



October 29, 2021

# PROCUREMENT OFFICE PERFORMANCE AUDIT



Project# 19-POP-01

A Report to:

**Commissioners:**

Chair, Keith E. Bell  
Vice Chair, Howard A. Denis  
Fausto R. Bayonet  
T. Eloise Foster  
Chris Lawson

**General Manager/CEO:**

Carla A. Reid

**Corporate Secretary:**

Julianne M. Montes De Oca



**Washington Suburban  
Sanitary Commission**

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COMMISSIONERS

Keith E. Bell, Chair  
Howard A. Denis, Vice Chair  
Fausto R. Bayonet  
T. Eloise Foster  
Chris Lawson

GENERAL MANAGER

Carla A. Reid

**TO:** CHAIR BELL, VICE CHAIR DENIS  
COMMISSIONER BAYONET, COMMISSIONER FOSTER,  
AND COMMISSIONER LAWSON  
GENERAL MANAGER REID

**THRU:** ARTHUR A. ELKINS, INSPECTOR GENERAL <sup>DS</sup>  
OFFICE OF THE INSPECTOR GENERAL *ll*

**FROM:** MAXENE M. BARDWELL, ASSISTANT INSPECTOR GENERAL FOR AUDIT <sup>DS</sup>  
OFFICE OF THE INSPECTOR GENERAL *MB*

**DATE:** OCTOBER 29, 2021

**SUBJECT: OFFICE OF THE INSPECTOR GENERAL  
PROCUREMENT OFFICE PERFORMANCE AUDIT**

The Washington Suburban Sanitary Commission's (WSSC) Office of the Inspector General (OIG) performed an audit of WSSC's Procurement Office's Construction Architecture & Engineering Section. The detailed report is attached for your review. The OIG conducted the audit in accordance with the Generally Accepted Government Auditing Standards (GAGAS), except for the peer review requirement. We have already discussed with management issues of concern and their action plans are included in this report.

We appreciate the assistance provided by WSSC's Procurement Office and other personnel. We hope the information and recommendations presented in our report are helpful.

cc: Corporate Secretary, (J. Montes De Oca)  
DGM, Administration, (J. Beach)  
Chief Strategy and Innovations Officer, (T. Allen)  
Chief Procurement Officer, (C. Poole-Williams)  
OIG Supervisory Auditor, (J. Wall)  
OIG Supervisory Auditor, (J. Hicks)



**Washington Suburban Sanitary Commission  
Office of the Inspector General**

19-POP-01  
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# Quick Look



## Why the OIG Did This Audit

In accordance with the Fiscal Year 2019 work plan, the Office of the Inspector General (OIG) conducted a performance audit of the Washington Suburban Sanitary Commission (WSSC) Procurement Office's Construction Architecture & Engineering Section (the Section). The OIG conducted the audit in accordance with Generally Accepted Government Auditing Standards, except for the peer review requirement.

The Section is responsible for initiating, evaluating, and processing contracts related to construction, architecture and engineering projects and any related change orders or options. The Section also prepares and transmits solicitations and contract documents to vendors as invitation for bids or a request for proposals.

## Strategic Alignment

This report addresses WSSC Strategic Priority: Spend Customer Dollars Wisely.

## OIG Contact Information

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## Procurement Office Performance Audit

### What the OIG Found

The OIG assessed whether the Section is conducting its activities and duties in accordance with Maryland law and WSSC's regulations, directives, policies and procedures. The audit period covered the Section's procedures and processes for managing construction, architecture and engineering contracts, change orders and options from July 1, 2018 through June 30, 2019. During fiscal year 2019, the Procurement Office presented 30 different types of construction and architecture and engineering contracts, and related change orders or options for approval from the Commissioners. This audit sampled 21 of these types of contracts for examination. The sampled contracts totaled approximately \$116.8 million.

Based on the audit work performed, the OIG noted and recommended that the following areas warrant improvement, which may enhance the overall operational efficiency, effectiveness, and transparency of the Section:

- Insufficient internal operating procedures for Procurement staff;
- No centralized contract information database software;
- Award criteria is not clear in IFB Solicitations;
- Written solicitation and contract terms are not consistently followed;
- Conflict of interest affidavits are not submitted consistently; and,
- Vendors did not provide support for labor overhead rates.

The OIG presented the following recommendations to Procurement Office management to enhance the Section's contract procedures and processes:

- Develop sufficient internal operating procedures;
- Consider purchasing centralized contract information database software;
- Comply with regulations for IFB solicitations and develop evaluation criteria;
- Verify contract terms and provide written option agreements;
- Ensure conflict of interest affidavits are submitted; and,
- Obtain a vendor's certified overhead rate and update Procurement Office's overhead rate.

Management addressed each of the OIG's recommendations and presented operational improvements or provided corrective action plans with anticipated due dates, where applicable.



