

PART II
WASHINGTON SUBURBAN SANITARY COMMISSION
PROCUREMENT OFFICE
GENERAL CONDITIONS
GOODS & SUPPLIES

GENERAL CONDITIONS – GOODS & SUPPLIES

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ARTICLE 1. CONTRACT DOCUMENTS

- 1.1. The Contract Documents include WSSC's Procurement Regulations, the Solicitation, Invitation for Bids, Bonds, Notice of Award, Notice to Proceed, Change Orders, Drawings, Certificate of Substantial Completion, Specifications, these General Conditions, Special Conditions, Standard Details, Amendments, Addenda, Contract Execution Page, and Federal Contract Provisions when required.
- 1.2. The intent of the Contract Documents is that the Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy or operation by the Commission.
- 1.3. In resolving conflicts, errors, and discrepancies within the Contract Documents, the Documents shall be given precedence in the following order:

Federal Contract Provisions (only if identified and incorporated in the Contract Documents)

- WSSC Procurement Regulations
- Change Orders
- Amendments
- Addenda
- Special Conditions
- General Conditions
- Invitation for Bids
- Contract Execution Page
- Notice to Proceed
- Notice of Award
- Specifications/Statement of Work
- Drawings

ARTICLE 2. ECONOMIC PRICE ADJUSTMENT

- 2.1. All prices will remain firm for the initial term of the Agreement period. Any de-escalation/escalation in prices will be made on an annual basis thereafter at the sole discretion of the Commission. Requests for price adjustments must be made by the Contractor in writing at least 60 days in advance. The baseline for determining price adjustments will be based upon the closing date of the solicitation. All requests for price increase or decrease are subject to review and approval by the Commission. The maximum increase will have a ceiling of 10% annually and a net decrease of 10% annually. Changes in prices shall be based on the U.S. Bureau of Labor Statistics, average increase or decrease for the most recent calendar year, (As stated in solicitation).

ARTICLE 3. WORKING HOURS

- 3.1. The Contractor will only be permitted access to the Commission's facilities during the general working hours of 7:00 a.m. to 3:30 p.m., local prevailing time, Monday through Friday, except on Commission observed holidays. Any other times will be noted in the solicitation documents.
- 3.2. If it becomes necessary for the Contractor to perform work during Commission non-working hours, permission to work must be granted by the Project/Contract Manager. The Contractor will be required to furnish to the Project/Contract Manager a list of the Contractor's employees who will be working. No additional compensation shall be paid for hours worked during non-working hours.

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ARTICLE 4. HOLIDAYS

- 4.1. Access to Commission facilities will be denied on holidays. It is the responsibility of the Contractor to determine on which specific dates these holidays are observed by the Commission.
- 4.2. The Commission observes the following holidays: New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, General Election Day (even numbered years) and Inauguration Day.

ARTICLE 5. CONTRACTORS RESPONSIBILITIES

- 5.1. The work to be performed under this Contract will be performed in and around operating facilities. The Contractor will take all precautions necessary to prevent interference with the Commission's operations.

ARTICLE 6. DELIVERY

- 6.1. All deliveries made to the Commission Facilities shall be made F.O.B. destination. Receiving hours are from 7:30 A.M. to 11:45 A.M. and 12:45 P.M. to 3:45 P.M., Monday through Fridays, except on Commission holidays (unless otherwise noted in solicitation documents).

ARTICLE 7. PROPERTY DAMAGE

- 7.1. Should any damage to Commission property be caused by the Contractor, employees or agents of the Contractor, the Contractor will be required to report them to the Commission's Project Manager and make repairs immediately, to the satisfaction of the Commission's Project Manager and at no cost to the Commission. The Commission may, however, elect to make repairs or replace the damaged property and deduct the cost of repairs or replacement from monies due, or to become due, the Contractor.

ARTICLE 8. PACKING LIST

- 8.1. A packing list shall accompany every shipment made. Absence of a packing slip or absence of required information may cause refusal of the shipment. The packing list shall contain the following information: Contract number, Master Delivery Release (MDR), and/or Purchase Order number, item description and size, quantity shipped, quantity ordered, quantity backordered, and packing slip number. Absence of the packing slip and its required information may be cause for rejection of the material and termination of the contract for default.

