


# PROCUREMENT REGULATIONS



LOUISVILLE AND JEFFERSON COUNTY  
METROPOLITAN SEWER DISTRICT  
700 West Liberty Street  
Louisville, Kentucky 40203

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## LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT PROCUREMENT REGULATIONS

These procurement regulations shall remain in full force and effect unless and until modified by the Board of the Louisville and Jefferson County Metropolitan Sewer District (MSD) and shall govern all MSD procurement activities in accordance with KRS 45A.345-45A.460 with their adoption by the Board of MSD and shall supersede all previous and existing MSD procurement regulations.

If it is determined that a provision of these regulations is in conflict with KRS 45A.345-45A.460, that provision of KRS 45A will govern, and such determination shall not affect the validity of other provisions of these regulations. Notwithstanding however, the provisions of these regulations and other Board policies may be more restrictive than the minimum provision of KRS 45A.345-45A.460. Specific provisions of these regulations are severable. In the event that any provision of these regulations shall be held invalid or unenforceable by any court of competent jurisdiction, such finding shall not invalidate and render unenforceable any other provisions herein except to the extent required by law.

It is the policy of the MSD Board to ensure maximum practicable competition in all procurement activities. All MSD employees have a duty to comply with these regulations. Unless otherwise provided for in these regulations and the Kentucky Model Procurement Code, all procurements shall utilize the procedures of sealed bidding, competitive negotiations, non-competitive negotiations or small purchase.

### SECTION 1 AUTHORITY

1A-1 The Executive Director is responsible for administration of the procurement function of MSD. The authority of the Executive Director to delegate is limited to the following:

- (a) The Executive Director may delegate such authority as may be appropriate and necessary for the proper performance of the procurement function in accordance with these regulations. It is understood that any reference to the Executive Director within these regulations shall mean either the Executive Director or his designees.
- (b) Any delegation of purchasing authority shall be in writing, setting forth with particularity the kinds or type of procurement activity or function delegated, together with any limitations or restrictions on the exercise of such authority, and shall be included in policies and procedures issued pursuant to these regulations.
- (c) All standing delegations of purchasing authority by the Executive Director shall remain in force according to the original terms thereof unless modified, or until rescinded by the Executive Director.

1A-2 The Executive Director shall establish procedures to perform the procurement function as established in these regulations.

1B-1 The authority of the Executive Director in exercising procurement functions is subject to the following limitations:

- (a) No procurement contract, or contract amendment, shall be awarded by the Executive Director in an amount in excess of amounts authorized under this Section without the Board's approval, except for emergencies, as provided for in Section 1B-1(d), and for change orders, as provided for in Section 1B-1(b), which may be awarded by the Executive Director for additional cost over the original amount of the contract.

The Executive Director shall be authorized to approve procurement contracts in the following amounts without further approval of the Board, provided all such contracts were procured in accordance with these Procurement Regulations:

<u>Effective Date:</u>	<u>Executive Director Approval:</u>
01/01/16	\$25,001 - \$500,000
07/01/16	\$25,001 - \$750,000
01/01/17	\$25,001 - \$1,000,000

- (b) For all contracts the Executive Director shall be authorized to approve change orders up to the amounts authorized for procurement contracts under Section 1B-1(a) of these Procurement Regulations and all such change order amounts for contracts shall be cumulative.
- (c) In addition, and subject to any limitations, provisions and/or other requirements of the MSD Board, the Executive Director shall also be authorized to present routine procurement contracts in the following amounts at a regular meeting of the MSD Board as part of a Consent Agenda:

<u>Effective Date:</u>	<u>Consent Agenda Approval:</u>
01/01/16	\$500,001 - \$750,000
07/01/16	\$750,001 - \$1,000,000
01/01/17	\$1,000,001 - \$1,250,000

- (d) In the event of an emergency, the Executive Director may award procurement contracts without Board approval after issuing an Emergency Certificate explaining the need for immediate procurement. However, the Executive Director shall make a reasonable effort, as such circumstances permit, to obtain three price quotations

before awarding a procurement contract. Each Emergency Certificate for an amount exceeding \$50,000 issued will be reported to the Board at its next regular meeting following issuance. Emergency Procurements do not constitute a waiver of MSD's current Supplier Diversity Program.

- (e) The Executive Director shall enforce the MSD Board's "Pre-Procurement Approval Procedures," a copy of which is attached hereto as Appendix A.
- 1B-2 The Executive Director shall at all times assure compliance with Board adopted Minority Business Enterprises and Women's Business Enterprise and Small Local Business Enterprises (MBE/WBE/SLBE) policies/programs (Supplier Diversity Program) relating to all MSD procurements, unless specifically exempted by the Executive Director. The One Water Chief Procurement Officer, or her/his designee, shall be the Executive Director's designee exclusively responsible for the evaluation of all MBE/WBE/SLBE factors in a procurement covered by these regulations.
- 1B-3 The Executive Director shall at all times assure compliance with Board adopted Community Benefits policies/programs (Community Benefits Program) relating to all MSD procurements, unless specifically exempted by the Executive Director. The Community Benefits Director, or her/his designee, shall be the Executive Director's designee exclusively responsible for the evaluation of all Community Benefits Commitments in procurements covered by these regulations.
- 1C All Procurement Determinations are subject to the following:
- 1C-1 Every determination by an employee or official of MSD engaged in or responsible for the negotiation of any procurement activity or function and constituting a final procurement action for other than small purchases, as defined in Section 2E of these regulations, shall be made in writing. Such written determination shall be made prior to engaging or commencing the procurement process.
- (a) Each determination shall be based on written findings that support the determination and shall be signed by the employee making the determination.
  - (b) Each determination shall include the procurement regulation section number applicable to the procurement.
  - (c) Each determination shall provide an explanation of how the procurement conforms with MSD's Supplier Diversity Program or the Supplier Diversity procurement requirements of any agency from which MSD may receive funds.
  - (d) Each determination shall be reviewed and found acceptable by Legal Counsel before the procurement is concluded.

- (e) Each determination shall indicate the Designated Procurement Officer for the procurement.
- (f) Each determination shall be approved by the Executive Director or the MSD Division Director with authority to approve procurements for the amount indicated.

1C-2 The Legal Counsel shall review and approve all contracts which MSD intends to execute or offer for negotiation unless a standard contract is being utilized which has previously been review by Legal Counsel.

1C-3 All procurements exceeding the Executive Director's procurement authority established under Section 1B-1(a) through (e) of these Procurement Regulations require MSD Board approval. All procurements, including change orders, exceeding \$30,000 and which are not subject to MSD Board approval, shall be reported monthly to the MSD Board.

## SECTION 2 PROCUREMENT METHODS

### 2A Sealed Bids

#### 2A-1 Security

The sealed bidding process shall be used for all procurements except those that qualify under Competitive Negotiations, Non-Competitive Negotiations, or Small Purchases. Bid Bonds are required for certain sealed bids. Bid Bonds shall conform to the following:

- (a) Each bidder responding to invitations for bids for construction contracts estimated to exceed \$100,000 or to other invitations for bids wherein bid security is required, shall submit the required bond with the bid.
- (b) Bid Bonds shall be in the form and penal sum as outlined in Section 3E.

#### 2A-2 Advertising

- (a) All sealed bids shall be advertised not less than seven (7) days prior to the date set for opening with the day of advertising not counting as one of the seven days.
- (b) Advertisements shall be posted on the MSD Internet Web Site or may be entered in the legal notices of the Courier Journal or additional publications as may be appropriate.
- (c) Any notice of extension of bid opening date shall comply with sections 2A-2(a) and 2A-2(b).



- (d) An invitation for bids may be rescinded when it is determined in writing by the Executive Director to be in the best interest of MSD.
- (e) All advertisements shall include Equal Employment Opportunity language as may be required by law. MSD shall include as part of any invitation for bids for supplies, equipment or services MSD's Supplier Diversity Program requirements or the Supplier Diversity procurement requirements of any agency from which MSD may receive funds. All advertisements for construction, construction related services, engineering and professional services shall include as part of any invitation for bids or request for proposals MSD's Community Benefits Program requirements or similar language for Community Benefits procurement requirements for any agency from which MSD may receive funds.

