


Policy Title:	Procurement of Goods and Services		
	OFFICE OF THE CHIEF FINANCIAL OFFICER	Category	Customer Service
		Administrative Policy #	200-FIN-Procurement of Goods and Services
		Revision #	N/A
		Review Frequency	As Needed – no less frequently than biennial
Administrative Division	Procurement	Reviewed By	Chief Financial Officer, General Counsel
BOWC Approval	6/21/2023	Last Reviewed/Update Date	
Implementation Date	10/1/2023	Resolution #	23-129

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1. **AUTHORITY**

The United States Environmental Protection Agency (EPA) initiated legal action against the City and DWSD alleging violations of the Clean Water Act in a case entitled *United States of America vs. City of Detroit, et al.*, United States District Court, Eastern District of Michigan, Case No. 77-71100. The City of Detroit Water and Sewerage Department (DWSD) operated under federal court oversight from May 6, 1977, to March 27, 2013. On November 24, 2010, the case was assigned to the Honorable Sean F. Cox, who entered numerous orders affecting DWSD operations, governance, and policy. Specifically, two orders relate to DWSD's procurement of goods and services, which remain in effect.

On November 4, 2011, the Court entered an order adopting recommendations from a Root Cause Committee which, in part, allow the DWSD to enact a policy for the purchase of goods and services that is separate from City of Detroit ordinances related to procurements. The Board of Water Commissioners must approve the DWSD procurement policy. An order issued October 5, 2012, declared that in determining whether the monetary approval thresholds are triggered under the procurement policy, amounts should be determined on a fiscal year basis for multi-year contracts.

2. **OBJECTIVES**

- 2.1. To communicate a uniform process that will control the procurement process and establish accountability of DWSD employees and persons who wish to do business with DWSD.
- 2.2. To provide internal controls to mitigate risks associated with procurements.

3. **PURPOSE**

- 3.1. To promote a transparent, fair and independent procurement process that ensures DWSD receives the best value for its necessary expenditures for services and goods, and to assure contractors that impartial and equal treatment will be afforded to all who wish to do business with DWSD.
- 3.2. The purpose of DWSD's equalization credits is to increase opportunities for Certified Detroit Businesses to participate in DWSD contracts that are not funded, in whole or in part, with federal funds, or not otherwise prohibited by the funding source; to diversify and include a larger pool of potential contractors to bid on solicitations; and to incentivize businesses to hire Detroit residents.
- 3.3. To promote efficiency and ensure long-term compliance with the Clean Water Act and DWSD's National Pollutant Discharge Elimination System permit.

4. **DEFINITIONS**

Amendment means an agreed upon addition, deletion, or modification of an existing contract. Also referred to as contract amendments, alterations, change orders, or construction change orders.

BOWC means City of Detroit Board of Water Commissioners.

Certified Detroit Businesses means, collectively, Detroit Based Businesses (DBB), Detroit Based Small Businesses (DBSB), Detroit Headquartered Businesses (DHB), Detroit Resident Businesses (DRB), Detroit Based Micro Businesses (DBMB), Joint Ventures (JV), and Mentor Ventures (MV) as defined herein.

Conflicted Individual means a member of the BOWC, Executive Management of DWSD, or any DWSD employee who may influence a decision for the procurement of goods or services with a Contractor and:

- (i) is related to Contractor or owner of Contractor as parent-child, siblings, grandparent-grandchild, or aunt/uncle-niece/nephew, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law, or cohabitate as significant others;
- (ii) has a five (5) percent or greater ownership interest in any business owned by Contractor; or
- (iii) the Contractor and the Conflicted Individual have any other relationship in which the Conflicted Individual would personally profit from the business relationship or transaction between the Contractor and DWSD.

Contractor means any individual, partnership, corporation or business entity that seeks to obtain or has obtained any Contract or subcontract with DWSD.

Cooperative Contract (also referred to as cooperative procurement or co-op contracts) means two or more government entities that cooperatively combine their purchasing power and buy goods and services through competitively solicited contracts.

CRIO means City of Detroit Office of Civil Rights, Inclusion and Opportunity

Debarment means action taken by the City to exclude a person from acting as a Contractor for a specified period of time.

Detroit Based Business (DBB) means a business which certified by CRIO at the time of the bid or proposal submission, and which pays city income taxes on the business' net profits, pays city property taxes on a plant or office and equipment which are ordinarily required for the furnishing of the goods or the performance of the services required by a contract, and referred to in an application for certification as a Detroit Based Business, or other real or personal property in the City equivalent in value to such plant or office and equipment for not less than one (1) taxable year immediately prior to the date of the application for certification as a Detroit based Business.

Detroit Based Micro Business (DBMB) means a business certified by CRIO at the time of the bid or proposal submission and which meets the definitions of Detroit-Based Business and a Micro Business Concern as defined in this section.

Detroit Based Small Business (DBSB) means a business certified by CRIO at the time of the bid or proposal submission and which meets the definitions of Detroit-Based Business and Small Business Concern as defined within this section.

Detroit Headquartered Business (DHB) means a business which:

- (i) Has been certified by CRIO as a DHB at the time of the bid or proposal submission ;
- (ii) Has an office within the City that serves as the administrative center where the chief executive officer and highest level management staff perform at least fifty-one (51) percent of their management functions; and
- (iii) Has received certification from CRIO as a Detroit headquartered business.

Detroit Resident Business (DRB) means a business certified by CRIO at the time of the bid or proposal submission and which employs a minimum of four (4) employees and at least fifty-one (51) percent of the business' employees are City residents *or* a business that makes a binding commitment fifty-one (51) percent of employees performing work under a contract will be City residents.

Direct Economic Interest means a legally protectable financial interest in the award or non-award of a contract arising from a Person's status as an actual bidder or proposer in the solicitation at issue. A Direct Economic Interest exists only where the Person would have a substantial chance of receiving the award if its protest were sustained. A general interest in the integrity of the procurement process, a speculative economic interest, or an interest held solely as a subcontractor, supplier, consultant, or potential future bidder shall not, by itself, constitute a Direct Economic Interest.

Disqualification means action taken by DWSD to bar a Contractor from doing business with DWSD for a period of time not to exceed two years.

Emergency Procurement means prior approval under this policy would be impossible or impracticable under emergency circumstances due to: exigencies requiring the immediate delivery of goods or performance of services; there is a threat to public health, welfare or safety; or there is risk of an imminent violation of a required environmental permit or Administrative Consent Order.

Executive Management means the DWSD Director, Deputy Director, Chief Engineer, Chief Operating Officer, Chief of Staff, General Counsel, Chief Financial Officer, Chief Information Officer, Human Resources Director or Chief Procurement Officer of DWSD as well as other positions on the organizational chart that oversee DWSD business units.

Goods means any tangible items purchased other than incidental services or real property and synonymous with commodity or materials.

Interested Party means a Person (including a bidder or proposer) that satisfies, at the time of submission of its bid or proposal and based solely upon the bid documents submitted at that time, each of the following requirements:

- (1) the Person did submit a timely bid or proposal in response to the solicitation at issue, and is not Non-Responsible, suspended, disqualified, or otherwise ineligible for award under this policy;
- (2) the Person has a Direct Economic Interest that would be affected by the award or failure to award the contract (including the chance to compete for and receive the award); and

(3) the Person can demonstrate it was prejudiced by the alleged violation, consistent with the Substantial Chance Standard (as defined herein).

Intergovernmental Agreement (IGA) also referred to as a *Memorandum of Agreement*, means an agreement under the Michigan Intergovernmental Contracts Between Municipal Corporations Act, Act 35 of 1951 (MCLA 124.1 et seq) between DWSD and any governmental or quasi-governmental agency.

