

ETHICS IN PUBLIC CONTRACTING
(EXCERPTS FROM THE WSSC CODE OF ETHICS)

Section 1-3. Definitions.

In this Code of Ethics, unless the context clearly indicates otherwise, the following words or phrases have the meanings stated:

- (a) **Board** means the WSSC Board of Ethics.
- (b) **Business** means any for-profit or not-for profit enterprise, including a corporation, general or limited partnership, sole proprietorship, joint venture, association, firm, institute, trust, or foundation. **Business** does not include a governmental entity.
- (c) **Commission** means the Washington Suburban Sanitary Commission and **Commissioner** means a member of the **Commission** appointed under Article 29 of the Annotated Code of Maryland.
- (d) **Compensation** means any money or thing of value, regardless of form, including the sale or delivery of tangible or intangible property, that an **employer** pays or agrees to pay for services rendered.
- (f) **Employee** means any **person** employed by **WSSC** whether or not employed on a merit, non-merit, contract, temporary, permanent, or part-time basis.
- (h) **Employment** or **Employ** means engaging in an activity for **compensation**.
- (i) **Entity** means a **person** or government or instrumentality of a government.
- (k) **Gift** means the transfer of anything of economic value, regardless of form, without an exchange of consideration of at least equal value. **Gift** does not include a transfer regulated by state or federal law governing political campaigns or elections.
- (n) **Interest** means any source of income or any other legal or equitable economic interest, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or in part, jointly or severally, directly or indirectly. **Interest** does not include:
 - (1) an interest in a time deposit or demand deposit in a financial institution;
 - (2) an interest in an insurance policy, endowment policy, or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;
 - (3) an interest in a mutual fund or exchange-traded fund(ETF);
 - (4) an interest held in the capacity of agent, custodian, fiduciary, personal representative, or trustee, unless the holder has an equitable interest in the subject matter; or
 - (5) an interest in a deferred compensation plan that:
 - (A) has more than 25 participants; and
 - (B) the Internal Revenue Service has determined qualifies as a trust under section 401, 457, and 501 of the Internal Revenue Code.
- (r) **Person** means an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind and any partnership, firm, association, corporation, or other **entity**.
- (u) **WSSC** means the Washington Suburban Sanitary Commission

Section 4-1. Reporting of Suspected Collusive or Fraudulent Bidding or Negotiation.

- (a) **Notification to the General Counsel.** When for any reason, collusion or fraud is suspected among any bidders or offerors, a written notice of such suspicion must be transmitted by a **Commissioner** or **employee** to the General Counsel.
- (b) **Retention of all documents.** All documents involved in any procurement in which collusion is suspected must be retained until the General Counsel determines otherwise. All retained documents must be made available to the General Counsel or designee upon request.

Section 4-2. Illegal Gifts and Kickbacks.

- (a) *Gifts.* A bidder, offeror, or contractor must not make or offer to make a **gift** to a **Commissioner** or **employee** that the **Commissioner** or **employee** is prohibited from accepting under Article 3 of the WSSC Code of Ethics or other law.
- (b) *Kickbacks.*
 - (1) In these regulations, a kickback means any money, fee, commission, credit, **gift**, or **compensation** of any kind which is provided directly or indirectly to a prime contractor, a prime contractor employee, a subcontractor, a subcontractor employee, a **Commissioner** or **employee**, or other **person** for the purpose of obtaining or rewarding favorable treatment in the award of a prime contract or a subcontract in connection with a contract awarded by **WSSC**.
 - (2) A **person** must not:
 - (A) provide, attempt to provide, or offer to provide a kickback;
 - (B) solicit, accept, or attempt to accept a kickback;
 - (C) include, directly or indirectly, the amount of a kickback in the price charged by the subcontractor to the contractor, or by the prime contractor in the price charged by the prime contractor, to **WSSC**; or
 - (D) claim that the unlawfully induced contract or subcontract fulfills any legal, regulatory, or contractual requirement.
 - (3) **WSSC** may offset the amount of a kickback from any sum owed to the prime contractor by **WSSC**.

Section 4-3. Ethics; Contractor Conduct.

- (a) During the conduct of a procurement, a bidder or offeror, or any officer, **employee**, representative, agent, or consultant of any bidder or offeror, may not knowingly:
 - (1) make any offer or promise of future **employment** or business opportunity to, or engage in any discussion of future **employment** or business opportunity with, any **WSSC employee** or **Commissioner** involved in the procurement;
 - (2) offer, give, or promise to offer or give any money, gratuity, or other thing of value to any **WSSC employee** or **Commissioner** involved in the procurement; or
 - (3) solicit or obtain from any **employee** or **Commissioner** of **WSSC** before the award of a contract, any proprietary or source selection information regarding the procurement.
- (b) A contractor providing an analysis or recommendation to **WSSC** concerning a particular matter must not, without first obtaining the written consent of the General Manager, after comment from the **Board**:
 - (1) assist:
 - (A) another party in the matter; or
 - (B) another **person** if the **person** has a direct and substantial **interest** in the matter; or
 - (2) seek or obtain an economic benefit from the matter in addition to payment to the contractor by **WSSC**.
- (c) A contractor must not use confidential information obtained in relation to performing a contract except as expressly authorized in the contract or by the General Manager.
- (d) In connection with a contract with **WSSC**, a **person** must not willfully:
 - (1) falsify, conceal, or suppress a material fact by any scheme or device;
 - (2) make a false or fraudulent statement or representation of material fact; or
 - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (e) A **person** may not aid or conspire with another **person** to commit an act under subsection (d).

Section 4-4. Participation in Procurement.