ARTICLE 9. CONDITION OF MATERIAL UPON DELIVERY

- 9.1. All material shipped shall be protected to insure against damages in transit; all material shall be in good condition upon delivery. If upon unloading from a Carrier's truck, any products/materials are found damaged or otherwise unacceptable, the material will be rejected. The Project Manager or designee will notify the Contractor for such damages. The rejected product/material will be loaded on the carrier's truck for return to the Contractor or for other means of disposal at the Contractor's expense.

ARTICLE 10. STOP WORK

- 10.1. Work may be temporarily stopped in the field by the Commission's Project Manager because of weather, poor workmanship, lack of materials, safety violations, or other unforeseen

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circumstances. If the work stoppage is longer than, or is expected to be longer than 48 hours, a written Stop Work Notice will be issued by the Contract Administrator.

ARTICLE 11. RIGHT TO BID

11.1. The Commission reserves the right to advertise for bids any individual proposed project(s) whose estimates exceed that which the Commission feels is reasonable. The Commission also reserves the right to advertise for bid any project whose estimate exceeds 20% of the Contract value.

ARTICLE 12. EMERGENCY

12.1. Notwithstanding the existence of the contract, the Commission reserves the right to order any item required for emergency purposes from any party who can deliver such item to meet the requirements of the Commission, without waiving or voiding any of the terms of the contract.

ARTICLE 13. WARRANTY

13.1. The Contractor shall expressly represent, warrant and agree that all goods, equipment, machinery, materials, services, or work provided or performed on or off Commission premises relative to this Contract will:

13.1.1. Conform in all respects to the Commission's specifications, drawings, requirements, or other descriptions.

13.1.2. Be fit for the purpose or purposes of intended use.

13.1.3. Conform to all applicable local, state, and federal laws and regulations.

13.1.4. Be of good quality, merchantable, of good workmanship, or material best suited for the intended purposes, and free from defects of any kind or nature whatsoever.

13.1.5. If said equipment, material, service, or work is found to be defective in workmanship, materials or design, fails or is found to be non-conforming with the terms and conditions of this Contract, within 12 months after the date of acceptance, it shall, at the Commission's option, be repaired or replaced at the Commission's location by the Contractor at absolutely no cost to the Commission.

13.1.6. All items delivered or supplied hereunder will be free and clear of all liens, encumbrances, claims, and security interest of whatever nature and substance. Upon request, the Contractor shall supply the Commission with documentation satisfactory to it, evidencing the absence of such liens, encumbrances, claims, and security interests.

13.2. The warranty period shall begin upon final acceptance of the work.

ARTICLE 14. PAYMENT

14.1. Payment will be made for the total number of items contained in each delivery (shipment) within 30 days after the shipment has been received, inspected and accepted by the Commission.

14.2. Payment will not be made for any material in any given delivery (shipment) until the materials have been properly accounted for as to the quantity, compliance and acceptance by the Commission in accordance with this Contract. Prompt payment discounts, if any, shall

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be applicable from the date of acceptance of the materials, or the date of receipt of the invoice, whichever is later. Payment will be made upon receipt of a properly executed invoice(s) and in accordance with the provisions of this Contract.

- 14.3. Invoices shall reference the Master Delivery Release, and/or Purchase Order number, be submitted in duplicate based on the appropriate unit prices named in the Bid and addressed as follows:

Washington Suburban Sanitary Commission
Finance/Disbursements Group
14501 Sweitzer Lane, 11th Floor
Laurel, Maryland 20707-5902

ARTICLE 15. METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

- 15.1. Bidders are advised that the prices, terms and conditions of any Contract resulting from this Invitation for Bids will be extended, subject to bidder approval, to any of the members of the Metropolitan Washington Council of Governments Purchasing Group. Bidders shall indicate in the appropriate space whether they will extend the resultant Contract to any or all of the members of the Metropolitan Washington Council of Governments Purchasing Group on the attached page.

ARTICLE 16. CONTRACT SOLE AGREEMENT

- 16.1. This Contract constitutes the sole and entire agreement with the Contractor for the Work to be performed.

ARTICLE 17. SUBCONTRACTING OR ASSIGNMENT

- 17.1. The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the obligations or services to be performed there under shall be subcontracted, assigned, or otherwise disposed of, either in whole or in part, except with the prior written consent of the Chief Procurement Officer. Written consent of the Commission's Chief Procurement Officer is also necessary for substitution of a previously approved subcontractor or assignee.

