



**DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY**

Board of Directors

Governance Committee

May 8, 2013

9:00 a.m.

1. Call to Order.....Alethia Nancoo, Chairperson
2. Government Affairs: Update.....William Pickering, Government Relations Manager
 - Federal
 - [Federal Issues and Legislation](#)
 - FY 13 Appropriations
 - FY 14 President's Budget Proposal
 - District of Columbia
 - [District Issues and Legislation](#)
 - FY 14 Mayoral Budget Proposal
3. Board of Director Approval of Contract Modifications, Contract Option Years and Delegation of Contracting Authority.....George S. Hawkins, General Manager
4. [Update on the Compliance Monitoring Program](#)..... Loretta Caldwell, LS Caldwell & Associates
5. Corinthian Contractors, Inc.NLRB Compliance Update.....Korey Gray, Specialist II
Contract Support, Procurement
6. [Enforcement Processes for Contractor/Vendor Contracts](#)... Randy E. Hayman, General Counsel
7. Emerging Issues Chairperson
8. Agenda for Upcoming Committee Meeting (TBD).....Chairperson
9. Executive Session – To discuss legal, confidential and privileged matters pursuant to Section 2-575 (b) (4) of the D.C. Official Code
- !0. Adjournment.....Chairperson

Legislative Tracking Information for Governance Committee

Prepared by: William Pickering, william.pickering@dcwater.com

Date prepared: 4/29/2013

Federal legislation

FY 2014 President's budget

- \$14.5 million payment for Clean Rivers Project
- \$350 million reduction in Clean Water State Revolving Fund
- \$100 million reduction in Drinking Water State Revolving Fund
- Municipal bond tax exempt interest provision – 28% cap could cost DC Water \$14.5 million in additional borrowing costs
- Replaces Build America Bonds Program with lower subsidy “Fast Forward Bonds.” This new bond program would provide a 28% subsidy to local and state governments on taxable bonds issued to finance investments in governmental capital projects instead of a 35% subsidy under the BAB program.
- Status: The President's budget request will now serve as a baseline for Congressional budget negotiations in the coming months though both the House and Senate have already passed separate budget proposals. Now Congress must reconcile these competing proposals into a final package for FY14.
- <http://www.whitehouse.gov/omb/budget/Overview>

S.601, the “Water Resources Development Act”

Summary: This massive bill authorizes the work conducted by the U.S. Army Corps of Engineers.

- Includes a provision to provide federally backed low interest loans for drinking and wastewater infrastructure capital projects. The program is small in scale and will be very competitive.
- Bill status: Approved by Senate Committee on Environment and Public Works, awaiting full Senate vote
- <http://www.gpo.gov/fdsys/pkg/BILLS-113s601rs/pdf/BILLS-113s601rs.pdf>

H.R. 765, the “Water Infrastructure Resiliency and Sustainable Act”

Summary: The bill would establish a competitive funding assistance program to help the nation's drinking water, wastewater, and stormwater systems plan and implement projects to adapt their infrastructure to these changing hydrological conditions. Eligible projects will include those that conserve water and increase efficiency, rebuild or relocate threatened treatment facilities, accelerate the adoption of advanced water treatment technologies like water reuse and recycling, or incorporate green infrastructure techniques. A recent study by AMWA and the National Association of Clean Water Agencies estimated that these necessary adaptation projects could cost water systems nearly \$1 trillion through 2050.

- Bill status: Referred to House Subcommittee on Water and Power
- <http://www.gpo.gov/fdsys/pkg/BILLS-113hr765ih/pdf/BILLS-113hr765ih.pdf>

DC Council Legislation

Fiscal Year 2014 Budget Request Act

Summary: This is the Mayor's Fiscal Year 2014 budget. The budget incorporates DC Water's annual budget and contains no provisions of concern at this time.

- Status: The DC Council is currently holding budget review hearings in each committee. The budget is scheduled to be finalized in July 2013. DC Water will continue to monitor the budget as it moves forward through the DC Council's legislative process.
- <http://budget.dc.gov/>

Virginia

No anti-biosolids legislation introduced this session in the General Assembly.

Maryland

HB 641 (Montgomery & PG's Co. Del.) Washington Suburban Sanitary Commission - Drinking Water and Wastewater Effluent – Testing.

Summary: Requires the WSSC to conduct quarterly testing of drinking water and wastewater effluent in Commission facilities for specified unregulated contaminants beginning in 2014; and requiring the Commission to report the results of the quarterly testing to the county executives of Montgomery County and PG's County and publish the results on its Web site within 30 days after receiving the results. This legislation is very similar to the emerging contaminants legislation passed by the DC Council in 2012.

