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By: **Montgomery County Delegation and Prince George's County  
Delegation**

Introduced and read first time: February 9, 2001  
Assigned to: Commerce and Government Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Washington Suburban Sanitary Commission - Contract Management**  
3 **MC/PG 127-01**

4 FOR the purpose of authorizing the Washington Suburban Sanitary Commission to  
5 procure certain management contracts for certain equipment and facilities;  
6 providing certain procedures regarding the procurement of certain management  
7 contracts by the Commission; requiring the Commission to complete a certain  
8 joint procurement process by a certain date; requiring the Commission to use  
9 certain criteria when reviewing certain bids; providing for the uses of certain  
10 proceeds or budgetary savings; requiring the Commission to report on the status  
11 of a certain procurement on or before a certain date; adding and altering certain  
12 definitions; and generally relating to the authority of the Washington Suburban  
13 Sanitary Commission to procure certain management contracts for certain  
14 equipment and facilities.

15 BY repealing and reenacting, with amendments,  
16 Article 29 - Washington Suburban Sanitary District  
17 Section 3-102(a) through (e), inclusive  
18 Annotated Code of Maryland  
19 (1997 Replacement Volume and 2000 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article 29 - Washington Suburban Sanitary District**

23 3-102.

24 (a) (1) In this section the following words have the meanings indicated.

25 (2) "Design/build contract" means a contract that provides for both  
26 architectural and engineering design services and construction services as a part of a  
27 single contract.

1 (3) "Facilities construction contract" means a contract that provides  
2 services for the construction of:

3 (i) Water or wastewater treatment plants;

4 (ii) Water or wastewater pumping stations and related force mains  
5 within the pumping station site limits;

6 (iii) Water storage facilities; and

7 (iv) Wastewater storage facilities or buildings.

8 (4) "MANAGEMENT CONTRACT" MEANS A CONTRACT THAT PROVIDES  
9 FOR THE MANAGEMENT OF:

10 (I) THE CONSTRUCTION OF A FACILITY; OR

11 (II) THE MAINTENANCE AND DAILY OPERATION OF EQUIPMENT OR  
12 A FACILITY.

13 [(4)] (5) "Pipeline contract" means a contract that provides services for  
14 the construction of a pipeline.

15 (b) This section only applies to design/build [contracts and] CONTRACTS,  
16 construction contracts, AND MANAGEMENT CONTRACTS.

17 (c) (1) Whenever the WSSC decides, after an opportunity for a hearing has  
18 been given, to proceed with the design or construction of a water supply or sanitary  
19 sewer system, OR WITH A MANAGEMENT CONTRACT FOR A WATER SUPPLY OR  
20 SANITARY SEWER SYSTEM, the WSSC shall comply with the requirements of this  
21 section.

22 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE  
23 WSSC MAY NOT INITIATE A BIDDING PROCESS FOR A MANAGEMENT CONTRACT OR  
24 SERIES OF MANAGEMENT CONTRACTS COVERING ALL OR A SIGNIFICANT PART OF  
25 THE FACILITIES OF THE WSSC WITHOUT PRIOR JOINT APPROVAL OF THE BIDDING  
26 PROCESS BY THE COUNTY EXECUTIVES AND COUNTY COUNCILS OF PRINCE  
27 GEORGE'S COUNTY AND MONTGOMERY COUNTY.

28 [(2)] (3) The WSSC shall advertise, by notice in newspapers and  
29 technical press as the WSSC considers proper, for bids or proposals for the design and  
30 construction of the system, in parts or as a whole, as the WSSC considers advisable.

31 [(3)] (4) Design/build contracts shall be used only for facilities  
32 construction contracts with costs exceeding \$2 million and may not be used for  
33 pipeline contracts.

34 [(4)] (5) The WSSC:

35 (i) May readvertise the work or any part of the work if the WSSC  
36 considers that the prices quoted are unreasonable; or

1 (ii) Subject to paragraph [(5)] (6) of this subsection, may do any  
2 part or all of the work by day labor.

3 [(5)] (6) Notwithstanding paragraph [(6)] (7) of this subsection, at any  
4 time the WSSC may expend \$15,000 or less by day labor for construction work  
5 without advertising or receiving bids or proposals.

6 [(6)] (7) The WSSC shall award contracts by:

7 (i) Competitive sealed bids in accordance with subsection (d) of this  
8 section; or

9 (ii) Competitive sealed proposals in accordance with subsection (e)  
10 of this section.

