



Catskill Watershed Corporation

669 County Hwy 38 • Suite 1 • Arkville, NY 12406

Tel: (845) 586 -1400

Fax: (845) 586 -1401

Website: www.cwconline.org

EMAIL COVER SHEET

To: FINANCE COMMITTEE

ATTN: Thomas Snow Richard Parete
Alicia Terry Innes Kasanof
Shilo Williams Joseph Cetta
John Kosier Jim Ellis

CC: CWC Staff, John Schwartz, Michael Meyer, Matthew Giannetta,
Thomas Stalter, Gerson Tavaréz and Aaron Bennett

SUBJECT: FINANCE COMMITTEE MEETING NOTICE

DATE: Tuesday, October 6, 2026

TIME: START: Immediately Following Septic

LOCATION: Catskill Watershed Corporation Building

Additional Instructions:

Please be advised that the Finance Committee meeting has been scheduled.

NOTICE OF PRIVILEGE AND CONFIDENTIALITY

Information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.

CWC Finance Meeting
October 6, 2026
AGENDA

Committee Members: Joseph Cetta, Jim Ellis, Innes Kasanof, John Kosier, Jason Merwin, Richard Parete, Thomas Snow, Alicia Terry, Shilo Williams

AGENDA

- I. Call To Order**
- II. Review Minutes From Previous Meeting**
- III. Review August Financial Statements**
- IV. 2027 Corporate Budget**
- V. Investment & Procurement Policy Update**
- VI. Other**
- VII. Schedule Next Meeting**
- VIII. Adjournment**

**CWC Finance Meeting
September 1, 2026
DRAFT MINUTES**

Attended Committee Members: Joseph Cetta, Jim Ellis, Innes Kasanof, John Kosier, Jason Merwin, Richard Parete, Alicia Terry, Shilo Williams

MINUTES

I. Call To Order

II. Review Minutes From Previous Meeting – Accepted as presented.

III. Review July Financial Statements – The July financial statements and the supplemental schedules were presented to the committee. Investments and [investment] yields were also discussed.

CWC received an engagement quote from UHY LLP (formally RBT, CPAs). The committee approved the quote, and a resolution will be presented at the next board meeting for review/approval.

IV. Other - The 2027 corporate budget will be presented to the committee next month. Same format and minimal changes anticipated.

The investment policy has been updated to comply with the auditor's suggestion, and the procurement policy has been updated with current thresholds. Both policy updates will be presented at the next meeting.

V. Schedule Next Meeting – The next meeting will be held on October 6, 2026.

VI. Adjournment

**Catskill Watershed Corporation
Finance Director's Report
September 1, 2026**

Financial Statements

On September 1, 2026, July financial statements and the supplemental schedules were presented to the Finance Committee. The August financial statements and the supplemental schedules will be presented at the next Finance Committee meeting on October 6, 2026.

Investments

Enclosed you will find a summary of CWC's investments. As of July 31, 2026, the total [municipal/agency bonds] carrying value is \$9,345,086. The interest yields range from .63% to 4.52%, and maturity terms vary, up to 3 +/- years. For real short-term investments, CWC has invested in money markets and savings accounts at authorized banks totaling \$21,324,220 with interest rates ranging up to 3.22%.

Investments Policy

3-4.01-13.1 *Scope*

This investment policy applies to all moneys and other financial resources available for investment by Catskill Watershed Corporation (the “Corporation”) on its own behalf or on behalf of any other entity or individual.

3-4.01-13.2 *Objectives*

- A. The primary objectives of the Corporation’s investment activities are, in priority order,
1. To conform with all applicable Federal, State, City, local contractual and other legal requirements (legal);
 2. To adequately safeguard principal (safety);
 3. To provide sufficient liquidity to meet all operating requirements (liquidity); and
 4. To obtain a reasonable rate of return (yield).
 5. To provide rate of return to offset the erosive effects of inflation on principal (growth).

3-4.01-13.3 *Delegation of Authority*

The Board of Directors’ responsibility for administration of the investment program is delegated to the Executive Director or the Executive Directors’ designee. The Executive Director, President and Treasurer must be emailed/notified immediately after any bond transaction(s) occur.

3-4.01-13.4 *Prudence*

All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in the Corporation.

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.

All participants involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or that could impair their ability to make impartial investment decisions.

3-4.01-13.5 *Diversification*

It is the policy of the Corporation to diversity its deposits and investments by financial institution, by investment instrument, and by maturity scheduling.

3-4.01-13.6 *Collateralizing Of Deposits*

All deposits of the Corporation, including certificates of deposit and special time deposits, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act, shall be secured:

1. By a pledge of “eligible securities” with an aggregate “market value,” as provided by New York General Municipal law (“GML”) 10, equal to the aggregate amount of deposits, from the following categories: (I) Obligations issued, or fully insured or guaranteed as to the payment of principal and interest, by the United States of America, an agency thereof, or a United States government-sponsored corporation; Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank; Obligations partially insured or guaranteed by an agency of the United States of America, at a proportion of the market value of the obligation that represents the amount of insurance or guaranty; and Obligations issued or fully insured or guaranteed by the State of New York, obligations

issued by a municipal corporation, school district or district corporation of New York State or obligations of any public benefit corporation, which under a specific State statute, may be accepted as security for deposit of public moneys.

2. By an eligible “irrevocable letter of credit” issued by a qualified bank other than the bank with the deposits, in favor of the Corporation, for a term not to exceed 90 days with an aggregate value equal to 140% of the aggregate amount of deposits and the agreed upon interest, if any. A qualified bank is one whose commercial paper and other unsecured short-term debt obligations are rated in one of the three highest rating categories by at least one (1) nationally recognized statistical rating organization or by a bank that is in compliance with applicable Federal minimum risk-based capital requirements; or
3. By an eligible surety bond payable to the Corporation for an amount at least equal to 105% of the aggregate amount of deposits and the agreed upon interest, if any, executed by an insurance company authorized to do business in New York State, whose claims – paying ability is rated in the highest rating category by at least two nationally recognized statistical rating organizations.
4. By an “irrevocable letter of credit” issued in favor of the corporation by a federal home loan bank whose commercial paper and other unsecured short-term debt obligations are rated in the highest rating category by at least one nationally recognized statistical rating organization, as security for the payment of 100 percent of the aggregate amount of deposits and the agreed-upon interest, if any.

3-4.01-13.7 Safekeeping and Collateralization

Eligible securities used for collateralizing deposits shall be held by the depositary and/or a third party bank or trust company subject to security and custodial agreements.

The security agreement shall provide that eligible securities are being pledged to secure the Corporation’s deposits together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events that will enable the Corporation to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the Corporation, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Corporation or its custodial bank.

The custodial agreement shall provide that securities held by the bank or trust company, or agent of and custodian for, the Corporation, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the securities. The agreement shall provide for the frequency of revaluation of eligible securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreement shall include all provisions necessary to provide the Corporation a perfected interest in the securities.

3-4.01-13.8 Permitted Investments

The Corporation authorizes the Executive Director and/or the Finance Director to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:

- ◆ Special time deposit accounts;
- ◆ Certificates of deposit;
- ◆ Savings accounts (deposits at a savings bank or a trust bank are not permitted)
- ◆ Obligations of the United States of America;
- ◆ Obligations guaranteed by agencies of the United States of America;

- ◆ Investment rated (Baa – AAA) City, State or State authority [Municipal] bonds purchased from a Board approved New York State broker;
- ◆ Corporate obligations rated “A” or higher by at least two nationally recognized rating agencies;
- ◆ Government insured money market funds that invest in U.S. government securities;
- ◆ Repurchase agreements for U.S. government and U.S. government guaranteed securities;
- ◆ Commercial paper and banker acceptance notes rated “A” or higher by at least two nationally recognized rating agencies;
- ◆ Government issued bond funds;
- ◆ Convertible bond funds
- ◆ Corporate bonds and corporate bond funds of investment grade; and/or
- ◆ All mutual funds consisting of investment grade bonds – both open and closed
- ◆ Or other investments in accordance with General Municipal Law

All investment obligations shall be payable or redeemable at the option of the Corporation within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable at the option of the Corporation within two years of the date of purchase.

Part 3-10 Procurement

3-10.01 General

Introduction and Scope

The purpose of this policy is to ensure that the Catskill Watershed Corporation (the "CWC") achieves the best value for goods and services procured, following a transparent and cost-effective process in compliance with all applicable regulatory standards. The policy aims to safeguard an adequate level of competition in order to increase the integrity of the procurement process, ensure good stewardship of funds, and maintain regulatory compliance.

CWC will follow accounting policies and procedures that comply with New York State procurement law and avoid purchasing unnecessary items. Any procurement of goods and services shall be made by the Purchasing Agent, in the best interest of the CWC, upon considering the totality of the circumstances surrounding the procurement, which may include but is not limited to price, quality, availability, reputation, or prior dealings.

This policy is intended to govern the Purchasing Agent, President and Executive Director of the ~~CWCCorporation~~ in making decisions for the purchase of goods and services necessary to fulfill the ~~CWC'sCorporation's~~ purposes.

The ~~CWCCorporation~~ shall solicit, review and evaluate bids, and award purchase and public work contracts in accordance with the provisions of Section 103 of the General Municipal Law that would apply if the ~~CWCCorporation~~ were a municipal corporation. ~~Such provisions shall control over any provision contained in these policies and procedures that directly~~ conflicteonflicts with any such provisions.

Every prospective purchase of goods or services shall be evaluated to determine the applicability of the provisions of General Municipal Law § 103 that would apply if the ~~CWCCorporation~~ were a municipal corporation. ~~The President or Executive Director of the Corporation shall estimate the cumulative amount of items of supply or equipment needed in a given fiscal year. The estimates of the annual need for goods and services shall be used in determining the applicability of the following procedures for procurement practices.~~

3-10.02 *Competitive and Non-Competitive Bid Purchasing Regulations*

3-10.02-1 Definitions

- A. Offeror: Individual or entity or person acting on behalf of such individual or entity that contacts CWC about a CWC procurement during the Restricted Period of such procurement.
- B. Purchase Contract: A contract that involves the acquisition of commodities, materials, supplies or equipment. Contracts for software, software licenses, cloud-based services, digital content, digital marketing or e-commerce purchases, or subscription-based services shall also constitute a "purchase contract."
- C. Public Work Contract: A contract that involves the construction, installation, repair or replacement of facilities or equipment which would constitute "public works" within the meaning of Section 103 of the General Municipal Law, as if the ~~CWCCorporation~~ were a municipal ~~corporation~~Corporation.
- D. Personal Services Contract: A contract that involves the acquisition of personal services. As used herein, the term "personal services" shall mean any services performed for a fee, commission or other compensation by persons or organizations that are not providing such services as Officers or employees of the ~~CWCCorporation~~ or any governmental agency or public corporation, but excluding any construction, installation, repair or replacement services that would constitute a public works contract as defined above. Personal services include, but are not limited to, legal, accounting, management consulting, construction management, program management, planning, training, statistical research,

public relations, architectural, engineering, surveying or any other services of a consulting, technical or professional nature.

- E. Restricted Period: ~~The~~ period of time commencing with the earliest posting, on CWC's website or in a newspaper of a solicitation of a request for proposal⁵ and ending with the final contract award and approval by CWC.

3-10.02-2 CWC Corporation

A. Purchasing Agent:

1. The Executive Director and/or such other Officer or employee of the CWC Corporation as the Board of Directors may by resolution appoint shall be the "Purchasing Agent" of the CWC Corporation. The Purchasing Agent is the only person designated to commit the CWC Corporation to a purchase of goods or services.
2. The Purchasing Agent is responsible for the design, implementation, and effectiveness of the procurement of goods and services.
3. Whenever a disagreement arises about a purchase, the Finance Committee President of the CWC Board of Directors Corporation shall hear the views of the Purchasing Agent and the requisitioner and render a decision and provide direction.
4. Subject to the requirements of these policies and procedures, the Purchasing Agent shall have authority to determine, in any given situation, whether to competitively bid ~~-(through public advertisement)~~ or to solicit quotations, bids on proposals for goods and services utilizing other procurement methods. Other staff is directed to cooperate with the Purchasing Agent to achieve cost containment, efficiency and economy.

B. Financial Control:

1. The Executive Director or designee shall confirm that the City of New York has committed sufficient funds or that other funding sources have committed sufficient funds or funds have been received to cover each purchase before a contract therefore is executed.