- Status: Approved by the Governor - Chapter 127
- <http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=hb0641&stab=01&pid=billpage&tab=subject3&ys=2013RS>



District of Columbia Water and Sewer Authority
George S. Hawkins, General Manager

DC Water Major Projects
M/WBE Contracting and Local Employment Compliance
May 2013 Update

Presented to the:

Governance Committee
Alethia Nancoo—Chairperson

Presented by:

Gus Bass—Manager, Engineering Management Services Branch
DC Water Department of Engineering and Technical Services
Loretta S. Caldwell—Major Projects Compliance Officer
L. S. Caldwell & Associates, Inc.

Wednesday, May 8, 2013

DC Water Major Projects

AGENDA

- **Compliance Program Overview**
- **DC Water Major Projects Subject to Fair Share Objectives**
- **M/WBE Contracting Summary**
- **Employment Summary**
- **Questions and Discussion**



CONTRACTING AND EMPLOYMENT COMPLIANCE OFFICER RESPONSIBILITIES

L. S. Caldwell & Associates, Inc./DP Consultants, Inc.

CONTRACTS

- Monitor and track planned and actual participation against Architectural/Engineering Fair Share Objective of 28% MBE and 4% WBE
- Monitor and track planned and actual participation against Fair Share Objective of 32% MBE and 6% WBE
- Ensure contractors meet and/or exceed their Fair Share Objectives



(For First and Second Tier Contractors)

CONTRACTING AND EMPLOYMENT COMPLIANCE OFFICER RESPONSIBILITIES

L. S. Caldwell & Associates, Inc./DP Consultants, Inc.

EMPLOYMENT

- Review certified payroll in accordance with the Davis Bacon Wage Determinations; conduct onsite employee interviews **(ALL)**
- District of Columbia First Source Employment Agreements (FSEA) when applicable - 51% of new hires DC residents **(Contracts \$100K & Over)**
- DC FSEA registration of Apprenticeship Programs – 35% of total apprentice hours performed by DC residents **(Contracts \$500K & Over)**
- Collect resident hiring data for Major Project contracts **(ALL)**



DC Water Major Projects Included In Compliance Program

DC Clean Rivers

- Blue Plains Tunnel (BPT)
- CSO 019
- M Street Diversion Sewer
- Tingey Street Diversion Sewer
- Low Impact Development Retrofit at DC Water Facilities

Enhanced Nitrogen Removal
(ENR 1C)

Enhanced Nitrogen Removal
(ENR 2C)

Enhanced Nitrogen Removal- North

Biosolids Management

- Main Process Train (MPT)
- Final Dewatering Facility 1C (FDF1)
- Final Dewatering Facility 2C (FDF2)
- Combined Heat & Power (CHP)

DC Water Major Projects CONTRACT VALUES

DC Clean Rivers

Blue Plains Tunnel	\$ 326,903,971
CSO O19	\$ 27,882,822
M Street Diversion Sewer	\$ 29,750,000
Tingey St Diversion Sewer	\$ 16,056,573
Low Impact Dev. Retrofit	\$ 3,583,772

Biosolids Management

Main Process Train	\$206,173,500
Final Dewatering Facility 1C	\$ 7,465,415
Final Dewatering Facility 2C	\$ 78,081,000
Combined Heat & Power	\$ 83,015,875

Enhanced Nitrogen Removal 1C	\$69,502,000
Enhanced Nitrogen Removal 2C	\$97,118,000
Enhanced Nitrogen Removal – North	\$57,960,000

TOTAL VALUE OF MAJOR PROJECTS = \$1,003,492,928

FAIR SHARE OBJECTIVES

Architectural/Engineering 28% MBE/4% WBE

Construction 32% MBE/6% WBE



DC Water Major Projects Subject to Fair Share Objectives

Total Value of Major Projects	\$1,003,492,928
<u>-DC Water Design-Build/GMP Exclusions</u>	<u>(\$140,434,106)</u>
Total Costs Subject to Fair Share Objectives	\$863,058,822*

DC Water determined the necessity to exclude some costs on Design Build/Guaranteed Maximum Price contracts

Examples of Exclusions from Fair Share Objectives:

Cambi System (MPT)	\$37,036,000
Tunnel Boring Machine (BPT)	\$30,000,000
Contingencies/Allowances	<u>\$73,398,106</u> (Approximate)
	\$140,434,106