### 2A-3 Specifications

- (a) "Specifications" means any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (b) Specifications shall be open and accurate and any restrictive element should be avoided.
- (c) "Brand name or equivalent" specifications may be used only when other types of specifications are inappropriate or unavailable. If "brand name or equivalent" specifications are used, the specifications must (a) specify more than one brand name if possible; (b) specifically state that an equivalent product may be supplied, with the burden of proof of equivalency on the proposing vendor; (c) set forth all salient criteria to be met by all products proposed.
- (d) The Executive Director may, when appropriate for the anticipated procurement, establish a Qualified Products List and may use such Qualified Products List in place of detailed specifications.
  - (i) The Executive Director shall establish the criteria to be met by any product proposed for inclusion on a Qualified Products List, and shall make those criteria available to the public and to interested vendors.
  - (ii) A bidder may, in response to a bid issued on the basis of a Qualified Products List, propose to furnish a product not included on the Qualified Products List if the vendor demonstrates, prior to the award of a contract and to the satisfaction of the Executive Director, that the product proposed meets all criteria established for inclusion on the Qualified Products List.

#### 2A-4 Bids and Proposals

- (a) All bids and Proposals shall be submitted in the form required by MSD.
- (b) A bid shall be awarded to the responsible bidder who submits the responsive bid for the lowest bid price or lowest evaluated bid price as stated in the invitation for bids.
- (c) The Executive Director may waive any informalities and may establish conditions under which incomplete bids, whether obtained by sealed bid or competitive negotiations, may be considered if it is determined that such waiver is in the best interest of MSD.

#### 2A-5 Withdrawal of Bids

- (a) No bid, once submitted, may be withdrawn before the time allowed for award stated in the invitation for bids has elapsed, unless:
  - (i) Bids have not been opened and a written request is received from a bidder for withdrawal of its bid before the date and time set for opening of bids.
  - (ii) After bids have been opened, it is discovered that an error has been made that is obvious on the face of the bid (e.g., error in extensions, arithmetical errors, etc.) or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price, and a request for withdrawal of a bid is made in writing to the Executive Director clearly stating the reason for the request for withdrawal.
  - (iii) Any bid withdrawal except under the circumstances set forth above shall require forfeiture of bid security.

#### 2A-6 Opening Time for Bids

- (a) An opening time for each bid shall be stated in the advertisement.
- (b) The time set for opening shall be established by MSD. It shall be the bidder's responsibility to assure that its bid is delivered to MSD before the time set for bid opening.
- (c) Bids received after the time set for opening bids are late bids and shall be so marked. A late bid shall not be considered for award and shall be returned unopened.

- (d) At the time set for opening bids, the bidding shall be declared closed, and all bids submitted shall be publicly opened. If the form of the invitation for bids permits, all bids submitted shall be read aloud.
- (e) Bids shall not be examined, inspected or reviewed by persons present at the bid opening until all bids have been reviewed and evaluated by MSD; however, each bid amount, together with the name of the bidder, shall be recorded and be immediately available to the public for inspection.
- (f) With reasonable promptness, a tabulation shall be prepared for all bids received in response to an invitation for bids. Such tabulation will be available to the public upon reasonable request.

#### 2A-7 Evaluation and Awards

- (a) Immediately after bids are opened, the Executive Director shall review and document all bids for any clerical or technical errors and for compliance with specifications, terms and conditions contained in the bid documents.
- (b) Every bidder, when requested by the Executive Director, shall clarify or explain in writing any matter contained in their bid. The bid of any bidder who fails to provide such written clarification or explanation of the bid when such clarification or explanation is requested shall not be considered for award. The written clarification or explanation of bid shall be incorporated in and become part of any contract awarded on the basis of that bid.
- (c) Alternate bids will be considered for award only if the invitation for bids specifically requests that alternates be submitted and establishes conditions under which alternate bids will be considered for award.
- (d) After a reasonable evaluation, a contract shall be awarded to the responsive and responsible bidder whose bid (or alternate bid, if alternates are requested in the invitation for bids) is either the lowest bid price or the lowest evaluated bid price, as designated in the invitation for bids.
- (e) If the Executive Director determines, in writing, that no satisfactory bid has been received, all bids may be rejected pursuant to Section 2A-8 and new bids may be invited on the basis of the same or revised specifications, or a negotiated award may be undertaken for the procurement as described in Section 2A-7(f).
- (f) If no satisfactory bid is received in accordance with KRS 45A.370 (1)(c) and there is more than one bidder, competitive negotiations may be conducted with the bidders determined in writing to be the lowest responsible bidders. Negotiations shall be conducted under the following restrictions:

- (i) If discussions are held with any one bidder they must be held with all responsible bidders, and the negotiated price must be lower than the lowest responsible bid which was rejected unless specifications or quantities are revised based on additional work.
- (ii) Proposals based upon revised specifications or quantities shall be requested and awarded on the basis of the lowest bid price or lowest evaluated bid, with no further discussions after submission of proposals, except for compelling reasons, determined in writing. The request for proposals shall include this provision.
- (g) When, after competitive sealed bidding, it is determined in writing that there is only one responsive and responsible bidder, or when no bids are received after bids have been solicited in accordance with these regulations, a non-competitive negotiated award may be made in compliance with KRS 45A.380 and these regulations.

#### 2A-8 Rejection of Bids

- (a) The Executive Director reserves the right to reject any and all bids and to waive technicalities and minor irregularities in bids. The basis for rejection of all bids and subsequent action taken with respect to the bid shall be recorded in writing and filed in the bid file relating to the particular procurement.
- (b) Grounds for the rejection of a bid shall include, but shall not be limited to:
  - (i) Failure of a bid to conform to the essential requirements of the bid.
  - (ii) Failure of a bid to conform to specifications contained in or referred to in any bid documents.
  - (iii) Failure of a bid to conform to a delivery schedule established in the bid.
  - (iv) Imposition of conditions which would modify the terms and conditions of the bid, or which would limit the bidders' liability to MSD under terms of the contract awarded on the basis of the bid.
  - (v) Failure of a bid, as determined in writing by the Executive Director, to be reasonable in price.
  - (vi) Determination that a bid was submitted by a bidder determined to be not responsible.
  - (vii) Failure of a bidder to furnish a bid bond when such a bond is required.

- (viii) Failure of the bidder to comply with the Supplier Diversity and/or Community Benefits requirements of MSD or the Supplier Diversity and/or similar Community Benefits procurement requirements of any agency from which MSD may receive funds.
- (ix) MSD reserves the right to refuse to accept bids from or award any additional work to any Contractor who is behind schedule on any work in progress or who fails to perform acceptable work until such work is satisfactorily completed, or to refuse to accept bids from or award any work to any Contractor who has shown a repeated inability to complete work on schedule and in an acceptable manner. .

#### 2A-9 Bid Conditions

- (a) The Executive Director shall adopt and revise as necessary, general conditions for bidding. The general conditions for bidding shall be applicable to, included in, or incorporated by reference in all invitations for bids issued by MSD.
- (b) The Executive Director, as required by a particular procurement, may develop and adopt special bid conditions supplemental to the general bid conditions.
- (c) It shall be standard language in all MSD invitations to bid that:
  - (i) Any bidder who submits a bid in response to an invitation for bids shall be deemed to have agreed to comply with all terms, conditions and specifications of such invitation for bids.
  - (ii) It shall be the duty of all bidders to carefully review and verify the accuracy of their bids before submitting them and prior to execution of a contract.

#### 2A-10 Contract Pricing

- (a) The following shall be applicable to all invitations for bids issued, bids submitted and contracts awarded for the purchase of commodities, supplies, equipment, and any change orders thereto.
  - (i) Discounts shall not be considered unless stated in the invitation for bids.
  - (ii) In case of a discrepancy in the extension of a price for an item, the written unit price shall govern over the total price for that item.
  - (iii) An award may be made to the lowest aggregate bidder for all items, groups of items, or on an individual item basis, whichever is deemed to be in the

best interest of MSD. The methods and bases of evaluation of bids and award of contract shall be stated in the invitation for bids.

- (iv) The bidder shall certify that the cost or pricing data submitted is complete, accurate and current as of the date of submission to MSD.
- (b) All contracts over \$30,000, and change orders over \$25,000, which are procured under Section 2B, “Competitive Negotiations”, or Section 2C, “Non-Competitive Negotiations”, shall require the contractor to certify that the pricing or cost data used is accurate, complete, and current as of the date of negotiations.
- (c) All contracts, and any change orders thereto, shall contain a provision that the price including any profit or fee shall be adjusted to exclude any significant sums by which MSD finds that such price was increased because the bidder/contractor furnished cost or pricing data that was inaccurate, incomplete, or not current.