Joint Venture means a joint venture certified by CRIO at the time of the bid or proposal submission and composed of separate businesses, where (a) each such partner must perform a distinct, non-passive, and commercially useful portion of the work that goes beyond mere administrative, financial, compliance, or other passive functions; and (b) at least one such businesses is CRIO-certified as a DBB, DBSB, DRB, or DBMB at the time of the bid or proposal submission, and where such joint venture has been established to perform a specific contract and is evidenced by a written agreement which provides at a minimum that the DBB, DBSB, DRB, or DBMB member of the joint venture:

- (i) is substantially included in all phases of the contract, including, but limited to, bidding and staffing; and
- (ii) performs at least fifty-one (51) percent of the total performance, responsibility, and project management of a specific job/scope of work, and shall directly perform such work using its own employees, equipment, and supervision; and
- (iii) receives at least fifty-one (51) percent of the total remuneration from a specific contract, and such remuneration shall correspond to the actual work performed and responsibilities assumed by that partner; and
- (iv) shares in profits and losses.

Lease Agreements means, collectively, the following documents entered into between the City of Detroit and Great Lakes Water Authority: Regional Water Supply System Lease, Regional Sewage Disposal System Lease, Water and Sewer Services Agreement and Shared Services Agreement.

Memorandum of Understanding (MOU) means an informal arrangement between government agencies, or within subdivisions of the same government agency, that details an agreement between the parties but lacks the enforceability of a legal contract.

Mentor Venture means a joint venture certified by CRIO at the time of the bid or proposal submission and composed of two or more separate businesses, where (a) each such partner must perform a distinct, non-passive, and commercially useful portion of the work that goes beyond mere administrative, financial, compliance, or other passive functions; and (b) at least one such business is CRIO-certified as a DBB, DBSB, DRB or DBMB at the time of the bid or proposal submission, and where such mentor venture has been established to perform a specific contract and is evidenced by a written agreement which provides at a minimum that the DBB, DBSB, DRB or DBMB member of the mentor venture:

- (i) Is substantially included in all phases of the contract including, but not limited to bidding and staffing; and
- (ii) Performs at least thirty (30) percent of the total performance, responsibility, and project management of a specific job; and
- (iii) Receives at least thirty (30) percent of the total remuneration from a specific contract;
- (iv) Shares in profits and losses.

Micro Business Concern means a business which has average annual gross receipts of \$1,000,000.00 or less and no more than 15 employees. A business which is an affiliate or subsidiary of an entity that is not eligible for registration as a Micro Business Concern shall not be registered as a Micro Business Concern.

Non-Professional Service Contract means the furnishing of labor, time or effort by a Contractor, which may involve to a lesser degree the delivery or supply of goods or materials needed to perform the service component of the contract and is not a professional service.

Non-Responsible means a bidder or proposer that is ineligible to do business with DWSD or does not meet the minimum qualifications or other performance requirements as listed in the solicitation document at the time of the bid or proposal submission.

Non-Responsive means a bid or proposal that fails to conform, in any material respect, to the mandatory or essential requirements listed in the solicitation document as submitted at the time of the bid or proposal, regardless of qualifications. A Non-Responsive bid or proposal shall not be subject to post-submission cure, supplementation, or correction unless expressly permitted by the solicitation.

Owner means an individual who has a five (5) percent or greater ownership interest in a potential Contractor.

Person means an individual, business, partnership or corporate entity, or a governmental agency.

Personal Service Contract means an independent contractor agreement requiring an individual to provide labor, time, or effort. A personal services contract is one that furnishes labor, time, or effort by an individual, who may or may not require a professional license to provide the service and is not required to deliver a specific end product other than reports which are merely incidental to required performance.

Procurement Administrator or Procurement Manager means the individual with primary direct responsibility for the DWSD business unit that is primarily responsible for purchasing and procurement.

Procurement means an agreement for the purchase or sale of goods and services.

Professional Service Contract means a contract providing legal, financial, engineering, architectural, or information technology services.

Protest means a written objection, submitted by an Interested Party, concerning a DWSD solicitation, evaluation, recommendation, or award, alleging a material violation of this policy that caused prejudice, as defined by the Substantial Chance Standard.

Responsible Bidder/Proposer means a contractor, business entity, or individual who is eligible to do business with DWSD and who possesses the required financial, technical, logistical, and operational capabilities outlined in the solicitation at the time of the bid or proposal submission.

Responsive means a bid or proposal which fully conforms in all material respects of the solicitation and all of its requirements, including all form and substance, and the timely submission of all required documents, certifications, and representations at the time of the bid or proposal submission.

Request For Bids (RFB) means a solicitation format used to request bids from Contractors for specific goods or services. The RFB is awarded based on the lowest price from a responsive and responsible bidder. It is to be used when the total contract value is anticipated to exceed \$25,000.

Request For Information (RFI) means a non-binding inquiry for input from interested parties for an upcoming potential solicitation and is used to obtain comments, feedback or reactions from potential contractors prior to issuing a solicitation. Generally, price or cost is not considered or required. Feedback may include best practices, industry standards, technology issues, etc.

Request For Quote (RFQ) means a solicitation format when the anticipated total contract value does not exceed \$25,000.

Request For Proposals (RFP) means a solicitation format used to request proposals from potential Contractors for contracts requiring technical expertise, specialized capability, or a substantial service component. The proposals are evaluated based on specific criteria outlined in the RFP where the objective is to obtain best value. Lowest price is not the sole determining factor.

Request For Qualifications (RFQual) means a solicitation format used to identify potential Contractors who are qualified to provide goods or services. Only those who successfully respond to the RFQ and meet the qualification criteria will be included on the prequalified Contractor list and be included in the subsequent solicitation process.

Single Source Procurement means a decision to purchase from one source based on a compelling business decision, typically arising out of standardization, warranty considerations, or other circumstances demonstrating the impracticability of competitive solicitation.

Small Business Concern (SBC) means a business which:

- (1) Has been in existence and operating for at least one year prior to the date of application for certification as a small business concern;
- (2) Does not meet the definition of a Micro Business Concern as defined in this section; and
- (3) Is one of the following:
 - a. A manufacturing business which, for the three fiscal years preceding the date of application for certification, has provided full-time employment to not more than 500 persons; or
 - b. A general construction business which, for the three fiscal years

- preceding the date of application for certification, has average annual gross receipts of not more than \$28,000,000.00; or
- c. A specialty construction business whose average annual gross receipts have not exceeded \$12,000,000.00 in the three fiscal years preceding the date of application for certification; or
 - d. A wholesale business which, for the three fiscal years preceding the date of application for certification, has provided full-time employment to not more than 100 persons; or
 - e. A retail business which, for the three fiscal years preceding the date of application for certification, has average annual gross receipts of not more than \$6,000,000.00; or
 - f. A service business, other than professional, which for the three fiscal years preceding the date of application for certification, has average annual gross receipts of not more than \$6,000,000.00; or
 - g. A professional services business, which for the three fiscal years preceding the date of application for certification, has had average annual gross receipts of not more than \$6,000,000.00.

A business which is an affiliate or subsidiary of an entity that is not eligible for certification as a small business concern shall not be certified as a small business concern.

Small Purchase means a singular purchase of goods or services that does not exceed \$25,000.

Sole Source Procurement means the good or service is available from only one source due to a lack of competition, monopoly market, proprietary product or technology, licensing, copyright, or a Contractor's unique capability.