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## EXECUTIVE SUMMARY

### Background

In accordance with the Washington Suburban Sanitary Commission’s (WSSC) Office of the Inspector General’s (OIG) Fiscal Year (FY) 2019 Risk-Based Work Plan and the authority granted to it pursuant to Public Utilities Article (“PUA”), § 17-605 (a)(6) of the Annotated Code of Maryland, the OIG conducted a performance audit<sup>1</sup> of WSSC’s Procurement Office’s (Procurement) Construction Architecture & Engineering Section (the Section). The OIG conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS), except for the peer review requirement.

WSSC’s Procurement Office is responsible for overseeing the solicitation process as well as for procuring works, goods, and services (professional, architecture and engineering services) necessary to support the Commission.<sup>2</sup> The Chief Procurement Officer (CPO) is the primary contracting officer for WSSC.<sup>3</sup> The CPO is responsible for the overall policies, guiding principles, plans, practices, tools used to accomplish the Procurement Office objectives. Although the CPO may designate a senior level Procurement Officer to execute reviewed and approved contracts on his/her behalf, the CPO assumes ultimate responsibility to solicit and enter contracts for the procurement of goods and supplies, services, construction, professional, or architectural and engineering services for all WSSC departments.<sup>4</sup>

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<sup>1</sup> See U.S. Government Accountability Office (GAO), “*Government Auditing Standards 2018*,” page 12 (stating that the purpose of a performance audit is to provide information to improve public accountability and facilitate decision-making).

<sup>2</sup> See WSSC Code of Regulations (Code), Title 6, Chapter 6.15.

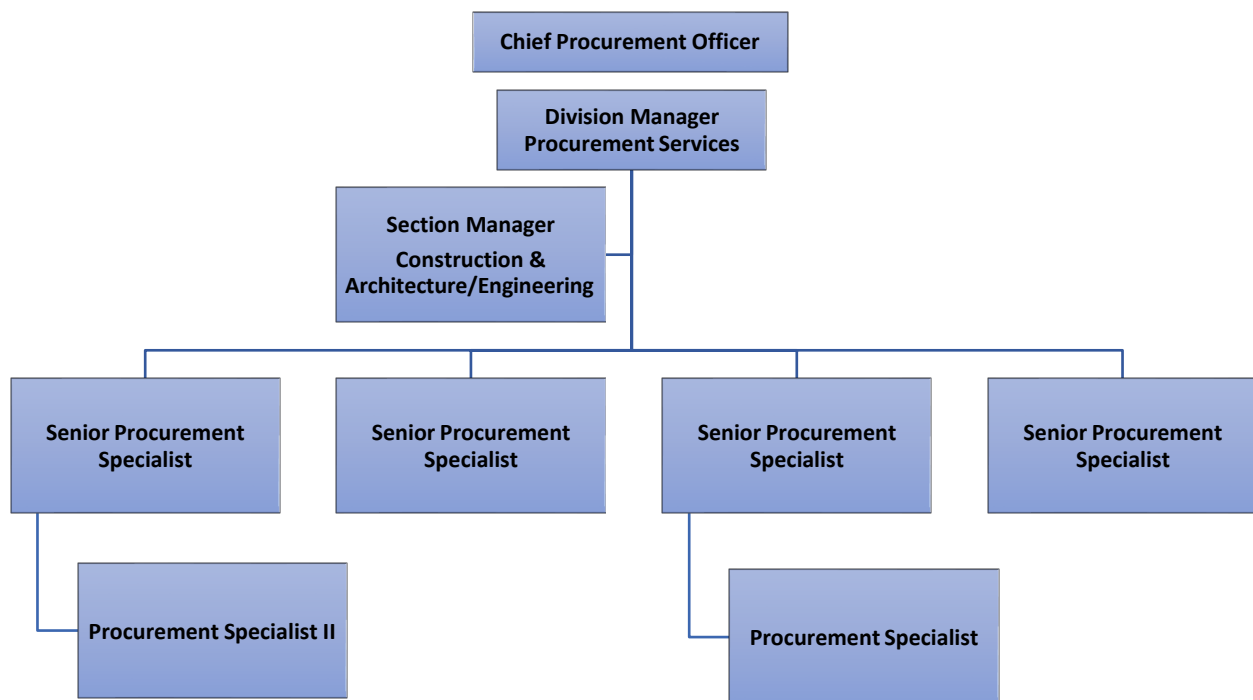
<sup>3</sup> See WSSC Resolution No. 2016-2133, Sub-Delegation of Authority (June 28, 2016); *see also* WSSC 6.15.090.

<sup>4</sup> See WSSC 6.15.090.



The Division Manager for the Procurement Services Division supports the CPO and assists with contract preparation and enhancement of business processes and practices. Additionally, the Division Manager oversees the Construction Architecture & Engineering (A&E) Section. The Construction A&E Section Manager is responsible for managing a team of Procurement Specialists and ensuring the team has the skills and training to perform its duties. Procurement Specialists are responsible for the administration of contracts and solicitations and technical operations.

The below organization chart illustrates the reporting hierarchy.<sup>5</sup>



<sup>5</sup> See WSSC Procurement Office's Organizational Chart (Intranet, as available on-site: accessed May 14, 2021).



