

Detroit Water and Sewerage Department Procurement Policy

(1) General Policy Statement

The Detroit Water and Sewerage Department ("DWSD") procurement policy (the "Policy") is intended to promote a transparent, fair and independent procurement process that ensures DWSD receives the best value for its necessary expenditures.

A copy of this Policy shall be available to the public on the DWSD website and shall be provided in conjunction with each procurement of DWSD. Any procurements entered into in violation of this Policy and any procedures adopted to implement this Policy may be cancelled by DWSD with no penalty. The failure of a vendor to comply with this Policy and any procedures adopted to implement this Policy is grounds for the vendor to be ineligible for a specific procurement or to be placed on the DWSD debarred vendor list.

Unless an express exception applies, DWSD shall procure all goods, materials, commodities and services through the use of competitive bidding as outlined in this Policy. The DWSD Director (the "Director") shall advertise DWSD procurement opportunities utilizing electronic platforms and newspaper advertisements with the goal of ensuring maximum access and opportunity for vendors to respond. All potential vendors shall have access to the same information related to a specific procurement. DWSD personnel shall establish a method to inform all potential vendors of any question related to a solicitation and the response from DWSD personnel.

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 vendor to withdraw a bid if requested any time prior to bid opening.

The Director shall establish the necessary procedures to implement this Policy and shall take all necessary measures to ensure this Policy is adhered to. The Director may delegate all or some of his/her authority under this Policy to an appropriate member of Executive Management.

All members of Executive Management and all DWSD procurement personnel shall execute a written notice acknowledging that they have received, read and understand this Policy.

(2) Ethics

A Conflicted Individual shall not participate in the procurement process for any procurement in which a Conflict exists.

A vendor seeking to do business with DWSD shall disclose if: (i) an Owner and a Conflicted Individual: (A) are related as parent-child, siblings, grandparent-grandchild, or aunt/uncle-niece/nephew, (B) are related as father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law, or (C) co-habitate as significant others; (ii) a Conflicted Individual has a 5% or greater ownership interest in any business owned by an Owner; and (iii) the Owner and the Conflicted Individual have any other relationship in which

the Conflicted Individual would personally profit from the business relationship or transaction between the vendor and DWSD (each, a “Conflict”).

A vendor shall disclose a Conflict in writing to DWSD (i) at the time of submitting a response to a competitive solicitation, or (ii) if a business relationship is entered into pursuant to an exception to the competitive solicitation process, prior to entering into any contract to provide any services or to sell any goods, materials or commodities to DWSD.

Such 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 vendor, who shall disclose the existence of any Conflict at any time he or she becomes aware of it.

All members of the Board of Water Commissioners (the “Board”) shall be excluded from the procurement process until a contract is presented to the Board for approval, if required.

(3) Competitive Bidding

Unless an exception applies, DWSD shall competitively procure all goods, materials, commodities and services (including professional, construction, personal and other services).

In the procurement of goods, materials and commodities, DWSD shall only use an Invitation for Bids in which the price factor shall be the only factor considered in the award of a contract. An Invitation for Bids shall not be due any sooner than 7 calendar days from the date of issuance.

In the procurement of professional services, DWSD shall use a Request for Proposals. A Request for Proposals shall not be due any sooner than 7 calendar days from the date of issuance.

In the procurement of construction services, DWSD is free to determine the type of competitive bidding and the time frame for response that is appropriate for the complexity of the project.

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 when required by the circumstances of a particular procurement.

At the Director’s discretion, a competitive process may not be required for a specific Procurement upon a showing of reasonable cause. If the Director elects to deviate from these requirements, he shall prepare an Alternative Competitive Bidding form, which shall state the reason for the deviation. The Director shall provide the Board a monthly report identifying all deviations from the requirements of this section.

(4) Minimum Qualifications for Response

DWSD shall provide within each competitive solicitation the minimum qualifications necessary to submit a responsible and acceptable response. These minimum qualifications may include, among others:

- procures and maintains any insurance and bond requirements commensurate with the level of risk associated with the specific procurement,
- complies with the Ethics code, Section 2-6-91 et seq of the City of Detroit (the "City") Code of Ordinances,
- not be on the DWSD debarred vendor list,
- complies with this Policy and any procurement procedures,
- during the period of performance, maintains all applicable licensure and certificates of good standing with the State of Michigan, and
- be qualified under the System for Award Management, if applicable.

