
By: Prince George's County and Montgomery County Delegations

Introduced and read first time: February 1, 1996

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Washington Suburban Sanitary Commission - Design/Build and Construction Contracts**
3 **PG/MC 10-96**

4 FOR the purpose of altering the manner by which the Washington Suburban Sanitary
5 Commission (WSSC) may award certain contracts relating to the design and
6 construction of water supply or sanitary sewer systems; establishing procedures
7 governing the award of certain contracts; prohibiting costs-plus percentage of costs
8 contracts; authorizing the WSSC to adopt certain regulations; requiring the WSSC
9 to adopt certain regulations; requiring that certain contracts be awarded to certain
10 responsible bidders; defining certain terms; providing for the construction of this
11 Act; and generally relating to the award of contracts for the design and construction
12 of certain systems by the WSSC.

13 BY repealing and reenacting, with amendments,
14 Article 29 - Washington Suburban Sanitary District
15 Section 3-102(a), (b), (c), and (d)(2)
16 Annotated Code of Maryland
17 (1993 Replacement Volume and 1995 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article 29 - Washington Suburban Sanitary District
20 Section 3-102(e)
21 Annotated Code of Maryland
22 (1993 Replacement Volume and 1995 Supplement)

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

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

26 3-102.

27 (a) (1) [When the plans and specifications for water supply or sanitary
28 sewerage systems for any district have been completed and] IN THIS SECTION,
29 "DESIGN/BUILD CONTRACT" MEANS A CONTRACT THAT PROVIDES FOR BOTH

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1 ARCHITECTURAL AND ENGINEERING DESIGN SERVICES AND CONSTRUCTION
2 SERVICES AS A PART OF A SINGLE CONTRACT.

3 (2) THIS SECTION ONLY APPLIES TO DESIGN/BUILD CONTRACTS AND
4 CONSTRUCTION CONTRACTS.

5 (3) WHENEVER the WSSC [has decided] DECIDES, after an opportunity
6 for a hearing has been given, to proceed with the DESIGN OR construction OF A WATER
7 SUPPLY OR SANITARY SEWER SYSTEM, the WSSC shall COMPLY WITH THE
8 REQUIREMENTS OF THIS SECTION.

9 (4) THE WSSC SHALL advertise, by notice in newspapers and technical press
10 as the WSSC considers proper, for bids OR PROPOSALS for the DESIGN AND
11 construction of the system, in parts or as a whole, as the WSSC considers advisable.

12 [(b) (1) The WSSC:

13 (i) Shall let the bid to the lowest responsible bidder; or

14 (ii) May reject any or all bids.

15 (2)] (5) The WSSC:

16 (i) May readvertise the work or any part of the work if the WSSC
17 considers that the prices quoted are unreasonable; [and] OR

18 (ii) Subject to [the provisions of subsection (c)] PARAGRAPH (6) of
19 this [section] SUBSECTION, may do any part or all of the work by day labor.

20 [(c)] (6) [At] NOTWITHSTANDING PARAGRAPH (7) OF THIS SUBSECTION, AT
21 any time the WSSC may expend \$15,000 or less by day labor for construction work
22 without advertising or receiving bids OR PROPOSALS.

23 (7) THE WSSC SHALL AWARD CONTRACTS BY:

24 (I) COMPETITIVE SEALED BIDS IN ACCORDANCE WITH
25 SUBSECTION (B) OF THIS SECTION; OR

26 (II) COMPETITIVE SEALED PROPOSALS IN ACCORDANCE WITH
27 SUBSECTION (C) OF THIS SECTION.

28 (8) THE WSSC MAY REJECT ANY BID OR PROPOSAL.

29 (9) THE WSSC:

30 (I) MAY ADOPT REGULATIONS TO ESTABLISH A
31 PREQUALIFICATION PROCESS FOR BIDDERS OR OFFERORS; AND

32 (II) SHALL ADOPT REGULATIONS TO GOVERN DISCUSSIONS HELD
33 UNDER SUBSECTION (C)(3) OF THIS SECTION.

34 (10) (I) EXCEPT AS PROHIBITED UNDER SUBPARAGRAPH (II) OF THIS
35 PARAGRAPH, THE WSSC MAY ENTER INTO ANY TYPE OF CONTRACT UNDER THIS
36 SECTION THAT PROMOTES THE BEST INTEREST OF THE WSSC.

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1 (II) THE WSSC:

2 1. MAY NOT ENTER A COST-PLUS-PERCENTAGE-OF-COST
3 CONTRACT; AND

4 2. SHALL PROHIBIT A COST-PLUS-PERCENTAGE-OF-COST
5 SUBCONTRACT UNDER A WSSC CONTRACT.

6 (B) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
7 MEANINGS INDICATED.

8 (II) "EVALUATED BID PRICE" MEANS THE PRICE OF A BID AFTER
9 ADJUSTMENT IN ACCORDANCE WITH OBJECTIVE MEASURABLE CRITERIA.

10 (III) "OBJECTIVE MEASURABLE CRITERIA" MEANS STANDARDS
11 THAT ENABLE THE WSSC TO COMPARE THE ECONOMY, EFFECTIVENESS, OR VALUE
12 OF THE SUBJECT OF THE BIDS.

13 (2) IF A CONTRACT IS AWARDED BASED ON COMPETITIVE SEALED BIDS,
14 THE WSSC SHALL SEEK BIDS BY ISSUING AN INVITATION TO BID.