#### 2A-11 Multiple and Partial Contracts

Multiple and Partial Contracts for sealed bids are permissible under certain circumstances. See Section 3B.

#### 2A-12 Buy American

MSD shall include as a part of any invitation for bids, or request for proposals for supplies or equipment, provisions giving preference to domestic materials and supplies.

- (a) “Domestic materials and supplies” shall mean manufactured and unmanufactured materials and supplies that have been either mined, processed, produced, manufactured, or assembled in the United States.
- (b) “Nondomestic materials and supplies” shall mean materials and supplies other than domestic materials and supplies.
- (c) Domestic materials and supplies may be used in preference to nondomestic materials and supplies when the delivered price of domestic materials and supplies is no more than six percent (6%) higher than the bid or offered price of the nondomestic materials and supplies, including all costs of delivery.
- (d) The Executive Director may waive the Buy American provision based upon those factors he considers relevant, including the following conditions:
  - (i) When the additional cost to MSD is unreasonable.

- (ii) When the materials and supplies are not reasonably available from a domestic source in sufficient commercial quantities of satisfactory quality.
- (iii) When the parts or auxiliary equipment to be purchased must be compatible with existing MSD owned equipment or processes.
- (iv) When the delivery time is of prime importance.
- (v) When the use of this provision is not in the best interest of MSD.

#### 2A-13 Reciprocal Resident Business Preference

- (a) Prior to a contract being awarded to the lowest responsible and responsive bidder, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference given shall be equal to the preference given or required by the state of the nonresident bidder.
- (b) A resident bidder is an individual, partnership, association, corporation or other business entity that, on the date the contract is first advertised or announced as available for bidding:
  - 1) Is authorized to transact business in the Commonwealth; and
  - 2) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490 and maintained a Kentucky worker's compensation policy in effect.
- (c) A nonresident bidder is an individual, partnership, association, corporation or other business entity that does not meet the requirements of subsection (b) of this section.
- (d) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.
- (e) All preferences given under this section will follow the procedural regulations promulgated by the Finance Administration Cabinet.
- (f) The preference for resident bidders shall not be given if the preference conflicts with federal law.

#### 2A-14 Local Business Preference (RESCINDED)

## 2A-15 Local Labor Preference for Construction Contracts \$5 Million or Greater

- (a) MSD may use an evaluated bid process that contains a minimum of two criteria to include both price and local labor preference. In the event an evaluated bid process is utilized, the following shall be applicable to all invitations for bids issued, bids submitted, and contracts awarded for construction projects with an estimated cost of \$5 million or greater:
- (i) Each bidder will be requested to agree to employ a percentage of “Local Labor” for all positions utilized by the bidder during the performance and completion of the project, including newly created positions as well as existing positions.
  - (ii) As used in this Section, “Local Labor” shall be those individuals who have a primary legal residence within the Kentucky counties of Jefferson County, Bullitt County, Spencer County, Nelson County, Shelby County, Henry County, Oldham County, Trimble County, and Meade County and the Indiana counties of Clark County, Floyd County, Harrison County, and Washington County.
  - (iii) Each bidder agreeing as provided in 2A-15(i) shall establish its “Local Labor Percentage Commitment.” The Local Labor Percentage Commitment shall be measured in labor work hours. The Local Labor Percentage Commitment shall include subcontractor hires.
  - (iv) A multiplier of 1.5 shall be applied towards the percentage of each bidder’s Local Labor Percentage Commitment that is comprised of individuals who have a primary legal residence in Jefferson County by which sum the bidder’s Local Labor Percentage Commitment shall be deemed to have increased.
  - (v) Upon submission of a Local Labor Percentage Commitment, a bidder shall become eligible to receive evaluative points, up to a maximum of five percent (5%) of the total evaluative points to be awarded, based on a weighted average of its Local Labor Percentage Commitment as compared to the other bidders that established a Local Labor Percentage Commitment.
- (b) Purpose
- (i) The purpose of this local labor preference is to promote employment of individuals in and near Jefferson County, which local government is called the Louisville/Jefferson County Metro Government (“Louisville Metro”). The Kentucky and Indiana counties are within the Louisville-Jefferson County, KY-IN Metropolitan Statistical Area as defined on the date of the adoption of this regulation by the United States Office of Management and Budget. Individuals sought to be employed utilize the services provided by MSD; live within the service area of MSD; frequent and patronize



businesses within the service area of MSD; and/or benefit from the municipal services within the service area of MSD.

(c) Penalties

- (i) Periodic certified payroll reports (“Reports”) of local and non-local hiring shall be required, under penalty of perjury, to verify compliance with the Local Labor Percentage Commitment as provided for in the “Awarded Contract.”
- (ii) If a bidder fails to provide Reports as required in the Awarded Contract, and/or MSD has determined that a bidder failed to comply with its Local Labor Percentage Commitment, then the bidder shall be subject to a maximum penalty equal to 0.2% of the total Awarded Contract amount for each percentage point the bidder falls short of its Local Labor Percentage Commitment as provided for in the Awarded Contract.

2B Competitive Negotiations

2B-1 Conditions for Competitive Negotiations

- (a) Competitive Negotiations may be used for a procurement when the Executive Director determines in writing that it is appropriate.
- (b) The Executive Director shall find Competitive Negotiations appropriate if one of the following conditions are met:
  - (i) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or
  - (ii) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be fixed in advance, the price is regulated by law, or a fixed price contract is not applicable; or
  - (iii) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion. Either Section 2A-7(f), Section 2A-7(g) or Section 2B-5 will be followed in such cases.
- (c) When the Executive Director determines in writing that competitive negotiations are necessary to carry out a particular procurement:

- (i) The Executive Director may commence by advertisement for a request for written statement of qualifications. The Executive Director may, however, determine that a request for qualifications is unnecessary, in which case advertisements for a request for written proposals shall occur. In either event, the advertisement shall be in a manner prescribed by Section 2A-2 or 2B-2 of these regulations.
- (ii) A Procurement Team composed of the director of the division making the procurement, and representatives of the Finance Division, the Legal Division, the Supplier Diversity Office, and, when appropriate, the Procurement Department or their designees, and the Community Benefits Department or their designees, shall be formed to carry out the procurement. The Procurement Team shall be responsible for the development of the request for proposals, the contract documents, evaluation of proposals, negotiations, and for insuring that MSD procurement practices conform with the MSD Supplier Diversity and Community Benefits Program.

## 2B-2 Advertising

- (a) Competitive negotiations shall commence by advertisement of a request for written proposals pursuant to Section 2A-2 or by any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition, and proceed according to KRS 45A.370 and KRS 45A.375.
- (b) A request for proposals shall include:
  - (i) A statement of the work required.
  - (ii) A desired performance schedule.
  - (iii) Available government-furnished property, if any.
  - (iv) Applicable provisions to be included in the contract, if awarded.
  - (v) Criteria that will be used to evaluate proposals received.
  - (vi) Where and how detailed specifications may be obtained.
  - (vii) Required time and place for submission of proposals.
  - (viii) All Equal Employment Opportunity language as may be required by law. MSD shall include as part of any request for proposals MSD's Supplier Diversity and Community Benefits program requirements or the Supplier

Diversity and Community Benefits procurement requirements of any agency from which MSD may receive funds.

- (ix) Any required bid bonds, as may be appropriate. See Section 3E.
- (x) Any additional provisions which may be required by the Executive Director.

### 2B-3 Proposals

- (a) All written proposals received by MSD in response to a request for proposals shall be kept secure and unopened until the date and time set for opening.
- (b) Proposals not clearly marked as such on the envelope in which the proposal is submitted may be opened for identification purposes; appropriately identified, and resealed until the time for opening of proposals.
- (c) Proposals shall be opened on the date and at the time set for opening.
- (d) Proposals for competitive negotiations shall not be subject to public inspection until negotiations between MSD and all offerors have been concluded and a contract awarded.

### 2B-4 Opening of Proposals

- (a) The Executive Director shall examine each written proposal received for general conformity with the advertised terms of the procurement.
- (b) The Executive Director shall determine in writing, based upon individual review, those proposals received from responsible offerors that constitute a reasonable basis for negotiation. Price proposals shall be evaluated concurrently with and as a part of the overall evaluation.
- (c) Each such offeror shall be contacted informally and a meeting scheduled for discussion of the offerors' proposals.