Solicitation means a formal written invitation together with specifications issued to potential Contractors of materials, goods and/or service, the procurement of which is/are subject to competitive bidding requirements.

Subcontractor means a person that carries out work for a contractor as part of the larger contracted project.

Substantial Chance Standard means the Interested Party bears the burden to show—by clear and convincing evidence, and based on the written record submitted to DWSD—that but for the alleged procurement error, violation, or improper action, the Interested Party would have had a substantial likelihood of receiving the award. A protest shall not satisfy this standard where the alleged error, even if true, would not reasonably change the outcome of the procurement decision.

Suspension means action by DWSD to bar a contractor from doing business with DWSD during a period when investigation into possible disqualification or debarment is underway.

Unsolicited Proposal means a proposal submitted to DWSD for goods or services for which DWSD did not issue a solicitation and must meet the following criteria:

- a. Proposal was independently originated and developed by the offeror.

- b. Proposal was prepared without DWSD's active input or supervision.
- c. Proposal presents an innovative concept, idea, or process.

Voucher means a payment made for goods or services that were not procured through a purchase order or contract.

5. SCOPE

- 5.1. This policy applies to all DWSD employees and members of the BOWC.
- 5.2. This policy applies to all persons wishing to do business with the DWSD and to all contractors, and governmental or quasi-governmental entities that have a contract with DWSD.

6. RESPONSIBILITIES

6.1. Director

- 6.1.1. The Director shall establish the necessary procedures to implement this policy and shall take all necessary measures to ensure this policy is adhered to.
- 6.1.2. The Director may delegate all or some of his/her authority under this policy to an appropriate member of Executive Management and/or the Procurement Administrator. A delegate of the Procurement Administrator may take all actions allowed or required of the Procurement Administrator under this policy, unless (i) the action requires that an item be in writing or (ii) otherwise explicitly prohibited in this policy.

6.2. Executive Management

- 6.2.1. All members of Executive Management should be familiar with, understand, and act in full compliance with this policy and shall execute a written notice acknowledging that they have received, read and understand this policy.

6.3. Finance Department, Procurement Business Unit

- 6.3.1. DWSD procurement personnel shall execute a written notice acknowledging that they have received, read and understand this policy.
- 6.3.2. Responsible for administration and oversight of this policy.
- 6.3.3. Responsible for reporting any suspected fraud or violation of this policy to a member of Executive Management or an investigative agency.
- 6.3.4. Advertises DWSD procurement opportunities utilizing electronic platforms or newspaper advertisements with the goal of ensuring maximum access and opportunity for Contractors to respond.
- 6.3.5. Responsible for receiving, logging, administering, and maintaining the official record for bid protests, including standing determinations, notices to impacted parties, responses, determinations and recommendations, and transmittals to the BOWC Clerk when applicable.

6.4. DWSD Business Units

- 6.4.1. Should be familiar with, understand and act in full compliance with this policy.
- 6.4.2. Must provide all information to Procurement Business Unit in order to complete

its tasks to issue a solicitation, including but not limited to a scope of services to be solicited or a description of the goods to be procured.

6.5. **Information Technology/Public Affairs**

6.5.1. Posts this policy on the DWSD website and other public-facing outlets.

6.6. **Contractors**

6.6.1. Should be familiar with, understand and act in full compliance with this policy.

7. **POLICY**

7.1. **Generally**

7.1.1. Any procurements that violate this policy or any procedures adopted to implement this policy may be cancelled by DWSD with no penalty.

7.1.2. The failure of a Contractor to comply with this policy and any procedures adopted to implement this policy is grounds for the Contractor to be ineligible for a specific procurement or to be placed on the DWSD disqualified Contractor list and/or be referred to the Office of Inspector General for investigation.

7.1.3. Unless an express exception applies, DWSD shall procure all goods and services through the use of competitive solicitation as outlined in this policy.

7.1.4. All potential Contractors shall have access to the same information related to a specific procurement. DWSD personnel shall establish a method to inform all potential Contractors of any question related to a solicitation and the response from DWSD personnel.

7.1.5. DWSD reserves the right to cancel or amend a solicitation prior to contract award, or to reject any or all bids if it is determined that such action is in the best interests of DWSD. DWSD may allow a Contractor to withdraw a bid if requested any time prior to bid opening.

7.1.6. DWSD Business Units shall requisition and solicit procurements in amounts which are based upon their reasonable and foreseeable needs and storage capacities, and upon other relevant factors, such as economies of scale in purchasing, shipping and handling; or the shelf-life, useful life, or seasonal availability of a product.

7.2. **Ethics**

7.2.1. **Generally.** Notwithstanding this DWSD Policy, all employees and Contractors and potential Contractors must abide by Part IV, Chapter 2, Article V of the Detroit City Code, *Ethics*.

7.2.2. **Conflicts; Disclosure**

7.2.2.1. A conflicted individual shall not participate in the procurement process for any procurement in which a conflict exists.

7.2.2.2. A contractor shall disclose its relationship with conflicted individual in writing to DWSD using the DWSD disclosure form: (i) at the time of submitting a response to a competitive solicitation, or (ii) prior to entering into a contract pursuant to an exception to the competitive

solicitation process. (See Sec. 7.5 below).

7.2.2.3. Disclosure shall identify the conflicted individual and shall describe the nature of the conflict. The obligation to disclose a conflict is a continuing obligation for any contractor, who shall disclose the existence of any conflict at the time he or she becomes aware of it.

7.2.3. **Interest in More than One Proposal.** A Contractor may not respond to a solicitation as the prime contractor if they have provided their pricing to another bidder to act as its subcontractor.

7.2.4. Contractor **Communication Regarding Solicitations**

7.2.4.1. For a solicitation that a current or potential Contractor has knowledge of or believes will be solicited within the next sixty (60) days, all contact regarding pricing, specifications, or scope of work for that solicitation shall solely be with DWSD Procurement personnel. This section does not apply to outreach activities to educate potential Contractors generally of opportunities or how to do business with DWSD.

7.2.4.2. Potential Contractors that contact DWSD representatives other than the buyer identified in the solicitation seeking information regarding pricing, specifications, or scope of work relative to the solicitation prior to award could be subject to disciplinary action, including disqualification, termination of existing contracts or assumed contracts, suspension, and/or referral to the Office of Inspector General for investigation.

7.2.5. **BOWC Participation Prohibited.** All members of the BOWC shall be excluded from the procurement process unless a contract is presented to the BOWC for approval, or if a protest determination and recommendation is presented to the BOWC pursuant to Section 7.10 herein.

7.2.6. **Procurement Integrity.** Contractors shall not obtain, attempt to obtain, or use any non-public procurement information. Such conduct shall be considered presumptively anti-competitive and a violation of this Policy. Any Contractor who comes into possession of such information shall refrain from use and immediately notify DWSD Procurement. Violation of this provision may result in disqualification, contract termination, suspension, debarment, or referral to the Office of Inspector General and / or law enforcement authorities. DWSD may presume prejudice and competitive harm from such conduct without requiring further proof.

7.3. **Competitive Solicitation; Generally**

7.3.1. Where competitive solicitation is required, the Procurement Administrator shall determine the appropriate solicitation method with input from the requesting Business Unit.

7.3.2. In the procurement of goods and non-professional services, DWSD may use a Request for Bids (RFB) or Request for Proposals (RFP). RFBs and RFPs shall not be due any sooner than 7 calendar days from the date of issuance.

