



**DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY**

Board of Directors

Governance Committee

July 10, 2013

9:00 a.m.

- 1. Call to Order..... Chairperson
- 2. *Efficacy and Cost Savings Associated with the Use of "Board Books"*..... Linda Manley,
Secretary to the Board
- 3. *Government Affairs: Update*.....William Pickering, Government Relations Manager
 - Federal
Federal Issues and Legislation
 - FY 14 Appropriations Update
 - District of Columbia
District Issues and Legislation
 - DC Water Community Benefits Act of 2013
- 4. *Legality of a Local Hiring Preference Program*Randy Hayman, General Counsel
- 5. *Update on the Workforce Development Program*..... .Katrina Wiggins, Chief of Staff
- 6. Board of Director Approval of Contract Modifications, Contract Option Years and Delegation of Contracting Authority.....George S. Hawkins, General Manager
- 7. *Update on the Compliance Monitoring Program*..... Loretta Caldwell, LS Caldwell & Associates
- 8. Corinthian Contractors, Inc. Compliance Update
 - A. Update on Complaints Filed with the NLRB.....Randy Hayman, General Counsel
 - B. *Review of Corinthian Contractors Prevailing Wage and Fringe Benefit Compliance*
Korey Gray, Contract Compliance Officer

9. [Enhancements to the Debarment /Suspension Provisions of the Procurement Manual](#)
Randy E. Hayman, General Counsel
10. Emerging Issues Chairperson
11. Agenda for Upcoming Committee Meeting (TBD).....Chairperson
12. Executive Session – To discuss legal, confidential and privileged matters pursuant to Section 2-575 (b) (4) of the D.C. Official Code
13. Adjournment.....Chairperson



BOARDBOOK ASSESSMENT SURVEY RESULTS

The purpose of this survey is to determine whether board members are reaping benefits from the use of the Diligence Boardbooks portal and the improvements that will make the experience more efficient and effective. Surveys were sent out to all board members. Of a total of 20 board members, 11 or 55 percent responded.

The results of the survey clearly indicate that the Board members have accepted the use of the boardbook portal system and adjusted to this new technology at DC Water. The primary goal for the purchase and utilization of the system was to improve the accessibility of tremendous amounts of documents which are essential in making decisions concerning the operation of D.C. Water. Other goals included reducing the costs associated with the physical production and distribution of materials and freeing up the staff of the Office of the Secretary to focus on the quality of the board materials and meeting other needs of board members. The following presents some overall survey views of important aspects of the Boardbooks experience by the 11 board members who responded to the survey:

- 70 percent, or 7 members, responded that the boardbooks mostly or completely meet their needs and expectations
- 30 percent, or 3 members felt their needs and expectations are only slightly or satisfactorily met.
- 82 percent or 9 members, rated their overall experience as good and excellent.
- 18 percent or 2 members, responded that their overall experience was fair.
- 90 percent or 9 members felt Diligent Account Management and Support were good or excellent.
- 10 percent or 1 member, believe Diligent performs only at a fair level.
- 18 percent or 2 members felt that they would benefit from additional training.
- 82 percent believe they do not need additional training.

What most survey respondents liked most about Diligent Boardbooks was the ease of use and the accessibility of information, both historical and current, at work, at home and on iPads, etc.

Some board members would like to utilize the notes capability of the Boardbooks in a confidential manner. Further discussion of this issue with Diligent and the appropriate D.C. Water staff will occur with the aim of identifying methods to meet the members' needs, while keeping in mind the former General Counsel's opinion that all notes are part of the public record.

Special efforts will be made to assess all aspects of the current board computers, the D.C. Water network, and the Boardbook software in order to avoid the inconvenience and frustration which occurs during meetings when the system and computers fail. The weaknesses will be determined and recommendations made to fully address the issue.

The Office of the Secretary will continue to work closely with Diligent to address issues raised by board members that can most likely be resolved through targeted training. Survey comments included scrolling up and down, viewing full pages, and note taking.

Cost Analysis

As expected, the cost of producing, assembling, and distributing boardbooks has decreased significantly. This cost analysis looks at three major categories of expenditures--reproduction costs, boardbook deliveries by courier, and office supplies and equipment. For 2008, \$54,507 (108,769 copies) was spent on copying board materials for the monthly board meetings and committee meetings. The monthly range was from \$549 in August 2008 during summer recess, to \$14,659 in July. July is always a very heavy activity month because everyone is responding to critical needs prior to the August summer recess. These figures do not include the cost of copying on the machine located in the Office of the Secretary. In addition to reproduction costs, paper boardbooks were delivered by messenger to all board members at a cost of approximately \$700 per month or \$7,700 annually. In addition to the monthly board meeting books, committee packages were also delivered by hand, at an annual estimated cost of \$16,500. Total estimated cost annually was \$24,200 for delivery of paper boardbooks. Other costs included supplies and equipment for the assembly of the boardbooks--copy paper for Office of the Secretary's copier, toner, envelopes, boxes, tape, labels, index sheets, and numerous items, estimated annually at \$10,000.

Labor costs must be factored in for two budgeted positions in the Office of the Secretary. A substantial length of time was spent by staff assembling the tremendous amount of paper in boardbooks. Overtime costs were not significant due to an efficient management of time during the workday.

In the summer of 2010 the Diligent Boardbooks portal system was installed and implemented. After initial costs, the annual subscription fee is \$34,106.00 which includes training of board members and staff, as needed, and provision of management and support services.

The following table represents estimated costs for 2008 and 2012 of specified expenditures and when compared, estimates an annual savings of \$40,165:

Estimated Annual Expenditures	2008	2012	Differences	
Courier Delivery	\$ 24,200	\$ 4,400	-\$ 19,800	
Reproduction	54,507	3,036	- 51,471	
Supplies and Equipment	10,000	7,000	- 3,000	
Diligent Subscription Fee		34,106	+ 34,106	
Totals	\$ 88,707	\$ 48,542	-\$ 40,165	Savings

Research on the benefits of Boardbooks showed that some companies saved from \$25,000 (Wairarapa District Health Board in New Zealand) to \$764,000 (First Rand Bank in Africa) depending on their size and activity.

Along with cost savings, the many benefits derived by board members, especially accessibility of current and historical data, justify the continued utilization of Diligent Boardbooks and the future utilization of more features. D.C. Water is considered to be forward thinking and the use of the latest technology tools help to enforce that perception. In addition, Boardbooks provides an opportunity for the Board of Directors to contribute to this D.C. Water's efforts to minimize its carbon footprint and continue to be environmentally responsible by reducing paper usage.

DILIGENT BOARDBOOKS ASSESSMENT SURVEY RESULTS

Question 1	1 Not At All	2 Slightly	3 Satisfactory	4 Mostly	5 Completely
How well do Boardbooks meet your needs and expectations?	0	2	1	6	1
Question 2	Very Poor	Fair	Good	Excellent	
How would you rate your overall experience with Boardbooks?	0	2	8	1	
Question 3	1 Not At All	2 Fair	3 Good	4 Excellent	
How responsive to your needs is Diligent Account Management and Support?	0	1	6	3	
Question 4	Only During Meetings	Once or Twice Prior to Meetings	Numerous Times		
How often do you use Boardbooks?	3	5	3		
Question 5	Yes	No			
Would you benefit from additional training opportunities on the use of Boardbooks?	2	9			
Question 6	1 Not At All	2 Slightly	3 Satisfactory	4 Mostly	5 Definitely
With continuous accessibility of Board and D. C. Boardbooks facilitated more understanding of issues and better decision making?	1	1	2	4	3

Question 7	1 Not At All	2 Slightly	3 Satisfactory	4 Mostly	5 Definitely
When attendance at Board meetings is impossible, does Boardbooks keep you more up-to-date on Board business?	1	0	3	3	4
Question 8	1 Not At All	2 Slightly	3 Satisfactory	4 Mostly	5 Definitely
Does the green and environmental friendly impact of Boardbooks make a difference in your appreciation of this technology?	1	1	2	3	4
Question 9	1 Never	2 Rarely	3 Occasionally	4 Frequently	
Do you make notes when reviewing Boardbooks prior to meetings?	0	4	1	0	
Question 10	1 Never	2 Rarely	3 Occasionally	4 Frequently	
Do you log on to access your notes during meetings?	9	1			

Open-Ended Questions and Comments

What do you like most about Boardbooks?

