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**OFFICE OF THE INSPECTOR GENERAL  
LAUREL, MARYLAND**

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**CONTRACT COMPLIANCE ANNUAL REVIEW  
COLONIAL CHEMICAL SOLUTIONS, INC.  
CONTRACT NUMBER 16507  
PROCUREMENT DEPARTMENT**



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**OIG PROJECT NUMBER 23-CR-01**

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**FROM:** JANE N. LEWIS, SUPERVISORY AUDITOR  
DIGDEM (DEE) TOK, AUDITOR  
OFFICE OF THE INSPECTOR GENERAL  

**DATE:** DECEMBER 20, 2023

**SUBJECT:** CONTRACT COMPLIANCE ANNUAL REVIEW  
COLONIAL CHEMICAL SOLUTIONS, INC.  
CONTRACT NUMBER 16507

We have performed a review of contract number 16507 for Colonial Chemical Solutions, Inc. The detailed report is attached for your review. The OIG performed the work in accordance with the Association of Inspectors General, *Principles and Standards for Offices of Inspectors General, Quality Standards for Inspections, Evaluations, and Reviews*. We have already discussed issues of concern with management, and their action plans are included in this report.

We appreciate the assistance provided by management and other personnel. We hope the information and recommendations presented in our report are helpful.

Attachment

- cc: Chief of Staff (C. Knight-Lee)
- Performance & Accountability Director (R. Maloney)
- Chief Procurement Officer (C. Poole-Williams)
- Director, Production Department (J.C. Langley)
- Deputy Director, Production Department (B. Thompson)
- Division Manager, Procurement Dept. (M. Jackson)
- Division Manager, Procurement Dept. (K. Harley)
- Division Manager, Procurement Dept. (T. Carney)

# EXECUTIVE SUMMARY



## Why The OIG Did This Review

In accordance with the Washington Suburban Sanitary Commission (WSSC) Office of the Inspector General's (OIG) Fiscal Year (FY) 2023 Risk-Based Work Plan and the authority granted to it pursuant to the Maryland Annotated Code, Public Utilities Article, § 17-605 (a)(6), the OIG reviewed compliance for a contract related to a WSSC project carrying high financial exposure highlighted through the Commissioners' approved contract change orders.

WSSC's Procurement Department is vested with contracting authority, and the Engineering and Production Department is responsible for monitoring the contract services and approving invoices for payments.

The OIG performed the work in accordance with Quality Standards for Inspections, Evaluations, and Reviews by the Office of the Inspector General, except for the peer review requirement.

## Strategic Alignment

This report addresses WSSC's Priority: Spend Customer Dollars Wisely

## OIG Contact Information

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## CONTRACTS COMPLIANCE ANNUAL REVIEW

### What the OIG found

The objective of the review is to assess WSSC's compliance with the laws of the State of Maryland and WSSC regulations, standards, and guidelines pertaining to contracts and related agreements. The purpose of the review is twofold: to provide information for management's decision-making and to make recommendations to improve WSSC's regulations, programs, policies, or procedures. OIG auditors selected a change order approved during the fiscal year ending June 2021 and related to the Piscataway Bioenergy Project. The auditors then evaluated WSSC's compliance pursuant to Chapter 6.15 of the WSSC Code of Regulations (Code), the executed contract, and other signed agreements.

The review disclosed that WSSC bidding process activities warrant improvement to fulfill requirements outlined in the signed agreement for Contract No. 16507. The OIG noted the following:

- WSSC contracted with a party that was not in good standing with the State of Maryland; and
- WSSC paid the contractor \$2.45M more than the maximum limit allowed before amending the contract terms as agreed by the parties.

The OIG presented the following recommendations intended to improve the WSSC's contract management and administration processes:

- Consistently adhere to all terms of the contract by ensuring that a bidder or offeror, amongst other factors, complies with the solicitation;
- Address the discrepancy (excess payment of upset limits) noted under Contract No. 16507 by obtaining the parties' consent to ensure that all parties agree and are aware of the price change; Consistently modify contracts following the terms of the agreement before contract performance.

WSSC management addressed OIG's recommendations and presented operational improvements or provided corrective action plans with anticipated due dates, where applicable.



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## **BACKGROUND**

In accordance with the Washington Suburban Sanitary Commission (WSSC) Office of the Inspector General's (OIG) Fiscal Year (FY) 2023 Risk-Based Work Plan and the authority granted to the OIG pursuant to Public Utilities Article, § 17-605 (a)(6) of the Annotated Code of Maryland, the OIG reviewed and assessed compliance of a WSSC goods and services contract with significant financial exposure through the Commissioners' approved change orders.

The OIG performed this review in accordance with the Association of Inspectors General, Principles and Standards for Offices of Inspectors General, *Quality Standards for Inspection, Evaluations, and Reviews* (May 2014).<sup>1</sup> These quality standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the work objectives. Accordingly, we affirm that the evidence obtained and reviewed provides a reasonable basis for the review's findings and conclusions based on our scope and objectives.

In September 2020, WSSC executed a Master Service Agreement (further identified as Contract No. 16507) with Colonial Chemical Solutions, Inc. (CCS, Inc.), to supply 430,000 gallons of methanol, a critical chemical used in wastewater treatment.<sup>2</sup> The contract was for one year and included an option for WSSC to extend the contract for up to four (4) additional one-year terms.<sup>3</sup> Additionally, the contract contained an "upset limit" that established that the total amount of purchases may not exceed \$600,000 in the base or any option term unless the upset limit is modified in advance by a written amendment to the contract executed by both parties.<sup>4</sup>

On September 14, 2020, documentation shows that the Chief Procurement Officer (CPO) approved the original funding of Contract No. 16507 via a contract purchasing agreement in the sum of \$600,000 for the base term.<sup>5</sup> WSSC issued five change orders for Contract No. 16507: On September 17, 2020, the CPO approved an administrative Change Order No. 1 for zero dollars.<sup>6</sup> On February 24, 2021, the CPO approved Change Order No. 2, requesting \$352,346, citing additional funds to cover the plants' demand for methanol.<sup>7</sup> On March 17, 2021, WSSC Commissioners approved Change Order No. 3, requesting \$1,057,038, citing that the additional funds were required to meet the Water Resources Facilities' demand for methanol

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<sup>1</sup> In March 2023, an independent external peer review was conducted of the OIG in accordance with the U.S. Government Accountability Office's Generally Accepted Government Auditing Standards, and a satisfactory rating was assessed.

<sup>2</sup> See Methanol Master Service Agreement, Contract No. 16507, ¶ 3 (Sept. 8, 2020).

<sup>3</sup> See *Id.* at ¶ 5 (providing that WSSC at its sole discretion could extend the base term or any option term for a period of ninety (90) days at the same prices in accordance with § 6.15.410 (d) of WSSC Code of Regulations).

<sup>4</sup> See Contract No. 16507, ¶ 8.

<sup>5</sup> See Procurement, Base term funding #0 Contract Purchase Agreement No. 133286 (Sept. 14, 2020).

<sup>6</sup> See Procurement, Change Order #1 Contract Purchase Agreement No. 133286 (Sept. 17, 2020).

<sup>7</sup> See Procurement, Change Order #2 Contract Purchase Agreement No. 133286 (Feb. 24, 2021).

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across multiple WSSC treatment plants.<sup>8</sup> On November 17, 2021, WSSC Commissioners approved Change Order No. 4, requesting \$2,146,000 in addition to the CPO-approved \$600,000, thus increasing the total amount of the upset limit to \$4,755,384 in two years.<sup>9</sup> The final change order to date is Change Order No. 5, approved by the Commissioners on April 19, 2023, requesting \$1,000,000. The CPO approved an additional \$600,000 on April 19, 2023, thus increasing the total amount of the upset limit to \$6,355,384.<sup>10</sup>

See the table below created by OIG showing a summary of approved change orders for Contract No. 16507 with data obtained from two sources as indicated.