C. Communications During the Restricted Period:

1. For each procurement, including request for proposals (RFP) or invitation for bids (IFB), CWC will designate a specific person or persons to receive contacts regarding each procurement from Offerors. The designated persons will be identified in the RFP. All contacts by an Offeror with these designated staff persons are acceptable, subject to the limitations contained in the Penal Law and Public Officers Law. Such designated employee(s) shall complete a record of each contact for inclusion in the procurement record. If a contact involves a possible violation of the law, the contact shall be immediately forwarded forward to CWC Corporate Counsel.
2. Employees, except for the designated staff person or for limited circumstances provided in this section, shall not have any contact with any offeror regarding a procurement prior to due date of submissions. Certain contacts with CWC employees (other than the designated staff person) are permissible. All permissible subject matter contacts must be recorded in the procurement record. These "permissible" contacts are based on subject matter and are summarized below:
 - a. Submission of a bid, proposal or response for a procurement contract;
 - b. Submission of written questions when written responses are to be provided to all Offerors;
 - c. Participation in a pre-bid conference;

- d. Complaints by an Offeror to Corporate Counsel or the Executive Director where the designated person for the procurement contract of the Governmental Entity fails to respond in a timely matter;
 - e. Negotiations with the Offeror after a tentative award;
 - f. Filing of written disputes in administrative hearings, judicial proceedings and to the attorney general, inspector general, district attorney, or state comptroller;
 - f.g. Requests for responses to a procurement contract from an Offeror or other party, so long as CWC remains subject to the Freedom of Information Act (5 U.S.C. §552) and such requests comply with CWC's requirements according to such law.;
3. Except for permissible contacts listed above, CWC employees who are not the designated staff person in an RFP shall have no contact with Offerors. CWC employees contacted by an Offeror, not subject to the above exceptions, must record the contact and report the contact immediately to Corporate Counsel.
 4. Offerors who knowingly and willfully contact CWC employees in violation of this section shall be ineligible for awards from CWC for a period of four years. In addition, such offeror shall not be awarded the procurement contract, unless the award to the Offeror is necessary to protect public property or public health or safety, and that the Offeror is the only source capable of supplying the required article of procurement within the necessary timeframe. In such circumstance, CWC shall include in the procurement record a statement describing the basis for such finding.

3-10.02-3 General Municipal Law/Statement of General Conditions

The General Municipal Law of the State of New York provides that purchase contracts for materials, equipment and supplies involving an expenditure exceeding \$~~2010~~3520,000 and public work contracts involving an expenditure exceeding \$~~3520~~3520,000 shall be awarded to the lowest responsible Bidder furnishing the required security after advertisement for sealed bids in the manner provided in that section. The Purchasing Agent of the CWC shall estimate the cumulative amount of items of supply or equipment needed in a given fiscal year. The estimates of the annual need for goods and services shall be used in determining the applicability of the procedures for procurement practices.

3-10.02-4 Competitive Bidding Required

A. Method of Determining Whether Procurement is Subject to Competitive Bidding:

The Purchasing Agent shall first determine if the proposed procurement is a purchase contract, ~~or a~~ contract for public work or a personal service contract.

If the procurement is either a purchase contract or a contract for public work, then the Purchasing Agent shall determine whether the amount of the procurement is above the applicable monetary threshold as set forth above or if competitive bidding is otherwise required by the terms of the relevant program contract between the ~~CWC Corporation~~ and The City of New York.

The Purchasing Agent shall also determine whether any exceptions to the competitive bidding requirements (as set forth below) are applicable and warranted.

Subject to the exceptions set out in Section ~~3-10.02-5~~ below, with respect to any purchase contract or a contract for public work, competitive bidding shall be required if (x) the amount of the proposed contract exceeds the applicable monetary threshold set out above, or (y) competitive bidding is required under the terms of the applicable program contract between the ~~CWC Corporation~~ and The City of New York. ~~-All procurements of purchase contracts and contracts for public work where competitive bidding is required shall be conducted in accordance with the CWC's Corporation's Policies and Procedures for Solicitation and Award of Bids When (Ref. 33-10.04) when Competitive Bidding is Required (Ref. 3-10.04), as adopted by the CWC Corporation.~~

1. With respect to any personal services contract, competitive procurement shall be required in accordance with, and subject to the exceptions set out in the CWC's Corporation's Policies and Procedures for Personal Services Contracts (Awarding, Monitoring and Reporting) (~~Ref 3-10.063010.05~~), as adopted by the CWC Corporation.

B. Contract Combining Purchase and Public Works:

In the event that a contract combines elements of both a purchaser contract and a public work contract, the Purchasing Agent, in determining the appropriate monetary threshold criteria to apply to the contract, shall determine whether the purchase or the public work is the predominant part of the transaction. The contract should be viewed as a purchase for purposes determining the competitive bidding requirement or monetary threshold if the public work elements are minor, incidental or customarily provided by the vendor as a component of the purchase. Conversely, if the public work elements are extensive, substantial or involve specialized skills so that the acquisition of the commodity is incidental to the work, the contract should be treated as a contract for public work for purposes of the monetary threshold.

3-10.02-5 Exceptions to Competitive Bidding Requirements

Subject to any express provision to the contrary contained in any contract to which the CWC Corporation is a party, and except when the Board of Directors expressly determines otherwise, the CWC Corporation will not be subject to competitive bidding requirements under the following circumstances:

- A. Emergency situations, as determined where feasible by the Board of Directors and where it is impracticable for the Board of Directors to make such determination, as determined by the Purchasing Agent, in its discretion, where:
 1. The situation arises out of an accident or unforeseen occurrence or condition;
 2. A public building, public property, or the life, health, safety or property of an inhabitant of a town that has signed the Watershed Memorandum of Agreement is affected; and
 3. The situation requires immediate action that cannot await competitive bidding.
 4. Nevertheless, when the Board passes a resolution that an emergency situation exists, the CWC Corporation shall make purchases at the lowest possible costs, seeking competition by informal solicitation of bids or otherwise, to the extent practicable under the circumstances.

Documentation:- The requisitioner shall prepare a memorandum describing the emergency situation and justifying the need for relief from competitive bidding requirements, which shall be submitted to and approved by the Purchasing Agent, prior to seeking a Board resolution. Such memorandum, together with the resolution of the Board determining that an emergency exists, and a written record of any verbal or written bids obtained, shall be maintained in the contract file for the procurement.

~~B. When the Corporation purchases surplus or second hand supplies, materials, or equipment from the Federal, State, City or local governments or from any other political subdivision or public benefit corporation within the State, from agencies for the blind or severely handicapped, and from correctional facilities;~~

~~**Documentation:-** The requisitioner shall make a good faith effort (through verbal or written bids) to ascertain the reasonableness of the price being quoted versus market price. The requisitioner shall prepare a memorandum describing the benefit to the Corporation of acquiring such supplies, materials or equipment from the source in question, and any market price comparison made, which shall be submitted to and approved by the Purchasing Agent. Such memorandum shall be maintained in the contract file for the procurement;~~

C.B. When there is only one possible source ("sole source") from which to procure goods or services required in the public interest.

Documentation: For such sole source expenditures anticipated to exceed the applicable monetary threshold set forth above, the ~~CWCCorporation~~ shall cause an advertisement stating the ~~CWC'sCorporation's~~ intent to procure goods or services from the sole source, the nature of such goods or services, the desired acquisition date of such goods or services, and the time by, and place to, which prospective alternative suppliers must send their proposals to be published once ~~on—in~~ the ~~CWC'sCorporation's~~ official ~~websitene newspapers~~ at least fifteen (15) days before the proposed acquisition date. If no alternative source for such goods or services or an acceptable substitute therefore is brought to the Purchasing Agent's attention within ten (10) days prior to the proposed acquisition date, the ~~CWCCorporation~~ may enter into a contract to purchase such goods or services from the identified sole source, subject to the following: the ~~CWCCorporation~~ will maintain written documentation of the unique benefits of the item or service purchased as compared to other items or services available in the marketplace; no other item or service provides substantially equivalent or similar benefits; and considering the benefits received, the cost of the item or service is reasonable, when compared to any alternative methods. In addition, the documentation shall provide that there is no possibility of competition in the procurement of the goods.

~~D.C.~~ When two or more competitive bids are solicited and only one responsive bid is received;

Documentation: -The ~~CWCCorporation~~ shall maintain copies of all requests for proposals, invitations for bids or advertisements for bids with the names and addresses of the firms to which such were sent and/or the place(s) and date(s) of advertisement, if applicable, with copies of all responses received. Such documentation shall be maintained in the contract file for the procurement.

~~E.D.~~ For goods purchased at auctions;

Documentation: -The ~~CWCCorporation~~ shall maintain market price comparisons, and where possible, the price bid and identity of the second and third lowest bidders at auction. Such documentation shall be maintained in the contract file for the procurement.

E. When a contract has been let by the United States or any agency thereof, any state or any other political subdivision or district therein to the lowest responsible bidder or on the basis of best value in a manner consistent with GML §103(16) and made available for use by other governmental entities, typically by the inclusion of a clause in the original contract extending the terms and conditions of the contract to other governmental entities; except for public works contracts;

Documentation: The CWC shall maintain appropriate documentation to allow for a thorough review of the decision to use this exception to competitive bidding. This documentation may include such items as copies of the original contract, analysis of the contract to ensure it meets the prerequisites stated above, and cost savings analysis including consideration of other procurement methods.

F. When a purchase required by the CWC from contracts let by other state agencies, the U.S. Government, or any other state with the concurrence of the Office of the State Comptroller has been authorized by New York State Office of General Services (NYSOGS) and under appropriate circumstances (otherwise known as “piggybacking”);

Documentation: Where the subject of the original procurement is a New York State Agency-specific contract, the original contracting entity must be contacted and advised of the intended use. Concerns about the intended use must be forwarded to NYSOGS with the request for approval. Where the requesting Agency proposes using an amendment to an existing contract, consent of the originating Agency must be obtained. The vendor's consent to the request must be written in legal form, separate from a purchase order, which sets forth the agreed terms of the request. Similar to other methods of procurement, CWC must document that the price for the proposed contract is reasonable under the circumstances.

3-10.02-6 Purchase/Public Work: Methods of Competition to be Used for Non-Bid Procurement; Documentation to be Maintained

This section describes the procedures to be used and documentation to be maintained when a proposed purchase contract or contract for public work is for an amount which is less than the threshold required for the competitive bidding.

A. Purchase Contracts up to \$~~20~~10,000:

1. ~~Contracts from \$0 to \$1,999; no bids or other solicitations for competitive bidding are required; except that a purchase order consistent with standard CWC practice and procedure shall be completed for purchases for more than \$100. Contracts from \$0 to \$999; no bids are required. Exception: when a specific commodity may cost \$500 or more, verbal bid proposals (or comparisons to catalogs) are required. Documentation shall include notations as to verbal bid proposals or a page reference to a catalog. Competitive quotations are encouraged (verbal or written) and when obtained, the Corporation shall maintain records of such quotations in the contract file for the procurement.~~
2. Contracts from \$~~21~~,000 to \$~~92~~,999; the ~~CWCCorporation~~ must receive written bid proposals from at least one (1) vendor. Documentation must show that competitive prices have been obtained and that ~~up to more than~~ three vendors were contacted.
3. Contracts from \$~~103~~,000 up to \$~~199~~,999; the ~~CWCCorporation~~ must ~~issue a written request for proposal ("RFP") or invitation to bid ("IFB") and~~ receive written ~~bid proposals~~quotes from at least ~~two (2) vendors. one (1) vendor.~~ Documentation must show that competitive prices have been obtained and that more than ~~threesix~~ vendors were contacted.
4. All bids must include the vendors' complete names and addresses.

B. Public Works Contracts up to \$~~35~~20,000:

1. Contracts from \$0 to \$~~92~~,999; no bids ~~or other solicitations for competitive bidding are~~ required. Competitive quotations are encouraged (verbal or written) and when obtained, the ~~CWCCorporation~~ shall maintain records of such quotations in the contract file for the procurement.
2. Contracts from \$~~103~~,000 to \$~~349~~,999; the ~~CWCCorporation~~ must ~~receive, where possible, issue a written bid proposals~~RFP or IFB and ~~receive written quotes~~ from ~~three (3) vendors, but must receive~~ at least one (1) ~~written bid proposal .vendor.~~ Documentation must show that competitive prices have been obtained and that more than three ~~(3)~~ vendors were contacted.
3. Contracts from \$~~1510~~,000 to \$~~3419~~,999; the ~~CWCCorporation~~ must issue a RFP or IFB and receive written bid proposals from at least three vendors.
4. All bid proposals must include the vendors' complete names and addresses. ~~The written RFP or IFB shall describe the desired goods, quantity, description of public work and/or the particulars of delivery or provision of the service. The President or Executive Director shall compile a list of all vendors from whom written or verbal bids or proposals have been requested and the written or verbal bids or proposals offered.~~

All information gathered in complying with the procedures of this procurement policy shall be preserved and filed with the documentation supporting the subsequent purchase or public works contract. ~~All written bids may, but need not be, received by the Corporation by facsimile. If facsimile bids are to be received, written or advertised notice thereof shall be given to each prospective bidder.~~

PROPOSED PROCUREMENTS SHALL NOT BE SPLIT INTO SMALLER SEGMENTS TO AVOID COMPETITIVE BIDDING UNDER SECTION IV ABOVE, OR TO REDUCE OR ELIMINATE

REQUIREMENTS THAT WOULD OTHERWISE APPLY PURSUANT TO THIS SECTION 3-10.02-6~~VI~~.

- C. Issuance~~Insurance~~: Written bids - Documentation shall include bid advertisements, specifications, and the awarding resolution. Alternatively, written or verbal bid forms will serve as documentation if formal bidding is not required. RFPs documented in the same manner as described herein, may also be used.
- D. Lease of Equipment~~Personal Property~~: Written Bids - Documentation will include written bids, cost-benefit analysis of leasing versus purchasing, etc. The CWC~~Corporation~~ shall determine and note that the contract is a true lease and not an installment purchase contract.