- Being able to access historical information
- Ease of information's availability at work, home, or iPad, especially when seeking archived information from past meetings
- Easy access of all materials
- Having electronic information
- Easy to use. Provides lots of information prior to meetings
- All meeting minutes and resources are in one place
- Accessibility of materials

What do you like least about Boardbooks?

- Cannot make confidential notes
- Navigation – having to scroll up and down to see all information on a page
- No training
- Sometimes I prefer to have the paper in front of me. But I realize we save more paper by this electronically
- Page up and down and page turn. Too many keystrokes required.
- On several occasions the system has gone down during a committee or board meeting and unrecoverable

What features would you most like to see added to Boardbooks?

- The ability to scroll through pages in order to be able to see the bottom of one page and the top of the next and/or the ability to see two pages at once, rather than having to click on the arrow to see just one page at a time.
- Thumbnails
- Current list of committees assignments
- A place to specifically categorize board decisions
- Ability to do note taking in the body of the document
- User friendly instruction on how to restore a failed connections

Comments

- Good system
- Mobile access on iPads would allow greater access and functionality
- Diligent is a great resource. But enhancing accuracy and comprehensiveness of information and materials would be great improvements

Legislative Tracking Information for Governance Committee

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

Date prepared: 7/1/2013

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 the Senate. House will begin working on their version this summer.
- <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>

H.R. 2084, the “Partnership to Build America Act”

Summary: This bill introduced by Rep. John Delaney (D-MD) would establish a \$50 billion national infrastructure bank that would provide low interest loans to fund public investments in transportation, energy, communications, and water infrastructure. The bill would incentivize the repatriation of corporate income by allowing companies to invest overseas earnings in the infrastructure bank. Infrastructure bank legislation has stalled in the past several sessions of Congress. This legislation is unlikely to move forward.

- Bill status: Referred to the Committee on Ways and Means and Committee on Transportation and Infrastructure
- <http://www.gpo.gov/fdsys/pkg/BILLS-113hr2084ih/pdf/BILLS-113hr2084ih.pdf>

DC Council Legislation

Fiscal Year 2014 Budget Request Act/Budget Support 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. The Budget Request Act includes \$280,000 that will be granted to DC Water via DDOE for water quality research on emerging contaminants.

- Status: The DC Council approved the FY2014 Budget Request Act on May 22, 2013. The DC Council voted to approve the Budget Support Act on June 26, 2013.
- Budget Request Act: <http://dcclims1.dccouncil.us/images/00001/20130401120149.pdf>
- Budget Support Act: <http://dcclims1.dccouncil.us/images/00001/20130625123258.pdf>

DC Water Community Benefits Act of 2012

Summary: This bill was introduced on June 4, 2013 and is intended to encourage DC Water to adopt local hiring goals consistent with the District’s new First Source requirements. The legislation does not propose legally-binding requirements on DC Water.

- Status: Referred to the Committee on Transportation and Environment. No hearing date has been scheduled.
- <http://dcclims1.dccouncil.us/images/00001/20130606120312.pdf>

Virginia

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

Maryland

No bills of interest at this time.



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MEMORANDUM

To: Randy E. Hayman
Katherine Cahill

From: Robert I. White

Date: July 1, 2013

Subject: Local Hiring Preferences: Environmental Protection Agency (EPA) Grants and Federal Payments in the Congressional Financial Services Appropriations

I. Introduction and Summary.

This memorandum responds to your request for our review of whether (i) EPA grants to DC Water are conditioned on DC Water not using local hiring preferences on the projects to which the grants are applied, and (ii) Congressional appropriations to DC Water are subject to any restrictions on local hiring preferences for the projects funded by those appropriations.

As discussed below, neither EPA grants nor Congressional appropriations limit DC Water's ability to require its contractors to implement local hiring preferences.

II. Discussion

A. Local Hiring Preferences under EPA Funding

EPA has adopted procurement regulations applicable to States and other grantees and subgrantees of EPA funds. When procuring property and services under a grant, a:

State is required to follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. . . Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable [F]ederal law [and] the standards identified in this section.¹

¹ 40 CFR § 31.36, Procurement.

As discussed in Section B, below, there are no Federal statutes or executive orders that bar EPA grantees from adopting local hiring preferences. Therefore, the question becomes whether EPA's own procurement standards prohibit local hiring preferences.

None of the EPA's procurement standards directly address local hiring preferences. However, Section 31.36(c)(2) does require grantees and subgrantees to "conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of proposals or bids, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference." We have therefore considered whether this provision may reasonably be interpreted as prohibiting DC Water from requiring its contractors to implement local hiring preferences for EPA-funded projects. For the following reasons, we have concluded that it does not.

First, Section 31.36(c)(2) is limited to the evaluation of bids or proposals. As we understand it, the local hiring requirement would be a substantive contract term, and not a measure for evaluating bids. Any winning bidder would be required to agree to the inclusion of a local hiring preference in its contract with DC Water. The distinction between bidding procedures and substantive contract requirements has been recognized by the Courts in a leading decision interpreting federal agency procurement regulations.

In *City of Cleveland v. State of Ohio, et al.*,² the US Court of Appeals for the Sixth Circuit was asked to decide whether the Federal Highway Administration (FHWA) had acted properly in withdrawing funding from a grantee. One of the grounds that the FHWA asserted for withdrawing the funding was that the local hiring preference requirement included in the contract with the winning bidder violated a FHWA regulation that required bids to be awarded by competitive bidding. The Court rejected this argument, finding that, "Plainly, this clause deals only with the process of how bids are awarded . . . not the substance of the underlying contracts themselves."³

Consistent with the *Cleveland* decision, as long as the local hiring preference is not used as part of the process for evaluating bids, e.g. a bid that offers a higher percentage of local hires is rated more highly than a bid that offers a lower percentage of local hires, but rather is a substantive contract term that DC Water would require be included in the contract entered into with the winning bidder, the local hiring preference should not be viewed as running afoul of Section 31.36(c)(2).

A second, and equally compelling, reason for finding that Section 31.36(c)(2) does not preclude DC Water from using EPA grants to fund projects with a local hiring preference is that Section 31.36(c)(2) targets *geographical* preferences in the evaluation of bid proposals, not local hiring preferences. Geographical preferences, which are intended to favor local contractors over non-local contractors in the bid evaluation process, are widely recognized as distinct from local

² 508 F.3d 827 (2007) (*City of Cleveland*).