*Computations of Fair Share Objectives on the following two slides do not include ENR North, which is in the mobilization stage; \$805,098,822 is used as Total Costs Subject to Fair Share Objectives



DC Water Major Projects Subject to Fair Share Objectives

Total Costs Subject to Fair Share Objectives as of Mar 2013 **\$804,705,664**

Total Costs Subject to Fair Share Objectives as of May 2013 **\$805,098,822***

	As of March 2013	As of April 2013*
Design Costs Subject to Fair Share Objectives	\$27,845,785	\$27,818,838
28% MBE Design Costs Planned	\$7,796,820	\$7,789,275
29% MBE Design Awarded to Date	\$7,960,345	\$7,960,345
4% WBE Design Costs Planned	\$1,113,831	\$1,112,754
5% WBE Design Awarded to Date	\$1,366,707	\$1,366,707

* Computations of Fair Share Objectives do not include ENR North, which is in the mobilization stage; \$805,098,822 is used as Total Costs Subject to Fair Share Objectives. The design costs and awards have been adjusted to reflect change orders.



DC Water Major Projects Subject to Fair Share Objectives

Total Costs Subject to Fair Share Objectives as of Mar 2013 **\$804,705,664**

Total Costs Subject to Fair Share Objectives as of May 2013 **\$805,098,822***

	As of March 2013	As of April 2013*
Construction Costs Subject to Fair Share Objectives	\$780,785,065	\$782,644,121
32% MBE Construction Costs Planned	\$249,851,221	\$250,446,119
30% MBE Construction Awarded to Date	\$219,083,285	\$230,969,774
6% WBE Construction Costs Planned	\$46,847,104	\$46,958,647
4% WBE Construction Awarded to Date	\$37,111,272	\$32,655,659

* Computations of Fair Share Objectives do not include ENR North, which is in the mobilization stage; \$ 805,098,822 is used as Total Costs Subject to Fair Share Objectives . The construction costs and awards have been adjusted to reflect change orders.



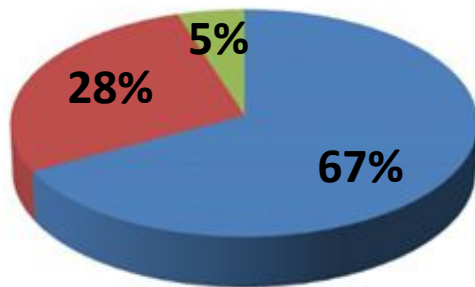
DC Water Major Projects M/WBE Contracting Summary



TOTAL Design M/WBE Subcontracts Awarded to Date

TOTAL DESIGN CONTRACTING March 2013

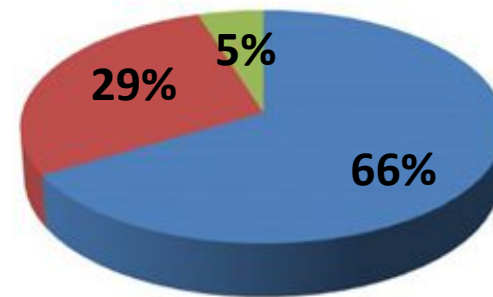
- Total Non-M/WBE:
\$18,518,733
- Total MBE \$ Awarded:
\$7,960,345
- Total WBE \$ Awarded:
\$1,366,707



TOTAL: \$27,845,785

TOTAL DESIGN CONTRACTING April 2013

- Total Non-M/WBE:
\$18,491,786
- Total MBE \$ Awarded:
\$7,960,345
- Total WBE \$ Awarded:
\$1,366,707



TOTAL: \$27,818,838

TOTAL Design M/WBE Subcontracts Payments to Date

Design goals are 28% MBE and 4 % WBE and only apply to Professional Services on the four (4) Major Projects that are design-build/guaranteed maximum price contracts (Blue Plains Tunnel, Tingey Street Diversion Sewer, Main Process Train, Combined Heat and Power)

Fair Share Objective achievement is measured by M/WBE confirmation of payment

TOTAL PAYMENTS

	As of March 2013	As of April 2013
MBE Payments	\$ 6,081,880	\$ 6,504,884
WBE Payments	\$ 731,449	\$ 835,337