15 (3) SUBJECT TO PARAGRAPHS (4) THROUGH (6) OF THIS SUBSECTION,
16 AN INVITATION TO BID SHALL:

17 (I) INCLUDE THE SPECIFICATIONS OF THE CONTRACT; AND

18 (II) STATE WHETHER THE CONTRACT WILL BE AWARDED BASED
19 ON THE LOWEST BID PRICE OR THE LOWEST EVALUATED BID PRICE.

20 (4) IF A CONTRACT WILL BE AWARDED ON AN EVALUATED BID PRICE,
21 THE INVITATION TO BID SHALL INCLUDE THE OBJECTIVE MEASURABLE CRITERIA
22 BY WHICH THE LOWEST EVALUATED BID PRICE WILL BE DETERMINED.

23 (5) THE WSSC SHALL AWARD CONTRACTS BASED ON COMPETITIVE
24 SEALED BIDS TO THE RESPONSIBLE BIDDER WHO SUBMITS THE LOWEST BID PRICE
25 OR LOWEST EVALUATED BID PRICE, AS APPROPRIATE.

26 (6) IF THE WSSC DETERMINES THAT AN INITIAL PREPARATION OF
27 SPECIFICATIONS FOR PRICE BIDS IS IMPRACTICAL, THE INVITATION FOR BIDS MAY:

28 (I) INCLUDE A REQUEST FOR UNPRICED TECHNICAL OFFERS OR
29 SAMPLES; AND

30 (II) DIRECT THE BIDDER TO SUBMIT A:

31 1. SEALED PRICE BID WITH THE UNPRICED TECHNICAL
32 OFFER OR SAMPLE; OR

33 2. PRICE BID AFTER THE WSSC EVALUATES THE TECHNICAL
34 OFFER OR SAMPLE AND FINDS THAT THE OFFER OR SAMPLE IS ACCEPTABLE UNDER
35 THE CRITERIA SET FORTH IN THE INVITATION TO BID.

36 (7) IF AN INVITATION TO BID INCLUDES A REQUEST FOR UNPRICED
37 TECHNICAL OFFERS OR SAMPLES, THE WSSC SHALL:

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1 (I) CONSIDER THE PRICE BID OF A BIDDER WHOSE TECHNICAL
2 OFFER OR SAMPLE IS ACCEPTABLE;

3 (II) RETURN UNOPENED THE PRICE BID OF A BIDDER WHOSE
4 TECHNICAL OFFER OR SAMPLE IS UNACCEPTABLE; AND

5 (III) AWARD THE CONTRACT TO THE RESPONSIBLE BIDDER WHOSE
6 TECHNICAL OFFER OR SAMPLE IS ACCEPTABLE AND WHO SUBMITS THE LOWEST BID
7 OR LOWEST EVALUATED BID, AS SPECIFIED IN THE INVITATION TO BID.

8 (C) (1) IF A CONTRACT IS AWARDED BASED ON COMPETITIVE SEALED
9 PROPOSALS, THE WSSC SHALL SEEK PROPOSALS BY ISSUING A REQUEST FOR
10 PROPOSALS.

11 (2) A REQUEST FOR PROPOSALS SHALL INCLUDE:

12 (I) A STATEMENT DESCRIBING THE SCOPE OF THE CONTRACT;

13 (II) THE FACTORS, INCLUDING PRICE, THAT WILL BE USED IN
14 EVALUATING PROPOSALS; AND

15 (III) THE RELATIVE IMPORTANCE OF EACH FACTOR.

16 (3) AFTER RECEIPT OF PROPOSALS, BUT BEFORE THE CONTRACT IS
17 AWARDED, THE WSSC MAY CONDUCT DISCUSSIONS WITH AN OFFEROR TO:

18 (I) OBTAIN THE BEST PRICE FOR THE WSSC; AND

19 (II) ENSURE FULL UNDERSTANDING OF THE REQUIREMENTS OF
20 THE WSSC, AS SET FORTH IN THE REQUEST FOR PROPOSALS AND IN THE PROPOSAL.

21 (4) IF DISCUSSIONS UNDER PARAGRAPH (3) OF THIS SUBSECTION ARE
22 HELD, THE WSSC:

23 (I) SHALL TREAT ALL RESPONSIBLE OFFERORS FAIRLY AND
24 EQUALLY; AND

25 (II) MAY ALLOW EACH RESPONSIBLE OFFEROR TO REVISE THE
26 OFFEROR'S INITIAL PROPOSAL AND SUBMIT A BEST AND FINAL OFFER.

27 (5) THE WSSC SHALL AWARD A CONTRACT BASED ON COMPETITIVE
28 SEALED PROPOSALS TO THE RESPONSIBLE OFFEROR WHO SUBMITS THE PROPOSAL
29 OR BEST AND FINAL OFFER THAT THE WSSC DETERMINES IS THE MOST
30 ADVANTAGEOUS TO THE WSSC, CONSIDERING THE EVALUATION FACTORS SET OUT
31 IN THE REQUEST FOR PROPOSALS.

32 (d) (2) By resolution and by implementing rules and regulations, the WSSC
33 shall establish a mandatory minority business utilization program to facilitate the
34 participation of responsible certified minority business enterprises in contracts awarded
35 by the WSSC in accordance with competitive bidding OR PROPOSAL procedures.

36 (e) All contracts may be protected by bonds, penalties, and conditions required by
37 the WSSC, all of which are enforceable in any court that has jurisdiction.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 1996.