Generally, this Section is responsible for initiating, evaluating, and processing contracts related to construction, architecture and engineering projects and any related change orders or options. It prepares solicitations and contract documents and transmits them to vendors pursuant to invitation for bids (IFB), or a request for proposals (RFP).<sup>6</sup> An IFB is a competitive bidding process used to formally invite vendors to submit sealed bid proposals to perform work for a specified project where there is no substantial difference between the product and services that meet the specifications for the project. A contract awarded pursuant to an IFB will be selected based on the lowest bid price or lowest evaluated bid price.<sup>7</sup> An RFP is a competitive negotiation process used to solicit vendors to submit proposals containing their best price on technical and complex projects requiring research and development.<sup>8</sup>

Contracts awarded pursuant to an RFP are selected based on the receipt of the best proposal or final offer to perform the services.<sup>9</sup>

The Procurement Office, including the CPO, Section Manager and Procurement Specialists are required to follow Title 20 of the PUA, WSSC's Procurement Regulations as set forth in Chapter 6.15 of the WSSC Code, and the Sub-Delegation of Authority entered on June 28, 2016. In addition, the Section utilizes a Procurement Framework flowchart to assist in processing contract-related documents. The Procurement Framework encompasses five phases:

- 1) *Planning phase* – The needs of the project are defined, and the scale of the project is developed. Further, during this time the Section staff, the end-user and WSSC's Office of Supplier Diversity and Inclusion (OSDI) are involved

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<sup>6</sup> See generally Maryland Annotated Code, PUA, § 21-105 (stating that the Commission shall award contracts by competitive sealed bids or competitive sealed proposals); see also WSSC 6.15.070 (oo) and (eee).

<sup>7</sup> *Id.*

<sup>8</sup> See PUA, § 21-105(c).

<sup>9</sup> *Id.*



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- in establishing the evaluation criteria and preparing the solicitation. The OSDI sets the level of minority participation for the proposed project.<sup>10</sup>
- 2) *Active phase* – The solicitation is formally advertised, and the Section addresses pre-bid issues during this period. Generally, the Section staff and the end-user are involved at this phase.
  - 3) *Evaluation phase* – The bids and offers for evaluation are reviewed. Additionally, during this phase, the OSDI reviews the level of minority participation.<sup>11</sup> This phase generally involves Section staff, OSDI, and an independent evaluation team that recommends a potential awardee for the contract to the CPO.
  - 4) *Approval phase* – The OSDI renders approval of the potential awardee’s subcontractor plan during this period. Further, based on the contract amount, the award is approved by the CPO or the Commissioners. Per the Delegation of Authority, the CPO can approve a contract award for less than \$1.2 million. The Commissioners approve contract awards for \$1.2 million or more.
  - 5) *Execution phase* – The notice of award to the vendor is prepared, and after approval, the Procurement Office will issue a notice to proceed to the awardee of the contract during this phase.

During the service of a contract, the Section staff may process change orders or options according to the contract terms. Change orders are unilateral written orders signed by the CPO to adjust the original contract’s price or time for unforeseen project complications.<sup>12</sup> Change orders are subject to WSSC’s Delegation of Authority before the vendor can start the additional work. Options are written into the original terms of the solicitation and the contract, which grant the vendor an additional contract period beyond the original contract term for a specified contract dollar amount. According to the Contract Performance Inquiry Questionnaire form, the Section staff is required to conduct a contract performance assessment when change orders or options are issued.

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<sup>10</sup> See generally PUA, § 21-202; see also WSSC 6.30.

<sup>11</sup> *Id.*

<sup>12</sup> See WSSC 6.15.070 (h).





## Objective

The audit objective is to assess whether the Construction A&E Section conducted its activities and duties in accordance with Title 20, of the Public Utilities Article of the Annotated Code of Maryland and WSSC’s Procurement regulations, directives, policies, and procedures.

## Scope

The audit period covers the Section’s policies and procedures for the solicitation and management of construction, architecture and engineering contracts, change orders and options from July 1, 2018 through June 30, 2019. During fiscal year 2019, the Procurement Office presented 30 different types of construction, A&E contracts and related change orders or options for approval from the Commissioners. A sample of 21 of these contracts were selected for examination and had a total contract value of approximately \$116.8 million.

The characteristics of the audit sample are detailed in the chart:

		Contract Type		
Contract Description	Total Number	IFB	RFP	Amount (*)
A&E	4	0	4	\$14,490
Construction	17	11	6	\$102,309
	21	11	10	\$116,799
				(*) In millions

## Conclusion

The OIG found that the Procurement Office should improve its internal policies and procedures to ensure compliance with the solicitation, awarding and monitoring requirements set forth under Maryland law and the WSSC regulations. Based on the audit work performed by the OIG, the following deficiencies in contracting process were noted:

- Insufficient internal operating procedures for Procurement Staff;
- No centralized contract information database software;
- Award criteria is not clear in IFB Solicitations;
- Written solicitation and contract terms are not always followed;
- Conflict of interest affidavits are not submitted consistently; and
- Vendors did not provide support for labor overhead rates.



