
By: Prince George's County and Montgomery County Delegations

Introduced and read first time: February 1, 1996

Assigned to: Commerce and Government Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 15, 1996

CHAPTER ____

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 facilities and systems; establishing
7 procedures governing the award of certain contracts; prohibiting costs-plus
8 percentage of costs contracts; authorizing the WSSC to adopt certain regulations;
9 requiring the WSSC to adopt certain regulations; requiring that certain contracts be
10 awarded to certain responsible bidders; defining certain terms; providing for the
11 construction of this Act; and generally relating to the award of contracts for the
12 design and construction 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), and (e)
16 Annotated Code of Maryland
17 (1993 Replacement Volume and 1995 Supplement)

18 BY ~~repealing and reenacting, without amendments,~~ renumbering
19 Article 29 - Washington Suburban Sanitary District
20 ~~Section 3-102(e)~~ Section 3-102(d)(1) and (3) through (7), respectively
21 to be Section 3-102(f)(1) and (3) through (7), respectively
22 Annotated Code of Maryland
23 (1993 Replacement Volume and 1995 Supplement)

2

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

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

4 3-102.

5 (a) (1) [When the plans and specifications for water supply or sanitary
6 sewerage systems for any district have been completed and] IN THIS SECTION; THE
7 FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

8 (2) "DESIGN/BUILD CONTRACT" MEANS A CONTRACT THAT PROVIDES
9 FOR BOTH ARCHITECTURAL AND ENGINEERING DESIGN SERVICES AND
10 CONSTRUCTION SERVICES AS A PART OF A SINGLE CONTRACT.

11 (3) "FACILITIES CONSTRUCTION CONTRACT" MEANS A CONTRACT THAT
12 PROVIDES SERVICES FOR THE CONSTRUCTION OF:

13 (I) WATER OR WASTEWATER TREATMENT PLANTS;

14 (II) WATER OR WASTEWATER PUMPING STATIONS AND RELATED
15 FORCE MAINS WITHIN THE PUMPING STATION SITE LIMITS;

16 (III) WATER STORAGE FACILITIES; AND

17 (IV) WASTEWATER STORAGE FACILITIES OR BUILDINGS.

18 (4) "PIPELINE CONTRACT" MEANS A CONTRACT THAT PROVIDES
19 SERVICES FOR THE CONSTRUCTION OF A PIPELINE.

20 ~~(2)~~ (B) THIS SECTION ONLY APPLIES TO DESIGN/BUILD CONTRACTS
21 AND CONSTRUCTION CONTRACTS.

22 ~~(3)~~ (C) (1) WHENEVER the WSSC [has decided] DECIDES, after an
23 opportunity for a hearing has been given, to proceed with the DESIGN OR construction
24 OF A WATER SUPPLY OR SANITARY SEWER SYSTEM, the WSSC shall COMPLY WITH
25 THE REQUIREMENTS OF THIS SECTION.

26 ~~(4)~~ (2) THE WSSC SHALL advertise, by notice in newspapers and technical
27 press as the WSSC considers proper, for bids OR PROPOSALS for the DESIGN AND
28 construction of the system, in parts or as a whole, as the WSSC considers advisable.

29 (3) DESIGN/BUILD CONTRACTS SHALL BE USED ONLY FOR FACILITIES
30 CONSTRUCTION CONTRACTS WITH COSTS EXCEEDING \$2 MILLION AND MAY NOT BE
31 USED FOR PIPELINE CONTRACTS.

32 [(b) (1) The WSSC:

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

34 (ii) May reject any or all bids.

35 (2)] ~~(5)~~ (4) The WSSC:

3

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

3 (ii) Subject to [the provisions of subsection (c)] PARAGRAPH ~~(6)~~ (5)
4 of this [section] SUBSECTION, may do any part or all of the work by daylabor.

5 [(c)] ~~(5)~~ [At] NOTWITHSTANDING PARAGRAPH ~~(7)~~ (6) OF THIS
6 SUBSECTION, AT any time the WSSC may expend \$15,000 or less by day labor for
7 construction work without advertising or receiving bids OR PROPOSALS.

8 ~~(7)~~ (6) THE WSSC SHALL AWARD CONTRACTS BY:

9 (I) COMPETITIVE SEALED BIDS IN ACCORDANCE WITH
10 SUBSECTION ~~(B)~~ (D) OF THIS SECTION; OR

11 (II) COMPETITIVE SEALED PROPOSALS IN ACCORDANCE WITH
12 SUBSECTION ~~(C)~~ (E) OF THIS SECTION.

13 ~~(8)~~ (7) THE WSSC MAY REJECT ANY BID OR PROPOSAL.

14 ~~(9)~~ (8) THE WSSC:

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

17 (II) SHALL ADOPT REGULATIONS TO GOVERN DISCUSSIONS HELD
18 UNDER SUBSECTION ~~(C)~~(3) (E)(3) OF THIS SECTION.

19 ~~(10)~~ (9) (I) EXCEPT AS PROHIBITED UNDER SUBPARAGRAPH (II) OF
20 THIS PARAGRAPH, THE WSSC MAY ENTER INTO ANY TYPE OF CONTRACT UNDER
21 THIS SECTION THAT PROMOTES THE BEST INTEREST OF THE WSSC.

22 (II) THE WSSC:

23 1. MAY NOT ENTER A COST-PLUS-PERCENTAGE-OF-COST
24 CONTRACT; AND

25 2. SHALL PROHIBIT A COST-PLUS-PERCENTAGE-OF-COST
26 SUBCONTRACT UNDER A WSSC CONTRACT.

27 ~~(B)~~ (D) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
28 MEANINGS INDICATED.

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

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

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

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

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

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

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

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

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

12 (I) INCLUDE A REQUEST FOR UNPRICED TECHNICAL OFFERS OR
13 SAMPLES; AND

14 (II) DIRECT THE BIDDER TO SUBMIT A:

15 1. SEALED PRICE BID WITH THE UNPRICED TECHNICAL
16 OFFER OR SAMPLE; OR

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

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

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

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

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

29 ~~(E)~~ (E) (1) IF A CONTRACT IS AWARDED BASED ON COMPETITIVE SEALED
30 PROPOSALS, THE WSSC SHALL SEEK PROPOSALS BY ISSUING A REQUEST FOR
31 PROPOSALS.

32 (2) A REQUEST FOR PROPOSALS SHALL INCLUDE:

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

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

36 (III) THE RELATIVE IMPORTANCE OF EACH FACTOR.

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

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

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

6 (4) ~~IF DISCUSSIONS UNDER PARAGRAPH (3) OF THIS SUBSECTION ARE~~
7 ~~HELD~~, THE WSSC:

8 (I) SHALL TREAT ALL RESPONSIBLE OFFERORS FAIRLY AND
9 EQUALLY; AND

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

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

17 ~~(F)~~ (F) (2) By resolution and by implementing rules and regulations, the
18 WSSC shall establish a mandatory minority business utilization program to facilitate the
19 participation of responsible certified minority business enterprises in contracts awarded
20 by the WSSC in accordance with competitive bidding OR PROPOSAL procedures.

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 3-102(d)(1)
24 and (3) through (7), respectively, of Article 29 - Washington Suburban Sanitary District
25 of the Annotated Code of Maryland be renumbered to be Section(s) 3-102(f)(1) and (3)
26 through (7), respectively.

27 SECTION 2- 3. AND BE IT FURTHER ENACTED, That this Act shall take
28 effect October 1, 1996.