ARTICLE 18. UNIFORM COMMERCIAL CODE (UCC) APPLICATION

- 18.1. The parties to this Contract recognize that the provisions of the Uniform Commercial Code do not normally apply to the performance of services as distinguished from transactions in goods. However, the parties explicitly agree that for purposes of this Contract the provisions of the Uniform Commercial Code shall apply and any dispute arising under this Contract shall be resolved in accordance with the provisions of the Code, unless the UCC provisions are in conflict with the General Conditions and Instructions set forth herein or any documents or provisions incorporated by reference.

ARTICLE 19. PATENTED DEVICES, MATERIALS AND PROCESSES

- 19.1. If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner and a copy of such agreement shall be filed with the Commission. The Contractor shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and hold the Commission harmless from loss on account thereof, except that the Commission will be responsible for any such loss when a particular process, design or the product of a particular manufacturer or manufacturers as specified is an infringement of a patent.

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ARTICLE 20. CHANGE ORDERS

- 20.1. The Chief Procurement Officer may, at any time, without prior consent of the Contractor, and without notice to sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of this Contract.
- 20.2. If the Contractor intends to assert a claim for additional compensation or extension of time for completion of the Contract as a result of a change order being issued, the Contractor shall submit a Claim in accordance with WSSC Procurement Regulations § 6-104.02.
- 20.3. However, nothing in this General Condition shall excuse the Contractor from proceeding with the Contract as changed. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

ARTICLE 21. CLAIMS:

- 21.1. Any Claim by the Contractor against the Commission arising under or relating to this Contract shall be filed and adjudicated in accordance with the requirements and procedures set forth in WSSC Procurement Regulation § 6-104.02.
- 21.2. Any Claim by the Commission against the Contractor arising under or relating to this Contract shall be filed in the federal or state courts located in Prince George's County, Maryland or Montgomery County, Maryland. However, the Commission may assert any set-off amount in any claim filed by the Contractor against the Commission.
- 21.3. This Contract and any Claim arising under or relating to it shall be governed in accordance with the law of the State of Maryland.
- 21.4. The Contractor shall diligently carry on the Work and maintain the progress schedule during any dispute, appeal, or court proceeding arising from or related to a Claim.
- 21.5. No claim by the Contractor shall be allowed if asserted after final payment under this Contract

ARTICLE 22. MATERIAL AND WORKMANSHIP

- 22.1. All equipment, materials, and components incorporated into the work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. References in the specifications to equipment, materials, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, as his option, use any equipment, material, article, or process that, in the judgment of the Chief Procurement Officer, is equal to that named in the specifications, unless otherwise specifically provided in this Contract.
- 22.2. All work under this Contract shall be performed in a workmanlike manner. The Chief Procurement Officer may require, in writing, that the Contractor remove from work any employee the Chief Procurement Officer deems incompetent, careless, or otherwise objectionable.

ARTICLE 23. TAXES

- 23.1. Pursuant to MD Code, Tax - General, § 11-220(a), Maryland sales and use taxes do not apply to a sale to the Commission. For purchases made directly by the Commission, the

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Commission will provide the Contractor with its Maryland sales and use tax exemption certificate.

ARTICLE 24. DELAY OF WORK

- 24.1. If the performance of all or any part of the work of this Contract is delayed or interrupted (a) by an act of the Chief Procurement Officer in the administration of this Contract that is not explicitly or implicitly authorized by this Contract, or (b) by a failure of the Chief Procurement Officer to act within the time specified in this Contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by the delay or interruption and the Contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other Contractual provision affected by the delay or interruption.
- 24.2. However, no adjustment shall be made under this General Condition for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other provision of this Contract.
- 24.3. A delay claim shall be filed according to WSSC Procurement Regulations 6.104.02. A delay claim shall not be allowed (a) for any costs incurred more than twenty (20) calendar days before the Contractor shall have notified the Chief Procurement Officer in writing of the act or failure to act involved, and (b) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the Contract.