3-10.02-7 Consequences of Unintentional Error

The unintentional failure to comply fully with the provisions of Section 104-b of the General Municipal Law or the CWC's~~Corporation's~~ procedures regarding procurement shall not be grounds to void action taken or give rise to a cause of action against the CWC~~Corporation~~ or any Director, Officer or employee of the CWC.

3-10.02-8 Required Procurement Records

CWC employees must maintain procurement records sufficient to detail the history of a procurement action. These records shall include the following at a minimum:

- a) Rationale for the method of procurement
- b) Selection of a contract type
- c) Contractor selection or rejection; and
- d) Basis for contract price

3-10.02-9 Solicitation Documentation

CWC must maintain procurement records in connection with every procurement action. Staff shall maintain information used to solicit and select a contractor, in addition to information documenting the actual purchases made from the successful contractor. This information may include:

- a) Copies of solicitation documents
- b) Names and dates of contractors contacted by phone;
- c) Copies of letters, emails, and faxes soliciting price or rate quotations;
- d) Trip reports identifying contractors contacted in person;
- e) Copies of price or rate quotations received, including telephone quote confirmations;
- f) Notification to the successful contractor;
- g) Purchase documents, such as invoices, bills of lading and canceled checks; and
- h) Such other records as recommended or required elsewhere in this document.

3-10.02-10 Modifications to a Contract

- A. If a proposed modification changes the work authorized under a purchase, public work, or personal service contract, and/or changes the price or total estimated cost, either upwards or downwards, a detailed breakdown of new and discontinued activities and the contractor's proposed corresponding

cost – not a lump sum proposal – shall be provided in writing to the Purchasing Agent before negotiating the change in the contract scope or price.

A.B. Modifications to previously approved contracts must be approved in writing by the Executive Director or CWC Board of Directors as applicable in consultation with the CWC Finance Director or their designee Corporation.

C. In the event that a modification to a contract increases the total amount to the next highest threshold category described within 3-10.02-6, except for modifications to a contract subject to the terms of this policy which increase the total amount for that contract above the \$20,000 threshold for Purchase contracts or \$35,000 for Public Work contracts, that contract is not required to comply with the newly applicable bidding, quoting, or notice requirements.

D. In the event that a modification to a contract increases the total amount to an amount above \$20,000 for Purchase contracts and \$35,000 for Public Work Contracts, such contracts shall be awarded to the lowest responsible Bidder furnishing any required security after advertisement for sealed bids in the manner provided in GMU §103.

E. Contracts shall not be modified for the purpose of avoiding competitive bidding requirements pursuant to Section 3-10.02-6 (c) of this policy. This includes contracts which are underestimated in their original form and subsequently modified up to their true and accurate amount.

3-10.03 *Qualification and Evaluation of Contractors, Consultants and Suppliers for Contracts*

3-10.03-1 Procedure

~~A. All contractors, architects/engineering firms, construction management firms, professional consultants, suppliers and vendors (for contracts of \$10,000 or more in the aggregate in any one (1) year period) are required to supply information to the Corporation prior to the award of a contract to such bidders/proposers, which information may be provided on a form prescribed by the Corporation, sufficient to enable the Corporation to evaluate such bidder's qualifications, in accordance with the standards established herein.~~

A. In evaluating the bidder's/proposer's~~proposers'~~ qualifications, the CWC~~Corporation~~ will consider the following factors:

1. Experience;
2. Quality and timeliness of past performance;
3. Financial capacity;
4. Reliability and responsibility;
5. Integrity of the firm, its affiliates and current and past owners and principals; and
6. Compliance with other requirements set forth herein.

~~B. The Corporation shall maintain lists of disqualified firms, as well as those firms previously qualified. The Corporation will update these lists at least once a year.~~

3-10.03-2 Minimum Standards

To be a qualified bidder or proposer, applicants must meet at least the following minimum standards:

A. Experience. The applicant must have sufficient experience in the relevant trade or field in which it seeks to do work.

B. History of Performance. The applicant must have a demonstrated record of timely completion of quality work. The CWC~~Corporation~~ may disqualify applicants for up to [3] years for failing to meet

this standard. A contractor shall be deemed to have failed to meet this performance standard in the event of debarment, default, and disqualification, a finding of "poor performer" or "not responsible" of the applicant or its affiliates by any government entity. If the applicant's failure to perform quality work in a timely manner is based on findings other than the factors enumerated above, the CWCCorporation will evaluate the facts and circumstances on a case-by-case basis.

- C. Financial Capacity. The applicant must have sufficient financial ability to undertake the work required of the contract for which the applicant submits or intends to submit a bid or proposal.
- D. Integrity and Ethics. Firms seeking to do business with the CWCCorporation must have a reputation for, and a record of, law-abiding conduct and ethical business practices. Contractors must complete a business integrity review via New York City's standard "PASSPort Questionnaire", (or successor questionnaire) and required backup documentation, if any, according to comply with the terms Business Integrity Section of CWCCthe program contracts with NYCDEP, where applicable.

~~In addition, all vendors for purchase contracts over \$10,000 and public works contracts over \$20,000 and all providers of personal service contracts over \$25,000 shall certify that none of the applicant, its owners or its principals:~~

- ~~1. Has been convicted within the past five years of a crime involving unfair or unethical business practices or acts of moral turpitude;~~
- ~~2. Has been held not responsible, denied a contract or denied approval as a subcontractor, vendor or supplier by any governmental entity for reasons of integrity, or for failure to cooperate with any such governmental procedures for determining business integrity; or~~
- ~~3. Has made material false statements or answers in response to questions arising out of the bidder/proposer qualification process;~~
- ~~4. Is the subject of a pending criminal investigation or indictment; or~~
- ~~1. Is the subject of a pending civil action brought by a governmental entity alleging illegal business practices;~~

The CWCCorporation may disqualify any bidder/proposer that knowingly and willfully submits false information for the purpose of becoming a qualified bidder/proposer and, to the extent permitted by applicable law, may terminate any outstanding contract with such bidder/proposer on account of the submission of such false information.

The CWCCorporation may also consider and evaluate any other facts and circumstances on a case-by-case basis, in addition to those factors enumerated in this procedure, in determining whether a firm or person possesses the integrity and ethics required for doing business with the CWCCorporation.

- E. Miscellaneous Policies Influencing Contract Awards.

Local Businesses - -The CWCCorporation shall use its best efforts to maximize contracting opportunities for firms that: (a) have their principal place of business located in a county in which a town that is party to the Watershed Memorandum of Agreement is located; or (b) do a substantial amount of their business in such a county using workers, the majority of whom performing such work reside in any such county. In furtherance of this policy, the Purchasing Agent shall make efforts to identify firms meeting the foregoing criteria, shall establish a list of such firms, and shall ensure that such firms are included in all appropriate solicitations, invitations to bid, and requests for proposals.

It is the policy of the CWCCorporation not to discriminate in the award of contracts against any qualified bidder on the grounds of race, creed, color, national origin, age, disability, religion, marital status, sex or sexual orientation. All contracts with the CWCCorporation shall include provisions requiring contractors to comply with such policy in their hiring of employees and selection of subcontractors, vendors and suppliers.

3-10.03-3 Revocation of Qualification Status

- A. The ~~CWCCorporation~~ may revoke the qualified bidder/proposer status of a firm on the basis of either changed circumstances or the discovery of new evidence that indicates that the firm does not meet the ~~CWC'sCorporation's~~ standards.

If the ~~CWCCorporation~~ concludes that there may be sufficient evidence to warrant denial or a revocation of a firm's status as a qualified bidder/proposer, the ~~CWCCorporation~~ shall notify the firm of its proposed denial or revocation, the reasons therefore, and the period of disqualification.

Within fourteen (14) days after the date of any such notice of denial or revocation, a firm so notified may request a meeting to occur within fourteen (14) days of such request or any extension of such time to which the ~~CWCCorporation~~ may agree in writing, at its sole discretion, at which such firm shall have the opportunity to present evidence that might result in reconsideration of the ~~CWC'sCorporation's~~ preliminary conclusion to deny or revoke such firm's qualification.

The ~~CWCCorporation~~ shall give such firm final written notification of its determination following such meeting. If no such meeting is requested or if the firm fails to appear at any such meeting, the ~~CWC'sCorporation's~~ preliminary notification of denial or revocation shall be deemed final.

- B. The ~~CWCCorporation~~ may revoke or deny a firm's qualified bidder/proposer status permanently if the ~~CWCCorporation~~ determines that the firm knowingly and willfully submitted a false instrument for the purpose of defrauding the ~~CWCCorporation~~ or of obstructing any inquiry or investigation by the ~~CWCCorporation~~ into the firm's qualifications, responsibility or performance.

~~3-10.03-4 Contractor Performance Evaluation~~

- ~~A. The Corporation will evaluate a firm's performance for compliance with contract requirements at any time during performance of the contract ("interim evaluation"). Notwithstanding whether an interim evaluation is performed, a firm will receive an evaluation following final completion of the contract ("final evaluation"). Final evaluations will be rated by the Corporation as either outstanding, satisfactory or unsatisfactory. Interim evaluations will be rated as either satisfactory, marginal or unsatisfactory. A contractor whose interim evaluation is either marginal or unsatisfactory will be given an opportunity to cure any deficiencies or irregularities in its performance, but may not bid or subcontract on future Corporation projects for at least 60 days.~~

- ~~B. If the Corporation determines that a contractor has failed to cure deficiencies or irregularities that resulted in a marginal or unsatisfactory interim evaluation, the contractor will be barred from bidding or subcontracting for the remaining term of the contract.~~

- ~~C. A contractor that receives an unsatisfactory rating on the final evaluation may be precluded from bidding, contracting or subcontracting on Corporation projects for a period of up to five years.~~

- ~~D. A contractor's performance will be evaluated by the Corporation pursuant to the following criteria:~~

~~Management of project;~~

~~Quality of work;~~

~~Record keeping;~~

~~Subcontracting;~~

~~Contract changes;~~

~~Compliance with contractual requirements;~~

~~Adherence to good safety, industrial and hygiene practices;~~

~~Fulfillment of workforce requirements;~~

Scheduling;

Timely payment of subcontractors, suppliers and employees; and

Compliance with the Corporation's non-discrimination policy.

~~B. A marginal or unsatisfactory evaluation in any of the elements of the criteria set forth above may serve as the basis for a contractor to receive an overall rating of marginal or unsatisfactory.~~

3-10.04 Solicitation and Award of Bids When Competitive Bidding Required

3-10.04-1 General

- A. Once the Purchasing Agent has determined that competitive bidding for a public work or purchase contract is required, the Purchasing Agent shall prepare, or cause to be prepared, an IFB or RFP in accordance with these policies and procedures.
- B. Subject to the Policies and Procedures for Personal Service Contracts and any other applicable procedures adopted by the CWCCorporation, the Purchasing Agent may retain such professional consultant(s) as ~~they deem~~he deems reasonably necessary for preparation of detailed bid specifications, including without limitation, a licensed engineer if the procurement is for a public work, or by any other reasonably necessary means, which may include the assistance of one or more vendors in the case of the procurement of goods. The Purchasing Agent shall exercise diligence, care and sound judgment to ensure that specifications prepared with the assistance of a vendor do not unnecessarily limit bidders to the purchase or sale of goods or services to those provided solely by such vendor or by any other specific manufacturer, supplier or contractor.

3-10.04-2 Minimum Contents of RFP and IFB

All ~~IFBs~~IFB's shall contain at least the following information or provisions, unless otherwise provided herein:

- A. Detailed specifications describing the goods to be acquired or the work or service to be performed, general conditions and if desirable, special conditions, prepared by the CWCCorporation, with such assistance of legal counsel or other professional consultant(s) as the Purchasing Agent deems reasonably necessary or desirable.
- B. The CWC'sCorporation's Policies and Procedures for Qualification and Evaluation of Contractors, Consultants and Suppliers for Contracts, Fiscal Policy §3-10.03.
- C. A Non-Collusion Statement, which must be subscribed by the bidder, affirmed by the bidder as true under the penalties of perjury, and submitted with such bidder's bid. The Non-Collusion Statement shall state the following:

"Non-Collusive Bidding" Certification

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- a. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- c. No attempt has been made or will be made by the bidder to induce any other bidder, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition."

A bid may not be considered for award nor may any award be made if the non-collusion certification executed in accordance with these procedures is not furnished to the Purchasing Agent prior to the bid opening.