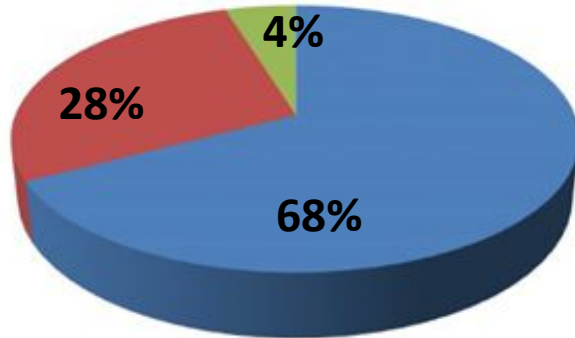


PROJECTS STARTED MAY 2011
DATA COLLECTION BEGAN FEBRUARY 2012

TOTAL Construction M/WBE Subcontracts Awarded to Date

TOTAL CONSTRUCTION CONTRACTING—March 2013

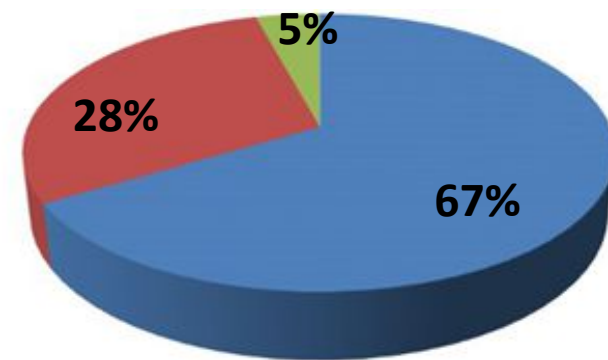
- Total Non-M/WBE: \$524,590,508
- Total MBE \$ Awarded: \$219,083,285
- Total WBE \$ Awarded: \$37,111,272



TOTAL: \$780,785,065

TOTAL CONSTRUCTION CONTRACTING—April 2013

- Total Non-M/WBE: \$519,018,688
- Total MBE \$ Awarded: \$230,969,774
- Total WBE \$ Awarded: \$32,655,659



TOTAL: \$782,644,121

TOTAL Construction M/WBE Subcontracts Payments to Date

Construction goals are 32% MBE and 6 % WBE

Fair Share Objective achievement is measured by M/WBE confirmation of payment

TOTAL PAYMENTS TO DATE

	As of March 2013	As of April 2013
MBE Payments	\$ 66,285,498	\$ 88,113,663
WBE Payments	\$ 13,415,939	\$ 10,762,463*

*There were MPT payments that were inadvertently counted towards WBE payments by a MPT construction contractor. As result, the payments were adjusted to reflect confirmed WBE payments.



DC Water Major Projects Employment Summary



Employment Statistics

Total Contractor Employees on Major Projects: 1236

Employee Residence

As of March 2013

District of Columbia	Prince George's County	Montgomery County	Fairfax County	Loudoun County	Outside of User Jurisdictions
130	192	102	115	24	592

Employee Residence

As of May 2013

District of Columbia	Prince George's County	Montgomery County	Fairfax County	Loudoun County	Outside of User Jurisdictions
139	235	123	100	26	613



PROJECTS STARTED MAY 2011;
DATA COLLECTION BEGAN FEBRUARY 2012

Employment of DC Residents

Total DC Residents on Major Projects: 139

DC Employee Residents by Ward As of March 2013

One	Two	Three	Four	Five	Six	Seven	Eight
15	8	2	12	24	7	25	38

DC Employee Residents by Ward As of May 2013

One	Two	Three	Four	Five	Six	Seven	Eight
15	8	2	12	25	9	28	40

Employment of DC Residents

Total DC Residents on Major Projects*:

	As of March 2013	As of May 2013
➤ New DC Resident Hires through Department of Employment Services:	79	79
➤ Transfer of Existing DC Resident Employees to Major Projects:	52	61

*Information obtained from project inception to date; ongoing updates

DC Apprenticeship Statistics

(DC Requirement – 35% DC Resident Hours)

As of March 2013

No. of Apprentices	Total Apprentice Hours	No. of DC Resident Hours	% DC Resident Hours
63	19,520	10,460	54%

As of May 2013

No. of Apprentices	Total Apprentice Hours	No. of DC Resident Hours	% DC Resident Hours
53	22,451	11,142	50%



**Information obtained to date; ongoing updates*

Select Overview of Employment Data By Other Jurisdiction*

State	Employees	State	Employees	State	Employees
AL	1	KY	2	OH	5
AUS	1	LA	2	PA	10
CA	1	MA	1	TN	2
CT	1	MD	167	TX	5
FL	11	MI	3	VA	163
GA	21	MO	49	VT	1
IA	1	NC	86	WA	1
IL	16	NH	1	WVA	11
IN	2	NJ	8		
KS	25	NY	16		

DATA SHOWN ON THIS PAGE WAS COLLECTED IN MARCH AND APRIL 2013 AND REFLECTS INFORMATION FROM COMPANIES ONSITE THAT RESPONDED TO REQUESTS FOR INFORMATION. THE FULL OVERVIEW OF EMPLOYEES FROM OTHER JURISDICTIONS HAS BEEN ADDED IN AN ATTACHMENT.



