

**Great Lakes Water Authority
Board Member Review of Proposed Procurement Policy
October 23, 2018**

Sec. #	Board Comment and Administration's Response
1.6.1	<p>Director Baker: Section 1.6.1 Representatives. Don't recall completing a Conflict of Interest form. Will the Board do so this December?</p> <p>Response: Yes.</p>
1.6.3	<p>Director Daddow: Sec. 1.6.3 Vendors. Shall v. could. If a vendor contacts a Representative and is told that the action is inappropriate and no confidential information is provided to the potential vendor, does 'shall' come off too strong as opposed to 'could'. Further, the references as to the punishment for this contact, even if it results in a noticing of the potential vendor that it is inappropriate 'shall' result in all three punishments – disqualification, termination of existing contracts (this one I think would be hard to do given a vendor may be half way through the underlying contractual work) OR disbarment (a bit strong for contact unless the matter is consistently done). I think I softened this a bit with 'that could include.'</p> <p>Response: The Policy will be revised to reflect this change.</p>
1.8(c)	<p>Director Daddow: Sec. 1.8 (c). If this section is to be honored, whenever the bidder other than the lowest bidder is selected, it would seem that the resolution ought to clearly explain the reasoning for the selection other than lowest bidder. Justification for the additional cost above lowest bidder should be referenced in the resolution for those matters passed by the Board.</p> <p>Response: The Administration will justify the additional costs in its correspondence to the Board.</p>
1.8(n)	<p>Director Daddow: Sec. 1.8(n). Conflict of Interest: Should be professional "and" public interest because it could be both.</p> <p>Response: The Policy will be revised to reflect this change.</p>
1.8(w)	<p>Director Daddow: Sec. 1.8(w). Evaluation Criteria: (1) Change "most" to "best" Vendor in the first sentence. (2) 2nd sentence: Add colon after "The factors may include:" and delete "such factors as."</p> <p>Response: The Policy will be revised to reflect these suggested changes. To your first point, "qualified" will be added after "most."</p> <p>:</p>
1.8(kk)	<p>Director Daddow: Sec. 1.8(kk). Professional Services: Should legal and auditing services be cited as examples too?</p>

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	Response: No, legal and auditing services are covered by the general definition in the first sentence.
2.1	<p>Director Daddow: Sec. 2.1 Contracting Authority. What is the difference between signing OR executing? Isn't it really the execution of the contract that matters? Second, is there anything in the policies that indicate that administration needs to follow the policy even if the dollars do not warrant taking the recommended vendor material to the Board? Should there be this assertion?</p> <p>Response: The Policy will be revised to state "execute" only. As for your second question, see Section 1.2., Scope.</p>
3.6	<p>Director Daddow: Sec. 3.6 of the original purchasing policy was deleted. As a means of readiness for emergency events, I think it is warranted to acknowledge that the Board and administration should be ready to serve with blanket purchase orders for certain types of events. I'd recommend putting this back into the final purchasing policy.</p> <p>Response: The Policy will be revised to reflect this change.</p>
4.2	<p>Director Baker: Section 4.2 Exceptions to Competitive Bidding. Assume by Information Technology you mean consultants or software, but not necessarily all Hardware, correct?</p> <p>Response: It does not include all hardware, however, Section 9(K)(2) of the Articles of Incorporation includes "equipment" when addressing single source procurements.</p>
4.2	<p>Director Daddow: Sec. 4.2 Exceptions to Competitive Bidding. In Oakland, whenever the Board's purchasing policies cannot or are not followed and after-the-fact exception report is filed with the Finance Committee (in GLWA's case the Audit Committee). There is no provision for situations where there is action that is in conflict with the purchasing policies and reporting after-the-fact. Should there be one? Also, take out space in 2nd paragraph, end of 1st sentence.</p> <p>Response: Section 9(L) of the Articles of Incorporation require an annual reporting of all contracts. These contracts can be specifically identified through this established reporting mechanism. Also, the space will be removed.</p>
4.3	<p>Director Daddow: Sec. 4.3 Funding Sources. There can be funding sources other than those cited in the policy – namely, operating funds and I&E funds – particularly if the funds are for capital needs. In addition, the resolution should be required to reflect that the cost needs are within the existing budget based upon the quarterly / periodic reviews of the budget to actual financial information to the extent applicable.</p>