(5) Exceptions to Competitive Bidding

While the general rule is that all procurements by DWSD shall be done pursuant to competitive bidding, there is a need for narrow exceptions to this general rule that will promote efficiency of operations and assist with insuring long-term compliance. The exceptions are as follows:

(A) Emergency Procurement

The Director, without prior approval of the Board of Water Commissioners (the "Board") or Detroit City Council, may make, or authorize others to make, an emergency procurement when public exigencies require the immediate delivery of articles 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:

- (i) Emergency procurements shall be made with such competition as is practicable under the circumstance; and
- (ii) The Director or other person he or she authorizes to make emergency procurement shall, within one (1) week of the procurement, notify the Board and the Detroit City Council (if the procurement would have required City Council approval if not obtained under this exception) in writing of the procurement and the basis for the emergency and for the selection of the particular contractor.

(B) Sole Source Procurements

Competitive bidding is not required when the DWSD Purchasing staff certifies that only one (1) source of supply is available. When this exception is utilized, procurement personnel shall maintain appropriate documentation substantiating the proprietary nature of the technology, good or service being provided.

(C) Small Purchases

(i) *General.* Any contract not exceeding \$25,000.00 may be made in accordance with the small purchase procedures authorized in this section. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. The Director shall provide a monthly report to the Board of all procurements obtained under this exception.

(a) When a dollar limit is specified upon the authority delegated by this subsection, it shall be construed to apply to the cumulative amount of contracts awarded to a specific business for a kind of supplies, service or construction within the same fiscal year. DWSD 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. Contracts shall not be divided into smaller parts to circumvent the need for Board or Detroit City Council approval.

(b) Separate contracts may however be used if:

- (1) There is a need to document expenditures as against various restricted funding sources; or
- (2) It is not economically practical to store a one-year supply of a given commodity, because of shelf-life, or storage costs and capacities; or
- (3) Product price often changes, and more often than not in a downward trend; or
- (4) Different users have significant differences in the timing of their needs for a service or product; or
- (5) The initial or continuing need for a product or service is not readily foreseeable so as to enable consolidated purchasing; or
- (6) The cost of coordinating consolidated purchasing will exceed any savings which are likely to be generated; or
- (7) To promote greater utilization of small businesses.

(ii) *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 requisition. Reasonable best efforts shall be made to solicit bids from Detroit Based Businesses. The award shall be made to the lowest responsive/responsible source. Monthly, the Board shall be provided a list of purchases, vendors and amounts which fall into this category.

(iii) *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. Every effort shall be made to distribute such purchases equitably among Qualified Vendors.

(iv) *Protest rights.* The provisions of Section 7 shall not apply to contracts awarded under the procedures set forth in this subsection.

(v) *Evaluation Credits for Small Purchases.* Evaluation credits under Section 5 shall not be considered for small purchases under \$25,000.00.

(D) Cooperative Purchases

The Director may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, or construction services with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include but is not limited to, joint or multi-party contract between public procurement units. 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.

(i) *Sale, acquisition or use of supplies.* The Director may 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.

(ii) *Cooperative use of supplies or services.* The Director may enter into an agreement, independent of the general bidding requirements of this Policy, with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

(iii) *Joint use of facilities/equipment.* The purchasing director may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

(iv) *Cooperative Purchase Agreements.* In the event that the Director determines that it is advantageous to take advantage of a Cooperative Purchase Agreement for the procurement of goods or services from a vendor that is neither a Detroit Based Business nor a Detroit Resident Business, the Director shall provide an opportunity for Detroit Based Businesses or Detroit Resident Businesses to submit a bid that is equal to or less than the cost of the Cooperative Purchase price.

(E) Personal Services Contracts

Competitive bidding is not required for personal services contracts. 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. This term does not include [employment agreements] or collective bargaining agreements, which are not subject to this Policy.

(F) Unsolicited Proposals

(i) *Defined.* For purposes of this Policy, an Unsolicited Proposal must meet all of the following criteria:

- (a) The proposal was independently originated and developed by the offeror.
- (b) The proposal was prepared without DWSD's active input or supervision.
- (c) The proposal presents an innovative concept, idea, or process.

(ii) *Consideration by DWSD.* Unsolicited Proposals may be accepted by DWSD and considered, for feasibility and implementation without a competitive bid or solicitation.