³ 508 F.3d at 840.

hiring preferences, which target individual employees, not contractors.⁴

An EPA employee has recognized the distinction between preferences for hiring local companies and preferences for hiring local employees, specifically with respect to whether Section 31.36(c)(2) should be interpreted as impinging on DC Water's ability to implement local hire preferences. On June 10, 2013, Denise Harris, Acting Branch Chief, Grants & Audit Management Branch, EPA, stated in an email to another EPA employee that:

One grant requirement is 40 CFR 31.36(c)(2) which mandates competition when procuring goods and services and forbids using "local geographical preferences in the evaluation of bids or proposals." I don't think that DC Water's plan would clearly violate this section. They're not suggesting only hiring local companies, but instead mandating that a company, local or otherwise, have a goal of hiring local workers. Our grant regulations are promoting competition. I don't necessarily see the proposed practice as a restraint on competition. Do you?

The genesis of the email was an inquiry from DC Water seeking EPA's guidance as to the existence of any EPA regulations that might inhibit the ability of an EPA grantee to implement local hiring preferences for EPA-funded projects. The email was forwarded to DC Water as from EPA's "attorney".

Ms. Harris' focus on competition concerns is fully consistent with the EPA regulations themselves. Section 31.36(c) is entitled "Competition." Section 31.36(a) provides that "All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 31.36." Section 31.36(a) goes on to provide that:

Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,

⁴ See, e.g., *Enforceability of Local Hire Preference Programs*, National Cooperative Highway Research Program, Legal Research Digest 59 at p. 24 ["In an effort to increase the employment opportunities for in-state businesses, some states and local entities have enacted local preferences in the awarding of contracts. Such preferences give state or local residential bidders or proposers an advantage in the award of public contracts."] (April 2013).

- (vi) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

While the list of possible competitive restrictions does not purport to be exhaustive, all of the enumerated restrictions focus on competition among bidding parties, not on the requirements that the grantee may desire to impose on the winning bidder, such as a local hiring requirement.

Furthermore, if EPA had intended its procurement rules to restrict the use of local hiring preferences, EPA presumably knew how to draft regulations that would accomplish that result. At least one US government agency, the FHWA, has promulgated labor and employment procedures that specifically target local hiring preferences. Thus, the FHWA regulations prohibit procedures or requirements that “will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.”⁵

The Harris email is the opinion of an individual EPA employee, albeit one that holds a management position, and therefore should not be viewed as binding on the agency. However, a strong detrimental reliance argument can be made that DC Water is entitled to rely on the Harris email until such time that EPA adopts a different position. Put another way, if EPA were to decide at some future time that local hiring preferences qualify as a “situation considered to be restrictive of competition,” that determination should be applied to DC Water on a prospective-only basis. It should not be applied retroactively so as to require DC Water to return to EPA any monies already spent by DC Water on projects with a local hiring preference.

B. Local Hiring Preferences under Direct Appropriations Funding.

DC Water is the beneficiary of Congressionally appropriated funds that DC Water may wish to use to support projects for which DC Water desires to require a local hiring preference. For 2012 and 2013, the funds have been included in the Financial Services appropriations bills.⁶ We have reviewed the Appropriations Bills and did not find any restrictions on DC Water’s use of the appropriated funds to support projects that include local hiring preferences.

Absent any specific limitations in the Appropriations Bills themselves, the question becomes whether local hiring preferences are *per se* contrary to federal regulation and law. According to the Court’s opinion in *City of Cleveland, supra*, Congress has not prohibited the imposition of local hiring preferences as a general matter.⁷ Our research has not revealed any precedent to the contrary. Accordingly, there do not appear to be any restrictions on DC Water’s use of Congressionally appropriated funds to support projects that have local hiring preferences.

⁵ 23 CFR § 635.117(b).

⁶ Consolidated Appropriations Act of 2012, Consolidated and Continuing Further Appropriations Act, 2013 (Appropriations Bills).

⁷ 508 F.3d at 850.

C. Other Potential Limitations on DC Water Requiring Local Hiring by DC Water's Contractors.

We discuss above whether DC Water's use of Congressional appropriations or EPA funds to support projects with local hiring preferences is restricted by any Federal statutes or regulations, or by EPA regulations. We conclude that there are no such restrictions. However, as we discuss at length in our May 8, 2013 memorandum to you on Workforce Incentive Programs, certain local hiring preferences have been found to violate the Privilege and Immunities Clause of the U.S. Constitution, which provides that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."⁸

The District's First Source Act, which includes local hiring mandates, is currently being challenged in court on Privilege and Immunities grounds.⁹ Although it is our understanding that DC Water does not view itself as subject to the First Source Act, we explain in the May 8 memorandum that the outcome of the First Source Act case may be instructive as to the likely outcome of any Constitutional challenge to local hiring preference programs implemented by DC Water.

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⁸ US Constitution, Article IV, Section 2.

⁹ See *Metropolitan Washington Chapter, Associated Builders and Contractors, Inc. et al. v. District of Columbia*, Civil Action No. 12-CV-00853 (EGS).

LOCAL HIRE BULLET POINTS

Summary

- Neither EPA grants nor Congressional appropriations limit DC Water's ability to require its contractors to implement local hiring preferences on projects funded by the grants and appropriations.

Local Hiring Preferences under EPA Funding

- There are no Federal statutes or executive orders that bar EPA grantees from adopting local hiring preferences. Therefore, the question becomes whether EPA's own procurement standards prohibit local hiring preferences.
- None of the EPA's procurement standards directly address local hiring preferences.
- One EPA regulation (Section 31.36(c)(2)) does require grantees and subgrantees to "conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of proposals or bids, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference."
- This EPA regulation does not appear to impose restrictions on local hiring programs for two reasons:
 1. First, it is limited to the evaluation of bids or proposals. The local hiring requirement would be a substantive contract term, and not a measure for evaluating bids. As long as the local hiring preference is not used as part of the process for evaluating bids, e.g. a bid that offers a higher percentage of local hires is rated more highly than a bid that offers a lower percentage of local hires, but rather is a substantive contract term that DC Water would require be included in the contract entered into with the winning bidder, the local hiring preference should not be viewed as running afoul of Section 31.36(c)(2).
 2. Second, the regulation targets *geographical* preferences in the evaluation of bid proposals, not local hiring preferences. Geographical preferences are widely recognized as distinct from local hiring preferences, which target individual employees, not contractors. An EPA employee has confirmed the distinction in a June 10, 2013 email to DC Water.
 3. If EPA were to decide at some future time that local hiring preferences do violate the current EPA regulations, that determination should be applied to DC Water on a prospective-only basis. It should not be applied retroactively so as to require DC Water to return to EPA any monies already spent by DC Water on projects with a local hiring preference.

Local Hiring Preferences under Direct Appropriations Funding.

- The 2012 and 2013 Appropriations Bills do not include restrictions on DC Water's use of the appropriated funds to support projects that include local hiring preferences.
- Congress has not prohibited the imposition of local hiring preferences as a general matter.
- Therefore, Congress appears not to have imposed limitations on DC Water's implementation of local hiring preferences for projects supported by Federal funds.

Other Potential Limitations on DC Water Requiring Local Hiring by DC Water's Contractors.

- Certain local hiring preferences have been found to violate the Privilege and Immunities Clause of the U.S. Constitution, which provides that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."
- The District's First Source Act, which includes local hiring mandates, is currently being challenged in court on Privilege and Immunities grounds. When a decision is issued in that case, DC Water intends to review it carefully to determine whether the ruling on that mandatory hiring preference has any application to incentive hiring preferences.