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	Response: The Policy will be revised to note that all procurements are within an approved budget.
4.5	<p>Director Daddow: Sec. 4.5 Intergovernmental Agreements. I was under the impression that intergovernmental agreements all had to be approved by the Board given that they generally extend beyond the existing appropriation periods. Not as concerned about the cooperative purchasing as I am about the 'achieving regional infrastructure objectives' – which may have dollars behind the agreement. If no dollars are behind the agreement I am much less concerned.</p> <p>Response: Please see Section 4.5, 3rd paragraph: "All procurements via intergovernmental agreements or Cooperative Procurements are subject to the same approval requirements as other procurements."</p>
5.1	<p>Director Daddow: Sec. 5.1 Solicitations Development and Advertisement. While I recognize that this is about a direct quote from the Articles of Incorporation for GLWA, my concerns are that the 'fairness' may morph into quotas, points or percentages associated with the purchasing evaluation of vendors. I am adamantly opposed to purchasing preferences and cannot in good conscious support them as I believe that they are counter-productive to the purpose of the organization. While this is in the Articles, I obviously cannot change the Articles, but can clarify it in the policy itself.</p> <p>Extracting from the legislation that established the Regional Transit Authority (PA. 387 of 2012; MCL 124.546, Section 6 (12)) it states "Nothing in this section shall be construed as creating a quota or set-aside for any city or any county in a public transit region, and no quota or set-aside shall be created." While this is specifically adopted for transit, it can be modified to address a utility such as GLWA.</p> <p>Response: Although Section 9(K)(3) of the Articles of Incorporation suggests the procurement of goods and services from businesses with the territory area of GLWA, it must be read in conjunction with Section 9(L) of the Articles of Incorporation, which preclude quotas or set-asides for any city or county within GLWA's territory area.</p>
5.1	<p>Directors Hendrix & Brown: Section 5.1 Solicitation Development and Advertisement. (1) How do we allow for preferences for Michigan based vendors? (2) How do we allow for set asides, such as for small businesses?</p> <p>Response: (1) The GLWA Articles of Incorporation, Article 9K(3) only allows a requirement to "use its best efforts within the competitive solicitation requirements" to enter into contracts with vendors within the Authority's territory area. This would not include the entire State of Michigan. Draft language was given to the Board on October 10, 2018 regarding consideration to State of Michigan vendors. (2) The GLWA Articles of Incorporation, Article 9L states "Nothing in this paragraph shall be construed as creating a quota or set-aside for any city or county in the Authority territory area."</p>

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5.3	<p>Director Daddow: Section 5.3. Take out (a) and (b) by making this more of a sentence. In addition, change "being listed" as a subcontractor to "including participating."</p> <p>Response: The Policy will be revised to reflect this change.</p>
5.4	<p>Director Daddow: Section 5.4 Professional Services: Legal, Accounting, Actuarial Services should be considered as well.</p> <p>Response: The Policy will be revised to reflect this change.</p>
5.5.3	<p>Director Daddow: Sec. 5.5.3 Value Engineering. Agree with the concept and Oakland encourages the compliance with the core RFP but suggests to vendors that if there is a better way not reflected in the RFP to do something cheaper, more effectively etc. then propose it. Actually, in doing so, it demonstrates a commitment to the job and the vendor's creativity to think out of the box. The language here is a bit awkward and struggles to make the point. Would suggest the following for the whole paragraph is this is the point that is being made:</p> <p><i>"The Great Lakes Water Authority values the professional expertise of its Potential Vendors and encourages the Potential Vendor to consider and comply with the RFP specifications as proposed. However, because of the evolving technology, specific expertise of the vendor and / or the experiences of the Vendor in other utilities the scope of work, if adhered to completely may not provide the most economical or efficient means of achieving the overall goal of the scope of work contemplated in the RFP. As such, GLWA encourages the submission of alternative approaches to the scope of work contemplated in the RFP that would provide a more economical, efficient and / or effective approach beyond the scope of work identified in the RFP. In addition to the requirement of complying with the RFP as drafted as to the scope of work, Potential Vendors should be encouraged to provide an alternative proposal, if they so desire, to achieve the same or better product at a more cost-effective rate for consideration by GLWA. There can be no assurances that the alternative approach will be considered or place any requirements on GLWA to accept this alternative approach if the Potential Vendor is selected to perform such work.</i></p> <p>Response: The Policy will be revised to reflect this change.</p>
5.8	<p>Director Daddow: 5.8 Bonds. Add "Based upon the Enterprise Risk Management recommendation" before "The type of bond required..."</p> <p>Response: The Policy will be revised with this change.</p>
7.2	<p>Director Daddow: Sec. 7.2 Responses Submitted After Due Date and Time. Oakland occasionally receives these late proposals as well. But we add one more procedure to protect ourselves in addition to not opening the response – we</p>