ARTICLE 25. SUSPENSION OF WORK

- 25.1. The Commission may, at any time, suspend, delay, interrupt or stop the performance of any or all of the work of this Contract by written notice to the Contractor. Suspension of work orders shall not exceed ninety (90) calendar days and, as soon as feasible after a suspension of work order is issued, either the Contract will be terminated or the suspension of work order will be canceled or extended in writing for a reasonable time beyond the period specified in the order. If an extension of the suspension of work order is necessary, it must be evidenced by a unilateral written modification to the Contract issued by the Commission.
- 25.2. In the event of such suspension of work for an unreasonable period of time, all allowable costs (excluding profit) which are deemed by the Chief Procurement Officer as reasonably and necessarily incurred by the Contractor in suspending the work shall be paid by the Commission, including all costs incurred during the period of suspension and additional costs incurred in reactivating the work. Such payment shall not duplicate costs included under any prior progress payments. The Contractor must (a) itemize the costs involved, (b) provide satisfactory documentation as required by the Commission, and (c) demonstrate that such work as was provided during the suspension was in direct support of overall work to be performed.
- 25.3. Both parties also recognize that the Commission may implicitly suspend the work by reasonable delays in its review, comment and action on the submitted data, plans, reports and other documents transmitted to the Commission, for which there shall be no additional compensation.
- 25.4. The Commission's right to suspend this Contract is in addition to and not in substitution for the Commission's right to terminate as stated herein.

ARTICLE 26. BRIBES

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- 26.1. A bribe or attempt to bribe any employee or officer of the Commission by the Contractor shall be considered a fraudulent and bad faith act, and shall thus empower the Commission to invoke its rights pursuant to WSSC Procurement Regulation § 6.103.02.

ARTICLE 27. FAILURE TO PERFORM

- 27.1. Failure of the Contractor to (a) deliver or perform the required goods within the time specified or within a reasonable time as interpreted by the Chief Procurement Officer or (b) make replacements of rejected articles immediately or as directed by the Chief Procurement Officer shall constitute authority for the Chief Procurement Officer to purchase in the open market goods of comparable grade to replace the goods not delivered or rejected. On all such purchases, the Contractor shall reimburse the Commission within a reasonable time as specified by the Chief Procurement Officer for any expense incurred in excess of Contract prices, including any administrative costs.
- 27.2. Should public necessity demand it, the Commission reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Chief Procurement Officer. The Contractor shall not be liable for any excess costs if acceptable evidence has been submitted to the Chief Procurement Officer that failure to perform this Contract was due to causes beyond the control and without the failure or negligence of the Contractor.
- 27.3. The remedies provided in this General Condition are in addition to any other rights and remedies provided by law or under any other provisions of this Contract.

ARTICLE 28. TERMINATION OF CONTRACT

- 28.1. Where the Contractor's services have been terminated by the Commission, said termination shall not affect any right of the Commission against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Commission due the Contractor will not release the Contractor from compliance with the Contract Documents.
- 28.2. Termination for Default
- 28.2.1. The Contract may be terminated for default in accordance with WSSC Procurement Regulation § 6-105.03.
- 28.2.2. The Commission has the right to terminate for default a material breach of the Contract which shall include but not be limited to the following events:
- 28.2.2.1. the Contractor is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws,
- 28.2.2.2. the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,
- 28.2.2.3. the Contractor repeatedly fails to make prompt payments to subcontractors for labor, materials or equipment,
- 28.2.2.4. the Contractor fails to prosecute the Work or any separable part thereof with such diligence as to endanger performance of this Contract,
- 28.2.2.5. the Contractor fails to complete said Work within said time,

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- 28.2.2.6. the Contractor disregards laws, ordinances, rules, regulations, directions or orders of any public body having jurisdiction over the Work, or
 - 28.2.2.7. The Contractor otherwise violates any provision of the Contract Documents.
 - 28.2.3. After a termination for default, the Commission may acquire, under the terms and in the manner the Chief Procurement Officer considers appropriate, supplies similar to those terminated, and the Contractor will be liable to the Commission for the excess cost of those supplies. However, the Contractor shall continue the work not terminated.
 - 28.2.4. All finished or unfinished supplies provided by the Contractor and not yet delivered, rendered, and accepted by the Commission shall, at the Commission's option, become the Commission's property. The Commission shall pay the Contractor compensation for satisfactory performance prior to receipt of notice of termination for default, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination for default and the Commission can affirmatively collect such damages. The term "damages" as used in this paragraph includes, but is not limited to, attorney's fees of fifteen percent (15%).
 - 28.2.5. If the Contractor disputes the issuance of a termination for default, or the amount of compensation due the Contractor as a result of the termination of the Contract for default, the Contractor may file a timely claim under WSSC Procurement Regulation §6-104.02.
 - 28.2.6. Termination for default under this Contract may result in debarment in accordance with WSSC Procurement Regulations §6-102.01.
 - 28.2.7. The rights and remedies of the Commission in this General Condition are in addition to any other rights and remedies provided by law or under any other provision of this Contract.
- 28.3. Termination for Convenience
- 28.3.1. The Contract may be terminated for convenience in accordance with WSSC Procurement Regulation § 6-105.04.
 - 28.3.2. After receipt of a notice of termination for convenience and except as otherwise directed, the Contractor shall:
 - 28.3.2.1. stop all work on the date indicated and to the extent specified;
 - 28.3.2.2. place no further orders or subcontracts for materials, services or facilities except as necessary for the completion of such portion(s) of the work not terminated;
 - 28.3.2.3. terminate any and all vendors' and subcontractors' agreements and, with the approval of the Commission, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;

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- 28.3.2.4. if directed by the Commission, transfer title and deliver to the Commission the Contractor's work in process, finished supplies and other material produced or acquired for the Work terminated and any completed or partially completed plans, drawings, information and other property that, if the Contract had been completed, would be required to be furnished to the Commission. If the Commission does not exercise this right, the Contractor shall use his best efforts to sell such supplies and materials in accordance with the standards of Uniform Commercial Code Section 2-706; and
- 28.3.2.5. Complete performance of the work not terminated.
- 28.3.3. The Contractor shall be entitled to recover the following costs as a result of termination for convenience:
 - 28.3.3.1. the Contract price for completed supplies accepted by the Commission but not previously paid for;
 - 28.3.3.2. costs already incurred in the performance of the work terminated;
 - 28.3.3.3. fair and reasonable profit on the costs incurred in the performance of the work terminated;
 - 28.3.3.4. the reasonable costs of settlement expenses for the work terminated; and
 - 28.3.3.5. The cost of settling and paying any termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract.
- 28.3.4. In arriving at the amount due the Contractor, the following shall be deducted:
 - 28.3.4.1. all unliquidated, advance or other payments to the Contractor under the terminated portion of the Contract; and
 - 28.3.4.2. Any claim which the Commission has against the Contractor under this or any other Contract.
- 28.3.5. If the Contractor and the Chief Procurement Officer cannot agree on the amount due the Contractor as a result of the termination for convenience, the Contractor may file a timely claim under WSSC Procurement Regulations § 6-104.02. The Contractor does not have the right to appeal the Chief Procurement Officer's decision to terminate the Contract for convenience.

28.4. Termination for Mutual Consent

- 28.4.1. The Contract may be terminated by mutual consent in accordance with WSSC Procurement Regulation § 6.105.05.

ARTICLE 29. GOVERNING LAW

- 29.1. This Contract shall be governed by and construed according to the laws of the State of Maryland.

ARTICLE 30. RIGHT TO AUDIT

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- 30.1. The Commission shall have the right to audit the books and supporting documents of a contractor or any subcontractor in accordance with the WSSC Procurement Regulations § 4-602.

ARTICLE 31. COMPLIANCE WITH LAWS

- 31.1. The Contractor hereby represents and warrants:
- 31.1.1. that it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
 - 31.1.2. that it is not in arrears with respect to the payment of any monies due and owing the Commission, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
 - 31.1.3. that it shall comply with all Federal, State and local laws, ordinances, rules, and regulations applicable to its activities and obligations under this Contract; and
 - 31.1.4. That it shall procure, at its own expense, all licenses, permits, insurance, bonding, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

ARTICLE 32. FORCE MAJEURE

- 32.1. Neither party shall be considered in default in the performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered or prevented by any cause which is beyond the reasonable control of such party (hereinafter called "Force Majeure"). Force Majeure includes but is not limited to any of the following, if reasonably beyond the control of the party claiming Force Majeure: delays caused by the other party, war (declared or undeclared), blockades, hostilities, riots, strikes, lockouts or other labor disturbances, epidemics, fires, storms, delays or interruptions in transportation, or any laws, regulations or ordinances of any government, governmental agency or court having or claiming to have jurisdiction over any part of the Contract, or any other causes (whether or not of kinds specifically mentioned herein). Notwithstanding anything in this Contract, Force Majeure does not include the Contractor's failure to obtain the necessary permits, licenses, exceptions, or other authorizations required to perform this Contract.
- 32.2. Either party hereto shall give notice promptly within seven (7) calendar days of the nature and extent of any Force Majeure claimed to delay, hinder, or prevent performance under this Contract. Failure to do so shall constitute a waiver of any claim hereunder.