Select Overview of Employment Data By Job Category

Definitions

Professional: Architects, professional engineers (PEs)

Management: Technical and administrative staff

Labor: Tradesmen/tradeswomen

Overview of Employees by Job Category*	
As of April 2013	
Professional	211
Management	208
Labor	579

*DATA SHOWN ON THIS PAGE WAS COLLECTED IN MARCH AND APRIL 2013 AND REFLECTS INFORMATION FROM COMPANIES ONSITE THAT RESPONDED TO REQUESTS FOR INFORMATION



DC Water Opportunity Center

Opportunity Center Initiatives

- Contractors “Weekly Bulletin”
- Training Resources Outreach efforts
- Contractors Roundtable Discussions
- Database Development
- Employment Opportunity Listings

“It’s a huge convenience having *The Opportunity Center* on site. The Visitor sign-in book & Applicant sign-sheet provides contact information which makes it easier to follow-up with potential employees.”

Seth Lehman, Site Superintendent, PC Construction

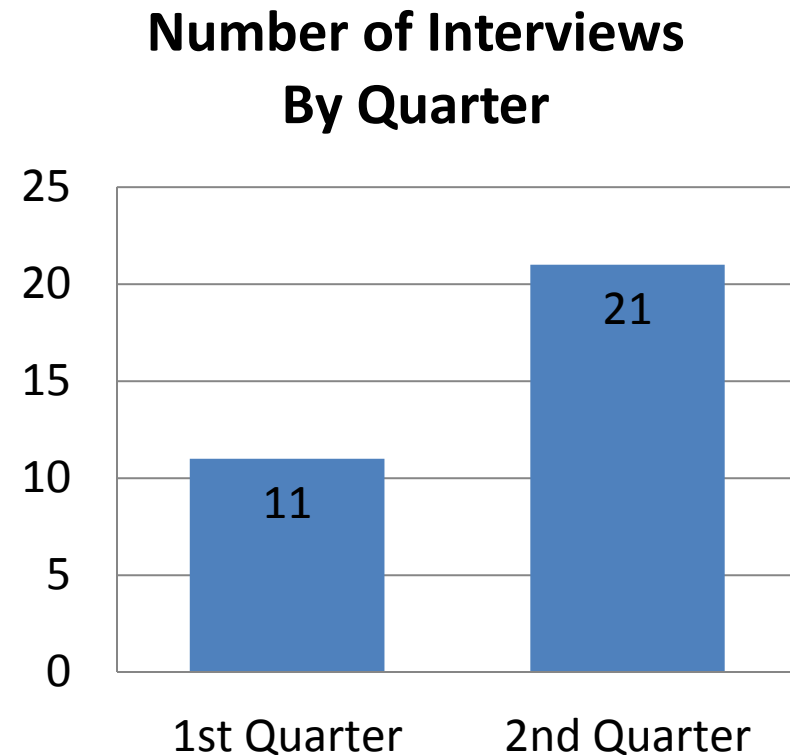
“*The Opportunity Center* is a great place to interview. It’s convenient, quiet, has private interview space and the staff is very helpful.”

Damien Woodard, Area Superintendent,
Ulliman Schutte Construction



DC Water Opportunity Center

Applicants by Location	
District of Columbia	111
Fairfax County	10
Loudon County	4
Montgomery County	6
Prince George's County	27
Other (Washington County)	1
TOTAL NUMBER OF APPLICANTS	159



The Opportunity Center opened December 15, 2012
We began marketing the Center and collecting statistical results January 15, 2013

DC Water Opportunity Center

New Hires by Resident Location

Contractor	Type of Position Hired	Resident Location	New Hires Reported
Ulliman Schutte	Laborers & Millwright	District of Columbia – Ward 7 Prince Georges County, MD Alexandria, VA Baltimore, MD	2 1 1 1
PC Construction	Laborers	District of Columbia – Ward 8	2
Bulldog Group	Class A CDL Driver	District of Columbia – Ward 8	1
Ulliman Schutte	Laborers & Bus Driver	District of Columbia – Ward 8 District of Columbia – Ward 7	2
PC Construction	Laborer	District of Columbia – Ward 8	1

“I wanted to send you a short thank you note for hosting the Employment Forum last month. While at the Forum, I met Ms. Andrea Thompson from the Community Services Agency, Metro Washington Council AFL-CIO. Ms. Thompson sent me the resume of an excellent candidate from the District. We interviewed her at the **Opportunity Center** and I am glad to report that Ms. Glenette Linebarger began working with Bulldog Trucking today!”