- D. A description of the method of contract award.
- E. Any other terms, conditions or administrative considerations that the Purchasing Agent deems necessary or desirable. Such administrative considerations may include, without limitation, bid acceptance, conditions under which bids may be modified or withdrawn, and a policy on submission of facsimile bids.
- F. The ~~CWCCorporation~~ may require bidders to submit a bid deposit or other security with their bids in such amount as the ~~CWCCorporation~~ deems advisable. This type of security protects the ~~CWCCorporation~~ from the time the bid is received until the award of the Contract, and serves as a guarantee that a bidder will keep the bid open and enter into a contract with the ~~CWCCorporation~~ in accordance with the specifications. Bidders shall be permitted to withdraw their bids if no award is made within forty-five (45) days after the bid opening and, upon such withdrawal, any bid deposits or other bid security received by the ~~CWCCorporation~~ shall be returned to the bidder forthwith. Upon the reasonable exercise of the discretion of the Purchasing Agent, an IFB may provide that bidders are permitted to withdraw their bids after a specified time that is less than forty-five (45) days.
- G. A bid form, to ensure uniformity of bids. This form should reflect the method of award and give bidders the ability to record all relevant costs in an organized manner. For commodities and services, the bid form may also include a section where the bidder is asked to fill in the name and address of the manufacturer of the item or items being bid, the guaranteed delivery, the manufacturer's warranty, and whether pricing offered is the lowest offered to commercial, government or education customers for similar quantities under similar conditions. The bid form must also include a section that requires bidders to acknowledge whether any documentation required to be submitted with the bid has indeed been included, and such other information as the Purchasing Agent deems desirable.
- H. The method of payment, which may include, without limitation, periodic variable payments (monthly, quarterly, etc.) based on the level of services rendered (units, hours, visits); periodic lump sum payments (monthly, etc.) at the completion of a specified service (predetermined amounts); or one lump sum at the completion of services rendered.
- I. Specify that bids must be sealed, or when submission by facsimile or electronic technology is expressly permitted, conveyed in a manner that guarantees the security of the bid.

3-10.04-3 Advertisement for Bids

An advertisement soliciting bids must be published in ~~(a) local~~~~the Corporation's official~~ newspaper(s) at least one time no less than five calendar days prior to the dates specified for the opening and reading of bids.

- A. Such advertisements must state:
 - 1. The time and place of the public opening and reading of bids;
 - 2. The method(s) by which a prospective bidder may obtain the bid documents;
 - 3. The time and place for submission of bids; and
 - 4. The amount and conditions of any bid deposit or other security required to be submitted by bidders with their bids.

3-10.04-4 Bid Opening

- A. At the announced bid opening time, the Purchasing Agent or his or her designee, shall open all timely bids in the presence of at least one other witness, who shall be another ~~CWCCorporation~~ employee or

Officer. The person opening bids shall sign a bid affidavit certifying that such person opened the bids for the specific IFB at the appointed time.

- B. No alteration or correction of bids may be allowed at or after the time of bid opening.
- C. The bids shall be recorded by the Purchasing Agent or his or her designee at the bid opening as such bids are opened, concurrently noting any readily apparent irregularities in such bid.
- D. After the bid opening, the Purchasing Agent shall cause a tabulation of all timely bids to be created. The bids shall be ranked from the lowest to the highest based on the stated method of award. The contract shall be awarded to the lowest responsive and responsible bidder, as determined by the Purchasing Agent in accordance with these Policies and Procedures. The Purchasing Agent may reject all bids if he/she determines that such action is in the best interests of the CWCCorporation. In the event of tie bids, the Purchasing Agent shall make the final determination, as provided in Section 9.03-7 below.
- E. The contents of all bids, including the name, ~~address~~ and the amount bid, shall be publicly announced at the bid opening. The Purchasing Agent may announce the apparent low bidder, but in such case, must admonish the public that award of the contract will not be made until the CWCCorporation makes final determinations regarding compliance with all terms and conditions of the IFB and bidder responsibility and qualifications. If technical specifications for the IFB were prepared by a consultant or licensed engineer, then no contract may be awarded until such consultant or engineer certifies to the CWCCorporation that the bid submitted complies with such specifications and any relevant bid terms and conditions. In all other cases, the Purchasing Agent may make such determination of compliance.
- F. The Purchasing Agent or his or her designee may conduct such investigation as may be required to determine whether the prospective contractor is qualified, in accordance with the Policies and Procedures for Qualification and Evaluation of Contractors, Consultants and Suppliers for Contracts adopted by the CWCCorporation.
- G. The CWCCorporation shall announce the proposed award of the contract by mail or e-mail to the successful bidder within the time specified in the IFB, with a corresponding notice, ~~by mail to all bidders that responded to the IFB.~~ The CWCCorporation may respond to inquiries with respect to the status of the bid evaluation process, but may not announce a proposed award by any method prior to the notification mailing of the formal award announcements referred to above.
- H. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to CWC based on price, quality, and other factors which the Purchasing Agent may consider as specified herein.
- I. Circumstances justifying an Award to other than the Lowest Cost quoted:
 - a) Delivery requirements;
 - b) Quality requirements;
 - c) Past vendor performance;
 - d) The unavailability of three or more vendors who are able to quote on a procurement requiring quotes from three or more vendors;
 - e) Previous expertise of a vendor with respect to a particular procurement.
- J. Restrictive competition shall not be permitted on behalf of the CWC or any bidder or offeror seeking to do business with CWC and such entities which engage in restrictive competition as described below shall be disqualified from participating in any presently solicited or future contract with CWC. Restrictive bidding is considered Prohibited Conduct for the purposes of this policy. Some of the situations considered to be restrictive of competition include but are not limited to:

- a) Placing unreasonable requirements on firms in order for them to qualify to do business;
- b) Requiring unnecessary experience and/or excessive bonding;
- c) Noncompetitive pricing practices between firms or between affiliated companies;
- d) Noncompetitive contracts to contractors that are on retainer contracts;
- e) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- a)f) Any arbitrary action in the procurement process.

3-10.04-5 Bidders List

The ~~CWCCorporation~~ may prepare and maintain a list of qualified bidders, containing the names, addresses, phone numbers and a description of the commodities or services provided by such bidders, to whom the ~~CWCCorporation~~ may send bid notices containing such information as shall be contained in bid advertisements. The ~~CWCCorporation~~ shall take care to assure that all known prospective bidders, with reasonable limitations, are included on the list and bidders are not arbitrarily removed from the list.

3-10.04-6 Tie Bids

- A. Where two or more responsive and responsible bidders submit identical bids as to price, the ~~CWCCorporation~~ may award the contract to any one of such bidders, or the ~~CWCCorporation~~ may reject all bids and re-advertise for new bids. In selecting among tie bidders, the ~~CWCCorporation~~ may to the extent permitted by applicable law give preference to local businesses, as described at Section II (E)(1) of the ~~CWC's Corporation's~~ Policies and Procedures for Qualification and Evaluation of Contractors, Consultants and Suppliers for Contracts.
- B. When the tie is among "local businesses" (as defined in the aforementioned Procurement Policies and Procedures), or among bidders where none is a local business, the Purchasing Agent is encouraged to draw lots so as to eliminate the charge of favoritism. Under no circumstances may the contract be divided among the tie bidders.

3-10.04-7 Trade-Ins

If the ~~CWCCorporation~~ contemplates trading-in equipment it is presently using, the IFB must indicate that a trade-in is involved and request that bids contain a trade-in allowance. In determining whether a purchase contract is above the ~~\$2010~~,000 monetary minimum for competitive bidding, a trade-in allowance shall be treated as an expenditure, so that even if the cash expenditure is below ~~\$2010~~,000, competitive bidding would be required if the total value (i.e., cash plus trade-in allowance) is over ~~\$2010~~,000. In determining the low bidder, the net price (i.e., gross price less trade-in) shall be considered.

3-10.04-8 Bid Mistake; Withdrawal of Bids

- A. Where a unilateral error or mistake is discovered in a bid, such bid may be withdrawn by the bidder after a showing of the following:
 - 1. The mistake is known or made known to the Purchasing Agent prior to the awarding of the contract or within three (3) days after the opening of the bid, whichever period is shorter;
 - 2. The price bid was based on an error of such magnitude that enforcement would be unconscionable;
 - 3. The bid was submitted in good faith and the bidder submits credible evidence to the Purchasing Agent that the mistake was a clerical error as opposed to a judgment error;
 - 4. The error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made

directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original workpaper, documents or materials used in the preparation of the bid sought to be withdrawn; and

5. It is possible to place the CWC Corporation in status quo ante.

B. Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this Section shall be withdrawal of that bid and the return of the bid deposit or other security, if any, to the bidder. Thereafter, the Purchasing Agent may, in its discretion, award the contract to the next lowest responsible and responsive bidder or re-bid the contracts. Any amendment to, or reformation of, a bid or a contract to rectify such an error or mistake therein is strictly prohibited.

3-10.04-9 Code of Conduct Requirements and Protocol

2 CFR Section 200.318 requires that CWC, as a(n occasional) recipient of federal funds, maintain written standards of conduct covering conflict of interests and governing the performance of its employees engaged in the award and administration of contracts.

All CWC employees who are engaged in the award and administration of government contracts must adhere to a code of professional conduct outlined herein. All employees, including employees who purchase goods or services, or otherwise similar contracts, must follow CWC's Conflict of Interest Policies.

3-10.04-10 Conflict of Interest

No employee, officer, or agent of the CWC shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, including the Purchasing Agent, of CWC, any member of their immediate family, their partner, or an organization that employs or is intending to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

3-10.04-11 Prohibited Conduct

No employee, officer, or agent of CWC may solicit nor accept gratuities, favors, or anything of monetary value (other than unsolicited gifts of nominal value, except if those gifts taken in the aggregate would not be reasonably considered nominal) from procurement contractors or parties to subcontracts.

3-10.04-12 Reporting

A. Any CWC employee, officer, or agent who believes that Prohibited Conduct, actions which constitute a prohibited conflict of interest, or any material breach of the terms of this policy shall immediately contact CWC Corporate Counsel and notify the Executive Director of any actual, potential, or perceived conflict of interest. No adverse action may be taken against any individual for making a report or disclosure under this policy. Failure to disclose a known conflict shall be considered a breach of this policy and may result in disciplinary action.

A.B. Any potential violation of these policies which may constitute Prohibited Conduct or conduct in violation of CWC's Conflict of Interest policies herein or present within the Employee Handbook shall be described in full in a report prepared by the Purchasing Agent in consultation with CWC Corporate Counsel with supporting documentation, if any, attached and reviewed by the Finance Committee at the next monthly meeting of the Board of Directors. All disclosures, reports, assessments, and resolution decisions shall be documented and retained by the Purchasing Agent or CWC Corporate Counsel, or their designee.

C. Disclosures will be reviewed by the Purchasing Agent and CWC Corporate Counsel, unless one or both of these individuals is the subject of the disclosure. Outcomes may include but are not limited to recusal, role adjustment, or approval by the CWC Board Finance Committee to proceed with documented safeguards.

3-10.05 *Payment on "Public Works" Projects*

All contracts made and awarded by the CWCCorporation (other than contracts between the CWCCorporation and a municipality) for construction, reconstruction or alteration of any public work project, or any project that would be a public work project under the General Municipal Law if the CWCCorporation were a municipal corporation, shall provide for payment by the CWCCorporation to the contractor and payment by the contractor to the subcontractor in accordance with the following:

3-10.05-1 Payment by the CWCCorporation to Contractors

- A. The contractor shall periodically, in accordance with the terms of the contract, submit to the CWCCorporation and/or its agent, a requisition for a progress payment for the work performed and/or materials furnished to the date of the requisition less any amount previously paid to the contractor. The CWCCorporation shall, in accordance with the terms of the contract, approve and "promptly pay" (as defined in Subsection E below) the requisition for the progress payment, less an amount necessary to satisfy any "claims, liens or judgments" (as those terms are defined in Subsection E below) against the contractor which have not been suitably discharged, and less any retained amount as hereafter described.
- B. The CWCCorporation shall retain not more than ~~five percent (5%) of each progress payment to the contractor, except that the Corporation may retain in excess of five percent (5%) but not more than~~ ten percent (10%) of each progress payment to the contractor, provided that there are no requirements by the CWCCorporation for the contractor to provide a performance bond, although consideration may be given to those bids containing a performance bond for purposes of awarding contracts, and a labor and material bond both in the full amount of the contract.
- ~~C.—The CWCCorporation shall pay, upon requisition from the contractor, for materials pertinent to the project that have been delivered to the site or off-site by the contractor and/or subcontractor and suitably stored and secured as required by the CWCCorporation and the contractor, provided, the CWCCorporation may limit such payment to materials in short and/or critical supply and materials specially fabricated for the project, each as defined in the contract.~~
- ~~D.—When the work, or major portions thereof, as contemplated by the terms of the contract are substantially completed, the contractor shall submit to the Corporation and/or its agent a requisition for payment of the remaining amount of the contract balance. Upon receipt of such requisition, the Corporation shall approve and promptly pay the remaining amount of the contract balance less two (2) times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens or judgments against the contractor which have not been suitably discharged. As the remaining items of work are satisfactorily completed or corrected, the Corporation shall promptly pay, upon receipt of a requisition, for these items less an amount necessary to satisfy any claims, liens or judgments against the contractor that have not been suitably discharged.~~
- ~~E.—Any "claims, liens and judgments" referred to in this provision shall pertain to the project and shall be filed in accordance with the terms of the applicable contract and/or applicable laws. As used in these provisions, the term "promptly pay" shall mean payment within thirty (30) days, excluding legal holidays, of receipt of the requisition, unless such requisition is not approval in accordance with the terms of the contract.~~

3-10.05-2

Payment by Contractors to Subcontractors

- ~~A.—Within fifteen (15) calendar days of the receipt of any payment from the Corporation, the contractor shall pay each of its subcontractors and materialmen the proceeds from the payment representing the value of the work performed and/or materials furnished by the subcontractor and/or materialman, and reflecting the percentage of the subcontractor's work completed or the materialman's materials supplied~~

