

Recommended Changes in the Language Proposed in Bill MC/PG 101-23

Listed below are statements of opposition to the language used in proposed legislation MC/PG 101-23. Additionally, listed below are the basis for my opposition together with changes.

[20-204] Section (6)

(6) require each [general] **PRIME** contractor, **WHEN FEASIBLE**, to provide prompt notification to the Commission [if a contract] **BEFORE THE TERMINATION OF A CONTRACT** with a minority business enterprise [is terminated];

Opposition

- Please remove the words 'when feasible.' It is always feasible to provide prompt notification. Also, the basis for proposed termination should be stated.

[20-204] Section (7)(ii)

(7) require each [general] **PRIME** contractor to:

(ii) provide [justification for the inability of the general contractor] **DOCUMENTATION OF GOOD FAITH EFFORTS** to maintain the participation [level] **REFERENCED UNDER ITEM (4) OF THIS SUBSECTION;**

Opposition

- The standard of measure for 'good faith' should be as follows:
 - a. Good faith must be demonstrated through diligent efforts

[20-204] Section (10)

(10) [except as provided in item (11) of this subsection, provide] **ALLOW** for a system of granting a **PRICE** preference [of up to the lesser of 5% or \$50,000] to minority business enterprises in evaluating bids or proposals, **INCLUDING THE AVAILABILITY OF A GOOD FAITH WAIVER PROVISION FOR A PREFERENCE;**

Opposition

- I strongly oppose the following language in paragraph 10 which states that “a system of granting a PRICE preference [of up to the lesser of 5% or \$50,000] to minority business enterprises in evaluating bids or proposals.” The basis of my opposition is as follows:
 - a. A 5% price preference does not allow a certified minority business sufficient opportunity to establish-economic growth and become a viable business in Prince George’s or Montgomery County.
 - b. Based on the language as proposed a minority company may be the lowest bidder when the application of the 5% preference is included. However, if the estimated value of the bid exceeds \$1 million, the certified company could not receive the award and the award would be made to a non-certified company because of the \$50,000 ceiling that is proposed in the legislation.
 - c. Recent precedent has shown that under the circumstances previously stated, awards were made to larger companies who had no presence or investment in the economy of Prince George’s or Montgomery County.

- In summary my opposition is based on the fact that if WSSC is to have a meaningful and functional program, under the authority of the Office of Supplies Diversity and Inclusion, the above referenced language must be removed. The present language would have a negative impact on the entire program whether it involved goods & services, construction, professional services or any other contracting category. The \$50,000 ceiling for minority business preferences is in conflict with the targeted 40% of any contracts awarded (see [20-204] Section (13)).

- I therefore propose that the following language be inserted:
 - *That the current 5% preference that is the policy for evaluating bids for good and services be changed from the 5% to 10% for all certified minority and women owned businesses.

 - * I further recommend that companies who are certified as local, minority/women owned businesses be given an additional 5%, totaling a price preference of 15% because of their investment into the economy of Prince George's or Montgomery Counties.

[20-204] Section (14)(i)

(14)] authorize the Commission to:

(i) refuse to recognize the certification of a business found to be in violation of the purposes of the program; and


Opposition

- With reference to paragraph (i), please know that I believe in the rule of law and that there should be a penalty for anyone and everyone who violate the law. However, I see the proposed language as vague and unnecessary. Under existing procurement regulations, WSSC already has the authority to debar or suspend a contractor under the procurement regulations (see chapter 6.15.540). Therefore, please delete that line

[20-204] Section (14)(ii)

(14)] authorize the Commission to:

(ii) permanently bar an active principal of a violating business from future participation in the program.

 My opposition to (ii) is as follows:

- A standard of conduct should be noted or specific violations should be stated so as to justify permanently barring a principle owner of a business which involves his livelihood and the right to earn a living in a nation where they enjoy citizenship. The compelling question is what conduct could be so egregious that it would cause one to consider permanently barring anyone from participating in a system that is funded by citizens of the United States and State of Maryland with out due process. Further can a principal of a corporation be permanently banned without penetrating the veil of the corporation. "A statement of this magnitude should shock the conscience of both state and county elected officials."

For all the reasons above, I propose that the above referenced statement be deleted from the proposed legislation.

[20-204] Section (14)(c)(2)

(2) the principal owner of an eligible minority business enterprise is in not more than one certified business that is participating in the Commission minority business enterprise utilization program under this section.