Miguel Lambert, CEO, The Bulldog Group



DC Water Major Projects Summary

- A formal Contracting and Employment Compliance Program has resulted in: standards, uniformity of contracting and employment reporting and the initiation of an on-line reporting system for Major Projects.
- Utilization of second tier contractors has increased the number of subcontracting/supplier opportunities for M/WBEs.
- Allowing second tier subcontractors/suppliers to count towards the goals, have opened new avenues for prime contractor compliance.
- The collection of employment statistics now allows DC Water to use empirical data to judge effectiveness of employment outreach/programs.

DC Water Major Projects

QUESTIONS AND DISCUSSION

Governance Committee - 4. Update on the Compliance Monitoring Program - Loretta Caldwell, LS Caldwell & Associates

DC WATER CONTRACTOR EMPLOYMENT OVERVIEW

Breakdown of Employees Per Project							
Contractor Name	Total No. of Employees on the Project	Employee Location					
		DC	PG	MC	PK	LD	Other
BPT	146	79	18	12	48	4	125
CSD 019	135	15	39	13	10	0	58
M.SI	60	0	13	0	2	0	35
Trinity St	15	0	0	0	0	0	5
UDR	0	0	0	0	0	0	0
MPT	159	19	38	25	4	4	69
ENR 1C	89	1	32	5	1	1	49
ENR 2C	145	11	27	11	17	2	77
PDF 1C	41	5	9	10	8	2	9
PDF 2C	71	5	18	4	5	3	36
CHP	175	1	9	11	1	5	150
CHP	175	1	9	11	1	5	150
Total	1238	139	234	123	100	29	613

Abbreviation Legend:
DC= District of Columbia
PG= Prince George's County
MC= Montgomery County
PK= Fairfax County
LD= Loudon County

*Note: The monthly breakdown of employees who reside outside of the user jurisdictions, illustrated in the "Other" column, began in October 2012.

THE DATA SHOWN BELOW REFLECTS INFORMATION FROM COMPANIES THAT RESPONDED TO REQUESTS FOR EMPLOYMENT INFORMATION

May 2013 Employees Residing Outside of User Jurisdictions (Breakout of "Other" Employee Locations as of May 2013)																																
Contractor Name	Total No. of "Other" Employees as of May 2013	Number of Employees by Other Location																														
		VA	MD	PA	WVA	NJ	OH	NY	TX	FL	NC	GA	CA	TN	AL	AUS	MA	MO	MI	NH	KS	CT	IN	IL	WA	IA	KY	VT	LA			
BPT	125	31	62	2	0	8	1	15	1	0	0	0	1	1	0	1	0	1	0	0	0	0	0	0	1	0	0	0	0	0		
CSD 019	86	28	15	0	2	0	1	1	0	1	5	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
M.SI	35	9	17	1	3	0	0	1	1	2	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Trinity Street	5	0	1	1	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1		
UDR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
MPT	69	31	3	1	3	0	0	0	0	1	14	14	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0		
ENR 1C	49	14	23	0	0	0	0	0	0	0	12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
ENR 2C	77	36	30	5	1	0	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
PDF 1C	9	4	4	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
PDF 2C	36	9	8	0	1	0	0	0	1	5	4	1	0	0	1	0	1	0	0	1	0	0	0	1	0	0	1	0	0	1	1	
CHP	150	1	4	0	0	0	0	0	1	0	47	1	0	0	0	0	0	0	48	3	0	25	1	1	15	0	0	0	0	0	0	
Total	613	163	367	90	11	8	5	16	5	11	86	21	1	2	1	1	1	49	9	1	25	1	2	16	1	1	2	1	2			

*Please Note: The breakout of employees residing outside of the User Jurisdictions began in the October 2012. This table does not include a breakout of employees residing outside User Jurisdictions before the November 2012 reporting period. We continue to request additional data from each contractor as we strive for complete employment data reporting.