~~in the requisition approved by the Corporation, and based upon the actual value of the subcontract or purchase order, less an amount necessary to satisfy any claims, liens or judgments against the subcontractor or materialman that have not been suitably discharged, and less any retained amount as hereafter described.~~

- ~~B. The failure by the contractor to make any payment, including any remaining amounts of the contract balance as hereinafter described, to any subcontractor or materialman within fifteen (15) calendar days of the receipt of any payment from the Corporation shall result in the commencement and accrual of interest on amounts due to such subcontractor or materialman for the period beginning on the day immediately following the expiration of such fifteen (15) calendar day period and ending on the date on which payment is made by the contractor to such subcontractor or materialman. Such interest shall be the sole responsibility of the contractor, and shall be paid at the rate of interest in effect on the date payment is made by the contractor. Notwithstanding any other provision to the contrary, interest shall be computed at the rate equal to the overpayment rate set by the commissioner of Taxation and Finance, pursuant to subsection (e) of section one thousand ninety six of the tax law.~~
- ~~C. The contractor shall retain not more than five percent (5%) of each payment to the subcontractor and/or materialman, except that the contractor may retain in excess of five percent (5%) but not more than ten percent (10%) of each payment to the subcontractor, provided that prior to entering into a subcontract with the contractor, the subcontractor is unable or unwilling to provide a performance bond and a labor and material bond, both in the full amount of the subcontract, at the request of the contractor. However, the contractor shall retain nothing from those payments representing proceeds owed the subcontractor and/or materialman from the Corporation's payments to the contractor for the remaining amounts of the contract balance.~~
- ~~D. If the contractor has failed to submit a requisition for payment of the remaining amounts of the contract balance within ninety (90) days of substantial completion as provided in Section I, then any clause in the subcontract between the contractor and the subcontractor or materialman which states that payment by the contractor to such subcontractor or materialman is contingent upon payment by the Corporation to the contractor shall be deemed invalid.~~
- ~~E. Within fifteen (15) calendar days of the receipt of payment from the contractor, the subcontractor and/or materialman shall pay each of its subcontractors and materialmen in the same manner as the contractor has paid the subcontractor, including interest as herein provided above.~~
- ~~A. Nothing in these provisions shall create any obligation on the part of the Corporation to pay or to see to the payment of any monies to any subcontractor or materialman from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor or materialman, and the Corporation.~~

3-10.06 *Personal Services Contracts (Awarding, Monitoring and Reporting)*

3-10.06-1 Procurement of Personal Services

Subject to the exceptions set out below, all personal services contracts (as hereinafter defined) shall be procured through competitive bidding. These policies and procedures shall govern how such procurements are conducted by the CWCCorporation.

3-10.06-2 Definitions

- A. As used in these policies and procedures, "personal services contract" shall mean any contract that involves the acquisition of personal services. The term "personal services" shall mean any services performed for fee, commission or other compensation by persons or organizations that are not providing such service as Officers or employees of the CWCCorporation or any governmental agency or public corporation. Personal services include, but are not limited to, legal, accounting, management consulting, construction management, program management, planning, training, statistical research,

public relations, architectural, engineering, surveying or any other services of a consulting, technical or professional nature.

- B. As used in these policies and procedures, the term "Purchasing Agent" shall refer to the Executive Director of the CWCCorporation and/or such other Officer or employee of the CWCCorporation as the Board of Directors may by resolution appoint as Purchasing Agent.

3-10.06-3 Use of Personal Service Contractors

The CWCCorporation will use personal service contractors only after the ~~President or~~ Purchasing Agent ~~after discussion with the President~~ shall have determined that it is appropriate to do so. In making such determination, the following factors shall be considered:

- A. The amount of time likely to be required in performing the services;
- B. The degree of special skill likely to be required in performing the services;
- C. The availability of employees of the CWCCorporation possessing the skills needed to perform the services;
- D. The likely expense of training employees of the CWCCorporation to perform the services, and the likely future benefits to the CWCCorporation of such training;
- E. The availability of personal service contractors and the likely expense of using personal service contractors;
- F. The requirement that the services be rendered by an independent professional, as in the case of auditors' opinions or legal opinions;
- G. The effect of use of personal service contractors on other agreements and operations of the CWCCorporation;
- H. The extent to which the CWCCorporation has successfully used personal service contractors in the past for the services to be performed; and
- I. The need to assure that the CWCCorporation conducts its operations in the most effective and efficient manner.

3-10.06-4 Selection of Personal Service Contractors

- A. Selection of all personal service contractors shall be made on a competitive basis, except in the following circumstances:
 - 1. The total amount of the contract is not likely to exceed \$5025,000;
 - 2. The ~~President or the~~ Purchasing Agent ~~(after consultation with the President)~~ shall have determined that:
 - a. The need to obtain high quality services or services having unique or extraordinary features or time requirements substantially outweighs possible cost savings from selection on a competitive basis; or
 - b. The CWCCorporation has other cost control procedures to protect the CWCCorporation from paying more for services than necessary; or
 - 3. The Board of Directors otherwise determines that competition would be inappropriate.

4. Emergency situations, as determined where feasible by the Board of Directors and where it is impracticable for the Board of Directors to make such determination, as determined by the Purchasing Agent, in its discretion, where:

- a. The situation arises out of an accident or unforeseen occurrence or condition;

- b. A public building, public property, or the life, health, safety or property of an inhabitant of a town that has signed the Watershed Memorandum of Agreement is affected; and
 - c. The situation requires immediate action that cannot await competitive bidding.
 - d. Nevertheless, when the Board passes a resolution that an emergency situation exists, the CWC shall make purchases at the lowest possible costs, seeking competition by informal solicitation of bids or otherwise, to the extent practicable under the circumstances.
- B. The foregoing shall not be construed to affect any requirement for competitive bidding binding on the CWCCorporation under any contract to which it is a party or applicable law.
- C. Where selection is made on a competitive basis, the Purchasing Agent shall request detailed proposals from at least three (3) personal service contractors known to have experience in the type of service to be performed. Where the total value of the contract is likely to exceed \$5025,000, the proposals shall be in writing. Proposals shall be evaluated on the basis of all relevant factors, such as the personal service contractor's experience, reputation, technical qualifications, financial condition, past performance, size, quality and availability of staff, identity of supervisory personnel, possible conflicts of interest, proposed scope of work and proposed fee or commission. No single factor shall necessarily be controlling and the personal service contractor submitting the proposal that is most favorable on an overall basis shall be selected, except that the ~~President or the~~ Purchasing Agent ~~after consultation with the President,~~ may reject any or all proposals if he or she considers such action to be in the best interest of the CWCCorporation.
- D. The qualifications of all proposers shall be evaluated in accordance with the CWC'sCorporation's Policies and Procedures for Qualification and Evaluation of Contractors, Consultants and Suppliers for Contracts.

3-10.06-5 Notification

~~All personal service contracts shall be presented to the Board of Directors in regular monthly reports. Personal service contracts for more than \$100,000 or contract modifications that will increase the contract to a value in excess of fifteen percent (15%) of the original contract amount shall be presented to the Board of Directors in specially identified sections of regular monthly reports or by special advisory memorandum.~~

~~3-10.06-6~~ Contractor's Responsibilities

The CWCCorporation shall monitor the performance of personal service contractors to assure that all personal service contractors perform all required services to the satisfaction of the CWCCorporation in accordance with the terms and conditions of their contracts. Such contractors shall be required to meet with appropriate representatives of the CWCCorporation upon request at reasonable times, present upon request written reports satisfactory to the CWCCorporation of the progress of the services they are providing and provide invoices for all services rendered in sufficient detail to enable the CWCCorporation to identify the services.

3-10.06-~~67~~ Provision of Personal Service Contracts

In addition to any provisions required by any contract to which the CWCCorporation is a party, by law, by these guidelines and procedures, or by the Purchasing Agent, all personal service contracts shall contain the following provisions:

- A. A description of the services to be performed, the standard for performance, if practical, and any relevant time requirements or deadlines;
- B. A statement of the cost to the CWCCorporation of the services to be performed, including the method and time of payment, and if the cost cannot readily be determined or estimated with a reasonable degree of accuracy at the time of contracting, a statement of the manner in which such cost to the CWCCorporation shall be determined;

- C. A requirement, where appropriate, that there be periodic progress reports in sufficient detail to permit monitoring of the services to be performed;
- D. Provisions relating to conditions and circumstances, if any, under which supplies, facilities and personnel of the CWC Corporation may be used by the personal service contractors in performing services; and
- E. Provisions under which the CWC Corporation may terminate the contract.

3-10.06-78 Reporting

~~The Executive Director, or his or her designee, shall submit to the Board of Directors annually a report reflecting the status of all existing personal service contracts, and identifying any new personal service contracts entered into during the preceding year and the manner in which contractors for those new contracts were selected. In addition, the Board of Directors shall annually review and approve a report on personal service contracts, which shall include a copy of these guidelines and procedures and of any amendments thereto since the last annual report, a list of personal service contractors performing services since the last annual report, and a list of fees, commissions or other charges paid to such contractors during the year.~~

3-10.06-9 Miscellaneous

- A. The provisions of these policies and procedures are for the sole use and guidance of the directors, Officers and employees of the CWC Corporation. No provision of these policies or procedures shall be the basis for any claim based on any such policies or procedures against the CWC Corporation or any of its directors, Officers or employees.
- B. These policies and procedures shall not alter the rights and obligations of any contract of the CWC Corporation with a third party, nor shall they be deemed to alter the terms of any contract or affect the validity of any contract made in violation of, or without compliance with, these policies or procedures.

3-10.07 Fiscal Policy Review

This procurement policy shall be reviewed and approved at least every two years by the CWC Board of Directors Finance Committee or whenever the Purchasing Agent, CWC Finance Director or CWC Corporate Counsel becomes aware of a pertinent and material change in GMU §103 or 2 CFR 200.318 if the CWC remains subject to such laws. In the event an amendment to GMU § 103 or 2 CFR 200.318 conflicts with these policies, the applicable law shall govern CWC until these policies are amended by the CWC Board.

Part 3-10 Procurement

3-10.01 *General*

Introduction and Scope

The purpose of this policy is to ensure that the Catskill Watershed Corporation (the "CWC") achieves the best value for goods and services procured, following a transparent and cost-effective process in compliance with all applicable regulatory standards. The policy aims to safeguard an adequate level of competition in order to increase the integrity of the procurement process, ensure good stewardship of funds, and maintain regulatory compliance.

CWC will follow accounting policies and procedures that comply with New York State procurement law and avoid purchasing unnecessary items. Any procurement of goods and services shall be made by the Purchasing Agent, in the best interest of the CWC, upon considering the totality of the circumstances surrounding the procurement, which may include but is not limited to price, quality, availability, reputation, or prior dealings.

This policy is intended to govern the Purchasing Agent, President and Executive Director of the CWC in making decisions for the purchase of goods and services necessary to fulfill the CWC's purposes.

The CWC shall solicit, review and evaluate bids, and award purchase and public work contracts in accordance with the provisions of Section 103 of the General Municipal Law that would apply if the CWC were a municipal corporation. Such provisions shall control over any provision contained in these policies and procedures that directly conflict with any such provisions.

Every prospective purchase of goods or services shall be evaluated to determine the applicability of the provisions of General Municipal Law § 103 that would apply if the CWC were a municipal corporation.

3-10.02 *Competitive and Non-Competitive Bid Purchasing Regulations*

3-10.02-1 Definitions

- A. Offeror: Individual or entity or person acting on behalf of such individual or entity that contacts CWC about a CWC procurement during the Restricted Period of such procurement.
- B. Purchase Contract: A contract that involves the acquisition of commodities, materials, supplies or equipment. Contracts for software, software licenses, cloud-based services, digital content, digital marketing or e-commerce purchases, or subscription-based services shall also constitute a "purchase contract."
- C. Public Work Contract: A contract that involves the construction, installation, repair or replacement of facilities or equipment which would constitute "public works" within the meaning of Section 103 of the General Municipal Law, as if the CWC were a municipal corporation.
- D. Personal Services Contract: A contract that involves the acquisition of personal services. As used herein, the term "personal services" shall mean any services performed for a fee, commission or other compensation by persons or organizations that are not providing such services as Officers or employees of the CWC or any governmental agency or public corporation, but excluding any construction, installation, repair or replacement services that would constitute a public works contract as defined above. Personal services include, but are not limited to, legal, accounting, management consulting, construction management, program management, planning, training, statistical research, public relations, architectural, engineering, surveying or any other services of a consulting, technical or professional nature.
- E. Restricted Period: The period of time commencing with the earliest posting, on CWC's website or in a newspaper of a solicitation of a request for proposal and ending with the final contract award and approval by CWC.

3-10.02-2 CWC

A. Purchasing Agent:

1. The Executive Director and/or such other Officer or employee of the CWC as the Board of Directors may by resolution appoint shall be the "Purchasing Agent" of the CWC . The Purchasing Agent is the only person designated to commit the CWC to a purchase of goods or services.
2. The Purchasing Agent is responsible for the design, implementation, and effectiveness of the procurement of goods and services.
3. Whenever a disagreement arises about a purchase, the Finance Committee of the CWC Board of Directors shall hear the views of the Purchasing Agent and the requisitioner and render a decision and provide direction.
4. Subject to the requirements of these policies and procedures, the Purchasing Agent shall have authority to determine, in any given situation, whether to competitively bid (through public advertisement) or to solicit quotations, bids on proposals for goods and services utilizing other procurement methods. Other staff is directed to cooperate with the Purchasing Agent to achieve cost containment, efficiency and economy.

