

BOARD OF ETHICS  
WASHINGTON SUBURBAN SANITARY COMMISSION

**ADVISORY OPINION # A-24-01**

SUBJECT: CODE OF ETHICS SECTION 1.70.270, PARTICIPATION IN  
PROCUREMENT

By request dated June 7, 2024, an employee of the Washington Suburban Sanitary Commission (WSSC) asked that the Board of Ethics (Board) issue an advisory opinion regarding the application of § 1.70.270 of the WSSC Code of Ethics (Code) to an Environmental Engineering Services (EES) consulting firm currently under contract with WSSC. At its June 10, 2024 meeting, the Board met with the employee (hereinafter "Requestor") to discuss the facts underlying this matter.

In 2021, WSSC competitively selected the EES consulting firm as an awardee under a Basic Ordering Agreement to provide services related to drinking water quality. The firm's services included developing an inventory of pipes that need to be replaced. (This was Phase I of the project). WSSC is now preparing Phase II of the project, which will include replacement of the pipes identified in Phase I. This phase also will be competitively solicited.

The question before the Board is whether the EES consulting firm that provided services during Phase I can bid on the solicitation for Phase II.

Section 1.70.270 of the Code states:

**Participation in Procurement.**

- (a) An individual or entity that employs an individual who assists WSSC in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals may not:
  - (1) submit a bid or proposal for that procurement; or
  - (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.
  
- (b) For purposes of subsection (a) of this section, assisting in the drafting of specifications does not include:

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- (1) providing descriptive literature such as catalogue sheets, brochures, technical data sheets, or standard specification samples, whether requested by WSSC or provided on an unsolicited basis;
- (2) submitting written comments on a specification prepared by WSSC or on a solicitation or bid or proposal when comments are solicited from two or more persons as part of a request for information or a pre-bid or pre-proposal process;
- (3) providing specifications for a sole source procurement made in accordance with the Procurement regulations (WSSC Chapter 6.15); or
- (4) providing architectural and engineering services for programming, master planning, or other project planning services.

After reviewing information regarding work performed by the EES consulting firm in Phase I and the proposed work to be completed in Phase II, it is the Board's opinion that the firm is prohibited from competing in Phase II under Code § 1.70.270(a). Identifying and documenting the pipes to be replaced requires the Commission to rely on the firm's judgment and expertise. In the Board's opinion, this is akin to the "drafting of specifications," because the information will become part of the bid package and essentially serves as the foundation of the work to be completed in Phase II.

Section 1.70.270(a) of the Code was intended to preserve the integrity of the competitive bidding process by prohibiting consultants that have been involved in the project planning process from gaining a competitive advantage in later phases of the project. The Board recognizes that Code § 1.70.270(b) provides exceptions that would allow a consultant to compete in later phases; however, none of those exceptions are applicable here. While Code § 1.70.270(b)(4) addresses architectural and engineering services, this exception was intended to apply to broad planning services and not to project-specific services. As stated above, the inventory will become part of the bid package for Phase II, so this exceeds the broad planning documents contemplated by the exception.

In conclusion, Code § 1.70.270 prohibits the EES consulting firm that prepared the inventory of pipes to be replaced in Phase I from competing to replace those pipes in Phase II of the project.

The Board commends the Requestor for recognizing the Code of Ethics requirements and seeking the Board's advice in this matter.

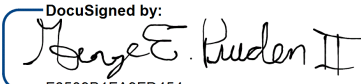
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This opinion applies to the specific facts presented herein. Should circumstances change or additional concerns arise, Requestor should seek further guidance from the Board.

On motion of Member Hysen and seconded by Member Hausman, three members of the Board agreed at its meeting held on July 10, 2024, to adopt the foregoing advisory opinion.

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George E. Pruden, II

Chair