- 7.3.3. In the procurement of professional services, DWSD shall use a Request for Proposals (RFP). RFPs shall not be due any sooner than 7 calendar days from the date of issuance.
- 7.3.4. In the procurement of construction services, the Procurement Administrator in consultation with the Business Unit determines the type of competitive bidding and the time frame for response that is appropriate for the project.
- 7.3.5. Nothing in this policy is intended to prohibit DWSD from utilizing a request for information, statement of qualification or other type of preliminary procurement inquiry prior to formal solicitation when required by the circumstances of a particular procurement.
- 7.3.6. A bidder/proposer who will not be performing one hundred (100) percent of the work solicited must identify in their bid/proposal the subcontractor(s) that will perform the work.
 - 7.3.6.1. Bidders/proposers must provide the name of subcontractor(s), the tasks to be performed, and the percentage of the task it will perform.
 - 7.3.6.2. A subcontractor may be named on more than one business' bid/proposal.
 - 7.3.6.3. Failure to identify subcontractors and their respective scope of work and percentage allocations as required herein shall render the bid or proposal non-responsive.
- 7.3.7. The Procurement Administrator, in consultation with the Business Unit may issue a solicitation identifying specific tasks for the scope of work and allow bidders/proposers to submit a response regarding one or more tasks.
- 7.3.8. The Procurement Administrator may elect to require best and final offers (BAFO) from proposers.
- 7.3.9. At the Procurement Administrator's discretion, a competitive process may not be required for a specific Procurement. If the Procurement Administrator elects to deviate from these requirements, he/she shall prepare an Exception to Competitive Solicitation (ECS) form, which shall state the justification for the deviation. The Procurement Administrator shall provide the BOWC a monthly report identifying all non-competitive bid approvals. (See, Sec. 7.5)
- 7.3.10. Where a bidder/proposer is structured as a Joint Venture, and seeks to be evaluated or receive equalization credit as a Joint Venture, the bidder/proposer must be certified by CRIO at the time of bid or proposal submission. Joint Ventures that are not so certified shall not be considered Joint Ventures for purposes of evaluation and shall not be eligible for any equalization credit.
 - 7.3.10.1. If certified, the bidder/proposer must then identify and represent to DWSD: (i) each Joint Venture partner; (ii) the specific scope of work to be performed by each Joint Venture partner; (iii) the percentage of total contract work and responsibility allocated to each Joint Venture partner; and (iv) which Joint Venture partner will exercise day-to-day management and control of each portion of the work. Such information must be complete and final as submitted and shall not be subject to post-submission clarification that would materially alter the

allocation of work, control, or responsibility.

- 7.3.10.2. Such representations shall be deemed material requirements of the bid or proposal and shall be integrated as a material provision into the contractual terms between DWSD and the Contractor should the Contractor be selected to provide the procurement.
- 7.3.10.3. Such representations must accurately reflect the actual allocation of work, control, staffing, and responsibility to be performed by each Joint Venture partner.
- 7.3.10.4. Each Joint Venture partner shall perform its identified portion of the work using its own employees, equipment, and supervision, and compensation to each partner shall correspond to the actual work performed.
- 7.3.10.5. Any material deviation from the Joint Venture structure, scope of work, or allocation of work, control, or compensation, without prior written approval from DWSD, may result in disqualification, termination for cause, withholding of payment, or other remedies available under this Policy or the contract, including, but not limited to, where such deviation results in a Joint Venture partner failing to perform a commercially useful function or acting as a pass-through entity.
- 7.3.10.6. Failure to satisfy these requirement shall result in the bidder/proposer being evaluated as a non-Joint Venture entity and shall render the bidder/proposer ineligible for any equalization credit associated with Joint Venture status.

7.4 Evaluation of Bids or Proposals; Generally

- 7.4.1. **Minimum Qualifications for Response.** DWSD shall provide within each competitive solicitation the minimum qualifications necessary to submit a responsible and acceptable bid or response. These minimum qualifications may require Contractors to, among other things:
 - a. procure and maintain insurance and bond requirements commensurate with the level of risk associated with the specific procurement,
 - b. not be listed on the DWSD suspended or disqualified Contractor list or debarred from City contracts,
 - c. comply with this policy and any procurement procedures,
 - d. during the period of performance, maintain all applicable licensure and certificates of good standing with the State of Michigan, and
 - e. be qualified under the United States System for Award Management¹, if applicable.
 - f. Minimum qualifications are threshold requirements. Failure to demonstrate compliance at the time of bid or proposal submission shall render the submission Non-Responsive.
- 7.4.2. DWSD shall not enter into any contract, other than a settlement of a legal claim

or a dispute, with any of the following:

- a. A business, excluding a public agency, that is in arrears more than 30 days to, or has received a notice of default from, DWSD under any contract, debt, or other obligation unless DWSD's Controller (or in the absence of Controller, such other DWSD employee with equivalent duties) may determine that an arrearage is immaterial and waive the arrearage for purposes relating to this subsection, with such declaration revocable at the Controller's discretion.
 - b. A business currently suspended;
 - c. A business that is debarred from consideration for a contract award; or
 - d. A business that was deemed a disqualified Contractor within the past 2 years.
- 7.4.3. The Procurement Administrator in consultation with the requesting Business Unit may make a contract award recommendation for more than one contractor.
- 7.4.4. After a contract has been awarded, any Contractor not selected may request a debriefing with Procurement to review their submitted documents, only, and to discuss any deficiencies found during the evaluation process so that the Contractor may gain knowledge for future opportunities to do business with DWSD. Debriefings are informational only, and are not a substitute for, and shall not extend, the Bid Protest Deadline as defined in Section 7.10 herein.
- 7.4.5. Where a bidder/proposer represents itself as a Joint Venture, DWSD may evaluate whether the structure, allocation of work, and roles of each partner are consistent with the requirements of this policy and the representations made in the submission, including whether each Joint Venture partner exercises actual control over its designated scope of work and performs a commercially useful function. DWSD may reject a bid or proposal where the Joint Venture structure, as submitted, does not demonstrate compliance with this Policy, regardless of any subsequent clarification.

7.5. **Exceptions to Competitive Solicitation.** While the general rule is that all procurements by DWSD shall be done pursuant to competitive solicitation, there is a need for exceptions to this general rule that will promote efficiency of operations and assist with ensuring compliance with local, state and federal laws and permits. The exceptions are as follows:

7.5.1. **Cooperative Purchase**

- 7.5.1.1. The Procurement Manager may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of goods, services, or construction services with one or more public procurement units in any jurisdiction.
- 7.5.1.2. The agency sponsoring the cooperative agreement must have competitively solicited for the goods or services. Examples of such cooperative purchasing include State of Michigan contracts, General Services Administration (GSA) contracts, and supplies or services procured from another governmental agency, public body or public purchasing consortium.
- 7.5.1.3. **Piggyback Contracts.** DWSD may adopt or share (i.e., "piggyback")

the terms, conditions and pricing of a contract competitively solicited by the City of Detroit or another governmental entity, regardless of whether the contract constitutes a “cooperative agreement.”

- 7.5.1.4. In the event the Procurement Administrator determines that it is advantageous to take advantage of a cooperative purchase agreement for the procurement of goods or services from a Contractor that is not a Detroit Headquartered, Detroit Based Business, Detroit Resident Business, Detroit-based Small Business or Detroit-based Micro Business, the Procurement Administrator shall provide an opportunity for those businesses to submit a bid that is equal to or less than the cost of the cooperative purchase price.

7.5.2. **Shared Goods and Services**

- 7.5.2.1. **Sale, acquisition or use of goods.** The Procurement Administrator may initiate a purchase order to sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of the general bidding requirements of this policy.

