

**District of Columbia
Water and Sewer Authority
Board of Directors**



*Joint Meeting
Environmental Quality and Sewerage
Services Committee &
Finance and Budget Committee
Thursday, August 26, 2010
9:30 a.m.*

MEETING MINUTES

Environment Quality & Sewerage Services Committee Members Present

David Lake, Vice-Chairperson
Howard Gibbs
James Patteson
F. Alexis Roberson
Paivi Spoon
Beverly Warfield

Finance & Budget Committee Members Present

Timothy Firestine, Chairperson
David J. Bardin
Alethia Nancoo

DC Water Staff Present

George S. Hawkins, General Manager
Leonard Benson, Chief Engineer
Avis Marie Russell, General Counsel
Linda Manley, Board Secretary

I. CALL TO ORDER

David Lake, Vice-Chair of the EQ & SS Committee, called this special joint meeting to order at 9:32 a.m. noting that Mr. Hoyt, the Committee Chairperson, had an unavoidable commitment and could not attend this special EQ&SS Committee meeting.. Mr. Lake pointed out that D.C. Water is at the point of contracting for the Design – Build Team for the biosolids management program that we have been working on for some time, and there is an interest in assuring that a thorough due diligence has been performed with regard to the financial and commercial risks of the project. Mr. Lake turned the discussion over to Mr. Leonard Benson, Chief Engineer.

II. BIOSOLIDS MANAGEMENT PROGRAM UPDATE-REVIEW OF THE ROLE OF CAMBI IN DC WATER'S BIOSOLIDS MANAGEMENT REVIEW

Mr. Benson presided over this discussion, with a panel of four others to discuss topics relevant to the proposed commercial terms of the Design – Build contract, and address any concerns with the prior selection of Cambi as a proprietary technology. The others on the panel consisted of Mr. Walter Bailey, Assistant General Manager for Wastewater Treatment, Mr. Mike Loulakis, President/CEO of Capital Project Strategies, Mr. Eric Petersen, Partner with Hawkins Delafield & Wood, and Mr. Perry Schafer, Vice President with Brown and Caldwell.

Mr. Benson introduced the panel members and initiated the presentation with each member of the panel covering areas pertinent to their expertise. The presentation covered:

- Biosolids Plan Update (2007-2008)
- THP/Cambi Technology Assessment (2008-2009)
- Project Delivery Options Analysis (2009)
- Strategies for Optimizing Successful Implementation of Cambi THP (2009-2010)
- Cambi Commercial Terms (2010)
- Contracting with a Design - Builder

Details can be found in the power point presentation delivered to the BOD on August 20, 2010. Upon conclusion of the presentation, Mr. Lake opened the floor to questions.

QUESTIONS AND ANSWERS:

Q1: A Committee member questioned whether a 50% reduction in biosolids is sufficient since land application may be limited in the future and asked whether the best technology was being utilized for energy production. The Committee member would like a level of comfort that we will not have to revisit the issue in 2015.

A1: Mr. Benson stated that the other technologies being referred as possibly more energy efficient were likely drying and incineration; technologies that were reviewed and determined not to be applicable for Blue Plains. Mr. Benson noted that staff believes there is no technology better for Blue Plains than what was recommended to the Board. Mr. Hawkins noted that we will always have the problem of changing laws to deal with.

Q2: It was also asked whether DC Water obtained any consideration (i.e., substantially lower price) from Cambi for introducing Cambi to the U.S market?

A2: Mr. Benson noted that Cambi is a small company, and it doesn't appear that it could afford to take a significant economic loss on this effort and also that such an offer to D.C. Water is inconsistent with its business model, as Cambi does not change its price from one client to another. Mr. Hawkins agreed that Cambi's North American business depends on the DC Water project being successful since this project will be Cambi's model for the rest of the country and that Cambi would be highly incentivized to make sure that it performs well.

Q3: It was asked whether the lime stabilization process that is currently being utilized will be abandoned.

A3: Mr. Bailey advised that it will remain in service to be utilized for peak loads; it would not be increased in capacity, though it will be upgraded,

Q4: An additional question was asked about a project (Davyhulme) and its size (91,000 tonnes) relative to what is proposed here.

A4: Mr. Bailey noted that it is close to the size of this project, as we are 120,000 dry tons per year.

Q5: Financial information was not found on the web; is it available?

A5: A CD was distributed to the Committee with pertinent background information; financial information can be found on the CD in Items 10-14.

Q6: Slide 19-Total revenue shown is different that the answer to Question 11- Could you explain?

A6: We will look into this further and get an answer for the Board.

Q7: There is a lot of discussion of the parent company-who is it? The American subsidiary is expected to sign the contract, with the requirement that the Cambi parent company will back the guarantees.

A7: Mr. Benson noted that staff needs to confirm the relationships of the Cambi family of firms and will get this information back to the Board.

Q8: Why is the U.S. subsidiary opening an office in Birmingham, Alabama (as opposed to locally)?

A8: Mr. Schafer noted that it appears to be due to its chosen U.S. representative being located there.

Q9: Financial documents show assets of \$15M but a cash position of \$875,000.

A9: Mr. Petersen noted that this reflects the start up position in North America. Mr. Petersen also noted that the full resources of the parent company will be provided as security for Cambi's performance on our project.

Q10: What is the total cost of the project and the Cambi component?

A10: The design-build contract would be approximately \$210M. D.C. Water is still negotiating terms and conditions, but currently the cost for the Cambi scope of work is approximately \$33 to \$35M.