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	<p>return it to the vendor unopened so as to have NOTHING on site to permit us to be challenged when the vendor's unopened package might turn out to be cheaper / better than the selected vendor. In doing so, no one has knowledge OR ACCESS to what was truly submitted by the vendor. I'd suggest a sentence or reference to saying we return the unopened package for late proposals back to the vendor. We can therefore never be held to what we didn't know or could have known but for the opening of a package we'd have hanging around the Procurement Department.</p> <p>Response: Potential Vendors do not respond to a Solicitation in a hard copy. Responses to Solicitations are submitted electronically on Bonfire. The responses are automatically logged with the date/time & they are not opened if past the stated time. Once the response to a Solicitation is in Bonfire, GLWA has a permanent record of it being submitted late.</p>
8.2	<p>Director Baker: Section 8.2 Evaluation Team. Should we define when evaluators from member communities will be selected? i.e. for what types of solicitations, as now the policy only states, "where applicable". Doing so in the policy may prevent any board issues after the fact.</p> <p>Response: The Administration recommends addressing examples in the Procedures and not, necessarily, in the Policy.</p>
8.3	<p>Director Daddow: Section 8.3(c) Protest. (1) Add "receipt of" in front of "the notification of the protest decision to appeal." (2)The notification likely should be by email/PDF. 3 days isn't enough time if the notice is placed in the U.S. mail. A little concerned with 3-day notice period.</p> <p>Response: The Policy will be revised to reflect e-mail notification.</p>
8.3(b)	<p>Directors Hendrix & Brown: Protests. Does not think GLWA's Chief Procurement Officer, an internal employee, should make the decision on bid protests. An internal employee could be biased, and a vendor may feel there could be repercussions if they protest.</p> <p>Response: To be discussed at Board meeting.</p>
8.3(d)	<p>Directors Hendrix & Brown: Protests. Does not think GLWA's Chief Administrative and Compliance Officer, an internal employee, should make the decision on bid protests. An internal employee could be biased, and a vendor may feel there could be repercussions if they protest.</p> <p>Response: To be discussed at Board meeting.</p>

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9.2	<p>Director Daddow: Sec. 9.2 Contract Length and Renewals. Don't know where to put this one, but I'd like to see the contracts posted on the website in the future. We did this 10 years or so (maybe longer) and what we found was – 1) it virtually eliminated the periodic requests of contracts under FOIA (tell them – go to the website at your leisure), 2) it actually resulted in vendors being more competitive and 3) given the specific length of the contracts (GLWA's is similar to Oakland), it allowed for vendors to research the contracts for the periods when they ended and would be likely up for bid.</p> <p>Response: As contracts are executed, they are posted to Bonfire for public viewing.</p>
9.2	<p>Director Baker: Section 9.2 Contract Length and Renewals. If a renewal is for more than \$1 million (as well as exceeds 5 years), does not still need to go to the Board?</p> <p>Response: Yes, Board approval is required.</p>
11.2.2	<p>Director Daddow: Sec. 11.2.2 Monetary Change Orders. I am left wondering in this section of who does what under the two levels of contracts – those under Board's involvement and those requiring Board involvement. Also, 'authorization' and 'reauthorization' are not terms defined in the contract. What happens if the contract was below the Board's authorization level but the change order pushes it over the authorization level? Does the Board then get involved?</p> <p>Response: Changes in contracts must follow approvals outlined in the Approval Requirement Table. In the hypothetical presented, if the change in the term or contract amount exceed the authorization in Section 2.1, the Board must approve the change order.</p>
13.1.2	<p>Director Daddow: Sec. 13.1.2. Am confused. The first paragraph ends with the phrase – 'for all time.' But the next paragraph indicates the time frames for being disbarred. Is the disbarment forever or for a specified time limit? Depending upon the offense (fraud for example) I can go with forever. Lesser offenses – perhaps a time limit is more appropriate. Needs to be clarified.</p> <p>Response: The Policy will be revised.</p>
Annual Reporting of Contracts	<p>Director Daddow: As a secondary matter, Section 9-I (page 11) of the Articles of Incorporation states "The Board shall prepare an annual report detailing all contracts entered into by the Authority during the immediately preceding fiscal year, which report shall be made publicly available and posted on the Authority's website." I don't recall ever seeing this report or it being on the website. Are we doing this? Perhaps the above first paragraph could be construed to have achieved this requirement if adopted – that is, contracts on the website.</p> <p>Response: To date, this Report has not been submitted to the Board. The Report will be generated for the Board's review for Fiscal Years 2016-2018.</p>

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Unbundling	<p data-bbox="397 233 1419 401">Directors Hendrix & Brown: From the Small Business Initiative presentation, we understand that unbundling is a concept that can be used so local small businesses have an opportunity to bid on projects that would have been too large. Can unbundling of contracts be in put in writing so it is acted upon whenever it can be?</p> <p data-bbox="397 436 1386 506">Response: I recommend placing the subject of unbundling in the Procurement Procedures.</p>