

Contract Exemption 2026-07

Issued on June 4, 2026, by

The West Virginia Ethics Commission

Opinion Sought

The **Huntington Water Quality Board** requests a contract exemption to renew on-call service contracts with C.J. Hughes Construction Company, Inc., and Tribute Contracting and Consulting, LLC, both of which are wholly owned by Energy Services of America Corp., where the Mayor of Huntington serves on the Board of Directors.

Facts Relied Upon By the Commission

The Huntington Water Quality Board (HWQB) manages the sanitary sewer and stormwater infrastructure for the City of Huntington. It maintains a policy of having on-call contractors for emergency repairs, operational repairs, maintenance and construction for its sanitary sewer, and stormwater infrastructure. The most recent contracts for these services have been with C.J. Hughes Construction Company, Inc., ("C.J. Hughes") and Tribute Contracting and Consulting, LLC ("Tribute"). HWQB entered into contracts with C.J. Hughes and Tribute on April 3, 2024, and February 4, 2024, respectively, both set to expire on December 31, 2025, with four optional renewals of two years. The renewal sought in this request is for one two-year period beginning January 1, 2026, and ending December 31, 2027. The contracts are silent about any price increases for the renewal periods, but HWQB Executive Director Brian Bracey states that historically, any increases requested by these two contractors have been consistent with increases in the Consumer Price Index (CPI). Both contracts are the product of a competitive bid process employed by HWQB as described below.

HWQB explains that it does not maintain a staff in sufficient numbers or with sufficient experience, and it does not have the equipment, to perform much of the urgent and highly specialized repairs and maintenance that must be performed on the wastewater treatment plant, the pump station infrastructures, the flood gates, the system of sewer pipes, the system of stormwater pipes, pumps, and the myriad of other structures

necessary to operate the largest treatment plant and stormwater system in West Virginia. It is cost prohibitive to conduct all maintenance operations internally. Thus, it has been the practice of the HWQB to maintain agreements with at least two contractors with sufficient skill, personnel, and equipment to provide the necessary services. According to the HWQB, it is vital for providers to maintain the capacity for rapid mobilization to address various potential emergency scenarios. Further, the HWQB has determined through experience that it is prudent to have two separate agreements in order to prevent catastrophe because one contractor may be otherwise occupied and unable to respond immediately. The process that led to the contracts with C.J. Hughes and Tribute is described as follows:

1. In February 2023, the Requester determined that on-call and emergency services were needed.
2. In July 2023, the Requester published an advertisement for bids, and a request for proposals was provided to interested parties.
3. The Requester received one bid from C.J. Hughes and the other from Tribute.
4. The contracts were awarded to C.J. Hughes and Tribute by emails dated January 17, 2024, and January 18, 2024, respectively.

Mr. Bracey attested that he believes that these two responding contractors are the only local contractors with the personnel, skill, and equipment necessary to meet the significant needs of the HWQB. He states that should another round of competitive bidding take place, in his opinion, only the same two contractors will submit a bid.

Mayor Patrick Farrell was elected in November 2024 and assumed office on January 1, 2025. Prior to this election, in 2022, Mr. Farrell was appointed one of eight members of the Board of Directors of Energy Services of America Corporation (Energy Services). Both C.J. Hughes and Tribute are wholly owned subsidiaries of Energy Services.

Per [W. Va. Code § 16-13-18\(b\)](#):

The sanitary board shall be composed of **either the mayor of the municipality**, or the city manager thereof, if the municipality has a city manager form of government...

Pursuant to Huntington Revised Code Sec. 930.02(b), the members of the Huntington Sanitary Board are the same as that of the HWQB. Thus, the Mayor is one of three voting members of the HWQB and in fact serves as Chairman of both boards.

The Commission notes and appreciates that the HWQB provided over 100 pages of exhibits to its request for a contract exemption. These include a very detailed Request for Proposals (RFP) by the HWQB, bids by C.J. Hughes and Tribute, the awards emails, and an affidavit by Brian Bracey. Per the requirements of the RFP, the bids by these two contractors are primarily unit price bids (also referred to as measurement contracts or measure and pay contracts). Under this type of bid/contract, payment is based on predetermined rates for discrete units of work (i.e. cubic yards of concrete, feet of piping, etc.). Thus, the bids contain a detailed breakdown for many different work items that HWQB may need along with the items corresponding units of measure (i.e. feet, yards, ton hours).

Provisions Relied Upon By the Commission

[W. Va. Code § 6B-2-5\(d\)\(1\)](#) states, in relevant part:

In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control.... Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract

which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

W. Va. Code § 6B-2-5(d)(2) states, in relevant part:

In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is: (A) An interest which does not exceed one thousand dollars in the profits or benefits of the public contract or contracts in a calendar year. . . .

W. Va. Code § 6B-2-5(d)(3) states, in relevant part:

If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

W. Va. Code § 6B-2-5(d)(4) states, in relevant part:

Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written

application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

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The Ethics Act prohibits a public official or employee and businesses with which he or she is associated from having more than a limited interest in the profits or benefits of a contract over which he or she has direct authority or control unless his or her governing body seeks, and receives, an exemption to contract with the public official or their associated business. W. Va. Code § 6B-2-5(d). Since Mayor Farrell is a voting member and the chair of HWQB, he has direct authority or control over HWQB's contracts. Moreover, none of the exceptions in (d) applies. In reaching this conclusion, it is necessary to evaluate this conflict based on Mr. Farrell's dual roles as Mayor and board member of the HWQB.