- (a) An individual or **entity** that employs an individual who assists **WSSC** in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals may not:
 - (1) submit a bid or proposal for that procurement; or
 - (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.
- (b) For purposes of subsection (a) of this section, assisting in the drafting of specifications does not include:
 - (1) providing descriptive literature such as catalogue sheets, brochures, technical data sheets, or standard specification "samples", whether requested by **WSSC** or provided on an unsolicited basis;
 - (2) submitting written comments on a specification prepared by **WSSC** or on a solicitation or bid or proposal when comments are solicited from two or more persons as part of a request for information or a pre-bid or pre-proposal process;
 - (3) providing specifications for a sole source procurement made in accordance with the Procurement Manual; or
 - (4) providing architectural and engineering services for programming, master planning, or other project planning services.

Section 4-5. Consultants-Conflicts of Interest Affidavit; Non-Conviction Affidavit.

- (a) Each invitation for bids or requests for proposals for a contract that will involve the selection of a consultant who is to assist **WSSC** in the formation, award, or execution of any **WSSC** contract shall require that a bidder or offeror provide **WSSC** with an affidavit that discloses any actual or potential conflict of interest of which the bidder or offeror knows, or reasonably can be expected to know.
- (b) Requirements for disclosure of conflicts of interests under this section shall be consistent with those applicable to State agency consultants under Md. Ann. Code, State Finance and Procurement Article, §13-212.
- (c) Except as may be provided in **WSSC** procurement regulations, each **person**, upon submitting a bid or proposal or other application for a contract with **WSSC** shall submit an affidavit of non-conviction (and related affirmation) in accordance with Md. Ann. Code, State Finance and Procurement Article §16-311. The affidavit additionally shall cover any convictions of making a payment of a gratuity to, or supplementing the salary of, a public official or similar offenses relating to public graft. The affidavit shall cover any conviction by any officer, director, partner, or **employee** of the **person** or, if the **person** is a **business**, the **business** itself. To the extent known, the affidavit shall also cover convictions of any officer, director, partner, employee of, and including a **business**, related by common ownership or management control, including subsidiaries, affiliates, or parent corporations.
- (d) Conviction, including an accepted plea of nolo contendere, of any of the offenses set forth in subsection (c) may be grounds for debarment or a determination by **WSSC** that a bidder or offeror is not responsible to perform the contract.
- (e) This section is not intended to preclude **WSSC** from imposing similar conflict of interest requirements as conditions in its other contracts.

Section 4-6. Disclosure of Procurement Information.

- (a) After a solicitation is issued and until a recommendation is made by a procurement officer or a project manager, the procurement officer, project manager or any other **WSSC employee** or **Commissioner** involved in the procurement may only disclose to a **person** outside **WSSC**:
 - (1) whether a decision has been made regarding the solicitation; and
 - (2) information that is available to the public under the Maryland Public Information Act.
- (b) After a solicitation is issued, a procurement officer or project manager shall record and include in the procurement file the following information from a source outside **WSSC**:
 - (1) the date and time of the inquiry or communication;
 - (2) the name and affiliation of the person making the inquiry

- (3) or communication; and
the substance and nature of the inquiry or communication.
- (c) After a recommendation is made by a procurement officer or project manager, but before final action on the procurement, a **WSSC** employee or **Commissioner** responsible for approving or recommending the contract award shall provide the procurement officer or project manager, for inclusion in the procurement file, a written summary of any inquiries or communications from a source outside **WSSC** in the manner provided in subsection (b) of this section.
- (d) This section is not intended to cover inquiries or communications in the course of activities clearly contemplated under **WSSC's** procurement procedures such as pre-bid conferences, proposal evaluation interviews, competitive or sole source negotiation, or the negotiation and execution of contracts.

Section 4-7. Prohibited Contingent Fees.

- (a) A **person** must not retain another to secure a contract from **WSSC** under an agreement that in exchange for the contract, the **person** will pay another a commission, percentage of the contract, or a contingent fee.
- (b) This section does not apply to:
 - (1) a bona fide **employee** or commercial selling agency retained by the **person** for the purpose of securing **business**; or
 - (2) an attorney rendering professional legal services consistent with applicable canons of ethics.

Section 4-8. Civil or Administrative Remedies Against Those Who Violate Ethical Standards.

- (a) Violation of the provisions of this Article may result in the voiding by **WSSC** of the applicable contract, suspension, debarment, or a determination that a bidder or offeror is not responsible to perform a contract. Any civil and administrative remedies for violations of ethical standards which are codified elsewhere in law or regulation, or which are applicable by contract, are not impaired.
- (b) The value of anything received by any **person** for a violation of the ethical standards contained in this Article are recoverable from the **person** by **WSSC** by setoff, attachment, garnishment, or other appropriate legal action. A **person** who, for the purpose of defrauding **WSSC**, acts in collusion with another person in connection with procurement process is liable for damages equal to three times the value of the loss to **WSSC** that is attributable to the collusion under Md. Ann. Code, State Finance and Procurement Article §11-205.
- (c) If a **person** makes a kickback in connection with the award of a contract, subcontract or order, **WSSC** is entitled to presume conclusively that the amount of the kickback was included in the price of the contract, subcontract, or order and ultimately borne by **WSSC**. The amount of the kickback may be recovered from the:
 - (1) recipient; or
 - (2) **person** making the kickback.

Section 4-9. Penalties.

- (a) Any criminal penalties for violations of ethical standards codified elsewhere by law or regulation are not impaired.
- (b) Following a final criminal conviction of an **employee** for violation of a provision of this Article, **WSSC** must release the convicted **employee**. Pending completion of any criminal proceedings, the **WSSC** may suspend, with or without pay, the accused **employee**.