ARTICLE 33. PUNITIVE DAMAGES

- 33.1. In any action by the Contractor against the Commission or its agents, there shall be no liability for punitive damages.

ARTICLE 34. PUBLIC INFORMATION ACT NOTICE

- 34.1. Bidders must specifically identify those portions of their bids, if any, which they deem to contain confidential or proprietary information or trade secrets and must provide any justification why such materials, upon request, should not be disclosed by the Commission under the Maryland Public Information Act, State Government Article, Sections 10-611, et. seq., of the Annotated Code of Maryland.

ARTICLE 35. CONTRACTOR ABUSE, USE, SALE OR POSSESSION OF DRUGS OR INTOXICANTS

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35.1. The use, possession, sale or distribution of drugs or intoxicants by the Contractor, Subcontractor, or any of their employees while on Commission premises or while actively representing or performing work for the Commission is prohibited. It shall be the responsibility of the Contractor to prevent such activities and to remove any employee or subcontractor employee whose ability to perform appears to be affected by the use of drugs or intoxicants. Failure of the Contractor to comply with this provision may result in termination of the Contract.

ARTICLE 36. SMOKING

36.1. It shall be the responsibility of the Contractor to observe the conditions of the Commission's Smoking Policy within Commission-operated facilities and within Commission-owned motor vehicles. The Project Manager will indicate to the Contractor the restricted areas. Failure to comply with the provisions of the policy may result in removal of the Contractor's employees or termination of the contract.

ARTICLE 37. LEGAL ADDRESS

37.1. The address given in the Bid shall be the legal address of the Contractor. Such address may be changed at any time by notice in writing delivered to the Chief Procurement Officer. The mailing of any notice to this legal address, postage pre-paid to the Contractor, shall be deemed to be a legal and sufficient service upon the Contractor.

ARTICLE 38. SECURITY

38.1. The Commission will require the Contractor to submit background investigations on all employees, including subcontractor's employees, who will be performing work on this Contract. The Commission has retained the services of a background investigation agency to perform such investigations. The background investigations shall include work, driving, and criminal history. All employees, including subcontractor's employees, working on this Contract shall submit a completed Applicant Release & Authorization Form to the background investigation agency within seven (7) calendar days after receipt of Recommendation for Award. The Recommendation for Award will include documentation to have the background investigations performed. The cost to perform this service will be billed directly to the Commission from the background investigation agency. The employees' report will be submitted to the Commission's Security Group for review. All employees must be approved in writing prior to starting any work at any Commission facility. If any employee is not approved to work on this Contract, the Contractor may resubmit, with the knowledge of the Commission, other proposed employees within seven (7) calendar days upon issuance of written disapproval notification. The Commission reserves the right to reject any employee, sub-contractor or the Contractor, as a result of the findings of background investigations. Contractors submitting background applications on employees or subcontractors not authorized to work on this contract will be liable for payment.

38.2. The Contractor's employees shall be issued photo identification cards. Identification cards must be worn at all times while on any Commission property. Contractor employees found on-site without proper identification will be immediately removed from Commission property. The design of identification cards shall be reviewed and approved by the Commission prior to issuance. Identification cards for employees who are no longer associated with the project, for any reason, will be immediately recovered by the Contractor. The Contractor is responsible to control and inventory all identification cards issued so that cards are not obtained or used by unauthorized individuals.

38.3. All project participants needing either electronic or hardcopy documents dealing with critical facilities or sensitive information will be required to make application with, and receive

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approval from, the Commission prior to receiving this information. Permission to receive said documents (herein referred to as “sensitive”) will pertain only to the approved individuals. Sensitive documents received from the Commission must be handled consistent with the terms of non-disclosure required for application. The Contractor is responsible to restrict use of sensitive documents to project participants only and shall take appropriate measures to prevent distribution of sensitive documents to anyone inside or outside of the Contractor’s company except Contractor’s project participants. After completion of project, all sensitive documents remaining in the Contractor’s possession shall continue to be governed under the terms of non-disclosure and must continue to be stored in a secure manner.