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OBSERVATIONS, MANAGEMENT RESPONSES, AND ACTION PLANS

Observation 1: Insufficient Internal Operating Procedures for Procurement Staff

**Risk Rating: High**

**Condition**

During the review of the sampled contracts, OIG auditors noted that there are insufficient internal operating procedures to guide Procurement staff in processing solicitations and contracts. In addition, the auditors did not find documented procedures for processing change orders and option contracts. While management has the Procurement Framework flowchart which purports to represent the steps in the contracting process, it does not provide a process narrative of instructions on how to accomplish those steps. Further, Procurement management issued two directives and memoranda on instructions for the contract process, but these documents do not represent one collective procedural source for staff.

**Criteria**

WSSC's contracting process is governed by Title 6, Chapter 6.15 of the WSSC Code of Regulations. WSSC 6.15.090 (b)(6), states, in part, "the Chief Procurement Officer shall establish written procedures for the execution of contracts for the procurement of goods and supplies, services, construction, professional, or architectural and engineering services for all using departments of WSSC." Such procedures shall include policies, instructions, and/or guidelines for all WSSC procurement and shall be promulgated by the Chief Procurement Officer to implement and execute this chapter.<sup>13</sup> Additionally, it is a mandate of the Procurement Office to ensure fair and equitable treatment of all persons who deal with the procurement system of WSSC.<sup>14</sup>

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<sup>13</sup> See WSSC 6.15.090 (b)(6).

<sup>14</sup> *Id.*



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**Cause**

The Procurement Office created a broad framework for executing and managing contracts for WSSC's goods and services. According to Procurement Office management, numerous personnel changes; however, have prevented it from developing internal written policies and procedures to comply with Maryland law and WSSC regulations.

**Effect**

The lack of insufficient internal operating procedures increases the likelihood of Procurement staff's lack of knowledge of WSSC's contracting regulations and guidelines. This may permit Procurement staff to perform their duties in an arbitrary and discretionary manner, thus, creating the risk of inconsistent and improper management and execution of contracts. This could also adversely impact the fairness in enforcing contract requirements and subject the Commission to challenges regarding its fair and equitable treatment of participants in the procurement process.

**Recommendation 1: Develop Sufficient Internal Operating Procedures**

The OIG recommends the Procurement Office develop sufficient internal operating procedures that instruct Procurement staff on how to implement and execute procurement solicitations contracts including change orders and options.

***Management Response and Action Plan (including anticipated due dates):***

Procurement Management does not agree with this finding, as "no written contract administration instructions for processing contracts" is an incorrect statement. The Procurement Office currently has written procedures and guidelines which direct the staff on how to execute procurement contracts. Procurement Office personnel are bound by the WSSC Water Procurement Regulations, the Public Utilities Article found in the Annotated Code of Maryland, the WSSC Water Delegation of Authority, WSSC's General Conditions, and internal Procurement policies and procedures. These documents provide the staff with the insight needed to perform associated duties in overseeing the solicitation process and performing appropriate recommendations for contract execution. For example, the Procurement staff currently uses the Delegation of Authority and the executed contract documents to obtain guidance for approvals as it relates to change orders and option terms. Additionally, all solicitation documents are reviewed and approved by the Procurement management prior to being advertised and further reviewed by the Chief Procurement Officer (CPO) prior to being executed.



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The CPO is the contracting officer for WSSC. The CPO is responsible for the overall policies, guiding principles, plans, practices, and tools used to accomplish the Procurement Office’s objectives. This includes soliciting and entering into contracts for the procurement of goods and supplies, services, construction, professional, or architectural and engineering services for all WSSC departments. Contract administration requirements are not embedded in the description of these responsibilities. Further, post-award administration, including the management of options terms, task orders, and change orders are a decentralized function carried out by the end-using departments as they manage the contracts. The Procurement Office processes the requests in accordance with the Regulations and the Delegation of Authority.

The Procurement Office agrees that revisions to the internal policies and procedures are needed to strengthen and clarify current processes and changes. Consequently, the Procurement Office is in the process of strengthening policies and procedures by providing greater details of how to handle different scenarios and how to use WSSC’s Procurement systems (e.g. Oracle P2P). In view of the aforementioned (e.g. processes and documentation in place and forthcoming updated policies and procedures), Management also does not agree with this being a high risk; rather, the level should be reduced. We currently have weekly meetings to update procedures and ongoing instruction for the staff; thus, the perceived risk is actively addressed. Lastly, Internal Operational Procedures will be updated and uploaded to an online repository (e.g. the Procurement Intranet) by June 30, 2022.

#### Comment from the Office of the Inspector General

Observation 1 is supported by the auditors’ objective examination, WSSC’s Procurement Regulations, verbal and written evidence obtained from the CPO and the Procurement Office staff. The CPO and Procurement Office staff acknowledged improvements in its internal policies and procedures. In fact, staff shared its proposed plans for improvements and provided examples during the audit. Once the Procurement Office has implemented the referenced changes to its internal policies and procedures, as a part of its follow-up process, the OIG will review them to determine if they are responsive to the recommendation.