- 7.5.2.2. **Shared use of goods or services.** The Procurement Administrator may recommend, and Director may approve, an agreement, independent of the general bidding requirements of this policy, with any public procurement unit for the shared use of goods or services belonging to one or more of the units pursuant to the terms agreed upon between the parties.

- 7.5.2.3. **Joint use of facilities/equipment.** The Procurement Administrator may recommend, and Director may approve, an agreement for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit pursuant to the terms agreed upon between the parties.

- 7.5.2.4. **Agreements with Great Lakes Water Authority (GLWA).** Agreements for shared goods and services between the DWSD and the GLWA shall follow the terms and conditions of the Lease Agreements.

- 7.5.3. **Emergency Procurement.** The Director, without prior approval of BOWC or Detroit City Council, may make, or authorize others to make, an emergency procurement when public exigencies require the immediate delivery of goods or performance of services or when there exists a threat to public health, welfare or safety or to prevent an imminent violation of a required environmental permit or Administrative Consent Order under emergency conditions where prior approval would be impossible or impracticable under the circumstances; provided that:

- a. Emergency procurements shall be competitively solicited as is practicable under the circumstance; and
- b. The Director, or his/her designee, shall provide written notification to the BOWC and the Detroit City Council, depending on contract dollar amount, disclosing the emergency procurement, the basis for the emergency, and the basis for selection of the particular contractor.

- 7.5.4. **Intergovernmental Agreement (IGA) or Memorandum of Agreement (MOA).** Competitive solicitation is not required for agreements between DWSD and any public agency.
- 7.5.5. **Legal Claims or Disputes.** Competitive solicitation is not required for settlement or resolution of any actual or anticipated legal claim or dispute by or against DWSD or its personnel, including any mediation, arbitration or facilitation award.
- 7.5.6. **Legal Services.** Competitive solicitation is not required for legal services contracts.
- 7.5.7. **Personal Services Contract.** Competitive solicitation is not required for personal services contracts.
- 7.5.8. **Separate Contracts and Small Purchases**
- 7.5.8.1. **Prohibited Uses.** Contracts and small purchases with the same Contractor shall not be divided into smaller parts to circumvent the need for BOWC or Detroit City Council approval.
- 7.5.8.2. **Approved Uses.** Separate contracts may be used if:
- a. There is a need to document expenditures as against various restricted funding sources;
 - b. It is not economically practical to store a one-year supply of a given commodity, because of shelf-life, or storage costs and capacities;
 - c. Where it is prudent to take advantage of product price fluctuations;
 - d. Business units within DWSD require separate contracts due to differences in type or timing of a service or product;
 - e. The initial or continuing need for a product or service is not readily foreseeable to enable consolidated purchasing;
 - f. The cost of coordinating consolidated purchasing will exceed any savings which are likely to be generated.
- 7.5.8.3. **Cumulative Total.** When a dollar limit is specified upon the authority delegated by this subsection, it shall be construed to apply to the cumulative total of contracts awarded to a specific business for a kind of goods, service or construction within the same fiscal year.
- 7.5.9. **Single Source Procurement.** Competitive solicitation is not required for a single source purchase.
- 7.5.10. **Small Purchases**
- 7.5.10.1. **General.** Any contract not exceeding \$25,000.00 may be made in accordance with this section. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. The Procurement Administrator shall provide a monthly report to the BOWC of all procurements obtained under this exception.
- 7.5.10.2. **Small purchases over \$5,000.00 but not exceeding \$25,000.00.**

Insofar as it is practical, solicitations of verbal or written quotes from a minimum of three qualified sources of supply shall be made and documentation of the quotes recorded on or attached to the purchase order. Reasonable best efforts shall be made to solicit bids from Certified Detroit Businesses. The award shall be made to the lowest responsive/responsible source. Monthly, the BOWC shall be provided a list of purchases, Contractors, and amounts which fall into this category. (See also, Sec. 7.5.8.3.)

7.5.10.3. **Small purchases under \$5,000.00.** Any purchase not exceeding \$5,000.00 may be accomplished without securing competitive quotations if the Director considers the prices to be fair and reasonable. Competitive quotations need only be taken when the Director suspects the price may not be fair and reasonable, e.g., comparison to previous price paid, personal knowledge of the price range of the item involved. The maximum amount for purchases that may be achieved by using this method of procurement is \$5,000.00. (See also, Sec. 7.5.8.3.; See also, Purchasing Card Policy)

7.5.10.4. **Protest rights.** The provisions of Section 7.10 shall not apply to contracts awarded under the procedures set forth in this subsection.

7.5.10.5. **Equalization Credits for Small Purchases.** Equalization credits under Section 7.6 shall not be considered for small purchases.

7.5.11. **Sole Source Procurement.** Competitive solicitation is not required for a sole source purchase. The Procurement Administrator shall perform proper due diligence and certify in writing the justification for such purchase. DWSD shall maintain such certification in the procurement file for at least the term of the contract and any amendments, and in accordance with document retention requirements.

7.5.12. **Unsolicited Proposals**

7.5.12.1. **Waiver of Competitive Solicitation.** Unsolicited Proposals may be considered for feasibility and implementation without a competitive bid or solicitation; however, DWSD may require a solicitation or preliminary procurement inquiry to assess the feasibility, implementation or cost associated with the proposal.

7.5.12.2. **Property of DWSD.** Unless otherwise required by law or mutual agreement, any unsolicited proposal and the information contained within that proposal shall be considered DWSD's property.

7.5.12.3. **Modifications.** Modifications to an Unsolicited Proposal may be made by the offeror in consultation with DWSD to further DWSD's interests.

7.5.12.4. **Recommendation to the Board of Water Commissioners.** When presenting an Unsolicited Proposal to the BOWC for approval, the Director or his/her designee shall include as a part of that written recommendation the following:

a. Sufficient detail explaining how the proposed product, services or

work likely benefit DWSD's operations or responsibilities to its customers;

- b. A copy of the original Unsolicited Proposal received by DWSD.
- c. A statement that the Unsolicited Proposal is not an advance proposal for a known or anticipated DWSD purchase requirement that can or should be procured by competitive methods.

7.5.12.5. Requirements for Approval. For contracts above the Director's approval threshold, any contract resulting from an Unsolicited Proposal must be approved by no fewer than five (5) members of the BOWC.

7.5.13. Voucher Payment Authorization; Non-Purchase Order Payments. Competitive solicitation is not required for purchases where competitive solicitation is neither practical or appropriate to efficiently or effectively meet DWSD needs, as further outlined in this Section.

7.5.13.1. Generally. The Finance - Accounts Payable Business Unit processes voucher payment authorizations.

7.5.13.2. Voucher Approval

7.5.13.2.1. Director or CFO. The Director or CFO may approve any purchase of goods or services by voucher as allowed under this section and within the Director's approval threshold.

7.5.13.2.2. BOWC. Any purchase of goods or services within a consecutive 12-month period for the same type of procurement from same Contractor that exceeds the Director's approval thresholds must be approved by the BOWC.

7.5.13.3. Authorized Uses for Vouchers.

7.5.13.3.1. General Uses. A voucher may be used to pay for:

- a. Utility bills gas, electricity, and water/sewer
- b. Telephone bills/costs (excluding equipment)
- c. Advertisements
- d. Postage; express delivery services
- e. Equipment for employee badging
- f. Bid/proposal guarantee forfeitures
- g. Refunds and reimbursements
- h. Litigation expenses; filing fees
- i. Service fees
- j. Professional dues and membership fees
- k. Subscriptions
- l. License and permit fees (excluding software licenses)
- m. Conference, training and/or seminar fees
- n. Business travel related expenses
- o. Meeting expenses (e.g., room/equipment rental fees, etc.)