- (a) Modifications to an Unsolicited Proposal may be made by the offeror in consultation with DWSD when those modifications further DWSD's interests.

(iii) *Waiver of Competitive Bidding not Required.* Receipt of an unsolicited proposal by DWSD does not in any way limit DWSD's ability to utilize a competitive bid for goods and/or services addressed in any way by the unsolicited proposal.

(iv) *Property of DWSD.* Unless otherwise required by law or mutual agreement, any unsolicited proposal received by DWSD and the information contained within that proposal shall be considered the property of DWSD.

(v) *Recommendation for Approval by the Board of Water Commissioners.* When an Unsolicited Proposal is presented to the Board, the Director or his/her designee shall include as a part of that written recommendation the following:

- (a) Sufficient detail to permit a determination that the proposed product, services or work could benefit DWSD's mission, operations or allows it to better meet its responsibilities to its customers;
- (b) A copy of the original Unsolicited Proposal received by DWSD.

(c) That the Unsolicited Proposal is not an advance proposal for a known or anticipated DWSD purchase requirement that can be procured by competitive methods.

(iii) *Additional requirements for Approval.* Any contract resulting from an Unsolicited Proposal must be approved by no fewer than 5 members of the Board.

(6) Price Equalization Credits

(A) Price Equalization Credit Categories shall be:

- (i) Detroit Based Business
- (ii) Detroit Resident Business
- (iii) Joint Venture
- (iv) Mentor Venture

In order to claim entitlement to a credit pursuant to this section, the vendor must submit proper documentation of their entitlement to the credit at the time that the vendor responds to the competitive solicitation. Failure to provide documentation at the time of the bid submission shall negate any application of the equalization credits to the evaluation of that bid.

(B) Price Equalization Credits

	Contracts Up to \$1 million	Contracts Equal to or Greater than \$1 million
Detroit Based Business	2%	1%
Detroit Resident Business	2%	1%
Joint Venture	1%	0.5%
Mentor Venture	1%	0.5%

(C) Use of Price Equalization Credits

Price Equalization Credits shall be applied to reduce the relative cost of the price component of any bids provided by Qualified Vendors in the evaluation of all Requests for Proposals or competitive solicitations for construction services unless prohibited by law. The relative reduction in price shall be in accordance with the percentages outlined above in Section B.

A potential vendor is entitled to use multiple credits in their bid in accordance with the chart contained in subsection (B) above provided that a potential vendor cannot claim both a Joint Venture and a Mentor Venture.

(7) Approval of Contracts

(A) Approval by the Director

The Director shall have full and final approval to approve procurements of the following types of goods and services at dollar values that do not exceed the following limits:

- (i) Personal Services contracts that do not exceed \$50,000;
- (ii) Goods or commodities contracts that do not exceed \$100,000;
- (iii) Professional Services contracts that do not exceed \$250,000;
- (iv) Construction contracts that do not exceed \$500,000; and
- (v) Sale of land or equipment contracts that do not exceed \$500,000, pursuant to a written appraisal from a licensed appraiser, to the extent managed and coordinated consistent with the Regional Water Supply System Lease and the Regional Sewage Disposal System Lease, each dated June 12, 2015 (collectively, the “Leases”), with respect to the Leased Facilities (as such term is defined in the Leases).

(B) Approval by the Board

The Board shall be required to approve the following types of procurements prior to execution by the Director:

- (i) Personal Services contracts that exceed \$50,000;
- (ii) Goods or commodities contracts that exceed \$100,000;
- (iii) Professional Services contract that exceed \$250,000;
- (iv) Construction contracts that exceed \$500,000, and

(v) Sale of land or equipment contracts that exceed \$500,000, pursuant to a written appraisal from a licensed appraiser ~~to the extent managed and coordinated consistent with the Regional Water Supply System Lease and the Regional Sewage Disposal System Lease, each dated June 12, 2015 (collectively, the “Leases”), with respect to the Leased Facilities (as such term is defined in the Leases).~~

(C) Approval by the Detroit City Council

In addition to requiring approval of the Board, the following types of procurements shall also require the approval of the Detroit City Council prior to execution by the Director:

- (i) Personal Services contracts that exceed \$ ~~150,000~~ 50,000.00;

- (ii) Goods or commodities contracts that exceed \$ ~~2,000,000~~100,000.00;
- (iii) Professional Services contracts that exceed \$ ~~2,000,000~~250,000.00;
- (iv) Construction contracts that exceed \$ ~~5,000,000~~500,000.00; and
- (iv) Sale of land or equipment contracts that exceed \$ ~~2,500,000~~500,000.00, pursuant to a written appraisal from a licensed appraiser. ~~to the extent permitted by the Leases with respect to the Leased Facilities (as such term is defined in the Leases).~~ to the extent managed and coordinated consistent with the Regional Water Supply System Lease and the Regional Sewage Disposal System Lease, each dated June 12, 2015 (collectively, the "Leases"), with respect to the Leased Facilities (as such term is defined in the Leases)..