#### Observation 2: No Centralized Contract Information Database Software

**Risk rating: Medium**

#### **Condition**

The audit revealed that the Procurement Office does not have a centralized contract information database software to maintain and access contract related documents. OIG auditors found 12 out of 21 (or 57%) contracts sampled did not have all the documents on file in



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Procurement Office’s information database software. Currently, the Procurement Office stores its files and documents in a shared database software that provides file folders for the different phases of the procurement contracting process; however, apparently, there are no controls, which would prevent deletion or misplacement of contract information. In addition, there are no apparent measures to ensure all contract documents are complete and placed in the correct location.

### **Criteria**

WSSC 6.15.090 (b)(1), states, in part, that “the Chief Procurement Officer will manage and direct the Office of the Chief Procurement Officer.” Further, the CPO is the principal officer responsible for the Procurement Office’s information technology infrastructure and its completeness, accuracy, and validity of information processed by the Procurement staff during the contract process.

### **Cause**

There are no established procedures for the storage and security of contract related documents.

### **Effect**

The lack of a reliable, safe and secure system to house and store contract-related documents could compromise management practices related to consistency, uniformity and retention. The Procurement Office’s lack of a centralized contract database could lead to potential inconsistencies in the procurement process.

### **Recommendation 2: Consider purchasing centralized contract information database software**

The OIG recommends the Procurement Office consider purchasing database software to store contracts and related documents. The information database should meet the demands of Procurement’s operations and provide sufficient capacity for data storage, organization, retention and security of contract documents.

### ***Management Response and Action Plan (including anticipated due dates):***

Procurement Management agrees with the OIG’s recommendation that a contract database software is needed and is working with the Information Technology (IT) Department to secure such capabilities. The Procurement Office has met with the IT Department as well as other internal stakeholders regarding a Contract Lifecycle Management solution and requirement gathering to ensure the selected solution meets our needs. Further, we have met with various software providers for live demonstrations used to assess their storage, document management, and efficiency capabilities. We plan to incorporate such a solution after the Oracle R12 E-



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Business Suite (EBS) upgrade, which is scheduled to take place in early FY 2022. In the interim, we utilize a locked storage room and file cabinets to manage physical files. Additionally, electronic contract-related documents are stored via a restricted shared drive accessible by the Procurement Office. The Record Retention Schedule is also utilized for guidance.

Subsequent to the Oracle EBS upgrade, the Procurement Office will collaborate with the IT Department to ascertain the EBS upgrade's compatibilities and functionalities in real-world scenarios and use cases. Once the upgrade is complete, Procurement will work with IT to ascertain if the Oracle R12 functionality meets the Contract Lifecycle Management requirements. If no, Procurement will seek funding to implement an appropriate Contract Lifecycle Management tool by June 30, 2023. It is imperative to first assess whether the Oracle R12 functionality is sufficient to ensure contracts and related documents can be appropriately stored and accessed in an information database without conflicting with the new Oracle EBS upgrade.

#### Comment from the Office of the Inspector General

The OIG accepts management's response. Once management provides documented evidence that addresses the recommendations, as a part of its follow-up process, the OIG will review and determine if it is responsive to the recommendation.

#### Observation 3: Award criteria is not clear in IFB Solicitations

**Risk Rating: Medium**

#### **Condition**

IFB solicitations are unclear as to whether the contract will be awarded based on the lowest bid price or the lowest evaluated bid price. There is a distinct difference between awarding a contract based on the lowest bid price and the lowest evaluated bid price. The lowest bid price is the bid with the lowest price of all the qualified bids received. The lowest evaluated bid price is the lowest price after Procurement Office's evaluation team has reviewed the bid based on measurable criteria set forth in the solicitation.

#### **Criteria**

Pursuant to PUA, § 20-105 (b)(ii) and WSSC 6.15.310 (b)(2)(ii), an invitation for bids shall "state whether the contract will be awarded based on the lowest bid price or the lowest evaluated bid price."



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## Cause

The current language in the IFB solicitation has not been revised to comply with the PUA and the WSSC Code which require that the pricing method used to evaluate bids be disclosed in the solicitation bid by identifying which pricing method will be used to evaluate the bid. Currently, the IFB solicitation language states “for competitive sealed bids the contract will be awarded in accordance with Commission Procurement Regulation § 4-202 to the responsive and responsible bidder who submits the lowest bid price or lowest evaluated bid price, as appropriate, and for multi-step sealed bids, the contract will be awarded to the most responsive and responsible bidder, who offers the lowest price or lowest evaluated bid price, in conformance with the invitation for bids.<sup>15</sup>”

## Effect

The current language in an IFB solicitation does not conform with Maryland law and WSSC governing regulations on competitive sealed bidding, which may result in Procurement staff using arbitrary and outdated guidelines in evaluating and determining bids. The discretionary approach in the evaluation of bids does not comply with WSSC 6.15.310 (b)(2)(ii), which requires that the pricing evaluation be detailed in the solicitation. In addition, such discretion may result in challenges regarding the procurement process by bidders.