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

WORKFORCE INCENTIVE PROGRAM

“DC Water Works! A Local Hiring Initiative”

Governance Committee
Alethia Nancoo, Chairperson

Wednesday, July 10, 2013
Presented by George S. Hawkins, General Manager



Current Status: Four Legs

- **1: Preference for LSBE Companies: Goods and Services, Construction:**
 - Up to 10 points – bid preference (10 points or 10% of bid amount, capped at \$100,000)
 - Except for federally-funded contracts
 - 5 points for local businesses, 5 points for small businesses

- **2: EPA Fair Share Objective**
 - For Minority and Women-owned companies (M/WBE)
 - 32% MBE & 6% WBE for Construction; and 28% MBE & 4% WBE for Design
 - EPA funded projects (State Revolving Funds)



Current Status

- **3: Preference for Hiring People: First Source**
 - “First Source” preference for hiring DC Residents
 - Covers new hires only
 - All construction, goods and services contracts over \$100,000
 - All contracts over \$500,000 Apprentices
- **4: Communication and Outreach**
 - Regular outreach meetings with local contractors
 - Pro-active mentoring and support for participation in JVs.
 - DC Works Job Center



Performance

- **1: Preference for Companies: LSBE Program**
 - Preference not meaningful
 - Only 2- 3 Contracts during 10-15 years were won based on preference points
 - Often winning bids do not need preference points to be the lowest bidder or proposer

- **2: EPA Fair Share Objective**
 - Successful program: meet or exceeded both construction and design goals of MBE/WBE 32%/6 % and 28%/4%
 - Effective means to provide opportunities for contract work for women and minority owned firms
 - Not geographic based



Performance

- **3: Preference for Hiring: DOES First Source**
 - Not effective hiring source
 - New District First Source Employment Plan is controversial, in litigation, implementation behind schedule
- **4: Communication and Outreach**
 - Effective at encouraging mentoring, M/WBE and local/small business participation
 - Effective at communicating DC Water contracting opportunities
 - Need to improve local resident hiring by contractors



Job Statistics (as of June 2013) *

DC/MD/VA – Local (User Jurisdictions)

	DC	MD	VA	Outside	IMA Jurisdiction	Total
➤ On staff:	236	690	143	3	(782)	1072
➤ Contractor Employees	172	631	357	336	(747)	1496**

(*For Major Projects)

(**includes 55 apprentices)



Local Hiring Program - Complexity/Factors

- **DC/Wholesale Customers Funding** – meaning of “Local”
- **Federal Funding** – concerns with geographic based incentives
- **Cost** –to deliver lowest cost to ratepayers and to encourage local hiring
- **Availability** - of qualified workers
- **DC Water as a Business** – concern about building a program that works within DC Water’s core purpose
- **Sustainable** – support hiring where significant funds come from and where work is undertaken



The Plan: DC Water Works!

- **Principles:**
 - For companies: M/WBE and transparency
 - Continue what works: M/WBE Program
 - Expand what works: expand transparent monitoring of all contracting performance to goods and services
 - For hiring: Communication and Incentives
 - Substantially enhance outreach and communication
 - Pilot new incentive-based approach
 - Pilot apprentice/training module



DC Water Works!

- **Expand Communication and Outreach**
 - DC Water Works Job Center
 - Continue at Blue Plains
 - Open second center at 810 First Street
 - Consider additional co-locations in targeted neighborhoods (not permanent, rotating and regular)
 - Websites: DC Network, DC Water
 - New: Link to contractor positions
 - New: Direct ongoing outreach to 47 resource providers



DC Water Works!....1st Pilot

▪ Workforce Incentive Program (WIP)

- Incentive based on meeting goals for hours worked by DC residents
- Pilot on two existing non-joint use contracts
- DC Water design-bid-build (low bid) contracts
- Incentive payable on reaching goal would be 10% of direct DC resident payroll for prime and subs, with prime eligible for an additional 5% on subs DC based payroll
- Total incentive capped at 1% of total contract payments after workforce development program is initiated
- Hiring goal TBD (Need to review hiring performance on existing small contracts before establishing goal)



The Plan Continued....1st Pilot

Need an estimate of potential cost to DC Water if the pilot were totally successful (i.e. all contractors/subs meet goals)

Suggest the following approach:

- Identify the list of eligible projects (all active water/sewer system non-joint use projects that have substantial amount (>50%) of work remaining)
- For those projects, take 1% of the remaining cost as the potential maximum incentive amount



DC Water Works!....2nd Pilot

- **Training – National Utility Contractors Association (NUCA)**
 - Program could be piloted on two existing contracts
 - NUCA program is a training program designed to provide lasting job skills
 - Involves life skills training, OSHA safety training and on the job training provided by contractors, with DC Water paying all direct payroll costs for DC resident trainee positions for up to 12 months
 - Fully subsidized position
 - One trainee per crew
 - Four individuals, two crews per contract
 - Approximate funding for 1 year = estimated \$ 280,000

12



The Future

- **Decisions**
 - First Source – geographical preference for DC hiring vs. “local”, i.e., suburban hiring preference
 - Local hiring preference points change and high dollar threshold
 - Training to hire – more investment in pipeline for future jobs
 - Expand workforce incentive payments to joint-use projects



Questions and Answers



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



A LOCAL HIRING INITIATIVE

APPENDIX A

DC Water Governance Committee



Highlights of the DC Water Works Interim Employment Program (IEP)

1. The IEP will commence from the date approved by the Board of Directors.
 - a. The goal is to end the Interim Program in one year when the Permanent Employment Program becomes operational.
2. Projects currently operating under the First Source Employment Agreement and apprenticeship requirements will continue to do so.
3. Projects awarded during the IEP will continue to operate those aspects of the Program that are incorporated into the Permanent Employment Program (PEP)



Highlights of the DC Water Works Interim Employment Program

4. The IEP will largely consist of an online employment data collection system, currently used by Major Projects; to be used for all construction and services, for employment analysis and in developing the PEP. It will incorporate data as well as other employment programs.
5. IEP requires trade contractors to operate an Apprenticeship program, approved by a state agency authorized in accordance with US DoL regulations; a copy must be provided to DC Water.
6. The DC Water Works Center will continue to be available as a place for primes/subcontractors to meet and screen potential employees, advertise for upcoming jobs, etc.



Highlights of the DC Water Works Interim Employment Program

7. The IEP will incorporate employment from all User Jurisdictions (District of Columbia, Prince Georges and Montgomery Counties in Maryland, and Fairfax and Loudoun Counties in Virginia).
8. Prime construction and service contractors and construction and service subcontractors will not sign on to the FSEA once the IEP is approved. Instead prime contractors must commit at minimum to:
 - a. Actively soliciting participation from 1st and 2nd tier subcontractors meeting program inclusion thresholds.
 - b. Providing via certified payrolls employee hours.

Highlights of the DC Water Works Interim Employment Program

- c. Monthly reporting of personnel working on the project, regardless of location, providing name, last four digits of SS#, DOB, city, state, zip.
- d. Identifying each project employee's designation as Professional, Management, Labor Apprentice or Labor Journeyman.
- e. Submitting personnel reporting that illustrates on a monthly basis if the company current employees are actively working on the project, a new hire, or terminated from the company.
- f. Flow down contract provisions that ensure 1st and 2nd tier trade or service contractors meeting the program inclusion thresholds are aware of their responsibilities under the Program.