Opposition

- My opposition to the language is as follows:
 - a. The language is too restrictive and contrary to our free enterprise system that we the people of America hold dear.

- b. I propose that in the absence of any violations of state or federal laws, a principle must be afforded the opportunity to participate in the program so long as the criteria for certification is met. Past precedent set by WSSC through various administrations over a 10 year period has shown that the restriction proposed is not necessary and principles have an ownership in more than one company has operated seamlessly by the evidence in WSSC records of contract awards.

[20-204] Section (14)(d)(3)

(3) If fewer than three certified minority business enterprises bid on a contract under the sheltered market program, the contract shall be awarded under subsection (b)(10) of this section.]

Opposition

- Change from shall to may or may not be
- Award under the shelter market program even if only one certified bidder responds to a bid under the following circumstances:
 - a. The prices submitted are reasonable based on market standards.
 - b. The bid is responsive to the specifications.
 - c. The bidder is responsible.
- My opposition is being made in consideration of procurement regulations which require competition in the awarding of contracts. However, it is recognized in procurement law and policy that there are circumstances where three bidders are not required, and waivers are granted. Based on the circumstances and the waivers are recognized as a suitable remedy in order to atone for past and present discrimination and racial bias.

Summary

In summary, please know that I appreciate Delegate Kris Valderrama, each individual of the committee, General Manager of WSSC and the Commission for reviewing policy and the willingness to take whatever action that is necessary in furtherance of the strength and sustainability of WSSC water infrastructure. Obviously, there are some things that are broken that need to be fixed in order to maintain and repair the water infrastructure. A vital part of the infrastructure is the economics that are in the equation and how that economic power is used to benefit the citizens of Prince George's and Montgomery County and the businesses who serve. A robust minority program operating under the Office of Supplier Diversity & Inclusion, is necessary in order to achieve the goal that is set forth by the laws of the State of Maryland and Prince George's and Montgomery County.

It is critical however that corrections be made so as to sustain and maintain a robust program. For an example, during the tenure of Jerry N. Johnson who served as General Manager, WSSC as an administration supported a minimum of 4% minority participation in the Ductile Iron Pipe Replacement contract #1096. After the passing of approximately 4 years, another administration took a step backward within the program and advertised a bid requiring only 2% minority participation for the same scope of work or 'commercially useful function' as performed in the previous contract (see WSSC Contract #16703 awarded 04/01/2021). This award is made in the face of strenuous opposition to the meager 2% requirement even though the prime contractor was willing to preference 4% that was proffered by the prime contractor in the previously awarded and executed contract #1096 (see document enclosed). It would appear that a proponent of the program would certainly not place in a bid requirement only 2% for the same services that were rendered on the previous contract (see Contract #16703 enclosed).

Finally, I am submitting this request for change in legislation with full knowledge the mission of WSSC is bigger than myself or anyone else. My appeal is to uphold a standard of conduct that is unyielding, unrelenting and above personal feelings or emotions.

Thank you for your attention and favorable response,

Lenward C. Hood

President of Omega Supply Services, Inc.



Washington Suburban Sanitary Commission

20150310-0006449

CONTRACTOR FACT SHEET

ACTION REQUESTED

Approval is requested to award Contract No. 1096 for Ductile Iron Pipe to HD Supply Waterworks, LTD in the amount of \$42,600,000.00.

CONTRACTOR/SUB-CONTRACTOR INFORMATION

PRIME:	SUB-CONTRACTOR:	PARTICIPATION:
<p>HD Supply Waterworks, LTD 2930 Industrial Park Dr. Finksburg, MD 21049</p>	<p>Omega Supply Services, Inc. 1818 New York Ave., NE Washington, DC 20002 (SDDD #14-9671, African American)</p>	<p>25% MBE subcontracting goal for African American, Asian American, Female/Women-Owned, and Hispanic American.</p> <p>HD Supply Waterworks, LTD to proffer 4% to one MBE firm below.</p> <p>4% - Perform trucking services.</p>

*James
Mason*

DESCRIPTION AND PURPOSE

Purpose of the Contract:

The purpose of this contract is to deliver ductile iron pipe and accessories on an as needed basis to the Commission's warehouse or to construction jobsites. The pipe is installed for water main construction projects to meet the Commission's annual Capital Improvement Plan requirements of installing approximately 50 - 60 miles of water main pipeline, on an annual basis.