11 (8) THE WSSC SHALL BUDGET ADEQUATE RESOURCES UNDER § 1-204 OF  
12 THIS ARTICLE TO OBTAIN EXPERTS AND LEGAL AND FINANCIAL ADVISORY SERVICES  
13 NEEDED TO ENSURE THAT THE COMPETITIVE BIDDING AND PROPOSAL PROCESS  
14 UNDER THIS SECTION IS CONDUCTED FAIRLY.

15 [(7)] (9) The WSSC may reject any bid or proposal.

16 [(8)] (10) The WSSC:

17 (i) May adopt regulations to establish a prequalification process  
18 for bidders or offerors; and

19 (ii) Shall adopt regulations to govern discussions held under  
20 subsection (e)(3) of this section.

21 [(9)] (11) (i) Except as prohibited under subparagraph (ii) of this  
22 paragraph, the WSSC may enter into any type of contract under this section that  
23 promotes the best interest of the WSSC.

24 (ii) The WSSC:

25 1. May not enter a cost-plus-percentage-of-cost contract;  
26 and

27 2. Shall prohibit a cost-plus-percentage-of-cost subcontract  
28 under a WSSC contract.

29 (12) ON OR BEFORE APRIL 1, 2002, THE WSSC SHALL:

30 (I) COMPLETE A PROCUREMENT PROCESS FOR ONE OR MORE  
31 MANAGEMENT CONTRACTS COVERING ALL OR A SIGNIFICANT PART OF THE  
32 FACILITIES OF THE WSSC;

33 (II) REVIEW, AND APPROVE OR REJECT, BIDS FOR THE PROPOSED  
34 MANAGEMENT CONTRACTS; AND

1 (III) SUBMIT THE PROPOSED MANAGEMENT CONTRACTS AND  
2 PROPOSED USES OF CONTRACT PROCEEDS TO THE COUNTY EXECUTIVES AND  
3 COUNTY COUNCILS OF PRINCE GEORGE'S COUNTY AND MONTGOMERY COUNTY FOR  
4 THEIR JOINT APPROVAL.

5 (d) (1) (i) In this subsection the following words have the meanings  
6 indicated.

7 (ii) "Evaluated bid price" means the price of a bid after adjustment  
8 in accordance with objective measurable criteria.

9 (iii) 1. "Objective measurable criteria" means standards that  
10 enable the WSSC to compare the economy, effectiveness, or value of the subject of the  
11 bids.

12 2. "OBJECTIVE MEASURABLE CRITERIA" INCLUDES, FOR THE  
13 PURPOSE OF EVALUATING A BID FOR A MANAGEMENT CONTRACT:

14 A. IMPACT ON SUBSCRIBER RATES AND INCENTIVES FOR  
15 RATE REDUCTION;

16 B. CONTINUED COMPLIANCE WITH FEDERAL, STATE, AND  
17 LOCAL ENVIRONMENTAL REGULATION;

18 C. MAINTAINING WATER AND WASTEWATER QUANTITY AND  
19 QUALITY STANDARDS COMPARABLE TO THOSE ACHIEVED UNDER WSSC OPERATION;

20 D. PROTECTION OF THE EXISTING WORK FORCE AND  
21 MAINTENANCE OF LABOR STANDARDS, INCLUDING PENSIONS AND OTHER BENEFITS  
22 RECEIVED;

23 E. CONSUMER PROTECTION INITIATIVES; AND

24 F. EXPERIENCE AND COMPETENCE OF THE PROSPECTIVE  
25 CONTRACT MANAGER.

26 (2) If a contract is awarded based on competitive sealed bids, the WSSC  
27 shall seek bids by issuing an invitation to bid.

28 (3) Subject to paragraphs (4) through (6) of this subsection, an invitation  
29 to bid shall:

30 (i) Include the specifications of the contract; and

31 (ii) State whether the contract will be awarded based on the lowest  
32 bid price or the lowest evaluated bid price.

33 (4) If a contract will be awarded on an evaluated bid price, the invitation  
34 to bid shall include the objective measurable criteria by which the lowest evaluated  
35 bid price will be determined.

1 (5) The WSSC shall award contracts based on competitive sealed bids to  
2 the responsible bidder who submits the lowest bid price or lowest evaluated bid price,  
3 as appropriate.

4 (6) If the WSSC determines that an initial preparation of specifications  
5 for price bids is impractical, the invitation for bids may:

6 (i) Include a request for unpriced technical offers or samples; and

7 (ii) Direct the bidder to submit a:

8 1. Sealed price bid with the unpriced technical offer or  
9 sample; or

10 2. Price bid after the WSSC evaluates the technical offer or  
11 sample and finds that the offer or sample is acceptable under the criteria set forth in  
12 the invitation to bid.