Q11: an explanation was requested of the Cambi contractual limitations of liability.

A11: Mr. Loulakis explained that the Cambi term sheet has two sets of liquidated damages. One is for schedule delays, and the other is for failure to meet the throughput guarantee. Each set of liquidated damages is capped at 10% of the Cambi contract price. The two sets together (i.e., the total amount Cambi will pay for liquidated damages) are capped at 15% of the Cambi contract price. In addition to this, Cambi's total liability to DC Water is limited to 50% of the Cambi contract price, which will include its obligation for liquidated damages as well costs for a Cambi default. Cambi has provided a 10% letter of credit and a parent company guarantee to backstop its contract obligations.

Q12: An inquiry was made about the so-called "gap" issue. What does this mean?

A12: Mr. Loulakis explained that the design-builders and their sureties were unwilling to be responsible for the liability "gap" between problems caused by Cambi and what could be recovered from Cambi (either because of Cambi's contractual limitations of liability or in collecting from Cambi). DC Water has agreed that the design-builder would not be required to assume this liability "gap", D.C. Water would shoulder this risk. However, Mr. Loulakis and Mr. Peterson noted that one of the benefits of having Cambi work as a subcontractor to the design-builder, as opposed to working as a direct contractor to DC Water, was that there was a possibility that one or more of the shortlisted design-builders could offer to assume a portion of this "gap" in the final proposals. They noted that this remains an open issue at this point in time, and that the DC Water team would evaluate this as the procurement proceeded.

Q13: What is the difference in characteristics of European sludge versus U.S. sludge as feedstock for the Cambi process; is it significant and has it been accounted for?

A13: Mr. Schafer responded that there is a difference, but we have tested the process on Blue Plains sludge for several years and are comfortable that the process will work here.

Q14: What is the length of the performance guarantees/commissioning process?

A14: Mr. Schafer responded that it will take some time to build up a sludge inventory in the digesters-several months, after which the Acceptance Testing is expected to proceed for 14 days.

Q15: What if something goes wrong after a year or more of operation? What assurances or remedies do we have? We have focused a lot on Cambi and have good assurances that it will work, but what about the rest of the process?

A15: Mr. Lake noted that we will focus on the rest of the project when we discuss the design-build project.

Q16: What if after the guarantee period has passed and the facility is on-line, the Cambi system fails.

A16: Mr. Benson noted that we have completed an extremely thorough due diligence over a ten year period and believe the likelihood of failure of the Cambi process and equipment to be extremely remote. Cambi has never failed. In the event it did, we would still have digesters that even without Cambi pretreatment could operate at about half the capacity as they would have with Cambi, and we would have the option for bringing in trailers for additional lime stabilization. We don't think that there is any reasonably foreseeable possibility of a Cambi technology failure or D.C. Water would not be proceeding with the project.

Q17: What recourses would be available to us in a Cambi failure?

A17: Mr. Loulakis responded referencing an analysis that was included in the meeting materials delivered to BOD members on August 20, 2010, as revised on August 25. Under the case where Cambi walked off immediately after signing its contract with the design-builder (Case 3), DC Water (through the design-builder) would have available to it the contract balance and ultimately the Cambi and parent balance sheets, up to the 50% contractual limit of liability. He also discussed Cambi's failure to meet the performance goals (Case 1). Cambi has a make-good obligation up to 95% of the throughput guarantee, and if it failed to do so, DC Water would have the 10% letter of credit available, the 10% unpaid payment milestone and ultimately the balance sheets of Cambi and its parent. All of this would come through the design-builder. The entire question of risk was further discussed in the next section of the presentation as reported below.

Mr. Lake noted that if there are any other questions from the Committee, they should submit them to Ms. Manley to be relayed to staff.

RISK ANALYSIS DISCUSSION

Mr. Lake noted that it even though the committee had exceeded its allotted time it was important to go through the Risk Analysis for Cambi's Failure to Perform since key committee members were present. Mr. Loulakis summarized the evaluation performed to assess the risk and potential exposure of DC Water in the event of a failure related to the selection of the Cambi process. The analysis was originally forwarded to the Committee last week, with an August 25th revision distributed yesterday. Mr. Loulakis noted that there were three general commercial risks: failure to meet schedule, failure to meet performance, and default. Potential financial exposures were calculated under worst case scenarios for each and discussed. The technical risks have been mitigated over time with the maturation of the Cambi process. It was noted that the analyzed scenarios are remote, some highly so. All the risks are backstopped by the financial capability of the Cambi parent organization. For complete details of the analysis, the written document should be referred to.

Mr. Petersen reiterated that the design-builder has a huge role in any of these issues. The design-builder will be contracting directly with Cambi and Cambi will be accountable to them. It is expected that the design-builder will have contractual arrangements that facilitate a guarantee project accomplishment, and furthermore, both they and Cambi should be highly motivated to make the overall project work. There are many levels of protection, but if a failure occurs, DC Water would have a claim against the design-builder, who would have an obligation to try to make the system work. Mr. Loulakis noted that the failure analyses done would result only after all other contractual remedies have been unsuccessful.

A Board member offered his opinion that he was satisfied with the presentation and very much impressed.

Mr. Lake thanked the panel and commended the staff and panel on assembling this presentation. He also thanked the Committee members for showing up during what is usually the August hiatus. He further thanked the Finance and Budget Committee for allowing this meeting to run into their scheduled start time.

III. ADJOURNMENT

The meeting was adjourned at 11:50 a.m.