Change Order Number	Contract Purchase Agreement Number	Change Order Approval Date	Change Orders Amount Approved by Commissioners	Contract Amount Approved by the CPO	Cumulative <input type="checkbox"/> Contract Amount Approved to Date
No.0	133286	14-Sep-20	n/a	\$600,000	\$600,000
No.1	133256	17-Sep-20	n/a	\$0	\$600,000
No.2	133286	24-Feb-21	n/a	\$352,346	\$952,346
No.3	133286	17-Mar-21	\$1,057,038	n/a	\$2,009,384
No.4	147231	17-Nov-21	\$2,146,000	\$600,000	\$4,755,384
No.5	158636	19-Apr-23	\$1,000,000	\$600,000	\$6,355,384
<b>TOTAL</b>			<b>\$4,203,038</b>	<b>\$2,152,346</b>	

**Data Source:** WSSC Commission Minutes available online at <https://www.wsscwater.com> and the Purchasing Module for WSSC Oracle EBS application.

CCS, Inc., is a chemical distribution and logistical company headquartered in Savanna, Georgia, and is one of the various subsidiaries run by Colonial Group, Inc. The WSSC record showed that CCS, Inc., is insured under the umbrella of its parent company for Contract No. 16507.

WSSC's Procurement Department is vested with contracting authority, including overseeing the solicitation and award process for categories of purchasing and preparing purchase orders, contract purchasing agreements, and change orders pursuant to WSSC regulations, standard procedures, and contract terms. The Production Department (PD) is the end-user of the methanol product. The PD's responsibility includes the following:

- approving task orders for methanol deliveries,
- receiving the methanol shipments,
- acknowledging receipt of the product,
- approving invoices for payments, and
- presenting change orders for approval to the Commissioners.

<sup>8</sup> See Commission Package, Change Order #3, Contract Purchase Agreement No. 133286 (March 17, 2021).

<sup>9</sup> See Commission Package, Change Order #4, Contract Purchase Agreement No. 147231 (November 17, 2021).

<sup>10</sup> See Commission Package, Change Order #5, Contract Purchase Agreement No. 158636 (April 19, 2023).

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**OBJECTIVE**

The objective of the review is to assess WSSC's compliance with the State Finance and Procurement Article, Division II of the Annotated Code of Maryland, and WSSC 's Code of Regulations Procurement Chapter 6.15 (WSSC Code), Manual of Standards Procedures, and internal operating guidelines pertaining to contracting and purchasing. The purpose of the review is twofold: 1) provide information for management to make decisions, and 2) offer recommendations to improve WSSC's regulations, programs, policies, or procedures.

**SCOPE AND METHODOLOGY**

The scope included reviewing the administration and management of Contract No. 16507. The amount that the Commissioners approved for Contract No.16507 during the said period was \$2,146,000. Auditors also reviewed WSSC's orders and payments made under Contract No. 16507 to obtain information about the services or goods provided and the respective obligations of the parties during the 18 months, starting July 1, 2021, and ending December 31, 2022.

To achieve the review's objective, the OIG auditors reviewed the associated solicitation and bidding documents, Contract No. 16507, invoices, payments, and other supporting and related documents to understand the contract requirements and how WSSC administers and manages the selected contract. The OIG auditors conducted interviews with staff from the Procurement Department, including the CPO and three Division managers. Auditors evaluated WSSC's contract compliance with requirements in Procurement Chapter 6.15 of the WSSC Code that related to Contract No. 16507, specifically, Chapter WSSC 6.15.380, that governs the responsibility of bidders and offerors.

The OIG did not assess the change order process for the Procurement Department under this review.

**CONCLUSION**

The OIG concluded that the Procurement Department followed State Finance and Procurement Article, Division II of the Annotated Code of Maryland, WSSC Code, Manual of Standards Procedures, and internal operating guidelines pertaining to contracting and purchasing when administering Contract No. 16507.

However, evidence disclosed that WSSC bidding process activities warrant improvement to fulfill requirements outlined in the signed agreement for Contract No.16507. The OIG noted the following:

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- WSSC contracted with a party that was not in good standing with the State of Maryland; and
- WSSC paid the contractor \$2.45M more than the maximum limit allowed before amending the contract terms as agreed by the parties.

Addressing these matters and adhering to the WSSC signed agreement terms will help improve the contract management and administration processes.