Highlights of the DC Water Works Interim Employment Program

9. Employment program participation and reporting will be required of all prime contractors, 1st and 2nd tier trade and service contractors awarded contracts greater than or equal to \$300,000.
10. Certain types of DC Water contracts will be exempt from inclusion in the employment program:
 - a. Benefits/insurance service contracts
 - b. Financial services contracts
 - c. Legal services contracts
 - d. Small purchases (\$5,000--\$100,000; less than 1 year) or micro purchases (\leq \$5,000; one time purchase)

Highlights of the DC Water Works Interim Employment Program

11. The weekly AON ROCIP reports, which lists contractors by tier level participating in DC Water's liability insurance program on construction contracts, and the Contracting Plan provided by service contractors will be used as a base document to ensure capturing 1st and 2nd tier subcontractors meeting the inclusion threshold.
12. Solicitation documents for services, construction and design build contracts will include the requirement for prime contractors to flow down the employment program to 1st and 2nd tier contractors. Each participating company must designate an individual(s) within its organization who will input data into the electronic data collection system.

Creation of Employment Task Force

2. The EITF met weekly for nearly a three (3) month period, March through May.
3. EITF was responsible for reviewing and contributing to IEP parameters, procedures and processes
4. EITF's mission to provide input into the Interim Employment Program was completed successfully.



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

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

Presented to the:

Governance Committee

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, July 10, 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 Construction 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

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
- Anacostia River Tunnel (ART)

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
Anacostia River Tunnel*	\$ 253,859,999

Bio Solids Management

Main Process Train	\$210,288,101
Final Dewatering Facility 1C	\$ 7,861,989
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 = \$1,008,004,103*

FAIR SHARE OBJECTIVES

Architectural/Engineering 28% MBE/4% WBE

Construction 32% MBE/6% WBE



* Anacostia River Tunnel is mobilizing and has not been included in the Total Value of Major Projects

DC Water Major Projects Subject to Fair Share Objectives

Total Value of Major Projects	\$1,008,004,103
<u>-DC Water Design-Build/GMP Exclusions</u>	<u>(\$140,434,106)</u>
Total Costs Subject to Fair Share Objectives	\$867,569,997

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



DC Water Major Projects Subject to Fair Share Objectives

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

Total Costs Subject to Fair Share Objectives as of June 2013 **\$867,569,997**

	As of March 2013	As of June 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 – 03/13	\$7,960,345	
32% MBE Design Awarded to Date		\$8,807,706
4% WBE Design Costs Planned	\$1,113,831	\$1,112,753
5% WBE Design Awarded – 03/13	\$1,366,707	
5% WBE Design Awarded to Date		\$1,458,569



DC Water Major Projects Subject to Fair Share Objectives

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

Total Costs Subject to Fair Share Objectives as of June 2013 **\$867,569,997**

	As of March 2013	As of June 2013
Construction Costs Subject to Fair Share Objectives	\$780,785,065	\$841,000,695
32% MBE Construction Costs Planned	\$249,851,221	\$269,120,222
28% MBE Construction Awarded—03/13	\$219,083,285	
28% MBE Construction Awarded to Date		\$233,207,389
6% WBE Construction Costs Planned	\$46,847,104	\$50,460,042
5% WBE Construction Awarded—03/13	\$37,111,272	
5% WBE Construction Awarded to Date		\$37,847,545



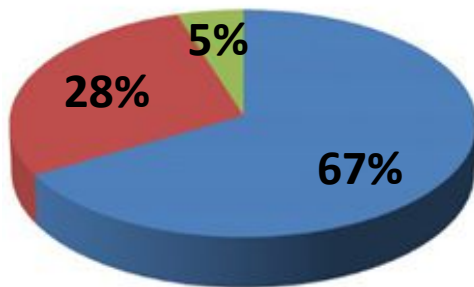
DC Water Major Projects M/WBE Contracting Summary



TOTAL Design M/WBE Subcontracts Awarded to Date

TOTAL DESIGN CONTRACTING MARCH 2013

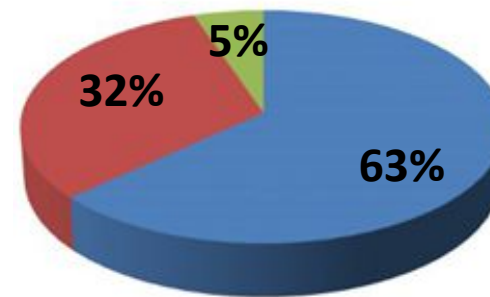
- Total Non-M/WBE:
\$18,518,733
- Total MBE \$ Awarded:
\$7,960,345
- Total WBE \$ Awarded:
\$1,366,707



TOTAL: \$27,845,785

TOTAL DESIGN CONTRACTING JUNE 2013

- Total Non-M/WBE:
\$17,552,563
- Total MBE \$ Awarded:
\$8,807,706
- Total WBE \$ Awarded:
\$1,458,569



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 June 2013
MBE Payments	\$ 6,081,880	\$ 6,494,994
WBE Payments	\$ 731,449	\$ 835,337

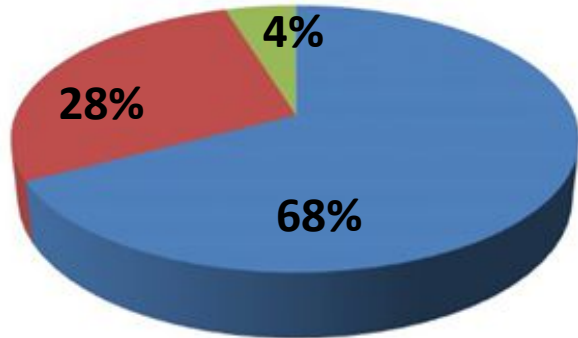


PROJECTS STARTED MAY 2011
DATA COLLECTION BEGAN FEBRUARY 2012

TOTAL Construction M/WBE Subcontracts Awarded to Date

TOTAL CONSTRUCTION CONTRACTING—March 2013

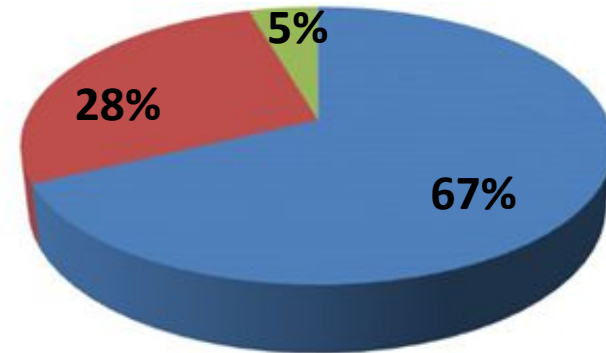
- Total Non-M/WBE: \$524,590,508
- Total MBE \$ Awarded: \$219,083,285
- Total WBE \$ Awarded: \$37,111,272



TOTAL: \$780,785,065

TOTAL CONSTRUCTION CONTRACTING—June 2013

- Total Non-M/WBE: \$569,945,761
- Total MBE \$ Awarded: \$233,207,389
- Total WBE \$ Awarded: \$37,847,545



TOTAL: \$841,000,695



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 Mar 2013	As of June 2013
MBE Payments	\$ 66,285,498	\$ 101,784,558
WBE Payments	\$ 13,415,939	\$ 12,198,993*

*The dollar value of WBE payments decreased due to discoveries of reporting errors.