7.5.13.3.2. Payment of Payroll Taxes and Withholdings. A voucher may be used to remit payroll taxes and other withholdings to the appropriate government or agency.

- 7.5.13.3.3. **Payment of Use or Sales Taxes.** A voucher may be used to remit to the appropriate taxing authority non-exempt use or sales taxes assessed in connection with any DWSD business or activity.
 - 7.5.13.3.4. **Payment of Expenses Related to the Purchase of Real Estate.** A voucher may be used to pay expenses incurred concerning an approved purchase of real estate. The BOWC resolution approving such purchase must be attached to or clearly indicated on the face of the voucher.
 - 7.5.13.3.5. **Payment of Insurance Premiums and Self-Insured Losses.** A voucher may be used to pay insurance premiums when authorized by CFO. The voucher must indicate the policy number, type of coverage, and dates of coverage; and a copy of the policy must be on file with DWSD's Finance Business Unit. A voucher may also be used for payment of insurance broker fees, and insurance deductibles and certain self-insured employee benefit programs administered by DWSD.
 - 7.5.13.3.6. **Payment of Claims, Judgments, Assessments and Settlements.** A voucher may be used only by the General Counsel for payment of claims, judgments, assessments and settlements that have been approved in accordance with the Claims and Settlements Policy. In situations where a check is requested prior to BOWC's approval of a claim or settlement, the General Counsel must indicate on the voucher request that the check will not be released until BOWC approves the settlement. Once approved, a copy of the BOWC resolution shall be forwarded to the CFO, or his designee, for verification and filing.
 - 7.5.13.3.7. **Payment of Purchasing Card and Credit Card Statements.** A voucher may be used to process payment of invoices for P-Card and credit card purchases.
- 7.5.13.4. **Authorized Signers of Vouchers; Budget Limitation**
- 7.5.13.4.1. **Authorized Signers of Vouchers.** When properly authorized as set forth in Section 7.5.13.2 above, a payment on a voucher for an approved use must be signed by at least two of the following: Director, Deputy Director, CFO, Deputy CFO or General Counsel, in accordance with the monetary limits approved in the budget for the appropriate line item expense.
 - 7.5.13.4.2. **Budget Limitation.** If payment of a voucher exceeds the approved budget amount for an appropriation, only the Director and CFO may sign the voucher. The voucher amount may not exceed the budget by more than 10% of the current line item, and the circumstance for exceeding the budget must be an unanticipated expense.

7.6. Equalization Credits

7.6.1. **Purpose.** The purpose of equalization credits is to promote equitable access to DWSD procurement opportunities, increase participation by smaller and Detroit-based businesses, and ensure meaningful competition by discouraging structures that concentrate contract awards among a limited number of firms.

7.6.2. **Eligibility.** Equalization Credits shall be awarded to:

- a. Detroit Headquartered Business
- b. Detroit Based Business
- c. Detroit Based Small Business
- d. Detroit Based Micro Business
- e. Detroit Resident Business
- f. Joint Venture
- g. Mentor Venture

7.6.3. **Generally.** To receive an equalization credit, the Contractor must submit current CRIO certification at the time Contractor responds to a competitive solicitation and no later than the applicable deadline date to submit a bid, proposal, response, or quote.

7.6.4. **Equalization Credits.** For purposes of evaluating bids, proposals and responses, an equalization credit will be awarded to Certified Detroit Businesses that respond to a solicitation, as follows:

	Bids/Proposals >\$25,000, <\$1 million	Bids/Proposals ≥\$1 million
Detroit Headquartered Business (DHB)	2%	1%
Detroit Based Business (DBB)	2%	1%
Detroit Based Small Business (DBSB)	6%	3%
Detroit Based Micro Business (DBMB)	6%	3%
Detroit Resident Business (DRB)	2%	1%
Joint Venture	3%	1.5%
Mentor Venture	3%	1.5%

7.6.5. Applying Equalization Credits

7.6.5.1. Equalization credits are applied during the evaluation processes based upon the type of solicitation and shall be used to determine the lowest bidder or the most responsible proposer but shall not affect a bid or quote total or the fee total in a proposal.

7.6.5.2. **Request For Bids.** Equalization credits shall be applied to reduce the price component of any bid during the tabulation process for bidders that qualify as one or more types as listed above. The reduction in price (credit) shall be in accordance with the percentages outlined above in Section 7.6.3.

7.6.5.3. **Requests For Proposals.** For solicitations based on qualifications, expertise, etc. and price, equalization credits shall be applied to the total points scored. The increase in total score shall be in accordance with

the percentages outlined above in Section 7.6.3 above.

- 7.6.5.3.1. **Request for Qualifications.** For solicitations based on qualifications, equalization credits shall be applied to the points scored, but pricing is not part of the scoring process. After a successful bidder/proposer is selected, the Procurement Administrator may negotiate pricing.
- 7.6.5.3.2. If DWSD and successful bidder/proposer cannot agree on pricing, the Procurement Administrator, in consultation with the Business Unit, may decide to reissue the solicitation or award the bid to the next responsible bidder/proposer.
- 7.6.5.4. **Multiple Credits.** A bidder or proposer may be eligible to receive multiple equalization credits, applied cumulatively, and in accordance with the chart contained in Section 7.6.3, only if such bidder or proposer is a DBSB or a DBMB at the time of the applicable deadline, and only as expressly permitted in this section.
 - 7.6.5.4.1. A bidder or proposer is ineligible to receive, and shall not receive, equalization credits as both a DBSB and a DBMB.
 - 7.6.5.4.2. A bidder or proposer is ineligible to receive, and shall not receive, equalization credits as both a DHB and a DBB.
 - 7.6.5.4.3. Except as provided above, all other bidders or proposers—including, without limitation, JVs and MVs—shall be eligible to receive only a single equalization credit and shall not receive multiple equalization credits applied cumulatively. Such bidders or proposers may receive only the single equalization credit for which they qualify and that provides the greatest benefit.
- 7.6.5.5. **Anti-Circumvention.** If DWSD determines, by a preponderance of the evidence, that a bidder or proposer has structured its submission—including through the use of affiliates, Joint Ventures, Mentor Ventures, or subcontracting arrangements—to circumvent the limitations on equalization credits set forth in this Policy, that bidder or proposer may be subject to disqualification, contract termination, suspension, debarment, or referral to the Office of Inspector General and/or law enforcement authorities. DWSD may presume prejudice and competitive harm from such conduct without requiring further proof. For purposes of this Section, circumvention includes but is not necessarily limited to any arrangement that has the effect, whether direct or indirect, of obtaining equalization credits that would not otherwise be available to the bidder or proposer under this Policy.

7.7. Certified Detroit Businesses Development

- 7.7.1. **Generally.** Where the Procurement Administrator, in collaboration with the head of the requesting Business Unit and/or any other person or Business Unit deemed necessary, has determined that three or more Certified Detroit Businesses are available and willing to provide the required construction, goods or services,

those contracts may be identified for solicitation and awarded only to Certified Detroit Businesses.

7.7.1.1. The Procurement Administrator and Business Unit shall consider the following in identifying contracts for the Certified Detroit Businesses Development Program:

- a. Type of goods, services or construction project;
- b. Total costs of the contract;
- c. Qualifications or expertise required to complete scope of work.

7.7.2. The Procurement Administrator shall state in the solicitation that as a matter of responsiveness a business must possess Certified Detroit Business status as of the applicable deadline date to submit a bid, proposal, response, or quote

7.8. **Approving Contracts and Contract Amendments.**

7.8.1. **Generally.** An approved budget allocation does not by itself constitute authorization or approval to enter into a contract, to permit Contractor performance, or to expend funds. Except in emergencies, all required approvals under this policy must be obtained before goods or services are provided and before any expending of funds.