ARTICLE 39. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

39.1. The acceptance by the Contractor of final payment shall constitute a release to the Commission from any and all claims of any nature and all liability to the Contractor, for all things done or furnished in connection with the Work, and for every act and neglect of the Commission and others relating to or arising out of this Work.

ARTICLE 40. INSURANCE

40.1. The Contractor shall within the time specified in the Contract Documents purchase and maintain insurance as specified in the Contract Documents. The Contractor shall submit proof of insurance as required by the Contract Documents.

ARTICLE 41. ASSIGNMENTS

41.1. Neither the Contractor nor the Commission shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of his right, title or interest therein, or his obligations there under, without written consent of both parties.

ARTICLE 42. INDEMNIFICATION

42.1. The Contractor shall defend, indemnify, and hold harmless the Commission, its agents, and employees from and against any and all claims, suits in law or equity, actions, damages, losses and expenses of every name and description, including attorneys fees to which the Commission, its agents, and employees may be subject or put by reason of injury to persons (including bodily injury, death or any other form of personal injury) or property damage arising out of or resulting from the performance of the Work whether caused or alleged to be caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by the Commission, its agent or employees, the party indemnified hereunder, or other cause.

42.2. Monies due or to become due the Contractor under the Contract as may be considered necessary by the Commission shall be retained by the Commission until such suits or claims for damages shall have been settled or otherwise disposed of or satisfactory evidence to that effect has been furnished to the Commission.

ARTICLE 43. ETHICS

43.1. Personnel of the Commission and the Contractor and its personnel and agents shall be guided in their actions by the WSSC Code of Ethics; Resolution No. 2003-1669 adopted June 11, 2003, and any subsequent revisions and amendments thereto. Additionally, standards for ethical, professional procurement behavior such as established by the Institute for Supply Management (formerly NAPM) entitled “Principles and Standards of Ethical Supply Management Conduct” are to be followed. Both documents are available for review in the

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Office of Chief Procurement Officer. See abstract in the attachment section entitled “Ethics in Public Contracting.”

- 43.2. In accordance with Section 3-3 of WSSC’s Code of Ethics, a former Commissioner or employee may not act as an agent or representative of any person or entity involved in a business transaction with WSSC for a period of 12 months from the date of the former employee’s separation from the Commission. In addition, a former Commission employee is barred from assisting or representing a party in a business transaction with WSSC if the former employee participated significantly in the matter as an employee.

ARTICLE 44. SEXUAL HARASSMENT

- 44.1. Sexual harassment of Commission employees by the Contractor, a subcontractor, or any of their employees while on Commission premises or while actively representing or performing work for the Commission is prohibited. It shall be the responsibility of the Contractor to prevent any such acts and to remove any employee who conducts such acts. Failure of the Contractor to comply with this provision may result in Termination of the Contract. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment. Basic criteria for determining unlawful behavior includes conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

ARTICLE 45. DEBARMENT AND SUSPENSION

- 45.1. Debarment and suspension actions taken against a contractor will be done in accordance with WSSC Procurement Regulation § 6-102.

ARTICLE 46. NONDISCRIMINATION POLICY

- 46.1. Discrimination in any manner against any employee or applicant for employment by the Contractor or a subcontractor on the basis of sex, race, creed, color, age, mental or physical handicap, sexual orientation, or national origin is prohibited.
- 46.2. The Contractor shall include a similar nondiscrimination clause in all subcontracts.
- 46.3. If the Contractor fails to include a nondiscrimination clause in a subcontract, the Commission shall provide a reasonable opportunity to cure the defect. If the Contractor fails to cure the defect within the time period granted, the Commission may declare the contract void and the Contractor shall be entitled to the reasonable value of work that has been performed and materials that have been provided to date. If the Contractor cures the defect, the Contract remains in force according to its revised terms.
- 46.4. If the Contractor willfully fails to comply with the requirements of the nondiscrimination clause, the Commission may compel the Contractor to continue to perform under the Contract as provided in Maryland Annotated Code, Public Utilities, § 20-106(b).