DC Water Major Projects Employment Summary



Employment Statistics

Total Contractor Employees on Major Projects:

Employee Place of Residence					
As of June 2013 - 1496					
District of Columbia	Prince George's County	Montgomery County	Fairfax County	Loudoun County	Outside of User Jurisdictions
172	307	132	108	28	749
Employee Place of Residence					
As of March 2013 - 1155					
District of Columbia	Prince George's County	Montgomery County	Fairfax County	Loudoun County	Outside of User Jurisdictions
130	192	102	115	24	592

*Information obtained from project inception to date; ongoing updates



PROJECTS STARTED MAY 2011;
DATA COLLECTION BEGAN FEBRUARY 2012

Employment of DC Residents

Total DC Residents on Major Projects:

DC Employee Residents by Ward

As of June 2013 - 172

One	Two	Three	Four	Five	Six	Seven	Eight
19	10	2	20	26	11	38	46

DC Employee Residents by Ward

As of March 2013 - 130

One	Two	Three	Four	Five	Six	Seven	Eight
14	8	2	12	24	7	25	38



* Information obtained from project inception to date; ongoing updates

DC Apprenticeship Statistics

(DC Requirement – 35% DC Resident Hours)

As of June 2013

No. of Apprentices	Total Apprentice Hours	No. of DC Resident Hours	% DC Resident Hours
55*	39,664*	19,438	49.0%

As of March 2013

No. of Apprentices	Total Apprentice Hours	No. of DC Resident Hours	% DC Resident Hours
63	19,520	10,460	53.6%



*MPT revised the number of apprentices and apprentice hours in their latest report

*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	6
AUS	1	LA	3	PA	15
CA	3	MA	4	TN	2
CT	3	MD	192	TX	9
FL	10	MI	4	UT	0
GA	13	MO	49	VA	221
IA	0	NC	93	VT	3
IL	19	NH	3	WA	4
IN	2	NJ	11	WVA	17
KS	25	NY	16	Undetermined	18

*DATA SHOWN ON THIS REFLECTS INFORMATION FROM COMPANIES 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 May 31	
Professional	229
Management	258
Labor	883

***DATA SHOWN ON THIS PAGE REFLECTS INFORMATION FROM COMPANIES THAT RESPONDED TO REQUESTS FOR INFORMATION**



DC Water Works

A Local Hiring Initiative

DC Water Job Center

A local initiative

Job Center Employment Statistics **Snapshot:**

Total Applications Received To Date: 177

Number of Interviews to Date: 47

Number of New Hires to Date: 18

Interviewee Statistics : 27 District of Columbia

5 Fairfax County

9 Prince George's County

6 Other



DC Water Works

A Local Hiring Initiative

Job Center

Applicant/ New Hire Statistics

Applicants – 177

- PG County: 31
- District of Columbia: 124
- Loudoun County: 4
- Fairfax County: 10
- Montgomery County: 7
- Other: 1 (Washington County)

Interviews

- 1st Quarter: 11
- 2nd Quarter to Date: 36

New Hires

- Ulliman Schutte: 12
- PC Construction: 4
- Bulldog Group: 1
- Arcadis: 1

Initiatives

- Database Development
- Contractors “Weekly Bulletin”
- Training Resources Outreach efforts
- Contractors Roundtable Discussions
- Employment Opps Listings
- Open House Events
- US DOJ Employer Re-Entry Program



DC Water Works

A Local Hiring Initiative

Contractor	Type of Position Hired	Resident Location	New Hires Reported
Ulliman Schutte	Laborers	DC – Ward(s) 4(1) 7(3), 8(2), PG(1), Other(2)	8
	Millwright	DC – Ward 7	1
	Bus Driver	DC – Ward 8	1
	Carpenter	Fairfax	1
	Crane Operator	Fairfax	1
PC Construction	Laborers	DC – Ward 8 (3) & Ward 6 (1)	4
Bulldog Group	Class A CDL Driver	DC – Ward 8	1
Arcadis	CCTV Inspector	Texas	1



Job Center Current Employment Opportunities

Employer Name	Contact Information	Job Title
Arcadis	http://www.arcadis-us.com/Job_Openings.aspx	<ul style="list-style-type: none"> Administrative Assistant
Bulldog Distribution Trucking	contact@bulldogdistribution.net	<ul style="list-style-type: none"> Truck Drivers
Chaney Enterprises	Applicants need to access www.ChaneyEnterprises.com	<ul style="list-style-type: none"> Administrative Sales Assistant Concrete Mixer Driver Laborer/Operations
Concrete Technology Solutions	301-794-7500	<ul style="list-style-type: none"> Skilled Laborers
Fort Myer Construction	202-636-9535 x2401	<ul style="list-style-type: none"> Laborers Cement Masons Equipment Operators Truck Drivers
List & Associates, LLC	301-595-3272	<ul style="list-style-type: none"> Concrete Inspector
PC Construction	202-683-6244	<ul style="list-style-type: none"> Welder
Ulliman Schutte Construction, LLC	202-373-1380 or 202-561-4402	<ul style="list-style-type: none"> Certified Crane Operator ASME Certified Pipe Welder AWS Certified Structural Welder



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 Job Center has continues to successfully increase DC and other User Jurisdictional resident new hires.**
- **DC Water Job Center has begun sending weekly job opportunities to twenty seven (27) training resource providers.**



DC Water Major Projects

QUESTIONS AND DISCUSSION



Corinthian Contractors, Inc. (Corinthian) Prevailing Wage and Fringe Benefits Compliance Review



Synopsis of Reviews

Initial complaint received on December 12, 2012

“RE: Corinthian Contractors employees’ complaint of possible wage rate violations”

Four questions that needed to be answered and resolved:

- 1) Is Corinthian Contractors appropriately displaying the prevailing wages and labor rights posters?
- 2) Is Corinthian Contractors properly classifying its workers?
- 3) Is Corinthian Contractors paying its workers the rates stipulated in the payroll reports?
- 4) Is Corinthian Contractors paying its workers the appropriate fringe benefit?

A fifth question:

- 5) Is Corinthian Contractors terminating employees as acts of retaliation?
Was not addressed in the DC Water review (NLRB was investigating).

In response, DC Water began its review on December 13, 2012, which was concluded on February 27, 2013. During this period, DC Water did the following:

- Onsite interviews with Corinthian workers
- Meetings, conference calls with Corinthian management as well as visits to their offices
- Conference calls with representatives of the Fringe Benefit Group
- Timesheet and payroll data review
- Internal meetings
- Meetings with the US Department of Labor investigator (Wage and Hour Division)



Synopsis of Reviews – Proper Classifications

Is Corinthian Contractors appropriately displaying the prevailing wages and labor rights posters?



Signage at Westphalia Location



Signage at Foxley Road Location

Synopsis of Reviews – Proper Classifications

Is Corinthian Contractors appropriately displaying the prevailing wages and labor rights posters?





Synopsis of Reviews – Proper Classifications

Are Corinthian Contractors workers properly classified and getting the proper pay?

Corinthian Contractors organizes its workers into work crews for the project. The classification for the crews is as follows:

Salaried Employees:

- Project Manager
- Site Superintendent
- Foreman

Hourly Employees:

- Operator – Power Equipment Operator

- Sewer Laborer - Laborer Heavy and Highway and Sewer and Water Line Group
- Pipe Layer Laborer – Laborer Heavy and Highway and Sewer and Water Line Group

- General Laborer – Laborer Paving and Incidental Grading

- Truck Driver – Truck Drivers Paving and Incidental Grading



Synopsis of Reviews – Proper Classifications

Is Corinthian Contractors paying its workers the appropriate fringe benefit?

Included in the complaint was the concern that Corinthian workers “**received no fringe benefit contributions throughout their entire employment with the company.**”

“During our employment with Corinthian, we have never received any fringe benefit contributions from our employer. The hourly fringe benefit amount can range from \$5 to \$7 an hour.”

The following are considered fringe benefits for purposes of the Davis-Bacon and Service Contract Acts:

Cash Payments

Life Insurance

Sick Pay

(Employer Contributed) Dental Insurance

Holidays

Paid Vacation

(Employer Contributed) Medical insurance

Retirement Plans

Vision Insurance

Overall, Corinthian workers have received or are receiving benefits through a fringe retirement plan.