7.8.2. **Determining Thresholds.** In determining whether monetary approval thresholds are triggered under this Policy, amounts are to be determined on a fiscal year basis for multi-year contracts.

7.8.3. **Director Approval.** The Director must approve the following procurements at dollar values that do not exceed the following limits:

- a. Personal Services contracts that do not exceed \$50,000;
- b. Goods and Non-Professional Service contracts that do not exceed \$100,000;
- c. Professional Services contracts that do not exceed \$250,000; and
- d. Construction contracts that do not exceed \$500,000.

7.8.4. **BOWC Approval.** The BOWC must approve the following procurements:

- a. Personal Services contracts that exceed \$50,000;
- b. Goods and Non-Professional Service contracts that exceed \$100,000;
- c. Professional Services contracts that exceed \$250,000; and
- d. Construction contracts that exceed \$500,000.

7.8.5. **Detroit City Council Approval.** In addition to BOWC approval, the Detroit City Council must approve the following procurements:

- a. Personal Services contracts that exceed \$150,000;
- b. Goods and Non-Professional Service contracts that exceed \$2,000,000
- c. Professional Services contracts that exceed \$2,000,000; and
- d. Construction contracts that exceed \$5,000,000.

7.8.6. **Mayor Approval.** The Mayor must approve all DWSD contracts exceeding \$750,000 in a fiscal year and/or having a term greater than two years.

7.8.7. **Approval of Contract Amendments**

7.8.7.1. **Director Approval.** For all contracts, the Director may approve time only amendments. For contracts previously approved by the Director where the proposed amended total contract amount remains within the Director's approval authority, the Director may approve such amendments, including amendments to scope of service. However, if the proposed amended total contract amount exceeds the Director's approval authority, then BOWC approval is required. Director may only approve one (1) contract renewal or time extension within his/her approval authority without Board approval.

7.8.7.2. **BOWC Approval.** Contracts the BOWC previously approved, any contract amendment expanding the scope of work or increasing the total contract amount, and contract renewals or extensions within Director's approval authority that were previously approved one (1) time require BOWC approval.

7.8.7.3. **Prohibited Amendments.** A proposed amendment may not be used to circumvent competitive solicitation by introducing a substantial change to the scope of work, a different project, new item pricing, or new pricing levels for items in the existing contract. (For example, a basic maintenance and repair contract cannot be amended to include purchase of heavy equipment.)

7.9. **Executing Contracts**

7.9.1. **BOWC Approved Contracts.** Any contract approved by the BOWC may be executed by any DWSD employee specifically designated in the BOWC's authorizing resolution or, in the absence of such, the Director.

7.9.2. **Contracts Not Requiring BOWC Approval**

7.9.2.1. The Director may execute any contract, including but not limited to licenses and permits, that has been properly procured consistent with this policy.

7.9.3. **Delegation of Contract Execution Authority**

7.9.3.1. **Voluntary Delegation.** The Director may delegate in writing to the Chief Financial Officer, or his or her designee, any or all of the Director's authority to execute any contract under which DWSD will expend or receive \$100,000 or less.

7.9.3.2. **Involuntary Delegation.** In the event of the Director's incapacity to execute contracts, the Director's authority to execute contracts shall automatically succeed to the Deputy Director or CFO.

7.9.3.3. **Signing Supplemental Contract Documents.** Without BOWC approval, the Director may execute any document that is necessary to carry out the terms of an approved contract if the document does not further financially obligate DWSD.

7.10. Bid Protests

7.10.1. **Eligibility to Protest Award.** Only an Interested Party may file a protest. A protest of an award may not be based on the terms of the solicitation; such concerns must have been raised prior to the applicable deadline date to submit a bid, proposal, response, or quote. Failure to raise such concerns prior to the Bid Protest Deadline shall constitute waiver.

7.10.1.1. **Notice and Submission of Protest.** Interested Party must submit a written notice of protest to the Procurement Administrator within seven (7) calendar days of (i) issuance of the solicitation term(s) being protested, or (ii) the issuance of a notice of intent to award (the “**Bid Protest Deadline**”).

7.10.1.1.1. The protest shall reference the solicitation number, the specific provision(s), action(s), or omission(s) protested, the factual and legal grounds for the protest, and the relief requested.

7.10.1.1.2. The protest must be accompanied by all information and evidence then available to the Interested Party that supports and is relevant to the grounds for the protest. The protest must be signed by an officer of the Protestor’s organization, and shall include a declaration that the protest is submitted in good faith and that the factual statements are true to the best of the signatory’s knowledge. DWSD shall not consider new evidence submitted after the Bid Protest Deadline that was available or should have been available at the time of submission.

7.10.1.1.3. The Procurement Administrator shall, upon receipt, log and maintain the official protest file, and—where such protest is valid and complete—submit the protest to the BOWC Clerk for filing and distribution.

7.10.1.1.4. Notwithstanding the foregoing, the Procurement Administrator is not required to consider any materials submitted after the applicable Bid Protest Deadline. Failure to comply with the applicable Bid Protest Deadline and submission requirements shall result in waiver of the protest.

7.10.2.1 **Standing Determination.** Within three (3) business days of receipt of a valid and complete protest, the Procurement Administrator, in consultation with the DWSD Office of General Counsel, as appropriate, shall determine whether (a) the party which submitted the protest qualifies as an Interested Party; and (b) whether the protesting party has satisfied the Substantial Chance Standard (together, “Standing”). If Standing is established, the Procurement Administrator shall proceed pursuant to Section 7.10.2.2. If Standing is not established, the Procurement Administrator shall issue a written dismissal stating the basis for the dismissal, and the procurement at

issue may otherwise proceed.

7.10.2.2 Notice to Impacted Party. If Standing is established pursuant to Section 7.10.2.1 herein, the Procurement Administrator shall notify the Interested Party and provide the protest and supporting materials to (i) the recommended awardee and (ii) any other directly impacted party within one (1) business day, and shall provide no less than five (5) business days from transmittal for the submission of a written response by the recommended awardee or interested party, with supporting evidence.

7.10.2. Suspension of Award Process. Upon receiving a timely protest from an Interested Party, the Procurement Administrator or his/her designee shall immediately suspend the contract award process pending completion of the protest process set forth in Section 7.10. Nothing in this section prohibits DWSD from proceeding under the Emergency Procurement provisions of Section 7.5.3, where applicable.

7.10.3. Grounds for Protest: An Interested Party may not challenge the good faith business decisions of the evaluation committee or its members. A protest may be sustained only upon a showing of:

- a. Breach of this policy;
- b. Error in the evaluation of the successful Contractor based on clear and convincing evidence contained in the written and prepared materials submitted with the protest; or
- c. Fraudulent conduct by either the successful bidder or proposer or DWSD in connection with solicitation.
- d. In no circumstances may the basis of the protest be related to the solicitation itself; such concerns must have been brought to the Procurement Administrator seven (7) days prior to the Bid Protest Deadline

7.10.3.1. Standing Requirement. Standing, as defined in Section 7.10.2.1, is a threshold requirement and shall be determined prior to review of the merits. Protests shall be sustained only for material violations that satisfy the Substantial Chance Standard.

