approve the issuance of the notice to cure and the issuance of a termination for default.
- D. If the contractor disputes the issuance of a termination for default, the contractor may file a timely claim under §6-104. The contractor may not file a claim in response to a notice to cure.

#### **6-105.04 Termination for Convenience.**

- A. The Using Department must provide the Chief Procurement Officer with documentation demonstrating that termination of the contract for convenience is in the best interests of WSSC.
- B. If the Chief Procurement Officer finds that the contract should be terminated for convenience, the Chief Procurement Officer must provide the contractor with written notice that the contract will be terminated for convenience on the date specified in the notice. The notice must require the contractor to provide the Chief Procurement Officer with documentation indicating the amount to which the contractor claims it is due as a result of the termination for convenience.
- C. Within the time specified in the notice of termination for convenience, the contractor must provide the Chief Procurement Officer with documentation substantiating the amount the contractor asserts it is due as a result of the termination for convenience.
- D. If the Chief Procurement Officer and the contractor agree on the amount due the contractor as a result of the termination for convenience, WSSC and the contractor must enter into a contract modification setting forth the amount due the contractor as a result of the termination for convenience.

- E. The General Counsel's Office must approve the issuance of the notice of termination for convenience and any resulting contract modification.
- F. If the contractor and the Chief Procurement Officer cannot agree on the amount due the contractor as a result of the termination for convenience, the contractor may file a timely claim under §6-104.

**6.105.05 Termination by Mutual Consent.**

- A. The Using Department must provide the Chief Procurement Officer with documentation justifying termination of a contract by mutual consent.
- B. If the Chief Procurement Officer finds that it is in the best interests of WSSC to terminate the contract by mutual consent, the Chief Procurement Officer may enter into a termination agreement.
- C. The General Counsel's Office must approve a termination agreement.



## EXHIBIT A – TABLE OF REPEALED WSSC STANDARD PROCEDURES

NUMBER	TITLE
CON 2000-01	DEBARMENT OF CONSTRUCTION CONTRACTORS – ENGINEERING AND CONSTRUCTION
COO-95-01	LETTER AGREEMENT FOR PROFESSIONAL SERVICES
CON 94-07	PREPARATION AND ISSUANCE OF NOTICE TO PROCEED
CON 99-01	PREQUALIFYING CONTRACTORS FOR CONSTRUCTION AND CONSTRUCTION RELATED PROCUREMENT
D-77-06	PROCEDURE FOR EMERGENCY CONTRACTING
CUS 05-01	PROCEDURE FOR EMERGENCY WATER MAIN REPAIR CONTRACTS
PD-99-01	PROCEDURE FOR IMPLEMENTING A MEMORANDUM OF UNDERSTANDING (MOU) FOR THE CONSTRUCTION OF WSSC SYSTEMS AND FACILITIES BY OTHERS
CON 96-02	PROCURING DESIGN-BUILD CONTRACTS
PD 95-01	PROFESSIONAL ARCHITECT ENGINEER SERVICES CONTRACTS
PD 2000-2	PROFESSIONAL ARCHITECT ENGINEERING SERVICES CONTRACTS
CON 96-10	SOLICITING AND EVALUATING REQUESTS FOR PROPOSALS FOR CONSTRUCTION CONTRACTS
W.21	PROCEDURE FOR EMERGENCY WATER MAIN REPAIR CONTRACTS
N/A	WSSC PROCUREMENT MANUAL (REV 4/95) INCLUDING ALL ADDENDA
CM-2007-02	PROCEDURES FOR CONSTRUCTION PERFORMANCE EVALUATION
ACQ 08-01	PURCHASE ORDER REVIEW COMMITTEE PROCEDURES

END OF DOCUMENT