- Different from Corinthian’ 401(k) Plan.
- Approximately 30 workers are receiving medical insurance.
- Approximately five (5) workers elected to participate in Corinthian’s 401(k) Plan. For this plan, Corinthian matches 3%.
- The majority are receiving contributions to the Fringe Benefit Retirement Plan.
 - Plan manager is Fringe Benefit Group, based in Austin, TX.
 - Proof was provided demonstrating that Corinthian made quarterly contributions to fund the plan



Synopsis of Reviews – Proper Classifications

Findings

- 1) Corinthian appropriately classified its workers and is paying them according to the prevailing wages.
- 2) Using calendar year 2012 as a test, Corinthian established a bona fide fringe benefit plan.
- 3) Based on the sample pulled, Corinthian is making quarterly contributions to the plan on behalf of the workers.
- 4) Corinthian workers were not properly informed of their classification or pay scale.
- 5) Although appropriate signage is posted, several of the workers interviewed were not aware or clear on their anticipated wage.
- 6) Corinthian workers were not properly informed of how contributions were made concerning their fringe benefits.
- 7) Corinthian workers do not feel comfortable talking with management, and there is a severe lack of understanding and trust.



February 27, 2013 DC Water completed its review of the initial complaint with DOL's concurrence.

You forwarded this message on 3/11/2013 3:49 PM.

From: [REDACTED] @dol.gov] **Sent:** Mon 3/11/2013 2:06 PM
To: Korey R. Gray
Cc:
Subject: RE: Labor Provisions for Corinthian Contractors

Hello Korey,

Thank you for the contract information.

In respect to the union complaint based on your review and your findings it seems Corinthian Contractors is paying the workers appropriately and Corinthian Contractors has appropriately established a fringe retirement program for the workers.

Have a great afternoon!!!

[REDACTED]
Federal Investigator
U.S. Department of Labor
6525 Belcrest Road, Suite 260
Hyattsville, MD 20782
[REDACTED] Phone
[REDACTED] Fax

From: Korey R. Gray [mailto:Korey.Gray@dcwater.com]
Sent: Friday, March 08, 2013 10:17 AM **Picture**
To: [REDACTED] - WHD
Subject: FW: Labor Provisions for Corinthian Contractors

Good morning [REDACTED]

I hope this email finds you well.
I was just checking in to make sure you got the contract documents you requested.

Also, I don't think you ever gave me a final response/guidance concerning the following:

- 1) With respect to the union complaint, Corinthian Contractors is paying its workers appropriately; and
- 2) Corinthian Contractors has appropriately established a fringe retirement program for the affected workers, but needs to do more to inform the workers of the program and how to access it.

Accordingly, please advise.



DOL confirmed that it was alerting the complainant of the review.

From: [REDACTED]@dol.gov]
To: Korey R. Gray
Cc:
Subject: RE: Labor Provisions for Corinthian Contractors

At the end of the investigation we do call the complainant.
Yes you can include in the process that you reached out to us.

Have a great day.

[REDACTED]
Federal Investigator
U.S. Department of Labor
6525 Belcrest Road, Suite 260
Hyattsville, MD 20782
[REDACTED] Phone
[REDACTED] Fax

Picture

From: Korey R. Gray [mailto:Korey.Gray@dcwater.com]
Sent: Wednesday, February 27, 2013 4:10 PM
To: [REDACTED] - WHD
Subject: RE: Labor Provisions for Corinthian Contractors

Thank you for your patience.

Quick question:

Does DOL inform the complainant of the findings of an investigation?
I am working on a best practices for compliance reviews going forward.

Also, can I include in DC Water's process that we reach out to DOL for guidance during a review?



Second Review

Second complaint received on March 5, 2013

“RE: Prevailing Wage Complaints against Corinthian Contractors, Inc.”

Four questions that needed to be answered and resolved:

- 1) Did Corinthian make regular contributions to the workers' fringe benefits?
- 2) How did Corinthian handle fringe benefits prior to 2012?
- 3) Is Corinthian Contractors making appropriate contributions for its truck drivers?
- 4) What efforts are being made by Corinthian Contractors to communicate the fringe benefits program to its workers?

In response, DC Water began its review on March 7, 2013, which was concluded on May 13, 2013. During this period, DC Water did the following:

- Site visits/ interviews with Corinthian workers
- Telephone interviews with Corinthian workers
- Conference calls with representatives of the Fringe Benefit Group and Union Bank representatives
- Group meeting with twelve current and former employees of Corinthian Contractors
- Payroll records review
- Held several internal meetings to review data
- Conference calls with the US Department of Labor investigator



Synopsis of Reviews – Proper Fringe Benefit Contributions

Did Corinthian make regular contributions to the workers fringe benefits?

“Those statements showed that, despite the fact that workers have been working for almost two years on DC Water jobs where a fringe contribution is required, Corinthian Contractors failed to make any contributions to the 401(k) plan until February 2013.”

“Those statements revealed that, while as of January 1, 2013 our accounts did not contain any contributions, as of February 21, 2013, the accounts contained almost a year’s worth of contributions.”



CORINTHIAN CONTRACTORS INC.
The Contractors Retirement Plan

Retirement Plan Account Statement From 1/01/13 to 2/2/13

Retirement Plan Account Statement
From 1/01/13 to 2/2/13
Social Security Number: ***-**-4434
Date Of Birth: 1/01/1974
Date Of Hire: 7/11/2011
Date Of Termination:

Please review your account and report any errors to the Recordkeeper within 30 days.

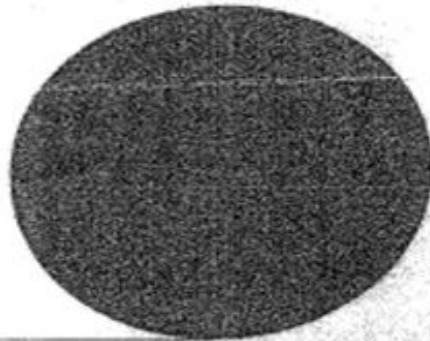
Beginning Balance: \$0.00
Change This Period: \$11,558.85
Ending Balance: \$11,558.85

YOUR ACCOUNT BALANCE

Beginning Balance	0.00
Change This Period	11,558.85
Ending Balance	11,558.85
Vested Balance	11,558.85

For account or investment information please call (800) 933-3863 or email Webster@contractorsplan.com. You may also view your account online at www.contractorsplan.com.

Funds



M & N Retirement Target 2030 Fund Instl	100.0%
Total	100.0%

N Retirement Target 2030 Fund Instl

Gains or Loss: \$199.08

ACTIVITY THIS PERIOD

	BY INVESTMENT					
ACCOUNT	Beginning Balance	Contributions & Forfeitures	Withdrawals	Payments & Transfers	Gain or Loss	Funds Balance
Retirement Target 2030 Fund Instl	0.00	11,559.77	0.00	0.00	199.08	11,558.85
Net	0.00	11,559.77	0.00	0.00	199.08	11,558.85

Fringe Benefit Group Account Statement for Mr. AG



Synopsis of Reviews – Proper Fringe Benefit Contributions

The statements provided indicate the worker'(s) “vested balance”. Not the actual amount contributed into each person’s account.