The OIG noted that the Procurement Department established and implemented a verification process on December 16, 2022, following the OIG report issued on December 13, 2022. We thank the Procurement, Production, and Information Technology Departments' personnel for their prompt responses and cooperative support.

## **FINDINGS, MANAGEMENT RESPONSES, AND ACTION PLANS**

### **Finding 1: WSSC contracted with a Party Not In Good Standing with the State of Maryland**

**Risk Rating: HIGH**

According to Article 31.1.1 of Contract No. 16507, the contractor [CCS, Inc.] agreed to be qualified to do business in the State of Maryland. Additionally, the contractor declared and affirmed in an accompanying affidavit submitted with its bid that it will obtain and maintain, in good standing, all corporate filings, licenses, and approvals with the Maryland State Department of Assessments and Taxation (SDAT).<sup>11</sup>

The language in Contract No. 16507 and the accompanying affidavit is consistent with the State of Maryland's procurement requirements that a recommended awardee of a contract with the State must be registered and in good standing with the SDAT.<sup>12</sup> Although the WSSC Code of Regulations does not require that a bidder or offeror register with SDAT and maintain good standing, WSSC has incorporated these requirements in certain contracts.

WSSC may deem a party as a "responsive bidder or offeror" if they have submitted a bid or a proposal that fully conforms to the invitation for bids or request for proposals.<sup>13</sup> In the Instructions to Bidders, Contract No. 16507, Paragraph 13, titled "Bidder/Offeror Qualifications," and subsection (b), "Maryland State Department of Assessments & Taxation registration and Good Standing," "before doing any business in the State of Maryland, all corporations and limited liability companies are required by Maryland law

<sup>11</sup> See CCS, Inc.'s Bid Proposal Affidavit, ¶ K (4) (August 14, 2020).

<sup>12</sup> See State of Maryland Procurement Manual, § 6.2.5 <https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/07/MarylandProcurementManual.pdf> last visited on February 23, 2023.

<sup>13</sup> See WSSC 6.15.070 (ggg).

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to be registered with the Maryland State Department of Assessments & Taxation and in good standing.” Subsection 13(b) cites the Maryland Code, Corporations and Associations Article, §§ 7-202 and 4A-1002. While 13(b) does not state whether WSSC will verify the bidder/offeree’s good standing, it does permit WSSC to find a Bidder/Offeree nonresponsible for failing to register with SDAT or be in good standing.<sup>14</sup> Again, this language is consistent with the requirements for contracting with Maryland state agencies.<sup>15</sup>

The evidence disclosed that in August 2020, WSSC accepted the bid and executed Contract No.16507 valued at \$600,000; however, the contractor, CCS, Inc., was not in good standing with the State of Maryland. Specifically, the SDAT identification number provided by CCS, Inc., and included in the supporting affidavit, could not be authenticated during this review. The auditors searched the SDAT website where such information is maintained, and as of April 20, 2023, the identification number could not be located or verified by the auditors.

Procurement Department officials explained they did not verify that the contractor was in good standing with the State of Maryland at the time the contract was awarded and executed because there was no verification process in place at WSSC. Instead, the Procurement Department accepted and considered the contractor’s “Use Tax Resale Certificate,” responsive to the qualified to do business requirement in the solicitation and Article 31.1.1 of Contract No. 16507.

WSSC considered CCS, Inc., a responsive bidder or offeror as defined in WSSC 6.15.070 (ggg). However, CCS, Inc., did not fully conform to the requirements of the solicitation. It was not registered with SDAT and in good standing as required in the solicitation. Although CCS, Inc., submitted an affidavit affirming that it was qualified to do business under Article 31.1.1 of Contract No. 16507 at the time of contracting, and Procurement provided OIG auditors with CCS, Inc.’s Use and Sales Tax Certificate, as of the OIG review date, it was not registered with SDAT or in good standing. Further, there was no evidence provided that showed CCS, Inc., was registered with SDAT or in good standing pursuant to the solicitation to determine whether WSSC should exercise the option of finding CCS, Inc., nonresponsible.