B. Financial Control:

1. The Executive Director or designee shall confirm that the City of New York has committed sufficient funds or that other funding sources have committed sufficient funds or funds have been received to cover each purchase before a contract therefore is executed.

C. Communications During the Restricted Period:

1. For each procurement, including request for proposals (RFP) or invitation for bids (IFB), CWC will designate a specific person or persons to receive contacts regarding each procurement from Offerors. The designated persons will be identified in the RFP. All contacts by an Offeror with these designated staff persons are acceptable, subject to the limitations contained in the Penal Law and Public Officers Law. Such designated employee(s) shall complete a record of each contact for inclusion in the procurement record. If a contact involves a possible violation of the law, the contact shall be immediately forwarded to CWC Corporate Counsel.
2. Employees, except for the designated staff person or for limited circumstances provided in this section, shall not have any contact with any offeror regarding a procurement prior to due date of submissions. Certain contacts with CWC employees (other than the designated staff person) are permissible. All permissible subject matter contacts must be recorded in the procurement record. These "permissible" contacts are based on subject matter and are summarized below:
 - a. Submission of a bid, proposal or response for a procurement contract;
 - b. Submission of written questions when written responses are to be provided to all Offerors;
 - c. Participation in a pre-bid conference;
 - d. Complaints by an Offeror to Corporate Counsel or the Executive Director where the designated person for the procurement contract of the Governmental Entity fails to respond in a timely matter;
 - e. Negotiations with the Offeror after a tentative award;
 - f. Filing of written disputes in administrative hearings, judicial proceedings and to the attorney general, inspector general, district attorney, or state comptroller;

- g. Requests for responses to a procurement contract from an Offeror or other party, so long as CWC remains subject to the Freedom of Information Act (5 U.S.C. §552) and such requests comply with CWC's requirements according to such law.
- 3. Except for permissible contacts listed above, CWC employees who are not the designated staff person in an RFP shall have no contact with Offerors. CWC employees contacted by an Offeror, not subject to the above exceptions, must record the contact and report the contact immediately to Corporate Counsel.
- 4. Offerors who knowingly and willfully contact CWC employees in violation of this section shall be ineligible for awards from CWC for a period of four years. In addition, such offeror shall not be awarded the procurement contract, unless the award to the Offeror is necessary to protect public property or public health or safety, and that the Offeror is the only source capable of supplying the required article of procurement within the necessary timeframe. In such circumstance, CWC shall include in the procurement record a statement describing the basis for such finding.

3-10.02-3 General Municipal Law/Statement of General Conditions

The General Municipal Law of the State of New York provides that purchase contracts for materials, equipment and supplies involving an expenditure exceeding \$20,000 and public work contracts involving an expenditure exceeding \$35,000 shall be awarded to the lowest responsible Bidder furnishing the required security after advertisement for sealed bids in the manner provided in that section. The Purchasing Agent of the CWC shall estimate the cumulative amount of items of supply or equipment needed in a given fiscal year. The estimates of the annual need for goods and services shall be used in determining the applicability of the procedures for procurement practices.

Commented [NM1]: GMU §103 was updated to increase these amounts from \$10,000 to \$20,000 for purchase contracts and from \$20,000 to \$35,000 for public works. Values relating to these two categories of procurement contracts have been updated proportionally.

3-10.02-4 Competitive Bidding Required

A. Method of Determining Whether Procurement is Subject to Competitive Bidding:

The Purchasing Agent shall first determine if the proposed procurement is a purchase contract, a contract for public work or a personal service contract.

If the procurement is either a purchase contract or a contract for public work, then the Purchasing Agent shall determine whether the amount of the procurement is above the applicable monetary threshold as set forth above or if competitive bidding is otherwise required by the terms of the relevant program contract between the CWC and The City of New York.

The Purchasing Agent shall also determine whether any exceptions to the competitive bidding requirements (as set forth below) are applicable and warranted.

Subject to the exceptions set out in Section 3-10.02-5 below, with respect to any purchase contract or a contract for public work, competitive bidding shall be required if (x) the amount of the proposed contract exceeds the applicable monetary threshold set out above, or (y) competitive bidding is required under the terms of the applicable program contract between the CWC and The City of New York. All procurements of purchase contracts and contracts for public work where competitive bidding is required shall be conducted in accordance with the CWC's Solicitation and Award of Bids When Competitive Bidding Required (Ref. 3-10.04), as adopted by the CWC.

- 1. With respect to any personal services contract, competitive procurement shall be required in accordance with, and subject to the exceptions set out in the CWC's Policies and Procedures for Personal Services Contracts (Awarding, Monitoring and Reporting) (Ref 3-10.06), as adopted by the CWC.

B. Contract Combining Purchase and Public Works:

In the event that a contract combines elements of both a purchaser contract and a public work contract, the Purchasing Agent, in determining the appropriate monetary threshold criteria to apply to the contract, shall

determine whether the purchase or the public work is the predominant part of the transaction. The contract should be viewed as a purchase for purposes determining the competitive bidding requirement or monetary threshold if the public work elements are minor, incidental or customarily provided by the vendor as a component of the purchase. Conversely, if the public work elements are extensive, substantial or involve specialized skills so that the acquisition of the commodity is incidental to the work, the contract should be treated as a contract for public work for purposes of the monetary threshold.

3-10.02-5 Exceptions to Competitive Bidding Requirements

Subject to any express provision to the contrary contained in any contract to which the CWC is a party, and except when the Board of Directors expressly determines otherwise, the CWC will not be subject to competitive bidding requirements under the following circumstances:

- A. Emergency situations, as determined where feasible by the Board of Directors and where it is impracticable for the Board of Directors to make such determination, as determined by the Purchasing Agent, in its discretion, where:
 - 1. The situation arises out of an accident or unforeseen occurrence or condition;
 - 2. A public building, public property, or the life, health, safety or property of an inhabitant of a town that has signed the Watershed Memorandum of Agreement is affected; and
 - 3. The situation requires immediate action that cannot await competitive bidding.
 - 4. Nevertheless, when the Board passes a resolution that an emergency situation exists, the CWC shall make purchases at the lowest possible costs, seeking competition by informal solicitation of bids or otherwise, to the extent practicable under the circumstances.

Documentation: The requisitioner shall prepare a memorandum describing the emergency situation and justifying the need for relief from competitive bidding requirements, which shall be submitted to and approved by the Purchasing Agent, prior to seeking a Board resolution. Such memorandum, together with the resolution of the Board determining that an emergency exists, and a written record of any verbal or written bids obtained, shall be maintained in the contract file for the procurement.

- B. When there is only one possible source ("sole source") from which to procure goods or services required in the public interest.

Documentation: For such sole source expenditures anticipated to exceed the applicable monetary threshold set forth above, the CWC shall cause an advertisement stating the CWC's intent to procure goods or services from the sole source, the nature of such goods or services, the desired acquisition date of such goods or services, and the time by, and place to, which prospective alternative suppliers must send their proposals to be published once on the CWC's official website at least fifteen (15) days before the proposed acquisition date. If no alternative source for such goods or services or an acceptable substitute therefore is brought to the Purchasing Agent's attention within ten (10) days prior to the proposed acquisition date, the CWC may enter into a contract to purchase such goods or services from the identified sole source, subject to the following: the CWC will maintain written documentation of the unique benefits of the item or service purchased as compared to other items or services available in the marketplace; no other item or service provides substantially equivalent or similar benefits; and considering the benefits received, the cost of the item or service is reasonable, when compared to any alternative methods. In addition, the documentation shall provide that there is no possibility of competition in the procurement of the goods.

- A. When two or more competitive bids are solicited and only one responsive bid is received;

Documentation: The CWC shall maintain copies of all requests for proposals, invitations for bids or advertisements for bids with the names and addresses of the firms to which such were sent and/or the place(s) and date(s) of advertisement, if applicable, with copies of all responses received. Such documentation shall be maintained in the contract file for the procurement.

- B. For goods purchased at auctions;

Documentation: The CWC shall maintain market price comparisons, and where possible, the price bid and identity of the second and third lowest bidders at auction. Such documentation shall be maintained in the contract file for the procurement.

- C. When a contract has been let by the United States or any agency thereof, any state or any other political subdivision or district therein to the lowest responsible bidder or on the basis of best value in a manner consistent with GML §103(16) and made available for use by other governmental entities, typically by the inclusion of a clause in the original contract extending the terms and conditions of the contract to other governmental entities; except for public works contracts;

Documentation: The CWC shall maintain appropriate documentation to allow for a thorough review of the decision to use this exception to competitive bidding. This documentation may include such items as copies of the original contract, analysis of the contract to ensure it meets the prerequisites stated above, and cost savings analysis including consideration of other procurement methods.

- D. When a purchase required by the CWC from contracts let by other state agencies, the U.S. Government, or any other state with the concurrence of the Office of the State Comptroller has been authorized by New York State Office of General Services (NYSOGS) and under appropriate circumstances (otherwise known as “piggybacking”);

Documentation: Where the subject of the original procurement is a New York State Agency-specific contract, the original contracting entity must be contacted and advised of the intended use. Concerns about the intended use must be forwarded to NYSOGS with the request for approval. Where the requesting Agency proposes using an amendment to an existing contract, consent of the originating Agency must be obtained. The vendor’s consent to the request must be written in legal form, separate from a purchase order, which sets forth the agreed terms of the request. Similar to other methods of procurement, CWC must document that the price for the proposed contract is reasonable under the circumstances.

3-10.02-6 Purchase/Public Work: Methods of Competition to be Used for Non-Bid Procurement; Documentation to be Maintained

This section describes the procedures to be used and documentation to be maintained when a proposed purchase contract or contract for public work is for an amount which is less than the threshold required for the competitive bidding.

- A. Purchase Contracts up to \$20,000:

1. Contracts from \$0 to \$1,999; no bids or other solicitations for competitive bidding are required; except that a purchase order consistent with standard CWC practice and procedure shall be completed for purchases for more than \$100.
2. Contracts from \$2,000 to \$9,999; the CWC must receive written bid proposals from at least one (1) vendor. Documentation must show that competitive prices have been obtained and that up to three vendors were contacted.
3. Contracts from \$10,000 up to \$19,999; the CWC must receive written bid proposals from at least two (2) vendors. Documentation must show that competitive prices have been obtained and that more than three vendors were contacted.
4. All bids must include the vendors’ complete names and addresses.

- B. Public Works Contracts up to \$35,000:

1. Contracts from \$0 to \$9,999; no bids or other solicitations for competitive bidding are required. Competitive quotations are encouraged (verbal or written) and when obtained, the CWC shall maintain records of such quotations in the contract file for the procurement.
2. Contracts from \$10,000 to \$34,999; the CWC must receive, where possible, written bid proposals from three (3) vendors, but must receive at least one (1) written bid proposal . Documentation must show that competitive prices have been obtained and that more than three (3) vendors were contacted.
3. Contracts from \$15,000 to \$34,999; the CWC must issue a RFP or IFB and receive written bid proposals from at least three vendors.
4. All bid proposals must include the vendors' complete names and addresses.

All information gathered in complying with the procedures of this procurement policy shall be preserved and filed with the documentation supporting the subsequent purchase or public works contract. PROPOSED PROCUREMENTS SHALL NOT BE SPLIT INTO SMALLER SEGMENTS TO AVOID COMPETITIVE BIDDING UNDER SECTION IV ABOVE, OR TO REDUCE OR ELIMINATE REQUIREMENTS THAT WOULD OTHERWISE APPLY PURSUANT TO THIS SECTION 3-10.02-6.

- C. Issuance: Written bids - Documentation shall include bid advertisements, specifications, and the awarding resolution. Alternatively, written or verbal bid forms will serve as documentation if formal bidding is not required. RFPs documented in the same manner as described herein, may also be used.
- D. Lease of Equipment: Written Bids - Documentation will include written bids, cost-benefit analysis of leasing versus purchasing, etc. The CWC shall determine and note that the contract is a true lease and not an installment purchase contract.

3-10.02-7 Consequences of Unintentional Error

The unintentional failure to comply fully with the provisions of Section 104-b of the General Municipal Law or the CWC's procedures regarding procurement shall not be grounds to void action taken or give rise to a cause of action against the CWC or any Director, Officer or employee of the CWC.

3-10.02-8 Required Procurement Records

CWC employees must maintain procurement records sufficient to detail the history of a procurement action. These records shall include the following at a minimum:

- a. Rationale for the method of procurement
- b. Selection of a contract type
- c. Contractor selection or rejection; and
- d. Basis for contract price

3-10.02-9 Solicitation Documentation

CWC must maintain procurement records in connection with every procurement action. Staff shall maintain information used to solicit and select a contractor, in addition to information documenting the actual purchases made from the successful contractor. This information may include:

- a. Copies of solicitation documents
- b. Names and dates of contractors contacted by phone;
- c. Copies of letters, emails, and faxes soliciting price or rate quotations;
- d. Trip reports identifying contractors contacted in person;

- e. Copies of price or rate quotations received, including telephone quote confirmations;
- f. Notification to the successful contractor;
- g. Purchase documents, such as invoices, bills of lading and canceled checks; and
- h. Such other records as recommended or required elsewhere in this document.