### **Recommendation 3a: IFB Solicitations should comply with Procurement Regulations**

The OIG recommends IFB solicitations comply with WSSC’s Procurement Regulations by ensuring that its solicitations state which award criteria will be used to evaluate invitations for bids.

### **Recommendation 3b: Develop evaluation criteria**

The OIG recommends management develop evaluation criteria for invitations for bids when the advertised solicitation states that the award is based on the lowest evaluated bid.

### ***Management Response and Action Plan (including anticipated due dates):***

The Procurement Office disagrees with this observation as each solicitation outlines the basis of award. The Procurement professionals work to ensure that all IFB’s are advertised in accordance with WSSC’s Procurement Regulations as approved by the Commission and the State of Maryland. In accordance with Procurement Regulation Section

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<sup>15</sup> See generally WSSC IFB solicitation, Terms and Conditions, Part I, Section 22 (H).



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6.15.310 (b)(2)(ii), the basis of award is established and presented in the “Additional Instructions to Bidders”. The basis of award details how responses to solicitations will be evaluated and subsequently awarded.

Additionally, Public Utilities Article and the Maryland Code State Finance and Procurement Law MD State Fin & Pro Code § 13-103 (2013) stipulates the following: “After obtaining any approval required by law, the procurement officer shall award the procurement contract to the responsible bidder who submits the responsive bid that:

- (i) is the lowest bid price;
- (ii) if the invitation for bids so provides, is the lowest evaluated bid price; or
- (iii) for procurement subject to § 11-202(3) of this article, is the bid most favorable to the State.”

The Procurement Office is in the process of creating and updating templates for the solicitation documents, which will further ensure consistency in all future documents. This will also entail indicating the appropriate basis of award (e.g. lowest bid vs. lowest evaluated bid) in each IFB based upon the type of solicitation being advertised. Such templates shall be completed by June 30, 2022. Procurement Management will also ensure the solicitation type is identified in the solicitation title and also confirm that the method of award is included in the Additional Instructions to Bidders and project descriptions by January 3, 2022.

Comment from the Office of the Inspector General

Observation 3 is supported by the auditors’ objective examination, WSSC’s Procurement Regulations, verbal and written evidence obtained from the CPO and the Procurement Office staff. Further, Management’s response acknowledges the need for improvements including updating templates to ensure that required solicitation information is properly noticed. Once it is completed, as a part of its follow-up process, the OIG will review them and determine if the updated documents are responsive to the recommendations.





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Observation 4: Written solicitation and contract terms are not consistently followed

**Risk Rating: Medium**

**Condition**

During this audit, OIG auditors observed instances where the Procurement Office exercised an option in a manner contrary to what was set forth in the solicitation or contract.

For example, in a contract, two prime contractors each received approval for a \$5,000,000 option contract to complete work on a sanitary sewer rehabilitation project. The solicitation described the original terms as a 3-year base term contract to be awarded to four prime contractors for a total of \$35 million. Each contractor would receive a maximum contract value of \$8,750,000, along with an option not to exceed \$2,187,500. OIG auditors were not provided any documentation evidencing amendments or change orders for the contract, and there were no option term provisions set forth in the contract to clarify Procurement Office's actions. Procurement Office exercised an option to extend the contract in the amount of \$5,000,000, which was \$2,812,500 more than the amount stated in the solicitation.

In addition to the option above, in the same contract, there were two other options exercised during the audit period. The Procurement Office also did not provide any documentation evidencing the approval of these options by the CPO or the Commissioners or notification to the contractor prior to exercising them. For example, the original contract did not include any option term provisions as referenced in the solicitation. OIG auditors did not identify where the option provision contained in the solicitation was memorialized in the executed contracts or change orders examined. Further, there were no related documents evidencing or explaining the three exercised options.

**Criteria**

According to WSSC 6.15.410 (c), when a contract contains an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation, and the exercise of an option is always at WSSC's discretion. Further, before exercising any option for renewal, extension, or purchase, the Procurement Officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to WSSC than renewal or extension of the existing contract.<sup>16</sup>

Under certain procurement circumstances, WSSC may find it advantageous to obtain the option of a unilateral contract extension to extend the contract 90 days past its

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<sup>16</sup> See WSSC 6.15.410 (c)(2).



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termination date.<sup>17</sup> In these instances, notice of such provision shall be included in the solicitation.<sup>18</sup> If WSSC intends to exercise the extension, it shall provide written notice to the contractor at least 30 days prior to the contract termination date. The exercise of the extension is at WSSC’s sole discretion.<sup>19</sup>

Moreover, in a contract reviewed during the audit, the solicitation defined the contract value in Part IV, Item 4C, as:

The maximum Project value is \$35,000,000 for the Base Term. The expected maximum Contract Value to each Contractor for the Base Term will be \$8,750,000 each. This value could vary depending on the number of successful bidders that are recommended for award. The expected maximum Project value for the contract term is \$8,750,000. The expected maximum contract value for the option term will be \$2,187,500 to each Contractor.