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<sup>14</sup> See WSSC 6.15.380 (permitting the Procurement Officer to determine that a bidder or offeror is nonresponsible, and provide written notice of nonresponsibility in instances where a bidder or offeror who would have been awarded a contract).

It should also be noted that WSSC Management in 2022, in its response to the OIG’s 2022 FY CCAR, stated a vendor will be notified by the Procurement Office in writing if it is not registered with SDAT and in good standing, and will have ten (10) business days to cure the defect. WSSC Management also stated that a vendor will be considered nonresponsible, and a written determination of nonresponsibility will be issued per 6.15.380(g) of the WSSC Code.

<sup>15</sup> See State of Maryland Procurement Manual, § 6.2.5 <https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/07/MarylandProcurementManual.pdf>

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**Recommendation 1: Comply with the Terms of the Contract**

The OIG recommends that the WSSC Procurement Department consistently adhere to all terms of the contract by ensuring that a bidder or offeror, amongst other factors, complies with the solicitation. All supporting documents submitted in response to the bid or solicitation by the bidder/offeror should be reviewed and validated to deem a bidder/offeror responsive.

We also recommend that where there is a contractual requirement to register with SDAT or be in good standing before performing work in Maryland, the CPO, in partnership with the End-User department, verifies compliance with the requirement and assesses whether there should be a written determination of nonresponsibility under WSSC 6.15.380 (g) if the requirement has not been met. Making such assessments and determinations promotes fairness in the competitive bidding process.

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

Management concurs with the Recommendation. Effective December 2022, the Procurement Office put additional processes in place and continues to make improvements (including staff training) to ensure all contract terms are adhered to and proper verification of information occurs.

The verification process is as follows:

1. Review all submittals for responsiveness and responsibility,
2. Ensure that all respondents were registered with the State of Maryland,
3. Award the contract in accordance with the Procurement Regulations and the Delegation of Authority,
4. Dutifully receive Commissioner approval for change orders that require Commissioner approval,
5. Process all change orders in specific adherence to the Delegation of Authority, and
6. Seek and receive legal sufficiency from the General Counsel's Office.

At time of writing Management's response, and in consultation with WSSC Water's General Counsel, it was determined that the responsibility for enforcing SDAT registration and good standing status resides with SDAT and not WSSC Water. WSSC is not legally obligated to verify a foreign corporation's registration or good standing status prior to contract award. Section 13-222 of the State Finance & Procurement Article of the Annotated Code of Maryland, which is the statute that requires State executive agencies to verify a proposed contractor's good standing, does not apply to WSSC Water.

Additionally, when determining whether a particular bidder or offeror is responsive or responsible, Procurement is and should be entitled to rely on the accuracy of the representations

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and warranties made by the contractor in support of its bid or proposal. The definition of a responsible bidder or offeror in the Procurement Regulations speaks to a bidder or offeror's performance capability, integrity, and reliability. It does not reference or require verification of an entity's registration or good standing status with SDAT. Further, the language "may be found non-responsible" in the Instructions to Bidders is not determinative language requiring Procurement to deem a bidder or offer non-responsible for not registering with SDAT and possessing good standing status. However, to avoid any misunderstandings in the future, the SDAT registration requirement has been removed from the solicitation and contract documentation moving forward.

**Finding 2: WSSC paid the contractor \$2.45M in excess of the Upset Limit Amount prior to modifying the agreement signed by the parties**

**Risk Rating: HIGH**

According to Contract No. 16507, the total amount of purchases under the agreement is subject to a contract upset limit of six hundred thousand dollars (\$600,000.00) for each term.<sup>16</sup> The agreement further states that WSSC may not order purchases in excess of the upset limit in the base term or any option term, and the contractor shall not be paid any amount in excess of the upset limit unless the upset limit is modified in advance by a written amendment to this agreement signed by the Parties.<sup>17</sup> The ability to modify the contract as stated in the agreement is consistent with the bilateral agreement requirement and process defined in the WSSC Code (Procurement).<sup>18</sup> Additionally, Article 20 of the WSSC General Conditions-Goods & Supplies (attached to the solicitation) permits the CPO to unilaterally issue a change order regarding the work within the general scope and requires the contractor to submit a claim for additional compensation pursuant to WSSC 6.15.560 (b).