3-10.02-10 Modifications to a Contract

- A. If a proposed modification changes the work authorized under a purchase, public work, or personal service contract, and/or changes the price or total estimated cost, either upwards or downwards, a detailed breakdown of new and discontinued activities and the contractor's proposed corresponding cost – not a lump sum proposal – shall be provided in writing to the Purchasing Agent before negotiating the change in the contract scope or price.
- B. Modifications to previously approved contracts must be approved in writing by the Executive Director or CWC Board of Directors as applicable in consultation with the CWC Finance Director or their designee.
- C. In the event that a modification to a contract increases the total amount to the next highest threshold category described within 3-10.02-6, except for modifications to a contract subject to the terms of this policy which increase the total amount for that contract above the \$20,000 threshold for Purchase contracts or \$35,000 for Public Work contracts, that contract is not required to comply with the newly applicable bidding, quoting, or notice requirements.
- D. In the event that a modification to a contract increases the total amount to an amount above \$20,000 for Purchase contracts and \$35,000 for Public Work Contracts, such contracts shall be awarded to the lowest responsible Bidder furnishing any required security after advertisement for sealed bids in the manner provided in GMU §103.
- E. Contracts shall not be modified for the purpose of avoiding competitive bidding requirements pursuant to Section 3-10.02-6 (c) of this policy. This includes contracts which are underestimated in their original form and subsequently modified up to their true and accurate amount.

3-10.03 *Qualification and Evaluation of Contractors, Consultants and Suppliers for Contracts*

3-10.03-1 Procedure

- A. In evaluating the bidder's/proposer's qualifications, the CWC will consider the following factors:
 - 1. Experience;
 - 2. Quality and timeliness of past performance;
 - 3. Financial capacity;
 - 4. Reliability and responsibility;
 - 5. Integrity of the firm, its affiliates and current and past owners and principals; and
 - 6. Compliance with other requirements set forth herein.

3-10.03-2 Minimum Standards

To be a qualified bidder or proposer, applicants must meet at least the following minimum standards:

- A. Experience. The applicant must have sufficient experience in the relevant trade or field in which it seeks to do work.

- B. History of Performance. The applicant must have a demonstrated record of timely completion of quality work. The CWC may disqualify applicants for up to [3] years for failing to meet this standard. A contractor shall be deemed to have failed to meet this performance standard in the event of debarment, default, and disqualification, a finding of "poor performer" or "not responsible" of the applicant or its affiliates by any government entity. If the applicant's failure to perform quality work in a timely manner is based on findings other than the factors enumerated above, the CWC will evaluate the facts and circumstances on a case-by-case basis.
- C. Financial Capacity. The applicant must have sufficient financial ability to undertake the work required of the contract for which the applicant submits or intends to submit a bid or proposal.
- D. Integrity and Ethics. Firms seeking to do business with the CWC must have a reputation for, and a record of, law-abiding conduct and ethical business practices. Contractors must complete a business integrity review via New York City's standard "PASSPort Questionnaire", (or successor questionnaire) and required backup documentation, if any, according to the terms of CWC program contracts with NYCDEP, where applicable.

1.

The CWC may disqualify any bidder/proposer that knowingly and willfully submits false information for the purpose of becoming a qualified bidder/proposer and, to the extent permitted by applicable law, may terminate any outstanding contract with such bidder/proposer on account of the submission of such false information.

The CWC may also consider and evaluate any other facts and circumstances on a case-by-case basis, in addition to those factors enumerated in this procedure, in determining whether a firm or person possesses the integrity and ethics required for doing business with the CWC.

- E. Miscellaneous Policies Influencing Contract Awards.

Local Businesses - The CWC shall use its best efforts to maximize contracting opportunities for firms that: (a) have their principal place of business located in a county in which a town that is party to the Watershed Memorandum of Agreement is located; or (b) do a substantial amount of their business in such a county using workers, the majority of whom performing such work reside in any such county. In furtherance of this policy, the Purchasing Agent shall make efforts to identify firms meeting the foregoing criteria, shall establish a list of such firms, and shall ensure that such firms are included in all appropriate solicitations, invitations to bid, and requests for proposals.

It is the policy of the CWC not to discriminate in the award of contracts against any qualified bidder on the grounds of All contracts with the CWC shall include provisions requiring contractors to comply with such policy in their hiring of employees and selection of subcontractors, vendors and suppliers.

3-10.03-3 Revocation of Qualification Status

- A. The CWC may revoke the qualified bidder/proposer status of a firm on the basis of either changed circumstances or the discovery of new evidence that indicates that the firm does not meet the CWC's standards.

If the CWC concludes that there may be sufficient evidence to warrant denial or a revocation of a firm's status as a qualified bidder/proposer, the CWC shall notify the firm of its proposed denial or revocation, the reasons therefore, and the period of disqualification.

Within fourteen (14) days after the date of any such notice of denial or revocation, a firm so notified may request a meeting to occur within fourteen (14) days of such request or any extension of such time to which the CWC may agree in writing, at its sole discretion, at which such firm shall have the opportunity to present evidence that might result in reconsideration of the CWC's preliminary conclusion to deny or revoke such firm's qualification.

The CWC shall give such firm final written notification of its determination following such meeting. If no such meeting is requested or if the firm fails to appear at any such meeting, the CWC's preliminary notification of denial or revocation shall be deemed final.

- B. The CWC may revoke or deny a firm's qualified bidder/proposer status permanently if the CWC determines that the firm knowingly and willfully submitted a false instrument for the purpose of defrauding the CWC or of obstructing any inquiry or investigation by the CWC into the firm's qualifications, responsibility or performance.

3-10.04 *Solicitation and Award of Bids When Competitive Bidding Required*

3-10.04-1 General

- A. Once the Purchasing Agent has determined that competitive bidding for a public work or purchase contract is required, the Purchasing Agent shall prepare, or cause to be prepared, an IFB or RFP in accordance with these policies and procedures.
- B. Subject to the Policies and Procedures for Personal Service Contracts and any other applicable procedures adopted by the CWC, the Purchasing Agent may retain such professional consultant(s) as they deem reasonably necessary for preparation of detailed bid specifications, including without limitation, a licensed engineer if the procurement is for a public work, or by any other reasonably necessary means, which may include the assistance of one or more vendors in the case of the procurement of goods. The Purchasing Agent shall exercise diligence, care and sound judgment to ensure that specifications prepared with the assistance of a vendor do not unnecessarily limit bidders to the purchase or sale of goods or services to those provided solely by such vendor or by any other specific manufacturer, supplier or contractor.

3-10.04-2 Minimum Contents of RFP and IFB

All IFBs shall contain at least the following information or provisions, unless otherwise provided herein:

- A. Detailed specifications describing the goods to be acquired or the work or service to be performed, general conditions and if desirable, special conditions, prepared by the CWC, with such assistance of legal counsel or other professional consultant(s) as the Purchasing Agent deems reasonably necessary or desirable.
- B. The CWC's Policies and Procedures for Qualification and Evaluation of Contractors, Consultants and Suppliers for Contracts, Fiscal Policy §3-10.03.
- C. A Non-Collusion Statement, which must be subscribed by the bidder, affirmed by the bidder as true under the penalties of perjury, and submitted with such bidder's bid. The Non-Collusion Statement shall state the following:

"Non-Collusive Bidding" Certification

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- a. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- c. No attempt has been made or will be made by the bidder to induce any other bidder, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition."

A bid may not be considered for award nor may any award be made if the non-collusion certification executed in accordance with these procedures is not furnished to the Purchasing Agent prior to the bid opening.

- D. A description of the method of contract award.
- E. Any other terms, conditions or administrative considerations that the Purchasing Agent deems necessary or desirable. Such administrative considerations may include, without limitation, bid acceptance, conditions under which bids may be modified or withdrawn, and a policy on submission of facsimile bids.
- F. The CWC may require bidders to submit a bid deposit or other security with their bids in such amount as the CWC deems advisable. This type of security protects the CWC from the time the bid is received until the award of the Contract, and serves as a guarantee that a bidder will keep the bid open and enter into a contract with the CWC in accordance with the specifications. Bidders shall be permitted to withdraw their bids if no award is made within forty-five (45) days after the bid opening and, upon such withdrawal, any bid deposits or other bid security received by the CWC shall be returned to the bidder forthwith. Upon the reasonable exercise of the discretion of the Purchasing Agent, an IFB may provide that bidders are permitted to withdraw their bids after a specified time that is less than forty-five (45) days.
- G. A bid form, to ensure uniformity of bids. This form should reflect the method of award and give bidders the ability to record all relevant costs in an organized manner. For commodities and services, the bid form may also include a section where the bidder is asked to fill in the name and address of the manufacturer of the item or items being bid, the guaranteed delivery, the manufacturer's warranty, and whether pricing offered is the lowest offered to commercial, government or education customers for similar quantities under similar conditions. The bid form must also include a section that requires bidders to acknowledge whether any documentation required to be submitted with the bid has indeed been included, and such other information as the Purchasing Agent deems desirable.
- H. The method of payment, which may include, without limitation, periodic variable payments (monthly, quarterly, etc.) based on the level of services rendered (units, hours, visits); periodic lump sum payments (monthly, etc.) at the completion of a specified service (predetermined amounts); or one lump sum at the completion of services rendered.
- I. Specify that bids must be sealed, or when submission by facsimile or electronic technology is expressly permitted, conveyed in a manner that guarantees the security of the bid.

3-10.04-3 Advertisement for Bids

An advertisement soliciting bids must be published in (a) local newspaper(s) at least one time no less than five calendar days prior to the dates specified for the opening and reading of bids.

- A. Such advertisements must state:
 - 1. The time and place of the public opening and reading of bids;
 - 2. The method(s) by which a prospective bidder may obtain the bid documents;
 - 3. The time and place for submission of bids; and
 - 4. The amount and conditions of any bid deposit or other security required to be submitted by bidders with their bids.

3-10.04-4 Bid Opening

- A. At the announced bid opening time, the Purchasing Agent or his or her designee, shall open all timely bids in the presence of at least one other witness, who shall be another CWC employee or Officer. The

person opening bids shall sign a bid affidavit certifying that such person opened the bids for the specific IFB at the appointed time.

- B. No alteration or correction of bids may be allowed at or after the time of bid opening.
- C. The bids shall be recorded by the Purchasing Agent or his or her designee at the bid opening as such bids are opened, concurrently noting any readily apparent irregularities in such bid.
- D. After the bid opening, the Purchasing Agent shall cause a tabulation of all timely bids to be created. The bids shall be ranked from the lowest to the highest based on the stated method of award. The contract shall be awarded to the lowest responsive and responsible bidder, as determined by the Purchasing Agent in accordance with these Policies and Procedures. The Purchasing Agent may reject all bids if he/she determines that such action is in the best interests of the CWC. In the event of tie bids, the Purchasing Agent shall make the final determination, as provided in Section 9.03-7 below.
- E. The contents of all bids, including the name and the amount bid, shall be publicly announced at the bid opening. The Purchasing Agent may announce the apparent low bidder, but in such case, must admonish the public that award of the contract will not be made until the CWC makes final determinations regarding compliance with all terms and conditions of the IFB and bidder responsibility and qualifications. If technical specifications for the IFB were prepared by a consultant or licensed engineer, then no contract may be awarded until such consultant or engineer certifies to the CWC that the bid submitted complies with such specifications and any relevant bid terms and conditions. In all other cases, the Purchasing Agent may make such determination of compliance.
- F. The Purchasing Agent or his or her designee may conduct such investigation as may be required to determine whether the prospective contractor is qualified, in accordance with the Policies and Procedures for Qualification and Evaluation of Contractors, Consultants and Suppliers for Contracts adopted by the CWC.
- G. The CWC shall announce the proposed award of the contract by mail or e-mail to the successful bidder within the time specified in the IFB, with a corresponding notice. The CWC may respond to inquiries with respect to the status of the bid evaluation process, but may not announce a proposed award by any method prior to the notification of the formal award announcements referred to above.
- H. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to CWC based on price, quality, and other factors which the Purchasing Agent may consider as specified herein.
- I. Circumstances justifying an Award to other than the Lowest Cost quoted:
 - a. Delivery requirements;
 - b. Quality requirements;
 - c. Past vendor performance;
 - d. The unavailability of three or more vendors who are able to quote on a procurement requiring quotes from three or more vendors;
 - e. Previous expertise of a vendor with respect to a particular procurement.
- J. Restrictive competition shall not be permitted on behalf of the CWC or any bidder or offeror seeking to do business with CWC and such entities which engage in restrictive competition as described below shall be disqualified from participating in any presently solicited or future contract with CWC. Restrictive bidding is considered Prohibited Conduct for the purposes of this policy. Some of the situations considered to be restrictive of competition include but are not limited to:
 - a. Placing unreasonable requirements on firms in order for them to qualify to do business;

- b. Requiring unnecessary experience and/or excessive bonding;
- c. Noncompetitive pricing practices between firms or between affiliated companies;
- d. Noncompetitive contracts to contractors that are on retainer contracts;
- e. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- f. Any arbitrary action in the procurement process.