### 2B-5 Discussions with Offerors

- (a) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted: (a) with respect to prices, where such prices are fixed by law or regulation except that consideration shall be given to competitive terms and conditions; or (b) where time of delivery or performance will not permit discussions; or (c) where it can be

clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service, or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposals notifies the offerors of the possibility that award may be made on the basis of initial offers.

- (b) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals from the offerors based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by MSD. The request for proposals shall state that an award is to be made without discussion except as herein provided.
- (c) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to MSD based on the evaluation factors set forth in the request for proposals.

#### 2B-6 Summary of Offerors

- (a) The Executive Director shall prepare a written summary of all oral discussions in competitive negotiations setting forth the date or dates of discussions with all responsible offerors and the general substance of the discussions.
- (b) Verbatim records of the discussions shall not be required.
- (c) The successful proposer shall certify contract prices pursuant to section 2A-10(b).

#### 2B-7 Multiple and Partial Contracts

Multiple and Partial Contracts for competitive negotiations are permissible under certain circumstances. See Section 3B.

#### 2C Non-Competitive Negotiations

##### 2C-1 Conditions for Non-Competitive Negotiations

Non-competitive negotiations may be used only after a written determination by the Executive Director that competition for the particular procurement is not feasible, and one of the following conditions is met:

- (a) An emergency, as certified by a written determination of the Executive Director, exists with respect to the particular procurement;
- (b) There is a single source within a reasonable geographical area of the product or service to be procured, such as;
  - (i) Services provided by a public utility holding a monopoly on the particular service within the geographic region or pursuant to a franchise awarded according to law.
  - (ii) Goods, services, equipment, replacement parts, publications, subscriptions, memberships, instructional materials and works of art available from a single source.
  - (iii) Real property or an interest in real property.
  - (iv) Contractual maintenance or service where the contractor is predetermined due to the special nature of the equipment or facilities owned or leased by MSD.
  - (v) Any other service or good, consistent with KRS 45A and these regulations.
- (c) The procurement is for goods or services in which KRS 45A.380 or KRS 45A.420 permits the use of non-competitive negotiations, such as;
  - (i) The contract is for perishable items purchased on a weekly or more frequent basis.
  - (ii) The contract or purchase is for expenditures made on authorized trips outside the service area of MSD.
  - (iii) The purchase is for a sale of supplies at reduced prices that will afford a purchase savings to MSD.
  - (iv) Services, goods or equipment from units of local government, the Commonwealth of Kentucky, its political subdivisions or the Government of the United States.
  - (v) Services, goods or equipment, available under terms of a Commonwealth of Kentucky Price Contract or another unit of local government price contract, and services, goods or equipment sold to MSD at prices negotiated by the General Services Administration for its current price contracts.

- (vi) Services, goods or equipment that have been bid and either no bids were received or only one bid was received.
  - (vii) Insurance coverage for group life insurance, group health and accident insurance, group professional liability insurance, workers compensation insurance and unemployment insurance.
  - (viii) The contract is for the services of a licensed professional, such as an engineer, architect, attorney, physician or certified public accountant, or a technician such as a plumber, electrician, carpenter or mechanic, or an artist, provided, however, this provision shall not apply to architects or engineers providing construction management services (see 2C-2 of this section for regulations governing the acquisition of Professional Services).
- (d) The successful proposer shall certify contract prices pursuant to section 2A-10(b).

#### 2C-2 Professional Services

- (a) The procurement of professional services from firms or individuals such as lawyers, physicians, engineers, accountants, registered nurses, psychiatrists (“Licensed Professionals”), or plumbers, electricians, carpenters, mechanics (“Technicians”) or artists, where the estimated cost exceeds the small purchase maximum prescribed by these regulations shall be governed by these provisions. Those services estimated to cost less than the small purchase maximum shall be procured in accordance with the “Small Purchases Procedures” as defined by these regulations. This provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services. Engineering services on federally funded projects may be exempted from these regulations if the procurement of such services is governed by EPA regulations that are in conflict with MSD regulations.
- (b) To ensure the appearance of a conflict of interest does not arise, avoid waste and extravagance, and/or circumstances that may adversely affect MSD’s reputation or interests, the Board may choose to waive any or all requirements under this section and select the person(s) or firm(s) best qualified to perform the required service. In this event, the Board’s decision shall be noted for the record in the minutes of the meeting at which the waiver is chosen.
- (c) In the event of an emergency or unusual circumstance, the Executive Director may waive these requirements and select the best qualified person or firm to perform the services necessary to suit the emergency. In this event the Executive Director shall prepare an “Emergency Certificate” explaining the need for the immediate procurement and subsequently report the same to the Board at its next regular Board meeting.

- (d) When the Executive Director determines in writing that the procurement of engineering and other professional services is governed by these regulations, then the Executive Director shall use one of the following methods to obtain the services:
  - (i) Competitive Negotiations as outlined in Section 2B, or
  - (ii) The Executive Director may select from a pre-qualified list, as established by Section 2D-3 of these regulations.
  - (iii) Non-competitive negotiations.
- (e) In the event of competitive negotiations, the Procurement Team shall make the evaluation of the proposals and identify the responsive, responsible proposers. Interviews or discussions may be held with more than one responsible, responsive offeror to select the best responsive, responsible offeror for further negotiations. The Executive Director shall review the Procurement Team's recommendations and designate the firm selected for further negotiations and discussions from the top ranked firms.
- (f) Negotiations shall be held by the Procurement Team, and may include other MSD employees as determined by the Executive Director. Such discussions may be held informally either orally, in writing, or both, as determined to be the most advantageous to MSD.
- (g) If discussions with the first firm selected are not concluded, the Procurement Team will terminate negotiations with that firm and begin negotiations with the next highest rated firm upon written approval of the Executive Director.
- (h) If, after discussions with the top three responsible offerors have been concluded, it is determined that no acceptable proposal has been submitted, any or all proposals may be rejected by the Procurement Team as a whole and, at the discretion of the Executive Director, new proposals may be requested as provided in this regulation on the basis of the same or revised terms, or the procurement may be abandoned.
- (i) Upon successful completion of negotiations, the Procurement Team will prepare a written summary of the selection and negotiation process. The summary shall include comments by the Supplier Diversity Manager relative to the successful offeror's experience and an explanation of the successful offeror's proposal for providing Supplier Diversity participation in the contract. When applicable, the summary shall also include comments by the Community Benefits Director relative to the successful offeror's Community Benefits Plan for providing voluntary Community Benefits commitments in the contract. The summary shall also include

the Procurement Team's recommended selection and shall be submitted to the Executive Director.

- (j) All agreements for professional services shall be in written form, approved by Legal Counsel, and shall be submitted to the Board along with the Summary of Negotiation. The successful offeror is required to submit a copy of the finalized Supplier Diversity sub-agreements to the Supplier Diversity Manager before a Notice to Proceed is issued.
- (k) No contract shall have an indefinite term, and those of a general nature shall be renewed annually through a formal contract extension. Existing contracts shall be subject to review and formal contract extension on their current anniversary date. Any changes in scope, terms or pricing shall be negotiated by the Procurement Team and shall be subject to Board approval. Supplier Diversity Program compliance also shall be reviewed by the Supplier Diversity Manager and shall be a factor in determination of renewal.
- (l) Those contracts that have a fixed price and a definite scope of work that extends beyond one year shall not be required to have a formal contract extension or review.

## 2D Prequalification

### 2D-1 General

- (a) These regulations permit prequalification of Licensed Professionals, Consultants, and Prospective Contractors for supplies, services, and construction.
- (b) Prequalification shall be obtained through:
  - (i) Licensed Professionals as outlined in Section 2D-3, or
  - (ii) Contractors for Supplies, Services, and Construction as outlined in Section 2D-2.

### 2D-2 Prequalification Requirements

- (a) The Executive Director may establish programs for the prequalification of construction contractors and other licensed trades. The intent of prequalification is to expedite the procurement process of projects costing more than \$30,000 while conforming with the Kentucky Model Procurement Code with regard to formalized bidding.
- (b) The Executive Director shall utilize the Procurement Team, as established in Section 2B-1c (ii). The Procurement Team shall be responsible for development of



solicitations, the evaluation of proposals, and once applicants are accepted into the program, the annual evaluation of their performance.