This analysis has already been completed by virtue of the Commission's decision last month in [Contract Exemption 2026-06, Huntington Stormwater Utility](#). That decision involved Mayor Farrell and a company he owned that sought to contract with the Huntington Stormwater Utility. As noted in the facts of this exemption, the Huntington Stormwater Utility is under the control of the HWQB, and all board members of both entities are the same. Consequently, the Commission held that due to Mayor Farrell's veto power, he had sufficient authority and control over the Utility's contract with the company he owned. The result is the same here. Moreover, as a member of the HWQB, Mayor Farrell has one of three votes on matters before the board, and thus in this capacity, has direct authority over its contracts. He cannot avail himself of the exception for "appointed part-time board members" because he is not appointed to the HWQB but is required to serve as a member by law.

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The Commission may grant an exemption to this prohibition if the requesting governmental entity demonstrates that the prohibition would cause "undue hardship, excessive cost or substantial interference with its operation." The entity must also show

it exercised due diligence to ensure a full and fair opportunity for all interested businesses to compete.

The need for an exemption in this matter is based on all three grounds, excessive costs, undue hardship, and risk of substantial interference with HWQB's operations when emergencies arise. Unlike Contract Exemption 2026-06, the HWQB is not seeking contracts for routine service repairs or parts replacement for its sewer and stormwater infrastructure. Here, the Requester needs experienced and reliable "on-call" contractors to handle "emergency repairs, operational repairs, maintenance and construction for its sanitary sewer and stormwater infrastructure." The contractors require the experience, manpower and equipment to mobilize for and handle emergencies and perform specialized repairs on a variety of types of infrastructure (sewer, flood gates, pump stations, treatment plants, etc.). Finally, years of experience support the HWQB's decision that it is prudent to have two on-call contractors.

In 2023, these companies provided the only responses to the Requester's published request for proposals (RFP). The Executive Director of the HWQB, Brian Bracey, provided an affidavit opining that C.J. Hughes and Tribute would be the only responsive bidders in a subsequent request for bids, as they are the only local contractors with the necessary experience, manpower, and equipment for the work.

It is not hard to foresee that if the HWQB had to wait for an emergency to happen before seeking out bids, significant interference would occur with its operations to the detriment of the public. Likewise, since the services are on-call, they only occur when the need arises thus making it cost ineffective for the HWQB to try and maintain a permanent staff to do what is intermittent work.

This reasoning is in line with [Contract Exemption 2025-01](#). In this exemption, the Mineral County Sheriff and County Commission requested an exemption to contract with a business owned by a deputy to upfit four new vehicles to make them suitable for law enforcement purposes. The deputy's business was the lowest of three bids and was not only experienced in police vehicle upfitting but *also provided the Sheriff's Office with 24-hour service availability due to being in Mineral County*. The next lowest bidder

informed the Sheriff it would take three or four days to fill a service request thus causing a cruiser to be out of service for this time. The Commission granted the exemption holding that, “Denying this exemption would result in unnecessary financial expenses of \$1,600, and would risk the timely upfitting and servicing of critical law enforcement vehicles.”

The Commission has acknowledged the value of having local contractors available to do work immediately as grounds for a contract exemption. In [Contract Exemption 2013-07](#), the City of Cameron was given an exemption to contract with the Mayor’s spouse for emergency repairs of the City Water Plant noting, “there does not appear to be other qualified plumbing contractors available and willing to perform the work.” Similarly, in [Contract Exemption 2020-04](#), the City of Reedsville was granted an exemption to use the Mayor’s company for a tree-trimming project where the facts showed that the town took meaningful efforts to obtain other bids and needed the limbs removed quickly for safety reasons.

Therefore, the Ethics Commission grants this Contract Exemption to the Huntington Water Quality Board to contract with C.J. Hughes Construction Company, Inc., and Tribute Contracting and Consulting, LLC, both wholly owned subsidiaries of Energy Services of America Corp., of which Huntington Mayor Patrick Farrell is a board member, to provide on-call services for emergency repairs, operational repairs, maintenance and construction and related work, for the Huntington Water Quality Board’s sanitary sewer and stormwater infrastructure. This Contract Exemption is effective for a single renewal period of two years as allowed for in the initial awarded bids. Thus, this Contract Exemption is granted for the period of January 1, 2026 to December 31, 2027.

Mr. Farrell must recuse himself from decisions, discussions, and votes or vetoes relating to the contracts and payment for services. He must follow the restrictions in W. Va. Code § 6B-2-5(j). For recusal to be proper, he must first fully disclose on the record his disqualifying interest and leave the room during the discussion, deliberation, and vote on the matter. In addition, the minutes or record of the meeting must reflect the

basis for the recusal and that Mr. Farrell left the room during all consideration, discussion, and vote on the contract and payment for his services. W. Va. Code § 6B-2-5(j)(3).

The Commission notes that exemptions must be granted on a case-by-case basis. Therefore, this Contract Exemption is limited to the facts and circumstances of this particular case and may not be relied upon as precedent by other persons or entities.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission