

Detroit Water and Sewerage Department Procurement Policy

November 2, 2011-302

(1) General Policy Statement

The Detroit Water and Sewerage Department (“DWSD”) shall procure all goods and services through the use of competitive bidding as outlined in this policy, unless an express exception is provided to that general rule. The DWSD Director shall take all necessary measures to ensure this policy is adhered to.

(2) Types of Competitive Bidding

In the procurement of goods or 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 14 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 21 calendar days from the date of issuance.

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

(3) Minimum Qualifications for Response

DWSD shall provide within each competitive solicitation the minimum qualifications needed to submit a responsible and acceptable response. These minimum qualifications may include among others, insurance requirements, compliance with the Ethics code, Section 2-6-91 et seq of the Detroit City Code, disclosure statements, certificates of good standing with the State of Michigan, etc.

(4) 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 DWSD Director, without prior approval of the Board of Water Commissioners (“BOWC”) 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 of 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 DWSD Director or other person he or she authorizes to make emergency procurement shall, within one (1) week of the procurement, notify the Board of Water Commissioners and the Detroit City Council in writing of the procurement and the basis for the emergency and for the selection of the particular contractor. The DWSD Director shall submit the procurement contract for any necessary approval within four (4) weeks of the procurement.

(B) Sole Source Procurements

Competitive bidding is not required when the DWSD Purchasing staff certifies that only one (1) source of supply is available.

(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.

(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 of Water Commissioners 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 serve 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 of Water commissioners 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 prices are considered to be fair and reasonable. Competitive quotations need only be taken when the DWSD 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 suppliers.

(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 DWSD Director may either 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 is State of Michigan contracts, General Services Administration (GSA) contracts, supplies and/or services procured from another governmental agency, and U.S. Communities.

(i) *Sale, acquisition or use of supplies.* The DWSD 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 DWSD 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 DWSD Director determines that it is advantageous to take advantage of a Cooperative Purchase Agreement for the procurement of goods from a vendor that is neither a Detroit Based Business nor a Detroit Resident Business, the DWSD 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 not required to deliver specific end product, other than reports which are merely incidental to required performance. This term does not include employment agreements or collective bargaining agreements.

(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 of Water Commissioners, the director or her designees 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.* In addition to any other requirements in this Purchasing Policy, at least 5 members of the Board must vote in favor of approving the contract resulting from an Unsolicited Proposal.

(G) Retail Customer Advocate

(i) *Defined.* The Retail Customer Advocate is engaged by the Board of Water Commissioners to fairly represent and advocate for the interests of DWSD's retail customer base in discussions, meetings and other matters pertaining to the structure and allocation of rates charged by DWSD to the various classes of customers it serves. The retail Customer Advocate shall make an independent assessment of current and proposed policy and, as necessary, advocate for appropriate inclusions, deletions, continuations, and/or amendments to that policy based upon his or her assessment of the needs of DWSD's retail customers.

(a) The Retail Customer Rate Advocate may be an individual, firm, joint venture or mentor venture.

(b) It shall not be a conflict of interest *per se* for the Retail Customer Advocate to perform work on other unrelated engagements for DWSD. It is the responsibility of the Retail Rate Advocate to insure that appropriate conflict protections are in place for both engagements.

(c) It shall be a conflict of interest for the Retail Customer advocate to work on other matters for DWSD or non-retail customers of DWSD that directly impact the establishment, implementation or operation of DWSD's rates.

(5) Price Equalization Credits

(A) Price Equalization Credit Categories shall be:

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

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%
Customer Based Business	1%	0.5%

(C) Use of Price Equalization Credits

In evaluating the bids of competing vendors, the Price Equalization Credits contained within this policy can be used to reduce the relative cost of the price component of any bids provided by vendors responding to a Request for Proposals or a competitive solicitation related to construction services. 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:

- (i) a potential vendor cannot claim both a **Joint Venture** and a **Mentor Venture**; and
- (ii) a potential vendor cannot claim to be both a **Customer Based Business** and a **Detroit Based Business**.

Price Equalization Credits will not be utilized in the award of contracts pursuant to an Invitation for Bids for the procurement of goods or where prohibited by applicable law. Federal law prohibits such equalization credits on projects utilizing federal funds.

(6) **Approval of Contracts**

(A) Approval by the Director of DWSD

The DWSD 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.

(B) Approval by the Board of Water Commissioners

The Board of Water Commissioners shall be required to approve the following types of procurements prior to execution by the DWSD 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.

(C) Approval by the Detroit City Council

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

- (i) Personal Services contracts that exceed \$ 150,000;
- (ii) Goods or commodities contracts that exceed \$ 2,000,000
- (iii) Professional Services contracts that exceed \$ 2,000,000;
- (iv) Construction contracts that exceed \$ 5,000,000; and
- (iv) Sale of land or equipment contracts that exceed \$ 2,500,000, pursuant to a written appraisal from a licensed appraiser

(7) Bid Protests and Appeals

(A) A potential vendor who is not recommended for award of a contract after participating in DWSD's competitive solicitation process may protest the award of the contract by filing a written notice of protest with the Board of Water Commissioners within seven (7) days of the notice of award. The written notice shall reference the solicitation number and the basis for the protest.

(B) Upon receiving a bid protest, the DWSD Director shall immediately halt the processing of the relevant contract award until the protest has been resolved.

(C) The Bid Protest shall be reviewed by the staff of the Board of Water Commissioners in an expeditious manner. The Board of Water Commissioners shall vote to either accept or reject the bid protest within fourteen (14) days of the date upon which the protest was filed. If the Board or Water Commissioners accepts the bid protest, the DWSD Director shall act in accordance with the Board of Water Commissioners findings. If the Board of Water Commissioners rejects the Bid Protest, the Director of DWSD shall notify the protestor of that decision and their opportunity to appeal to the Detroit City Council.

(D) A potential vendor may appeal a denial of their bid protest to the Detroit City Council. To be valid, the appeal must be filed with the Detroit City Clerk within seven (7) days of receipt of the denial of their bid protest. The Detroit City Council, acting through its Committee on Public

health and Safety, shall decide whether to accept or reject the appeal within ten (10) days of receipt of the Appeal.

(8) Definitions

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

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 – means any business which employs a minimum of four (4) employees at least fifty-one (51) percent of which are city residents.

Joint Venture – means a joint venture of separate firms, one of which is a DBB or DRB which has been created to perform a specific contract, and is evidenced by a written agreement which provides at a minimum that the DBB or DRB:

- (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 – means a joint venture of separate firms, one of which is a D-BB, D-BSB, D-RB or D-BMBC, which has been created to perform a specific contract, and is evidenced by a written agreement which provides at a minimum that the D-BB, D-BSB, D-RB or D-BMBC:

- (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.

Customer Based Business – A business that is headquartered and operating in the region and that receives water or wastewater services from DWSD.