- (c) The notice of MSD's intention to prequalify construction contractors, and licensed trades shall be formally advertised in accordance with the requirements of Section 2A-2. It shall be noted in the advertisement that no contractor or licensed trade shall be prequalified unless a sworn statement is provided that the contractor or licensed trade has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of any future contracts will not violate said law.
- (d) Once proposals are received and evaluated:
  - (i) those contractors and licensed trades meeting the evaluation criteria shall be awarded a master contract by the Board. Said contract shall set forth all of the terms and conditions of the program including the issuance of individual construction orders for work awarded through the program.
  - (ii) those contractors and licensed trades not meeting the evaluation criteria, the Procurement Team shall make a reasonable effort to provide assistance through counseling. Revised proposals and proposals of new applicants may be submitted at any time during the program term and acceptance into the program shall be processed on a quarterly basis.
- (e) Bids shall be solicited from all prequalified contractors and licensed trades prequalified to provide the necessary goods or services as specified in the bid. Notification of MSD's intent to solicit bids shall be posted on MSD's Web Site so as not to preclude non-prequalified contractors and licensed trades from bidding.
- (f) Project specific specifications, in form and manner consistent with the program standards, shall be made available to all prequalified contractors and licensed trades, and all non-prequalified contractors and licensed trades who request project specifications in accordance with bids listed on MSD's Web Site.
- (g) The MSD Prequalification Program shall not prevent a determination that a non-prequalified prospective contractor is responsive and responsible if the non-prequalified prospective contractor has submitted information necessary for such a determination prior to the award of the bid.

### 2D-3 Prequalification of Licensed Professionals

- (a) Prequalification of Licensed Professionals may be established using the following method:

- (i) The Executive Director may direct that a prequalified list of one or more categories of Licensed Professionals may be established and maintained for the purpose of prequalification as responsible contractors through the use of Statements of Qualifications (SOQ) submitted by persons or firms interested in performing licensed professional services for MSD.
  - (ii) The opportunity for persons or firms to submit a SOQ shall be advertised upon the initiation of any prequalified list by the Executive Director and at least annually thereafter in the manner prescribed in Section 2A-2 of these regulations. The advertisement shall describe the category of services requested. SOQ's may be submitted or amended by interested persons or firms at any time after the initial advertisement.
  - (iii) The SOQs shall be evaluated by the Procurement Team as established in Section 2B-1(c)(ii).
  - (iv) Specific category assignment(s) for the persons or firms submitting SOQs shall be established by the Procurement Team. The categories assigned by the Procurement Team to persons or firms submitting SOQs shall be based on the persons' or firms' stated area of expertise, listed experience in projects or area of stated expertise, complexity and variety of services offered, prior experience or history, and other similar criteria approved by the Executive Director. Category assignments shall be reviewed periodically, and shall be reviewed and updated as written amendments are submitted by the persons or firms.
  - (v) Nothing in these regulations shall prohibit any firm or Licensed Professional from seeking listing upon the Prequalified list after the initial evaluation period.
- (b) Selection of prequalified persons or firms for specific work shall be accomplished as follows:
- (i) When MSD needs to select a Licensed Professional, the Executive Director may direct in writing that non-competitive negotiations be entered into with one person or firm selected from the prequalified list created under part 2D-3(a) above, for the particular Licensed Professional Service needed by MSD.
  - (ii) Negotiations shall commence by delivery of a Request for Proposal to the person or firm selected from the prequalified list for the category of services required.

- (iii) After the proposal is received, negotiations, interviews and discussions shall be held by the Procurement Team, and may include other MSD employees as determined by the Executive Director, with the selected responsible bidder. Such negotiations, interviews, or discussions may be held either orally or in writing, or by both methods, as determined to be the most advantageous to MSD.
- (iv) If, after negotiations, interviews and discussions have been concluded with the prequalified person or firm first selected, the Procurement Team determines that no acceptable proposal has been made by that bidder, negotiations shall be terminated with that bidder and the Procurement Team may initiate negotiations, interviews, and discussions with any other person or firm prequalified for the category of services required. Negotiations may continue in this manner until an acceptable proposal is made or until negotiations with all such prequalified persons or firms have been concluded.
- (v) Upon completion of negotiations, interviews and discussions, the Procurement Team shall prepare a written summary of the selection and negotiation process and recommendation for award. The summary shall include comments by the Supplier Diversity Manager relative to the proposed successful offeror's experience and an explanation of the proposed successful offeror's proposal for providing Supplier Diversity participation in the contract. If the Procurement Team's recommendation is approved in writing by the Executive Director, the proposed contract with the successful person or firm shall be submitted for approval to the Board. The successful offeror is required to submit a copy of the finalized Supplier Diversity sub-agreements to the Supplier Diversity Manager before a Notice to Proceed is issued.

## 2E Small Purchase Procedures

2E-1 The Executive Director shall determine the need for small purchases, which are those that do not exceed \$30,000 in aggregate per annum, per item or product, the maximum amount allowable by statute.

- (a) Procurement requirements shall not be parceled, split, divided or purchased over a period of time for the sole purpose of meeting the dollar limitation for small purchases.
- (b) The Executive Director shall establish procedures for obtaining price quotations from vendors and selecting the one most advantageous to MSD.

- (c) The Executive Director shall establish procedures for using MSD's Purchasing Card Program that allows authorized employees to make small-dollar, non-inventory purchases of materials and supplies for single purchases of \$1,500 or less.
- (d) The Executive Director's use of a Purchasing Card must be authorized by the MSD Board Chairman, and the MSD Board Chairman or Vice Chairman must review and approve the Executive Director's expenditures monthly. The MSD Board Audit Committee will review the Executive Director's Purchasing Card expenditures semi-annually.

2E-2 The Executive Director shall maintain records of all small purchases.

2F General - Procurement Subject

2F-1 Vendor Lists

Any person, firm or corporation desiring to receive written notice of procurement requirements of MSD may do so through MSD's Web Site. All vendors interested in doing business with MSD must complete a Vendor Authorization Form and provide a copy of IRS Form W-9 before any payment will be made.

2F-2 Excess or Surplus Property

MSD may sell or dispose of any personal property not needed or unsuitable for public use, or which would be unsuitable, consistent with the public interest, in accordance with the following:

- (a) A written determination shall be made describing the property, its intended use at the time of acquisition, the reason why it is in the public's interest to dispose of the property, and the method of disposition.
- (b) Such property may be transferred to another government agency with or without compensation, sold at public auction, or sold by sealed bids.
- (c) In the event that MSD receives no bids, either by public auction or by sealed bids and if MSD is unable to locate, after a reasonable search, another governmental agency to accept the property, then MSD may dispose of the property, consistent with the public interest, in any manner deemed appropriate. A written description of the property, the method of disposition, and the amount of compensation, if any, shall be made.
- (d) Any compensation from the disposal of surplus or excess property shall be transferred to the general fund of MSD.

### 2F-3 Equal Employment Opportunity

MSD shall include as part of any invitation for bids or request for proposals for supplies, equipment or services, Equal Employment Opportunity language as may be required by MSD. MSD shall include as part of any invitation for bids or request for proposals for supplies, equipment or services, MSD's Supplier Diversity Program requirements or the Supplier Diversity procurement requirements of any agency from which MSD may receive funds. All advertisements for construction, construction related services, engineering and professional services shall include as part of any invitation for bids or request for proposals MSD's Community Benefits Program requirements or similar language for Community Benefits procurement requirements for any agency from which MSD may receive funds. Questions regarding Equal Employment, MSD's Supplier Diversity Program shall be referred to the Supplier Diversity Manager. Questions regarding the Community Benefits Program shall be referred to the Community Benefits Director.

## SECTION 3 CONTRACT PROVISIONS

### 3A General

3A-1 All Procurements, except those small purchases made through the means of petty cash and procurement cards and/or those related to travel, dues, subscriptions, etc., shall be formalized through the execution of an MSD purchase order or other contractual documents reviewed in advance of the procurement by MSD's Legal Counsel.

3A-2 No modification from standard documents will be permitted without the review and approval of MSD Legal Counsel. Use of non-MSD purchase orders or contracts shall be permitted only with the permission of MSD Legal Counsel.

3A-3 Any contract entered into pursuant to these regulations shall require the contractor and all subcontractors to be in compliance with KRS 45A.343. Any contractor and all subcontractors performing work under the contract shall reveal any final determination of violation within the previous five years of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 and shall be in continuing compliance with these statutes throughout the contract term.