The evidence disclosed that WSSC and the Contractor did not modify the agreement prior to exceeding the \$600,000 upset limit for payment under Contract No. 16507 during the base and option terms. During the first two contract terms, starting September 29, 2020, WSSC paid the contractor \$2.46M more than the agreed maximum of \$1.2M prior to modifying the agreement signed by both parties (see details in the table below).

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<sup>16</sup> See Contract No. 16507, ¶ 8.

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

<sup>18</sup> See WSSC 6.15.070 (o) (defining "contract modification" as any bilateral alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action and consent of the parties to the contract).

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<b>Contract Terms Year Ending</b>	<b>Amount Paid to CCS, Inc.</b>	<b>Upset Limit Amount</b>	<b>Amount Paid in Excess</b>
<b>September 29, 2021</b>	<b>\$1,690,388</b>	<b>\$600,000</b>	<b>\$1,090,388</b>
<b>September 29, 2022</b>	<b>\$1,978,821</b>	<b>\$600,000</b>	<b>\$1,378,821</b>
<b>Total</b>	<b>\$3,669,209</b>	<b>\$1,200,000</b>	<b>\$2,469,209</b>

*Data Source:* On February 2, 2023, OIG auditors received the requested information from the WSSC Section Manager, Information Technology Applications & Development.

Additional information provided shows that the first written amendment to Contract No. 16507 was made effective September 12, 2022. The written amendment, however, was not retroactive to the period(s) when the upset limit was exceeded.

During the calendar year 2021, the Procurement Department used Commission-approved change orders totaling \$4.15M to comply with the requirement in the contract that the parties modify the agreement in writing before exceeding the upset limit. The Procurement Department justified bypassing the written modifications set forth in the agreement by asserting that the change orders were “contract amendments” as defined under the WSSC Code. Procurement Department management states they did not amend the contract as agreed, and there was no need for a contract amendment or execution by both parties. WSSC permits a contract to be amended to revise or alter a specific contract or its conditions upon mutual agreement in a bilateral contract modification or through a unilateral change order.<sup>19</sup> Contract No. 16507 permitted contract amendments in the form of change orders when it related to the scope of the work, but it specifically required that “modifications” to the contract price be (1) made in writing and (2) signed by the parties in a written amendment prior to the performance.

Increasing the upset limit prior to modifying Contract No. 16507 in writing did not comply with the terms of the agreement. Also, the delayed written amendment in September 2022 did not remedy the previous violation of the contract terms.

**Recommendation 2: Address the Discrepancy and Consistently Modify Contracts prior to Performance**

The OIG recommends that the WSSC Procurement Department address the discrepancy (excess payment of upset limits) noted under Contract No. 16507 by obtaining the consent of the parties to ensure that all parties agree and are aware of the price change. Prior to contract performance, the OIG recommends that WSSC consistently modify contracts in accordance with the terms of the agreement.

<sup>19</sup> See WSSC 6.15.070 (m) (defining “contract amendment” as any revision or alteration of the specific contract or its conditions, whether it is a mutually agreed upon bilateral contract modification or a unilateral change order).

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

Management concurs with the Recommendation. This is an issue of non-compliance with a contract term that required amendments to be made by written agreement of both parties. In this instance, amendments that increased the upset limit were issued through revised Purchase Orders based on change orders that had been submitted to and approved by the Commission. All expenditures were within the Delegation of Authority and in accordance with Procurement Regulations.

Going forward, [Effective December 12, 2023<sup>20</sup>] requirements contracts will allow for amendments by bilateral contract modification or a unilateral change order, which is consistent with the definition of a “Contract Amendment” in WSSC’s Procurement Regulation, WSSC Code of Regulations Chapter 6.15.70 (m).

It should be noted that the web-based system will not allow releases for payments to exceed the established Purchase Order Limits that were approved in accordance with the Delegation of Authority and Commission-approved change orders.

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<sup>20</sup>The OIG included Procurement management's response date of December 12, 2023.