In Item 4 of the executed contract, it further states, in part, “that the contractor agrees to comply with the terms set forth therein for a total not to exceed \$8,750,000.” Signed agreements between parties are a well-known best practice that legalizes terms, details responsibilities, provides protection for self-interests, and makes the intended actions enforceable upon each party.”

### **Cause**

There are no formal procedures to verify that executed contracts contain option terms that are consistent with the those set forth in the solicitation.

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<sup>17</sup> See *Id.*

<sup>18</sup> See *Id.*

<sup>19</sup> See *Id.*



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**Effect**

The lack of a formal procedure may create inconsistencies and could exceed the maximum contract value and option value.

Elements of a contract that are not in writing may also expose WSSC to contract non-performance and other potential legal complications.

**Recommendation 4a: Verify and ensure contract terms are in accordance with the solicitation and the contract**

The OIG recommends management develop written procedures to verify and ensure that contract terms and options are consistent with solicitations; and to update contractual agreements, where applicable. Any deviation from the solicitation and the awarded executed contract should be disclosed to the Commissioners.

**Recommendation 4b: Provide written option agreements signed by all parties**

The OIG recommends the Procurement Office provide written option agreements signed by all parties and coordinate with WSSC's General Counsel to ensure the option agreement is in proper form and legally sufficient.

***Management Response and Action Plan (including anticipated due dates):***

On August 21, 2013, the Commission approved Contract PM5425A12 with a maximum project value of \$35,000,000 for award to four firms: Cherry Hill Construction, Inc., Inland Waters Pollution Control, Pleasants Construction, Inc., and AB Construction, Inc. Each awardee received an upset limit of \$8,750,000.00 for a three-year Base Term. This award was made as a stipulated contract action in response to the findings in the Consent Decree PJM-04-3679. The Decree enumerated the required actions regarding rehabilitation and stabilization of Environmentally Sensitive Areas within Prince George's and Montgomery Counties. Time was of the Essence in these awards. These contracts, as advertised and awarded, also carried an Option Term of three years with an "expected contract value" of \$2,187,500.00 for each of the four awardees.

Following shortly after the award of this contract, one of the awardees chose not to continue their services under the contract. In order to accomplish the Consent Decree work, it was necessary to award a larger Upset Limit for the remaining Contractors to accomplish the required work. At that time a justification for contract Amendment should have been authored by the User and a Contract Amendment should have been issued by Procurement to delineate the Upset Limit changes.



Procurement did issue a Commission Package to the Commissioners requesting their approval of the modified Option Term amount, which was subsequently approved. Procurement did not work with GCO to amend the contract. Such cases are an anomaly; however, Procurement Management agrees with the recommendation to ensure the option agreement is in proper form and legally sufficient. The Procurement Office will develop a form and implement procedures by June 30, 2022 to document amendments or change orders for contracts as noted in this observation.

#### Comment from the Office of the Inspector General

The OIG accepts management’s response. Once management provides documented evidence that addresses the recommendations, as a part of its follow-up process, the OIG will review it and determine if it is responsive to the recommendations.

The option contract was presented and approved at the November 28, 2018 Commission meeting, which is within the audit scope of July 1, 2018 to June 30, 2019.

#### Observation 5: Conflict of interest affidavits are not submitted consistently

**Risk Rating: Medium**

#### **Condition**

Conflict of interest affidavits from vendors who send contract bids or proposals to the Procurement Office are not submitted consistently. In nine of the 21 (or 43%) contracts sampled where a conflict of interest affidavit was required in the solicitation, auditors found that only 22 of the 43 (or 51%) vendors submitted a conflict of interest affidavit. Further, the evaluation team did not document any efforts to obtain the conflict of interest affidavits in the 22 instances.

Auditors examined potential conflicts of interest between vendors. In one instance where there was no requirement to submit a conflict of interest affidavit, auditors noted a potential conflict between the prime contractor and subcontractor who was awarded nearly 25% of the contract work. The two vendors had similar first names and the vendors had an office at the same address location. The Procurement Office did not provide any documentation that this potential conflict had been reviewed by the evaluation team.

#### **Criteria**

According to WSSC 1.70.280 (a), each invitation for bids or requests for proposals requires 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. Additionally, this has been integrated in the procurement process because typically, solicitations state that “if provided in Appendix C, the Bidder shall be required to



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submit a statement indicating that it has conducted a review for conflict of interest and has ascertained that there is currently no conflict of interest in the Bidder's representation of WSSC.”

**Cause**

There are no written procedures to ensure consistent compliance with WSSC 1.70.280, and to require that all forms including conflict of interest affidavits are submitted by the bidder and reviewed properly by Procurement staff prior to the selection and awarding of a contract.