7.10.3.2. Determination and Recommendation. Upon completion of its review, the Procurement Administrator shall issue a written Determination and Recommendation that addresses the Interested Party's standing, each ground asserted, findings of fact, conclusions, and recommended remedy (if any). The Procurement Administrator shall provide the Determination and Recommendation to the protest and any impacted party. If the contract requires BOWC approval under Section 7.8, Procurement shall transmit the Determination and Recommendation to the BOWC Clerk for inclusion on the agenda of the next available regularly scheduled BOWC meeting.

7.10.4. BOWC Determination

7.10.4.1. Where BOWC approval is required under Section 7.8 herein, the

BOWC shall vote to either uphold or reject the protest at its next regularly scheduled formal session at which the Determination and Recommendation is presented by the Procurement Administrator and/or the Office of General Counsel. The BOWC may schedule a special session to vote on the protest.

- 7.10.4.2. The BOWC may request the Interested Party, impacted party, and/or DWSD personnel to provide statements or answer questions during the meeting before voting on the protest.
- 7.10.4.3. If the BOWC sustains the protest, the Director shall implement the remedy identified in the Determination and Recommendation, as approved by the BOWC, which may include, but is not necessarily limited to: resoliciting the contract, awarding the contract to the appropriate responsible proposer, and/or referring the matter to the City of Detroit Office of Inspector General or other law enforcement for further investigation.
- 7.10.4.4. If the BOWC denies the protest, including where it approves a Determination and Recommendation that recommends denying the protest, it may then vote on the underlying contract, so long as BOWC approval is required under Section 7.8 herein.
- 7.10.4.5. The determination of the BOWC is final.
- 7.10.4.6. For contracts not requiring BOWC approval under Section 7.8, Procurement's Determination and Recommendation issued hereunder constitutes final DWSD action. Procurement shall provide a copy to the BOWC Clerk for recordkeeping.

7.11. Contractor Suspension, Disqualification or Referral for Debarment

- 7.11.1. **Determining Cause.** The Procurement Administrator, in consultation with the General Counsel, shall determine if due cause exists for suspension, disqualification of a Contractor, or referral of matter to the City of Detroit Office of Inspector General (OIG) to investigate a Contractor for possible debarment.
- 7.11.2. **Suspension During Determination of Cause.** When the Procurement Administrator initiates a determination of cause for disqualification and/or referral to OIG for investigation and possible debarment, he or she shall promptly provide a written notice of suspension to the contractor. Such notice shall provide the following:
 - a. That the contractor may be subject to disqualification and/or referral to OIG for investigation and possible debarment, and that the Suspension will last for thirty (30) days or until the OIG has ruled.
 - b. That bids, proposals, and responses from the contractor will not be evaluated and DWSD will not award pending contracts for which contractor submitted a bid, proposal or response until determination is made.
 - c. The alleged action(s) that constitute reasons for potential disqualification and/or referral to the OIG for investigation and possible debarment.

7.11.3. **Grounds for Determining Cause.** The following shall constitute causes sufficient for contractor disqualification and/or referring a matter to the OIG for investigation and possible contractor debarment:

7.11.3.1. Conviction for commission of a criminal offense by a person associated with or employed by the contractor as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract.

7.11.3.2. Conviction of a member of executive management or a corporate officer under local, state or federal statutes for embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a contractor.

7.11.3.3. Conviction under state and federal antitrust statutes arising out of the submission of bids or proposals.

7.11.3.4. Prior disqualification.

7.11.3.5. Repeated failure to comply with safety regulations on prior City contracts.

7.11.3.6. Knowingly or willfully:

- a. Obtaining certification as a Certified Detroit Business or other certification for equalization credits in a fraudulent manner;
- b. Entering into a joint venture, mentor venture or subcontractor relationship with a business that has fraudulently obtained a Certified Detroit Business certification;
- c. Misrepresenting the nature and extent of participation in a contract by a member of a joint venture, mentor venture or subcontractor relationship, including but not necessarily limited to failure to perform in accordance with the represented allocation of work, responsibility, or compensation submitted in a bid or proposal, or structuring or administering a Joint Venture in a manner that results in a partner acting as a pass-through entity or failing to perform a commercially useful function; or
- d. Otherwise making false or misleading representations to DWSD as to the use or misuse of another business enterprise;
- e. Making any material misrepresentation of the composition of the ownership or work force of a business entity claiming Certified Detroit Business status.

7.11.3.7. Any other cause so serious and compelling as to affect responsibility as a contractor, including debarment or a finding of wrongdoing by another governmental entity or the City of Detroit Inspector General.

7.11.3.8. Obtaining, attempting to obtain, using, or failing to disclose improperly received non-public procurement information.

7.11.4. **Informal Conferences.** Upon the contractor's request or the Procurement

Administrator's own choice, the Procurement Administrator may hold informal conferences to resolve issues, review information and evidence, simplify and clarify issues, or to consider other matters that may aid in the Procurement Administrator's determination whether to disqualify a Contractor or refer a matter to the OIG for investigation and possible Contractor debarment.

7.11.4.1. Procurement Administrator may fix time limits and require contractor to produce witnesses and/or documents at the informal conference.

7.11.4.2. Procurement Administrator may provide contractor an opportunity to cure or remedy an issue to avoid disqualification or referral to the OIG.

7.11.4.3. Contractor may bring an attorney or advocate to an informal conference. Contractor must provide DWSD with five (5) days' notice an attorney will be present.

7.11.5. **Issuing Determination.** Procurement Administrator will issue his/her determination whether to disqualify a contractor and/or refer the matter to the OIG for investigation in writing no later than thirty (30) days from the date of notice of suspension and will transmit the decision to contractor via certified and/or electronic mail. A copy of the determination shall be provided to the BOWC.

7.11.5.1. **Consultation with General Counsel.** The Procurement Administrator may consult with the General Counsel in determining applicable laws, the application of rules, regulations, policies and laws, and whether the evidence indicates a violation of any law, regulation, rule or policy.

7.11.6. **Request for Reconsideration of Determination.**

7.11.6.1. If contractor does not accept the Procurement Administrator's determination and has additional information that was not previously submitted to DWSD, contractor may request a reconsideration within two business days of the Procurement Administrator's decision, by sending such additional information to the Procurement Administrator along with an explanation of why the information was not included in the original protest or response thereto.

7.11.6.2. Such additional information may not be considered in any reconsideration where that information was available or should have been available to the contractor at the time it submitted its original protest or response thereto. If new information has been provided, contractor will be given an opportunity to attend an informal reconsideration conference, unless the new information prompts the Procurement Administrator to automatically rescind or modify her/his determination.

7.11.6.3. Contractor may bring an attorney or advocate to a reconsideration conference. Contractor must provide DWSD with five (5) days' notice if an attorney will be present.

7.11.6.4. Contractor will receive a written decision regarding reconsideration within fourteen (14) days from conference date. The decision shall be

transmitted via certified and/or electronic mail, and a copy shall be provided to the BOWC.

- 7.11.7. **Finality of Determination.** A reconsideration conference is the final step in DWSD's determination whether to disqualify a contractor or refer the matter to the OIG for investigation into the contractor's conduct and is not subject to appeal or further review.
- 7.12. **Document Retention.** DWSD Procurement shall retain copies of documentation related to each DWSD procurement for a minimum period of three (3) years, or longer if required by the applicable State, City or DWSD document retention policy. This retention requirement includes the complete bid protest file and all materials referenced in Sections 7.10.2 through 7.10.5.
- 7.13. **Reasonable and Necessary Accommodations.** Management may take reasonable and necessary actions to accomplish the intent of this policy.

8. **PROCEDURE**

- 8.1. The Procurement Administrator will review and update all Standard Operating Procedures and work instructions so they are consistent with this Policy.