(8) Bid Protests and Appeals

- (A) A Qualified Vendor who has submitted a complete and timely response to a competitive solicitation and is not recommended for award of a contract may protest the award of the contract by filing a written notice of protest with the Board within seven (7) days of the issuance of a notice of intent to award. The written notice shall reference the solicitation number, and the basis for the bid protest. A bid protest must be accompanied by all information or evidence relevant to the grounds for the bid protest.
- (B) A bid protest shall only be upheld for a breach of this Policy, for error in the evaluation of the successful vendor based on clear and convincing evidence submitted with the bid protest, or for fraudulent conduct by either the vendor or DWSD in connection with solicitation.
- (C) Upon receiving a bid protest, the Director or his designee shall immediately suspend the contract award process until the protest has been resolved if the bid protest is likely to be successful based on the information contained in the protest.
- (D) The bid protest shall be reviewed by Board staff in an expeditious manner. The Board shall vote to either accept or reject the bid protest at its next regularly scheduled meeting, but in no event later than fourteen (14) business days from the date upon which the protest was filed. If the Board upholds the bid protest, the Director shall act in accordance with the Board findings. If the Board rejects the bid protest, the Director shall notify the protestor of that decision. The determination of the Board shall be final.

- (9) Document Retention: DWSD procurement staff 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 DWSD or City document retention policy. Documents may be maintained either as paper copies or electronically.

(10) Definitions

Conflicted Individual: A member of the Board, Executive Management of DWSD, any DWSD employee who may influence a decision related to a procurement, [an appointee of the Mayor of the City].

Detroit Based Business: A business which pays city income taxes on the business's net profits and 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 the contract and referred to in the 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, which shall comply with the following requirements:

- (1) Provide verification that the firm has the physical resources including, but not limited to inventory, equipment, vehicles, etc., as well as the ability to provide the services indicated in its application for certification at the city location; and
- (2) Provide verification of the ability of the business to carry out the service or repair the product to be sold to the city at the city site; and
- (3) Provide references, licenses, or other means of verification acceptable to the city that the services the firm offers to the city has been provided at the city site for at least one (1) year prior to the date of application; and
- (4) Provide verification that the business has or can procure an adequate number of employees based at its city site to perform services indicated in the application.

Detroit Resident Business: Any business which employs a minimum of four (4) employees and at least fifty-one (51) percent of the business' employees are residents of the City.

Executive Management: The Director, Deputy Director and Chief Engineer, Chief Operating Officer, Chief Administrative Officer, General Counsel, Chief Financial Officer (the "CFO"), Human Resources Director or Chief Procurement Officer of DWSD.

Joint Venture: A joint venture of separate firms, one of which is a Detroit Based Business or Detroit Resident Business, which has been created to perform a specific contract, and is evidenced by a written agreement which provides at a minimum that the Detroit Based Business or Detroit Resident Business:

- (1) Is substantially included in all phases of the contract, including, but limited to, bidding and staffing; and

- (2) Provides at least fifty-one (51) percent of the total performance, responsibility, and project management of a specific job; and
- (3) Receives at least fifty-one (51) percent of the total remuneration from a specific contract; and
- (4) Shares in profits and losses.

Mentor Venture: A joint venture of separate firms, one of which is a Detroit Based Business or Detroit Resident Business, which has been created to perform a specific contract, and is evidenced by a written agreement which provides at a minimum that the Detroit Based Business or Detroit Resident Business:

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

Owner: An individual who has a 5% or greater ownership interest in a potential vendor.

Procurement: A written agreement for the purchase or sale of goods, services, land and fixtures attendant to the land.

Qualified Vendor: A vendor who meets the applicable requirements of Section 4 of this Policy, in addition to any additional criteria required by DWSD for a specific Procurement, and is lawfully permitted to provide the goods, materials, commodities or services being procured.