Abbreviation Legend:	
VA= Virginia	MA= Massachusetts
MD= Maryland	MO= Missouri
PA= Pennsylvania	MI= Michigan
WVA= West Virginia	NE= New Hampshire
NJ= New Jersey	KS= Kansas
OH= Ohio	CT= Connecticut
NY= New York	IN= Indiana
TX= Texas	IL= Illinois
FL= Florida	WA= Washington
NC= North Carolina	UT= Utah
GA= Georgia	HI= Hawaii
CA= California	KY= Kentucky
TN= Tennessee	VT= Vermont
AL= Alabama	LA= Louisiana
RO= Australia	

Tally of Employees by Job Category Reported as of May 2013				
Contractor Name	Total No. of Employees	Professional	Management	Labor
BPT	146	51	53	159
CSD 019	135	1	18	116
M.SI	60	1	21	38
Trinity Street	15	0	0	0
UDR	0	0	0	0
MPT	159	26	24	76
ENR 1C	89	0	10	42
ENR 2C	145	12	18	62
PDF 1C	41	2	7	13
PDF 2C	71	2	10	49
CHP	175	114	47	14
Total*	1236	211	208	579

Definitions	
Professional:	Architects, professional engineers
Management:	Technical and administrative staff
Labor:	Tradesmen/tradeswomen

*Please Note: There is a variation between the above "Total No. of Employees" (1236) and the monthly totals derived from the breakdown of Professional, Management, and Labor positions due to the fact that only 996 unique positions were reported (211 Professionals; 208 Management; 579 Labor). The data reflects information that has been submitted to the Compliance team from the contractors and subcontractors via personnel rosters. We continue to request additional data from each contractor as we strive for complete employment data reporting.



Enforcement Processes For Contractor/Vendor Contracts



DC Water Processes in Place to Police “Bad Actors”

Debarment

Suspension

Termination for Cause/Default

Termination for Convenience

Davis Bacon Act Requirements

Copeland Act Requirements



EFFECT OF EACH PROCESS

- **DEBARMENT** – EXCLUDES CONTRACTORS/VENDORS FROM CONSIDERATION WHEN AWARDING CONTRACTS
- **SUSPENSION** – STOPS CONTRACTORS/VENDORS FROM PERFORMING WORK ON A CONTRACT
- **TERMINATION FOR CAUSE/DEFAULT** – TERMINATES A CONTRACTOR/VENDOR CONTRACT FOR FAILURE TO PERFORM IN ACCORDANCE WITH THE CONTRACT



EFFECT OF EACH PROCESS (cont.)

- **TERMINATION FOR CONVENIENCE** – TERMINATES A CONTRACTOR/VENDOR CONTRACT FOR THE CONVENIENCE OF DC WATER
- **DAVIS BACON ACT REQUIREMENTS** – REQUIRES PAYMENT OF PREVAILING WAGE WITH FRINGE BENEFITS FOR WORKERS; DEPARTMENT OF LABOR OVERSIGHT
- **COPELAND ACT REQUIREMENTS** – IMPOSES PENALTIES FOR THREATENING/ INTIMIDATING WORKERS TO GIVE UP PART OF COMPENSATION; NATIONAL LABOR RELATIONS BOARD OVERSIGHT



Debarment and Suspension

Authority – DC Water Procurement Regulations; DC Water Procurement Manual

Grounds for Debarment: Conviction or Civil Judgment for:

- Fraud or crime related to public contract
- Violation of anti-trust statutes related to submittal of offer
- Embezzlement, theft, forgery, bribery, falsification/destruction of records, false statements, receipt of stolen property
- Commitment of offense indicating lack of business integrity

Additional Grounds for Debarment: Commits Serious Contract Violation:

- Failure to perform terms of contract
- Unsatisfactorily perform terms of contract
- Failure to pay subcontractors
- Willful failure to implement MBE, WBE and LSDBE goals



Debarment and Suspension (cont.)

Grounds for Suspension:

- Fraud or crime related to public contract
- Indictment for any grounds for debarment
- Placement on debarment list of any public body
- Consideration for debarment by DC Water
- Undertake activity affecting present responsibility of DC Water Contractor/Vendor



Investigative Procedures for Debarment and Suspension (Applicable to Non-Davis Bacon/Copeland Act Claims)

- Contractor/Vendor given written notice that debarment/suspension proposed
- Contractor/Vendor given reasonable opportunity to be heard
- Contractor/Vendor given notice by certified mail when debarment/suspension imposed
- DC Water held to evidentiary standard used in civil court



Current Investigative Procedures Fundamentally Sound-Procedures Can Be Enhanced (Non-Davis Bacon/Copeland Act Claims)

Establish time period for notifications

Pros - Creates clarity and supports equal treatment

Cons - Contractor could argue that time period not followed

Establish process and time period for Contractor/Vendor to be heard

Pros – Clarifies who will hear argument; sets out time period; adopts evidentiary standard; establishes appeal process; and supports equal treatment

Cons – May require additional staff or staff time

– Contractor could argue that process and time period not followed



Current Investigative Procedures Fundamentally Sound-Procedures Can Be Enhanced (Applicable to Non-Davis Bacon/Copeland Act Claims) cont.