**Effect**

The failure to employ a sufficient process to detect and monitor conflict of interest affidavits may result in the awarding of contracts that are not in WSSC’s best interest and may not result in WSSC receiving the best competitive offer. Improper management of conflicts of interest could lead to preferential treatment between Procurement Office staff and contract bidders or offerors that may constitute fraud, misuse of public resources, as well as undermine the integrity of WSSC’s procurement process. It could lead to unfair business practices where prime contractors are able to steer minority participation awards to related entities or family businesses and subject the Commission to legal risks.

**Recommendation 5: Ensure conflict of interest affidavits are submitted**

The OIG recommends the Procurement Office create internal procedures to comport with WSSC 1.70.280 (a) requiring bidders and offerors to submit a conflict of interest affidavit in solicitations, and that they are reviewed by the evaluation team.

***Management Response and Action Plan (including anticipated due dates):***

Procurement agrees with this recommendation. By January 1, 2022, the Procurement Office will create and begin utilizing a checklist to verify all solicitation documents, including a Conflict of Interest Affidavit, are received and reviewed during the evaluation process.



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Comment from the Office of the Inspector General

The OIG accepts management's response. Once management provides documented evidence that addresses the recommendations, as a part of its follow-up process, the OIG will review and determine if it is responsive to the recommendation.

Observation 6: Vendors did not provide support for their labor overhead rates

**Risk Rating: Medium**

**Condition**

There were three out of eleven (27%) contract solicitations originated during the audit scope that required vendors to provide support for labor overhead rates. None of the three vendors provided support for their labor overhead rates. The solicitations require each prospective bidder or offeror to provide support for their overhead rates. This support is described as a certified auditor's report, an audit performed by a governmental agency, or an acceptance letter from a specified Department of Transportation. If a vendor is not able to provide such support, then the Procurement Office uses its own overhead rate of 2.2 applied to labor.

The overhead rate is a critical cost element of the contract because labor cost is a significant portion of the total contract cost. Labor cost is comprised of direct labor and indirect labor costs and the overhead rate is used as multiplier to increase total labor costs. The overhead rate is applied to labor costs. The three contracts were awarded to three separate vendors who each had an overhead rate higher than the Procurement Office's established overhead rate. Among the three vendors, the average overhead rate was 2.8 which is 27% over the Procurement Office's overhead rate of 2.2.



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## Criteria

The advertised solicitations included a requirement in Section 6.1.2.3 that states, in part, “that the consultant shall provide a copy of a certified auditor's report on its overhead rate developed in accordance with the Federal Acquisition Regulation (Title 48 Code of Federal Regulation (CFR), Part 31) including any applicable Cost Accounting Standards (Title 48 CFR, Chapter 99). This shall include an audit performed by any federal, state or local audit agency and any acceptance letters from the Department of Transportation from Maryland, Virginia, Delaware, Pennsylvania, or the District of Columbia. If the consultant (or any sub-consultant) cannot provide an auditor's report, then the following maximum multiplier shall apply to this contract, which is 2.2.”

## Cause

There are no written procedures to ensure vendors provide the required documentation as stated in advertised solicitations. Additionally, support for the Procurement Office’s overhead rate calculation was not provided and it could be outdated pursuant to industry standards.

## Effect

The cost for WSSC contracts is increased when the Procurement Office does not obtain the support and uses the vendor’s higher overhead rate instead of the Procurement Office’s rate.

### **Recommendation 6: Obtain a vendor’s certified overhead rate and update the Procurement Office’s overhead rate**

The OIG recommends management obtain a vendor’s certified auditor’s report or an acceptance letter from a governmental agency, which supports the vendor’s overhead rate. In addition, the OIG recommends management consult with WSSC’s Accounting Division to obtain the most updated overhead rate; and where applicable, document any reasons when WSSC’s overhead rate is not used in a solicitation.

### ***Management Response and Action Plan (including anticipated due dates):***

Management agrees with the recommendation to implement procedures to ensure vendors provide the required documentation as stated in the solicitation. Further, as suggested in the recommendation, management submitted a request to WSSC’s Accounting Division to obtain the most updated overhead rate on October 26, 2021. The Procurement Office is also initiating a study to determine the use of overhead rates. At the end of the study, it will be determined if the use of overhead rates is a valuable tool in assessing the cost impact. The aforementioned procedure and study will be concluded by June 30, 2022.



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**Comment from the Office of the Inspector General**

The OIG accepts management’s response. Once management provides documented evidence that addresses the recommendations, as a part of its follow-up process, the OIG will review and determine if it is responsive to the recommendation. The OIG also acknowledges the Procurement Office has requested assistance from WSSC’s Accounting Division to obtain the most updated overhead rate.

cc: General Manager/CEO, (C. Reid)  
DGM, Administration, (J. Beach)  
Chief Procurement Officer, (C. Poole-Williams)  
Procurement Services Division Manager, (T. Carney)  
Operations and Administration Division Manager, (K. Harley)  
Chief Strategy and Innovation Officer, (T. Allen)