3-10.04-5 Bidders List

The CWC may prepare and maintain a list of qualified bidders, containing the names, addresses, phone numbers and a description of the commodities or services provided by such bidders, to whom the CWC may send bid notices containing such information as shall be contained in bid advertisements. The CWC shall take care to assure that all known prospective bidders, with reasonable limitations, are included on the list and bidders are not arbitrarily removed from the list.

3-10.04-6 Tie Bids

- A. Where two or more responsive and responsible bidders submit identical bids as to price, the CWC may award the contract to any one of such bidders, or the CWC may reject all bids and re-advertise for new bids. In selecting among tie bidders, the CWC may to the extent permitted by applicable law give preference to local businesses, as described at Section II (E)(1) of the CWC's Policies and Procedures for Qualification and Evaluation of Contractors, Consultants and Suppliers for Contracts.
- B. When the tie is among "local businesses" (as defined in the aforementioned Procurement Policies and Procedures), or among bidders where none is a local business, the Purchasing Agent is encouraged to draw lots so as to eliminate the charge of favoritism. Under no circumstances may the contract be divided among the tie bidders.

3-10.04-7 Trade-Ins

If the CWC contemplates trading-in equipment it is presently using, the IFB must indicate that a trade-in is involved and request that bids contain a trade-in allowance. In determining whether a purchase contract is above the \$20,000 monetary minimum for competitive bidding, a trade-in allowance shall be treated as an expenditure, so that even if the cash expenditure is below \$20,000, competitive bidding would be required if the total value (i.e., cash plus trade-in allowance) is over \$20,000. In determining the low bidder, the net price (i.e., gross price less trade-in) shall be considered.

3-10.04-8 Bid Mistake; Withdrawal of Bids

- A. Where a unilateral error or mistake is discovered in a bid, such bid may be withdrawn by the bidder after a showing of the following:
 - 1. The mistake is known or made known to the Purchasing Agent prior to the awarding of the contract or within three (3) days after the opening of the bid, whichever period is shorter;
 - 2. The price bid was based on an error of such magnitude that enforcement would be unconscionable;
 - 3. The bid was submitted in good faith and the bidder submits credible evidence to the Purchasing Agent that the mistake was a clerical error as opposed to a judgment error;
 - 4. The error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional

omission can be clearly shown by objective evidence drawn from inspection of the original workpaper, documents or materials used in the preparation of the bid sought to be withdrawn; and

5. It is possible to place the CWC in status quo ante.

- B. Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this Section shall be withdrawal of that bid and the return of the bid deposit or other security, if any, to the bidder. Thereafter, the Purchasing Agent may, in its discretion, award the contract to the next lowest responsible and responsive bidder or re-bid the contracts. Any amendment to, or reformation of, a bid or a contract to rectify such an error or mistake therein is strictly prohibited.

3-10.04-9 Code of Conduct Requirements and Protocol

2 CFR Section 200.318 requires that CWC, as a(n occasional) recipient of federal funds, maintain written standards of conduct covering conflict of interests and governing the performance of its employees engaged in the award and administration of contracts.

All CWC employees who are engaged in the award and administration of government contracts must adhere to a code of professional conduct outlined herein. All employees, including employees who purchase goods or services, or otherwise similar contracts, must follow CWC's Conflict of Interest Policies.

3-10.04-10 Conflict of Interest

No employee, officer, or agent of the CWC shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, including the Purchasing Agent, of CWC, any member of their immediate family, their partner, or an organization that employs or is intending to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

3-10.04-11 Prohibited Conduct

No employee, officer, or agent of CWC may solicit nor accept gratuities, favors, or anything of monetary value (other than unsolicited gifts of nominal value, except if those gifts taken in the aggregate would not be reasonably considered nominal) from procurement contractors or parties to subcontracts.

3-10.04-12 Reporting

- A. Any CWC employee, officer, or agent who believes that Prohibited Conduct, actions which constitute a prohibited conflict of interest, or any material breach of the terms of this policy shall immediately contact CWC Corporate Counsel and notify the Executive Director of any actual, potential, or perceived conflict of interest. No adverse action may be taken against any individual for making a report or disclosure under this policy. Failure to disclose a known conflict shall be considered a breach of this policy and may result in disciplinary action.
- B. Any potential violation of these policies which may constitute Prohibited Conduct or conduct in violation of CWC's Conflict of Interest policies herein or present within the Employee Handbook shall be described in full in a report prepared by the Purchasing Agent in consultation with CWC Corporate Counsel with supporting documentation, if any, attached and reviewed by the Finance Committee at the next monthly meeting of the Board of Directors. All disclosures, reports, assessments, and resolution decisions shall be documented and retained by the Purchasing Agent or CWC Corporate Counsel, or their designee.
- C. Disclosures will be reviewed by the Purchasing Agent and CWC Corporate Counsel, unless one or both of these individuals is the subject of the disclosure. Outcomes may include but are not limited to recusal, role adjustment, or approval by the CWC Board Finance Committee to proceed with documented safeguards.

Commented [NM2]: Consistent with the CWC Employee Handbook, which generally requires a broad disclosure to one's manager or Corporate Counsel. I do not think it is a bad idea to go above and beyond here.

3-10.05 *Payment on "Public Works" Projects*

All contracts made and awarded by the CWC (other than contracts between the CWC and a municipality) for construction, reconstruction or alteration of any public work project, or any project that would be a public work project under the General Municipal Law if the CWC were a municipal corporation, shall provide for payment by the CWC to the contractor and payment by the contractor to the subcontractor in accordance with the following:

3-10.05-1 *Payment by the CWC to Contractors*

- A. The contractor shall periodically, in accordance with the terms of the contract, submit to the CWC and/or its agent, a requisition for a progress payment for the work performed and/or materials furnished to the date of the requisition less any amount previously paid to the contractor. The CWC shall, in accordance with the terms of the contract, approve and "promptly pay" (as defined in Subsection E below) the requisition for the progress payment, less an amount necessary to satisfy any "claims, liens or judgments" (as those terms are defined in Subsection E below) against the contractor which have not been suitably discharged, and less any retained amount as hereafter described.
- B. The CWC shall retain not more than ten percent (10%) of each progress payment to the contractor, provided that there are no requirements by the CWC for the contractor to provide a performance bond, although consideration may be given to those bids containing a performance bond for purposes of awarding contracts, and a labor and material bond both in the full amount of the contract.

The CWC shall pay, upon requisition from the contractor, for materials pertinent to the project that have been delivered to the site or off-site by the contractor and/or subcontractor and suitably stored and secured as required by the CWC and the contractor, provided, the CWC may limit such payment to materials in short and/or critical supply and materials specially fabricated for the project, each as defined in the contract.3-10.05-2

A.

3-10.06 *Personal Services Contracts (Awarding, Monitoring and Reporting)*

3-10.06-1 *Procurement of Personal Services*

Subject to the exceptions set out below, all personal services contracts (as hereinafter defined) shall be procured through competitive bidding. These policies and procedures shall govern how such procurements are conducted by the CWC.

3-10.06-2 *Definitions*

- A. As used in these policies and procedures, "personal services contract" shall mean any contract that involves the acquisition of personal services. The term "personal services" shall mean any services performed for fee, commission or other compensation by persons or organizations that are not providing such service as Officers or employees of the CWC or any governmental agency or public corporation. Personal services include, but are not limited to, legal, accounting, management consulting, construction management, program management, planning, training, statistical research, public relations, architectural, engineering, surveying or any other services of a consulting, technical or professional nature.
- B. As used in these policies and procedures, the term "Purchasing Agent" shall refer to the Executive Director of the CWC and/or such other Officer or employee of the CWC as the Board of Directors may be resolution appoint as Purchasing Agent.

3-10.06-3 Use of Personal Service Contractors

The CWC will use personal service contractors only after the Purchasing Agent shall have determined that it is appropriate to do so. In making such determination, the following factors shall be considered:

- A. The amount of time likely to be required in performing the services;
- B. The degree of special skill likely to be required in performing the services;
- C. The availability of employees of the CWC possessing the skills needed to perform the services;
- D. The likely expense of training employees of the CWC to perform the services, and the likely future benefits to the CWC of such training;
- E. The availability of personal service contractors and the likely expense of using personal service contractors;
- F. The requirement that the services be rendered by an independent professional, as in the case of auditors' opinions or legal opinions;
- G. The effect of use of personal service contractors on other agreements and operations of the CWC;
- H. The extent to which the CWC has successfully used personal service contractors in the past for the services to be performed; and
- I. The need to assure that the CWC conducts its operations in the most effective and efficient manner.

3-10.06-4 Selection of Personal Service Contractors

- A. Selection of all personal service contractors shall be made on a competitive basis, except in the following circumstances:
 1. The total amount of the contract is not likely to exceed ~~\$50,000~~;
 2. The Purchasing Agent shall have determined that:
 - a. The need to obtain high quality services or services having unique or extraordinary features or time requirements substantially outweighs possible cost savings from selection on a competitive basis; or
 - b. The CWC has other cost control procedures to protect the CWC from paying more for services than necessary; or
 3. The Board of Directors otherwise determines that competition would be inappropriate.
 4. Emergency situations, as determined where feasible by the Board of Directors and where it is impracticable for the Board of Directors to make such determination, as determined by the Purchasing Agent, in its discretion, where:
 - a. The situation arises out of an accident or unforeseen occurrence or condition;
 - b. A public building, public property, or the life, health, safety or property of an inhabitant of a town that has signed the Watershed Memorandum of Agreement is affected; and
 - c. The situation requires immediate action that cannot await competitive bidding.
 - d. Nevertheless, when the Board passes a resolution that an emergency situation exists, the CWC shall make purchases at the lowest possible costs, seeking competition by informal solicitation of bids or otherwise, to the extent practicable under the circumstances.
- B. The foregoing shall not be construed to affect any requirement for competitive bidding binding on the CWC under any contract to which it is a party or applicable law.

Commented [NM3]: Amount as agreed upon during 8/3 meeting. As we are defining this category as separate from Purchase Contracts or Public Works, contracts under this category are not subject to the limitations and requirements of GMU 103, so \$50,000 was decided as the amount which allowed for the greatest discretion and least headache while also reducing risk of prohibited behavior, like collusion.

- C. Where selection is made on a competitive basis, the Purchasing Agent shall request detailed proposals from at least three (3) personal service contractors known to have experience in the type of service to be performed. Where the total value of the contract is likely to exceed \$50,000, the proposals shall be in writing. Proposals shall be evaluated on the basis of all relevant factors, such as the personal service contractor's experience, reputation, technical qualifications, financial condition, past performance, size, quality and availability of staff, identity of supervisory personnel, possible conflicts of interest, proposed scope of work and proposed fee or commission. No single factor shall necessarily be controlling and the personal service contractor submitting the proposal that is most favorable on an overall basis shall be selected, except that the Purchasing Agent may reject any or all proposals if he or she considers such action to be in the best interest of the CWC.
- D. The qualifications of all proposers shall be evaluated in accordance with the CWC's Policies and Procedures for Qualification and Evaluation of Contractors, Consultants and Suppliers for Contracts.

3-10.06-5 Contractor's Responsibilities

The CWC shall monitor the performance of personal service contractors to assure that all personal service contractors perform all required services to the satisfaction of the CWC in accordance with the terms and conditions of their contracts. Such contractors shall be required to meet with appropriate representatives of the CWC upon request at reasonable times, present upon request written reports satisfactory to the CWC of the progress of the services they are providing and provide invoices for all services rendered in sufficient detail to enable the CWC to identify the services.

3-10.06-6 Provision of Personal Service Contracts

In addition to any provisions required by any contract to which the CWC is a party, by law, by these guidelines and procedures, or by the Purchasing Agent, all personal service contracts shall contain the following provisions:

- A. A description of the services to be performed, the standard for performance, if practical, and any relevant time requirements or deadlines;
- B. A statement of the cost to the CWC of the services to be performed, including the method and time of payment, and if the cost cannot readily be determined or estimated with a reasonable degree of accuracy at the time of contracting, a statement of the manner in which such cost to the CWC shall be determined;
- C. A requirement, where appropriate, that there be periodic progress reports in sufficient detail to permit monitoring of the services to be performed;
- D. Provisions relating to conditions and circumstances, if any, under which supplies, facilities and personnel of the CWC may be used by the personal service contractors in performing services; and
- E. Provisions under which the CWC may terminate the contract.

3-10.06-7 Miscellaneous

- A. The provisions of these policies and procedures are for the sole use and guidance of the directors, Officers and employees of the CWC. No provision of these policies or procedures shall be the basis for any claim based on any such policies or procedures against the CWC or any of its directors, Officers or employees.
- B. These policies and procedures shall not alter the rights and obligations of any contract of the CWC with a third party, nor shall they be deemed to alter the terms of any contract or affect the validity of any contract made in violation of, or without compliance with, these policies or procedures.

3-10.07 Fiscal Policy Review

This procurement policy shall be reviewed and approved at least every two years by the CWC Board of Directors Finance Committee or whenever the Purchasing Agent, CWC Finance Director or CWC Corporate Counsel becomes aware of a pertinent and material change in GMU §103 or 2 CFR 200.318 if the CWC remains subject to such laws. In the event an amendment to GMU § 103 or 2 CFR 200.318 conflicts with these policies, the applicable law shall govern CWC until these policies are amended by the CWC Board.