DC Water not currently precluded from requiring Contractor/Vendor to swear under oath or have deposition taken under oath; such requirements should be affirmatively stated in Procurement Manual

Pros – False statements evidence as “bad actor” for future contract award considerations

Cons – May create additional costs



DAVIS BACON/COPELAND ACT REQUIREMENTS FOR INVESTIGATIONS

- Investigatory requirements established by the Department of Labor
- Claimants have three years after close of project to file a claim
- DC Water must respond to wage/hour claims within 60 days
- NLRB undertakes investigation for intimidation/retaliation claims
- DC Water responds to NLRB as requested



DC Water's Experience with Debarment and Suspension

- DC Water suspended Contractor in 2003
- Contractor suspended for conviction of conspiracy to bribe and consideration for debarment by DC Water
- No other known instances of DC Water utilizing debarment/suspension processes



TERMINATION for CAUSE/CONVENIENCE

Grant of Authority: DC Water Procurement Regulations mandate Termination for Cause/Convenience clauses be placed in DC Water contracts

Grounds for Termination for Cause/Default:

- Failure to deliver goods or perform services
- Failure to satisfactorily perform term (s) of contract
- Failure to progress so that completion of contract jeopardized



TERMINATION for CAUSE/CONVENIENCE (cont.)

Grounds for Termination for Convenience:

- Termination determined to be in DC Water's best interest

Limitations to use of Termination for Convenience:

- "Exercise of termination for convenience cannot be done in bad faith"
- "Aggrieved bidder must show there is no rational basis for termination"
- "Contract Officers have wide but not unbridled discretion"



DAVIS BACON ACT/COPELAND ACT REQUIREMENTS

Grant of Authority: Department of Labor (DOL) has determined that DC Water contracts are subject to the Davis Bacon/Copeland Act requirements

Davis Bacon Compliance Process Established by the DOL:

- DC Water contacts DOL upon receipt of Complaint
- DC Water responsible for review/documentation gathering/payroll examination/on –site interviews
- DC Water makes determination of compliance
- DC Water confirms findings with DOL
- DC Water informs Contractor of findings and details steps to eliminate violations
- Serious violations may result in debarment



Copeland Act:

- Copeland Act is part of Davis Bacon Act
- Investigations undertaken by the National Labor Relations Board (NLRB)
- NLRB may request documentation from DC Water



“Old” and “New” DC Water construction contract documents requirements related to Davis Bacon/Copeland Act

“Old” Documents: pre- 2012; known as “red book”:

- Labor provisions of “red book” require compliance with the Davis Bacon/Copeland Act
- Recent “red book” special provisions reference applicable wage decisions/wage rates

“New” Documents: 2012 and after

- Davis Bacon requirements addressed in Instructions to Bidders
- Copeland requirements stated in two provisions of all construction contracts
- Requires Contractors to stipulate familiar with all laws affecting cost, progress and performance of contract work



LOWEST RESPONSIVE RESPONSIBLE BIDDER AND DEBARMENT/SUSPENSION/TERMINATION

LOWEST RESPONSIVE RESPONSIBLE BIDDER

1. DC Water does not define the term “Lowest Responsive Responsible Bidder”
2. DC Water’s definition for Successful Bidder is “lowest responsible bidder who is qualified and responsive to whom DC Water makes an award”
3. When determining “Lowest Responsive Responsible Bidder” DC Water considers:
 - Responsibility exhibited by Contractor/Vendor through past performance and fiscal stability
 - Responsiveness of Contractor/Vendor in supplying all requested material for bid
 - Cost

LOWEST RESPONSIBLE BIDDER AND DEBARMENT/SUSPENSION/TERMINATION

Lowest Responsible Bidder not exempt from
debarment/suspension/termination



SUGGESTED ADDITIONS TO PROCUREMENT MANUAL

Add a new ground for debarment and suspension

“Intimidation and/or retaliation against employees for any reason including, but not limited to the expression of interest in forming a union”

Add definition for “Lowest Responsive Responsible Bidder”