13 (7) If an invitation to bid includes a request for unpriced technical offers  
14 or samples, the WSSC shall:

15 (i) Consider the price bid of a bidder whose technical offer or  
16 sample is acceptable;

17 (ii) Return unopened the price bid of a bidder whose technical offer  
18 or sample is unacceptable; and

19 (iii) Award the contract to the responsible bidder whose technical  
20 offer or sample is acceptable and who submits the lowest bid or lowest evaluated bid,  
21 as specified in the invitation to bid.

22 (8) IN EVALUATING BIDS FOR A MANAGEMENT CONTRACT, THE WSSC  
23 SHALL LIMIT THE NUMBER OF BIDDERS FOR FURTHER EVALUATION TO THOSE  
24 BIDDERS THAT ARE MOST QUALIFIED BASED ON A REVIEW OF OBJECTIVE  
25 MEASURABLE CRITERIA.

26 (e) (1) If a contract is awarded based on competitive sealed proposals, the  
27 WSSC shall seek proposals by issuing a request for proposals.

28 (2) A request for proposals shall include:

29 (i) A statement describing the scope of the contract;

30 (ii) The factors, including price, that will be used in evaluating  
31 proposals; and

32 (iii) The relative importance of each factor.

33 (3) After receipt of proposals, but before the contract is awarded, the  
34 WSSC may conduct discussions with an offeror to:

- 1 (i) Obtain the best price for the WSSC; and  
2 (ii) Ensure full understanding of the requirements of the WSSC, as  
3 set forth in the request for proposals and in the proposal.

4 (4) The WSSC:

- 5 (i) Shall treat all responsible offerors fairly and equally; and  
6 (ii) May allow each responsible offeror to revise the offeror's initial  
7 proposal and submit a best and final offer.

8 (5) The WSSC shall award a contract based on competitive sealed  
9 proposals to the responsible offeror who submits the proposal or best and final offer  
10 that the WSSC determines is the most advantageous to the WSSC, considering the  
11 evaluation factors set out in the request for proposals.

12 (6) THE WSSC SHALL USE 50% OF THE PROCEEDS, OR RESULTING  
13 BUDGETARY SAVINGS, FROM THE AWARD OF A MANAGEMENT CONTRACT FOR  
14 RETIREMENT OF FINANCIAL DEBT OF THE WSSC, IF ANY. EACH COUNTY MAY USE ITS  
15 PORTION OF THE REMAINING PROCEEDS, OR RESULTING BUDGETARY SAVINGS,  
16 FROM THE AWARD OF A MANAGEMENT CONTRACT FOR:

17 (I) RETIREMENT OF FINANCIAL DEBT;

18 (II) INFRASTRUCTURE DEVELOPMENT;

19 (III) RATE REDUCTION; OR

20 (IV) CAPITAL OR OPERATIONAL IMPROVEMENTS FOR THE QUALITY  
21 OF LIFE OF RESIDENTS OF ITS COUNTY, INCLUDING IMPROVEMENTS RELATING TO  
22 EDUCATION OR PUBLIC SAFETY.

23 (7) IF A COUNTY USES PROCEEDS OR SAVINGS FOR RATE REDUCTION  
24 UNDER PARAGRAPH (6) OF THIS SUBSECTION, THE RESULTING RATES:

25 (I) MUST BE UNIFORM WITHIN EACH COUNTY; BUT

26 (II) NEED NOT BE UNIFORM BETWEEN COUNTIES UNDER §  
27 6-101(A)(2) OF THIS ARTICLE.

28 (8) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE WSSC SHALL SUBMIT  
29 A REPORT TO THE HOUSE AND SENATE DELEGATIONS TO THE GENERAL ASSEMBLY  
30 FROM PRINCE GEORGE'S COUNTY AND MONTGOMERY COUNTY DESCRIBING IN  
31 DETAIL THE CONTRACT PROCEEDS AND BUDGETARY SAVINGS DERIVED FROM  
32 CONTRACT MANAGEMENT THAT WERE USED DURING THE PRECEDING FISCAL YEAR  
33 FOR REDUCTION OF FINANCIAL DEBT AND FOR OTHER PURPOSES UNDER  
34 PARAGRAPH (6) OF THIS SUBSECTION.

35 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1,  
36 2001, the Washington Suburban Sanitary Commission shall report on the status of

1 any procurement of a management contract under this Act to the House and Senate  
2 delegations to the General Assembly and the county executives and county councils of  
3 Prince George's County and Montgomery County, respectively.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 July 1, 2001.