3A-4 Any contract entered into under these regulations shall require the contractor to submit a copy of the finalized Supplier Diversity Sub-Agreements to the Supplier Diversity Manager and when applicable, the Community Benefits Program Plan documents before a Notice to Proceed is issued.

### 3B Multiple Contracts and Contracts Let Based on Segmented Bids

3B-1 Multiple contracts may be awarded on the basis of a single invitation for bids or after competitive negotiations when it is determined in writing by the Executive Director in advance of the invitation for bids or the advertisement and solicitation for proposals for

competitive negotiations, that the award of multiple contracts is in the best interest of MSD and reasonable costs are incurred. A determination and notice to potential offerors that multiple contracts may be awarded for any procurement shall not preclude the award of a single contract for such procurement.

3B-2 When it is determined, after evaluation of competitive bids or at the close of competitive negotiations, that an acceptable bid or offer has been received for only parts(s) of the requirements of the procurement:

- (a) A contract may be awarded for the part(s) of the procurement for which acceptable bids or offers have been received.
- (b) All bids or offers may be rejected and a new invitation for bids or request for proposals based on the same or revised terms, conditions and specifications may be issued.
- (c) All bids found unacceptable for part(s) of the procurement may be rejected and an invitation for bids or request for proposals, based on the same or revised terms, conditions and specifications for the part(s) of the procurement for which no acceptable bids were received, may be issued.

### 3C Contract Modifications and Termination

3C-1 Subject to the following limitations, the Executive Director shall be authorized to provide, by appropriate clauses to contracts for supplies or services of all types, for changes and modifications to such contracts and to provide for the method or methods of calculating the costs of any decrease, increase, or other change in the contract price resulting from such change or modifications.

- (a) In contracts for the purchase of fixed amounts of commodities, supplies and equipment, increases in quantities in excess of ten (10) percent of the original quantity fixed by contract shall not be permitted unless the invitation for bids or requests for proposals for competitive negotiations informed prospective bidders or offerors that an increase in quantities might be forthcoming.
- (b) Increases in unit prices shall not be permitted in contracts for the purchase of fixed amounts of commodities, supplies and equipment except as provided by a price escalation formula authorized by the invitation for bids or requests for proposals for competitive negotiations.
- (c) All changes or modifications to contracts for the purchase of commodities, supplies, equipment, and construction services shall be effected by a change order to the contract which shall be supported by a written determination documenting the reason and basis for the change or modification to the contract.

- (d) A copy of the change order and the supporting documentation relative to any change or modification to a contract shall be filed and maintained in the contract file.
- (e) In negotiation of all changes or modifications valued at \$25,000 or more the contractor/vendor/consultant shall certify that the cost and pricing is accurate, complete and current as of the date of the negotiations, in accordance with KRS 45A.405
- (f) Amendments and change orders to the original contract will not relieve the contractor/supplier/consultant from continued compliance with MSD's current Supplier Diversity Program, absent a valid waiver.
- (g) The original Community Benefits Commitment is based on the contract award amount; thus any increase/decrease of the contract will not relieve the contractor/supplier/consultant from the original Community Benefits Commitment.

3C-2 Every contractor to whom a contract containing clauses authorizing changes or modifications to the contract shall be deemed by acceptance of the contract to have agreed to the changes or modifications of the contract as provided therein.

3C-3 Any contractor who is determined in writing by the Executive Director to be in breach of any of the terms and conditions of a contract, at the discretion of the Executive Director, may be declared in default and such contract may be terminated for any valid reason, including, but not limited to, the following:

- (a) Failure to perform the contract according to its terms, conditions and specifications.
- (b) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract.
- (c) Late payment or non-payment of bills for labor, materials, supplies or equipment furnished in connection with a contract for construction services as evidenced by mechanic's liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors.
- (d) Failure to diligently prosecute the work under the contract.
- (e) Failure of the bidder to comply with the Supplier Diversity requirements of MSD or the Supplier Diversity procurement requirements of any agency from which MSD may receive funds.

- (f) Failure of the bidder to comply with the Community Benefits Program requirements after voluntarily committing to the program or the Community Benefits procurement requirements of any agency from which MSD may receive funds. .

3C-4 MSD shall not be liable for any further payment to a contractor under a contract terminated because of the contractor's default after the date of such default, except for commodities, supplies, equipment or services delivered and accepted on or before the date of default and for which payment had not been made as of that date.

3C-5 MSD shall be authorized to terminate for its own convenience all contracts for the procurement of supplies and services when the Executive Director determines in writing that such termination will be in the best interest of MSD.

- (a) When it has been determined that a contract should be terminated for the convenience of MSD, the Executive Director is authorized to negotiate a settlement with the contractor according to terms deemed just and equitable.

- (b) Compensation to a contractor for lost profits on a contract terminated for convenience of MSD shall not exceed an amount proportionate to the sum that the contractor's total expected margin of profit on the contract bears to the contract price, based on the total out-of-pocket expenses incurred by the contractor as of the date of termination of the contract. The contractor shall have the burden of establishing the amount of compensation to which he believes himself to be entitled by the submission of complete and accurate cost data employed in submitting his bid or proposal for the contract, and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination.

### 3D Community Benefits Program Penalties

- (a) If MSD has determined that a bidder has failed to comply with the Community Benefits requirements then the bidder shall be subject to a maximum penalty equal to 2% of the total Awarded Contract amount or up to the maximum percentage amount committed determined at bidding, or whichever is greater. MSD reserves the right to determine the appropriate penalty to be applied.

### 3E Property Inspection and Audit of Records

3E-1 The Executive Director shall include in all contracts a provision that grants MSD the right to inspect the plant or place of business of a contractor/vendor/consultant when it is reasonably determined that such a need exists.

3E-2 MSD may audit the books and records of any contractor/vendor/consultant and any subcontractor thereunder, who has submitted cost or pricing as the basis for negotiations or



billing, within normal business hours, until the period of record retention as set forth in this document has expired.

- (a) This provision applies to procurements made under competitive and non-competitive negotiations, and to negotiated change orders or amendments to bid contracts.
- (b) The audit shall extend only to those books and records reasonably connected with the cost and pricing data submitted.
- (c) The contractor/vendor/consultant shall maintain the books and records for a period of five years from the date of final payment under the prime contract, and by the subcontractor for a period of five years from the date of final payment under the subcontract.

### 3F Sureties and Bonds

#### 3F-1 General

- (a) All bonds required by these regulations shall be in such form and penal sum as is directed by or acceptable to the Executive Director.
- (b) A contract shall not be awarded to any contractor who fails or refuses to give bond when required.
- (c) The contractor and/or his surety, if a bid, performance, maintenance or payment bond has been required under the contract, shall be jointly and severally liable to MSD for all loss, cost or damage sustained as a result of the contractor's default.
- (d) A contractor's surety's liability shall not exceed the penal sum specified in the contractor's bond.

#### 3F-2 Bid Bonds

- (a) Each bidder responding to bids for construction contracts estimated to exceed \$100,000 or to other bids wherein bid security is required, shall submit the required security with the bid.
  - (i) Bidder's security shall be in the form of a bond, executed by a surety company authorized to do business in the Commonwealth of Kentucky, or the equivalent in cash in a form acceptable to MSD.
  - (ii) Bidder's security shall be in the amount equal to at least seven and one half percent (7½%) of the amount bid. MSD may require the bidder's security

be furnished in an amount greater than seven and one half percent (7½%) of the amount bid.

- (b) When a bidder fails to comply with the security requirement of a bid, the bidder shall be rejected except under exceptions provided in these regulations.

### 3F-3 Performance Bonds, Payment Bonds, and Maintenance Bonds

- (a) Every contractor, to whom it is proposed to award a contract for construction services where such bonding is required by the bid or requests for proposals, shall, upon the award of such contract, give a performance bond, payment bond and a maintenance bond to MSD, in such forms and penal sums satisfactory to MSD pursuant to Section 3E-2a(i).
- (b) Performance bonds shall be in a sum equal to 100 percent of the contract price, as it may be increased, and shall bind the contractor, as principal, and the surety to the performance of the contract according to the terms, conditions and specifications of the contract, including changes and modifications thereto, and to the payment of all costs for labor, materials, equipment, supplies, taxes and other proper changes incurred or to be incurred in the performance of the contract.
- (c) Payments bonds shall be in the amount equal to 100% of the contract price, including any change orders or amendments thereto, for the protection of all persons supplying labor and material to the contractor or his subcontractor for the performance of work provided for in the contract.
- (d) Maintenance Bonds shall be in an amount deemed sufficient to cover the cost and expense of reconstruction or additional work occurring because of settlement of backfill under paved surfaces and the restoration of any other areas disturbed by any construction activities during the Project.
- (e) Every contractor to whom it is proposed to award a contract for the purchase of commodities, supplies, equipment or services, when required by the terms of an invitation for bid or request for proposals shall give bond with surety satisfactory to MSD in an amount not to exceed 100 percent of the contract price. The actual amount of the bond required will be the amount determined by the Executive Director as sufficient to assure faithful performance of the contract by the contractor according to its terms.
- (f) A contract shall not be awarded to any contractor who fails or refuses to give bond when required as provided by these regulations.