Justification for the Contract Award:

- On October 2, 2014, a Request for Proposal (RFP) No. 1096 was advertised on the Commission's Centralized Bidder Registration (CBR) System with a bid closing date of October 20, 2014. Notifications were sent to 199 firms and 27 firms downloaded the solicitation.
- This contract was solicited under SP MBE 11-01 and contains a 25% MBE subcontracting goal.
- On October 22, 2014, five (5) proposals were received by the Procurement Office. The proponents include HD Supply Waterworks, LTD, Ferguson Waterworks, Acorn Supply & Distributing, Inc., Prospectus Enterprises, Inc., and Belair Road Supply Co., Inc.
- On November 18, 2015, Phase I, Technical Evaluation was completed. HD Supply Waterworks, LTD, Ferguson Waterworks, and Acorn Supply & Distributing, Inc. were selected to proceed to the Phase II Price Evaluation as the highest ranked proposals based on the following criteria: technical assistance, MBE participation, quality of program, ability to provide a full range of products, and innovativeness of methodology.
- On February 26, 2015, negotiations completed and, based on the combined technical and price proposal evaluations, the team recommended award of Contract No. 1096 to HD Supply Waterworks, LTD, the highest ranked, most responsible and responsive proponent, for a total amount of \$42,600,000.00 and a Base Term of three (3) years, and one (1) Option Term with a three (3) year duration.
- HD Supply Waterworks, LTD has proffered 4% to one certified minority-owned firm.
- On March 6, 2015, the SLMBE Office concurred with awarding this RFP to HD Supply Waterworks, LTD.

Scope:

This contract will furnish coated and uncoated ductile iron pipe and accessories ranging in size from 4" to 54" for use in WSSC water main construction projects.

COMMITTEE REVIEW & APPROVAL

Tracey Edwards 3/9/15
Tracey Edwards
Acting SLMBE Director
Date

Jesus R. Gonzalez 3/9/15
Jesus R. Gonzalez
Acting Chief Procurement
Officer
Date

Roscoe Wade 3/9/15
Roscoe Wade
Director of Logistics
Date

Jerry N. Johnson 3/10/15
Jerry N. Johnson
General Manager/CEO
Date



COMMISSION PACKAGE

ACTION REQUESTED:

Purpose of Commission Package: Request approval to award Contract No. 16703 for Ductile Iron Pipe and Accessories to Core and Main, LP in a not to exceed amount of \$72,000,000.00. The contract consists of a Base Term of three (3) years with a not to exceed amount of \$45,000,000.00 and one (1) two-year Option Term with a not to exceed amount of \$27,000,000.00.

Basis of Award: This solicitation is being awarded to the lowest, most responsive and responsible bidder.

PROJECT OVERVIEW:

The scope of this contract is to furnish and deliver Ductile Iron Pipe and Accessories of various configurations and coatings for the comprehensive rehabilitation, repair and replacement of water distribution and transmission mains throughout Prince Georges and Montgomery Counties.

CONTRACT DATA:

CONTRACT NO.:	16703	CUMULATIVE CONTRACT AMOUNT:	\$72,000,000.00
CONTRACT TERM:	5 YEARS	CONTRACT TYPE:	GOODS & SUPPLIES
PROCUREMENT TYPE:	IFB	OPTION TERM:	1, TWO -YEAR OPTION
PROJECT LOCATION:	<input type="checkbox"/> MONTGOMERY COUNTY <input type="checkbox"/> PRINCE GEORGE'S COUNTY <input checked="" type="checkbox"/> BOTH	OSDI CONCURRENCE:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

AWARDEE INFORMATION:

AWARDEE:	CORE AND MAIN, LP
CONTRACT AMOUNT:	\$72,000,000.00
PAST PERFORMANCE:	<input checked="" type="checkbox"/> SATISFACTORY <input type="checkbox"/> NO PAST PERFORMANCE

MBE/SLBE SUBCONTRACTING REQUIREMENT: 2.00%

- AFRICAN AMERICAN ASIAN AMERICAN NATIVE AMERICAN
 HISPANIC AMERICAN WOMEN OWNED WSSC-SLBE APPROVED

SUBCONTRACTORS (OSDI APPROVED SUBCONTRACTING PLAN)	PROFFERED PERCENTAGE	CLASSIFICATION	SUMMARY OF SERVICES
OMEGA SUPPLY SERVICES, INC.	2.00%	MBE	Render transportation and logistical support services.