3G Conflict of Interest and MSD Code of Conduct

3G-1 Pursuant to KRS 45A.450-45A.460, MSD shall have the right to recovery of the value of anything transferred or received in breach of said Statutes or MSD's Code of Conduct.

3G-2 All MSD construction, consulting and service contracts shall include the MSD Code of Conduct.

3H All MSD construction, consulting, supply and service contracts and all subcontracts shall include the following clause: It is expressly agreed that in consideration of the award of this Contract by MSD as a public body corporate, MSD shall not be liable for any damages of any kind whatsoever incurred by a contractor, subcontractor or any entity doing business directly or indirectly with MSD during or because of a suspension or debarment action.

SECTION 4 GENERAL

4A Verification and Public Availability of Records

4A-1 Access to records, specifications, procedures, regulations, bid documents and other items covered by these regulations shall be governed by the provisions of KRS 61 and MSD's Open Records Policies and Procedures.

4A-2 The Executive Director may not disclose to the public or to a prospective vendor's competitors:

- (a) Information furnished in response to a request from the Executive Director for information necessary to determine a bidder's responsibility.
- (b) Information obtained from a prospective vendor during negotiations which qualifies as confidential, technical information or trade secrets, or to the disclosure of which would constitute violation of patent rights or copyrights.

4B Grant Requirements

4B-1 Nothing in these regulations shall be construed in such a manner as to relieve MSD of the responsibility to comply with any procurement requirements imposed by any agency from which MSD may receive funds, including but not limited to state and federal agencies.

SECTION 5 APPEAL PROCEDURE

Any bidder challenging the award of a bid shall do so in writing directed to MSD's Executive Director who shall make the final determination. Any allegations by the bidder shall be specific and shall be made within three (3) days of the contract award by MSD's Board.

## SECTION 6 DEBARMENT AND SUSPENSION

### 6A General

- 6A-1 These regulations and procedures prescribe policies and procedures governing suspension and debarment which may be invoked by MSD to disqualify any party from doing business with MSD. These regulations apply to any and all persons or entities doing any business with MSD, including, but not limited to contractors, subcontractors, permit holders, permit applicants, professional persons and professional service corporations.
- 6A-2 If a party seeking to do business with MSD on a project funded by a federal or state agency has been debarred by said federal or state agency, that party shall be ineligible to participate on said MSD project and such debarment will be outside the scope of these regulations.
- 6A-3 MSD shall do business with responsible parties only. Suspension and Debarment are discretionary actions and due to their serious nature shall be imposed only for the purpose of protecting the interests of MSD and the public it serves.

### 6B Definitions

- 6B-1 "Adequate Evidence" - means information sufficient to support the reasonable belief that a particular act or omission has occurred.
- 6B-2 "Affiliates" - business concerns or individuals are affiliates if, directly or indirectly, (a) either one controls or can control the other, or (b) a third controls or can control both.
- 6B-3 "Conviction" - means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere, or an admission by the party sought to be debarred that the party committed a criminal act.
- 6B-4 "Debar" - means to exclude from MSD, pursuant to these procedures, contracting, subcontracting, permitting or licensing for a specific period of time.
- 6B-5 "Executive Director" - means the Executive Director of MSD.
- 6B-6 "Hearing Officer" - means an independent hearing official from outside MSD.
- 6B-7 "Indictment" - means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same affect as an indictment.

6B-8 "Legal Proceedings" - means any civil judicial or administrative proceeding (except a debarment proceeding hereunder), or any criminal proceeding. The term includes appeals from such proceedings.

6B-9 "Party" - means any person or other legal entity that:

- (a) submits an offer for or is awarded an MSD contract or a subcontract under an MSD contract, or
- (b) holds a permit or license, or has applied for a permit or license from MSD, or
- (c) otherwise conducts business with MSD directly, or as an agent or representative of another party.

6B-10 "Suspension" means an action taken by MSD to disqualify a contractor, subcontractor or any other person or entity doing business or working on any MSD project until suspension is lifted or debarment occurs.

#### 6C General Application

6C-1 The Executive Director may in the interest of MSD and the public interest debar any party for any of the causes listed in these regulations. Existence of a cause for debarment does not necessarily require that the party be debarred; the seriousness of the party's acts or omissions and any mitigating factors should be considered in making any debarment decision.

6C-2 Debarment constitutes a refusal by MSD to conduct any future business with the debarred party. The debarment of the party shall be as specified in its terms and may extend to include any affiliates of the party if they are (1) specifically named, and (2) given written notice of proposed debarment and opportunity to respond.

#### 6D Enforcement and Causes of Debarment

6D-1 The Executive Director of MSD or his designated representative(s) shall administer and enforce these regulations.

6D-2 The debarring official may debar any party for any of the following causes:

- (a) Conviction of or finding by legal proceeding of:
  - (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing any contract or subcontract with MSD, or in connection with doing any business with MSD;

- (ii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or
  - (iii) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the responsibility of the party to MSD.
- (b) Violation of the terms of an MSD contract so serious as to justify debarment such as:
  - (i) willful failure to perform in accordance with the terms of one or more contracts; or
  - (ii) a history of failure to perform, or of unsatisfactory performance of, one or more contracts.
- (c) Falsification of any information on any MSD bid, contract, permit application, or any other document in which a party has supplied information to MSD for the purpose of inducing or doing business with MSD or inducing MSD to do business with another party.
- (d) Violation of MSD Code of Conduct.
- (e) Any other cause of so serious or compelling a nature that it affects the present responsibility of a party to MSD.

## 6E Procedures

### 6E-1 Investigations and Referrals

Whenever an MSD employee believes a cause for debarment exists, the employee shall report said facts to the director of the division doing business with the party. If, after investigation of the facts, the division director believes a valid cause for debarment does exist, the division director shall submit a formal recommendation that documents the cause for debarment to the Executive Director.

### 6E-2 Notice of Proposal to Debar or Hold Ineligible

Based upon a review of the recommendation submitted by the division director, the Executive Director shall, if appropriate, initiate proposed debarment by taking the action below.

6E-3 Notice of Proposal to Debar

Debarment shall be initiated by advising the party and any specifically named affiliates, by certified mail, return receipt requested:

- (a) that debarment is being considered;
- (b) of the reasons for the proposed debarment in terms sufficient to put the party on notice of the conduct or transaction(s) upon which it is based;
- (c) of the cause(s) relied upon under Section 6D-2 for proposing debarment;
- (d) that, within thirty (30) days after receipt of the notice, the party may submit, in writing, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
- (e) of the MSD procedures governing debarment decision making; and
- (f) of the potential effect of proposed debarment, that is, a prohibition of any future activity with MSD.

6E-4 Notice of Executive Director's Decision to Recommend Debarment Hearing

- (a) If the Executive Director decides that sufficient grounds may exist to recommend debarment, then the Executive Director shall appoint an independent Hearing Officer. The party and any affiliates involved shall be given prompt notice by certified mail, return receipt requested:
  - (i) referring to the notice of proposed debarment;
  - (ii) specifying the reasons for recommending debarment;
  - (iii) stating the period of the proposed debarment, including effective dates;
  - (iv) advising that any debarment would be effective throughout MSD; and
  - (v) setting a date for a hearing before the Hearing Officer.
- (b) If Executive Director decides not to recommend debarment, he shall promptly notify the party and any affiliates involved, by certified mail, return receipt requested.

#### 6E-5 Debarment Hearing

- (a) The Hearing Officer shall hold a hearing on any recommendation to debar a party within sixty (60) days of the notice sent in Section 6E-4a above. At such hearing, the Hearing Officer shall:
  - (i) Afford the party an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Executive Director may present. Testimony of any witness at the hearing shall be sworn. A tape recording of the proceedings shall be made.
  - (ii) If requested by either party, a transcribed record of the proceedings may be made by the Hearing Officer, and shall be made available upon payment of half the transcribing costs. Any request for a transcribed record of the proceedings must be made within thirty (30) days of the hearing or otherwise the tape may be erased without transcribing.
- (b) In order to assist the consideration of evidence by the Hearing Officer, any party desiring to submit written or documentary submissions to the Hearing Officer should do so no later than seven (7) calendar days before the hearing date. Copies of documents submitted must be served simultaneously upon the opposing party.
- (c) The hearing shall be conducted in an informal manner and the Rules of Evidence shall not be strictly applied, but such rules may be applied so as to afford fundamental fairness to all parties.
- (d) The Hearing Officer shall make a decision on each appeal that is consistent with applicable law and the policy of the district. The decision shall be forwarded to the MSD Board in the form of a recommendation within thirty (30) days of the hearing. The Board shall review the findings of the Hearing Officer and accept or reject the recommendation within thirty (30) days of receiving it. The decision of the MSD Board shall be final.

#### 6E-6 Notice of MSD Board's Decision

- (a) If the MSD Board's decision is to impose debarment, the party and any affiliates involved shall be given prompt notice by certified mail, return receipt requested:
  - (i) referring to the debarring official's decision;
  - (ii) specifying the reasons for the decision of the debarring official;
  - (iii) stating the period of debarment, including effective dates; and
  - (iv) advising that debarment is effective throughout MSD.



- (b) If the MSD Board's decision is not to debar the party, it shall promptly notify the party and any affiliates involved, by certified mail, return receipt requested.

6F Period of Debarment

6F-1 Debarment shall be for a period commensurate with the seriousness of the cause(s), however, a debarment shall not exceed three (3) years.

6F-2 The Executive Director may extend the debarment for an additional period, if he determines that an extension is necessary to protect MSD's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of Section 6E shall be followed to extend the debarment.

6F-3 The Executive Director may reduce the period or extent of debarment, upon the party's request supported by documentation, for reasons such as:

- (a) newly discovered material evidence which the party could not, with reasonable diligence, have discovered and produced at the initial determination stage,
- (b) reversal of the conviction or judgment upon which the debarment was based,
- (c) bona fide change in ownership or management,
- (d) elimination of other causes for which the debarment was imposed, or
- (e) other reasons the debarring official deems appropriate.

6G Scope of Debarment

6G-1 The fraudulent, criminal or other seriously improper conduct of any individual associated with the party, including any officer, director, shareholder, partner, employee or other individual, may be imputed to the party when the conduct occurred in connection with the individual's performance of duties for or on behalf of the party, or with the party's knowledge, approval or acquiescence, or if the party should have known of such activity. The party's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

6G-2 The fraudulent criminal or other seriously improper conduct of a party may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the party who participated in, knew of, or should have known of the party's conduct.

6G-3 The fraudulent, criminal or other seriously improper conduct of one party participating in a joint venture or similar arrangement may be imputed to other participating parties if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of the other parties, or if the other parties should have known of such conduct. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

6H Suspensions

6H-1 Suspension is a serious action that shall be imposed when it has been determined by MSD that immediate action is necessary to protect the interest of MSD and its customers.

6H-2 Causes for Suspension

(a) MSD may suspend a contractor, subcontractor or other person doing work for MSD immediately upon an investigation yielding sufficient evidence that (1) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public contract or subcontract; (2) violation of federal or state anti-trust statutes relating to the submission of offers; (3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property or any other crime of dishonesty; (4) the commission of any other criminal act which may adversely affect MSD; or (5) the commission of any other offense indicating any lack of business integrity or honesty that affects the present responsibilities of MSD including any violation of Section 6D-2 not already covered in this section.

(b) Indictment for any of the causes mentioned above invokes an automatic and immediate suspension of an entity doing work for MSD. Parties normally doing business with MSD may be temporarily suspended from bidding for MSD's business in the event they are an adverse party to MSD during litigation. In no event shall the temporary suspension exceed the conclusion of the litigation.

6H-3 When any entity, internal or external to MSD, makes the Executive Director aware of an indictment for a violation of one of the causes for suspension mentioned in 6H-2, the Executive Director will issue immediate notice of suspension to the entity which has given cause for suspension. In the event that the Executive Director deems that this suspension shall become permanent and effectively debar the entity from doing business with MSD, then the Executive Director shall comply with 6E-4 and recommend a debarment hearing as provided for in this section.

6H-4 In the event that the party temporarily suspended from working on any MSD project wishes to contest the decision of the Executive Director for suspension, an independent hearing officer will be appointed to conduct a hearing as provided in this section. The hearing officer will comply with the rules as set forth in these regulations. Upon a final decision

having been reached by the hearing officer regarding the temporary suspension of an entity doing business with MSD the final appeal shall be made to the Board of MSD with a written recommendation of the hearing officer being provided. The notice requirements and rules of procedure of an appeal from the Executive Director's temporary suspension of an MSD contractor or other person or entity doing business with MSD shall be governed by Section 6 of these regulations.

## APPENDIX A

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT  
PRE-PROCUREMENT APPROVAL PROCEDURESPURCHASES, EASEMENTS &  
INSURANCE/SERVICES

## REQUIRED APPROVALS (1 &amp; 7)

Less than \$5,000	SP
\$5,001 to \$10,000	SP, PM, DM
\$10,001 to \$30,000	SP, PM-(5), DM, DD
\$30,001 to \$100,000	PO, DM, DD, CD
\$100,001 to \$500,000 (effective 01/01/16)	PO, DM, DD, CD, ED*
\$500,001 to \$750,000 (effective 07/01/16)	PO, DM, DD, CD, ED*
\$750,001 to \$1,000,000 (effective 01/01/17)	PO, DM, DD, CD, ED*
Over \$1,000,000	PO, DM, DD, CD, ED, BD (2)

## EMERGENCY PROCUREMENT (3)

Up to \$25,000	PO, DM, DD
\$25,001 to \$100,000	PO, DM, DD, CD
Over \$100,001	PO, DM, DD, CD, ED

## CHANGE ORDERS TO CONTRACTS (6)

## Change order amount per contract

Less than \$5,000	SP
\$5,001, to \$10,000	SP, PM, DM
\$10,001 to \$30,000	SP, PM-(5), DM, DD
\$30,001 to \$100,000	PO, DM, DD, CD
\$100,001 to \$500,000 (effective 01/01/16)	PO, DM, DD, CD, ED*
\$500,001 to \$750,000 (effective 07/01/16)	PO, DM, DD, CD, ED*
\$750,001 to \$1,000,000 (effective 01/01/17)	PO, DM, DD, CD, ED*
Excess over \$1,000,000	PO, DM, DD, CD, ED, BD (6)

\* All purchases, easements, insurance and service contracts, and change order amounts remain subject to MSD Board approval until the effective dates of the increase in the Executive Director's approval authority.

TRAVEL OTHER THAN LOCAL: TRAINING COURSES, SEMINARS, OR PROFESSIONAL DUES AND FEES

Less than \$5,000	DM, DD
\$5,000 to \$10,000	DM, DD, ED
Over \$10,000	DM, DD, ED, BD (2)

1. Legal Counsel must approve form and content and the Finance Director must approve payment terms for any non-standard procurement contracts and new or revised standard procurement contracts.
2. All requests for Board approval shall be submitted on the “Request for Board Action” Form. The Division Director responsible for the procurement shall initiate the form. NOTE: Board approval is not required for the procurement of routinely stocked inventory items.
3. Each emergency procurement over \$50,000 must be reported at the next regular Board meeting following the date of the written determination (Emergency Certificate).
4. The Executive Director’s approval authority shall not be required for the award of procurement contracts, or for contract amendments, including change orders below \$100,001. Change order amounts shall be cumulative.
5. The Executive Director shall be authorized to designate the pre-procurement approval authority granted to Directors to the Purchasing Manager in their absence up to \$25,000. The Executive Director may also grant other non-supervisory staff approval authority up to \$5,000.
6. Once the cumulative total of change orders exceeds the Executive Director’s approval authority established under Section 1B-1(a) through (e), they are subject to Board approval.
7. Legal Counsel must review all easement agreements.

SP = Supervisor

DM = Department Manager

PM = Purchasing Manager

PO = Designated Procurement Officer

DD = Division Director, Director or Designee

CD = C-Level Director

ED = Executive Director

BD = MSD Board