Mr. AG Transaction History 2012

[Transaction History]

Transaction History

CORINTHIAN CONTRACTORS INC. RETIREMENT PLAN

Investment:

Source:

Transactions to display:

Show account history from: To date:

Transaction status:

Only display records with redemption fees

1-5 of 5

Details	12/31/2012	Contribution of \$2,718.05
Details	09/30/2012	Contribution of \$2,882.77
Details	09/30/2012	Contribution of \$65.67
Details	06/30/2012	Contribution of \$2,120.45
Details	03/31/2012	Contribution of \$3,122.03



Synopsis of Reviews – Proper Fringe Benefit Contributions

Mr. DL Transaction History 2012

[Transaction History]

Transaction History
CORINTHIAN CONTRACTORS INC. RETIREMENT PLAN

Investment:	All	Source:	All
Transactions to display:	All	Show account history from:	01/01/2012 To date: 12/31/2012
Transaction status:	All		

Only display records with redemption fees

Submit

1-4 of 4

Details	12/31/2012	Contribution of \$2,659.13
Details	09/30/2012	Contribution of \$3,173.35
Details	08/30/2012	Contribution of \$3,016.50
Details	03/31/2012	Contribution of \$3,370.25



Synopsis of Reviews – Proper Fringe Benefit Contributions

Mr. EQ Transaction History 2012 (terminated in 2012)

[Transaction History]

Transaction History CORINTHIAN CONTRACTORS INC. RETIREMENT PLAN

Investment: All Source: All

Transactions to display: All Show account history from: 01/01/2012 To date: 12/31/2012

Transaction status: All

Only display records with redemption fees

Submit

1-3 of 3

Details	09/30/2012	Contribution of \$3,025.54
Details	08/30/2012	Contribution of \$3,575.78
Details	03/31/2012	Contribution of \$4,111.61



Synopsis of Reviews – Proper Fringe Benefit Contributions

How did Corinthian handle fringe benefits prior to 2012?

Corinthian Contractors opened the fringe benefit account in January 2012.

- Prior to 2012, Corinthian Contractors opened an account and set aside funds for the workers' retirement with Union Bank.
- Corinthian maintained a ledger of deposits to the account for all applicable employees working on DC Water projects since 2008.
- Between 2008 and 2011, Corinthian made 647 fringe benefit contributions ~ \$800k.
- Although Corinthian made monthly contributions to the account, this account does not meet the standards of a bona fide fringe benefit account.
- The account was no longer used as of December 2011.
 - Corinthian did not roll the funds over from this account to the Fringe Benefit Accounts.

Synopsis of Reviews – Proper Fringe Benefit Contributions

Is Corinthian Contractors making appropriate contributions for its truck drivers?

From: [REDACTED]@dol.gov Sent: Fri 3/29/2013 11:35
 To: Corey R. Gray
 Cc:
 Subject: Truck drivers

15e22 Truck drivers.
 The application of Davis Bacon to truck drivers is based on the definition of “construction, prosecution, completion, or repair” in 29 § CFR 5.2(l) (*see* FOH 15b05). Three U.S. appellate court decisions in the 1990’s helped to clarify these definitions and provide the guidelines below. (65 FR 80268-80278, Dec 20, 2000)

(a) Truck Drivers are covered by Davis-Bacon in the following circumstances:

- (1) Drivers of a contractor or subcontractor for time spent working on the site of the work.
- (2) Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work, if such time is not *de minimis*. *See* FOH 15e22(b)(3).
- (3) Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site.
- (4) Truck drivers transporting portions(s) of the building or work between a site established specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the physical place(s) where the building or work called for in the contract(s) will remain.

(b) Truck drivers are not covered in the following instances:

- (1) Material delivery truck drivers while off “the site of the work.” Rev. 660 FIELD OPERATIONS HANDBOOK – 10/25/2010 15e22 – 15e24
- (2) Drivers of a contractor or subcontractor traveling between a Davis-Bacon job and a commercial supply facility while they are off the “site of the work.”

(3) Truck drivers whose time spent on the site of the work is *de minimis*, such as only a few minutes at a time merely to pick up or drop off materials or supplies

Hope this helps.
 [REDACTED]
 Federal Investigator
 U.S. Department of Labor



Synopsis of Reviews – Proper Fringe Benefit Contributions

Findings – Second review completed on May 23, 2013 (DOL Concurrence given on June 3, 2013)

- Corinthian Contractors is making quarterly contributions to the applicable workers' fringe benefit accounts.
 - 194 workers received contributions to the fringe benefit retirement program
 - 5 workers received a 3% match towards the firm's 401K Plan
- Corinthian Contractors' truck drivers are not entitled to fringe benefit contributions.
 - If the truck driver performs other "labor", then the worker is to be classified as such for that time and paid the appropriate prevailing wage and fringe benefit.
- The appropriate amount of deductions were taken out of the worker's gross pay.
- Corinthian Contractors made contributions to an account on behalf of its applicable workers prior to 2012
 - Workers did not have independent access to the account, nor were they aware of its existence.
- There were some calculation errors in the 2012 fringe benefit contributions:
 - Under contributions of \$78,000.00
 - Most egregious errors were for individual under contributions of \$11,000, \$10,900, and \$10,700.
 - Over contributions of \$30,000.00



Synopsis of Reviews – Proper Fringe Benefit Contributions

Corrective Actions

- Although Corinthian properly classified its workers, more needs to be done to educate the workers as to their classification and rationale for such classifications. Education should be done through meetings, “toolbox talk” written documentation detailing tools used and job function(s), etc.
- Due to the high number of Hispanic and Spanish speaking workers, Corinthian should post wages and posters in Spanish and English.
- Wage classifications on a given project should be highlighted so they are easily identified by the workers. Also, copies of wages and posters are to be kept inside the superintendent or foreman’s vehicles. Superintendents and management must also be well educated on all aspects of prevailing wages so they can respond effectively to questions raised by the workers.
- Corinthian must take proactive steps to ensure workers are receiving regular statements concerning their fringe benefits, and have online access to their fringe benefit accounts with FBG (as applicable). Workers’ paystubs must also provide information on the fringe benefit contribution.
- With regards to the 2008 – 2011 fringe contributions, Corinthian should close out the Union Bank account and re-distribute the fringe contributions to its former and current workers.
- For those workers who did not receive their full fringe benefits for 2012, Corinthian is to make the necessary contributions on their behalf. Further, Corinthian needs to review their overall process to ensure that such errors are not made in the future.



DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY | 5000 OVERLOOK AVENUE, SW | WASHINGTON, DC 20032

MEMORANDUM

To: Governance Committee Members

From: Randy Hayman, General Counsel

Date: July 3, 2013

Re: Executive Summary /Procurement Manual Revisions

DC Water’s Governance Committee directed the Office of the General Counsel (OGC) to make certain revisions to DC Water’s Procurement Manual regarding its debarment and suspension provisions. When reviewing this matter the OGC examined the Debarment and Suspension regulations of the District of Columbia and the user jurisdictions. The OGC’s recommendations are summarized as follows:

Chapter 26. Debarment and Suspension

Debarment

1. The introductory sentence to “Causes for Debarment” is amended to add administrative hearing findings. This sentence will read as follows:

A contractor may be debarred for a conviction of, a civil judgment for, or an administrative hearing finding of ...

2. An additional cause for debarment is added which disallows intimidation and retaliation against employees. This enumerated cause includes the intimidation of, or retaliation against any employee who expresses or shows an interest in asserting any right or entitlement.

3. The notice provision is enhanced to include written notice by certified mail stating the basis for initiation of debarment proceedings, timeframe for response and the potential effect of the proposed debarment.

4. The notice provision is further enhanced by the addition of a new section to allow the contractor an opportunity to be heard. The Office of the General Counsel is recommending the inclusion of an administrative hearing process and is currently seeking the input of the operational departments which shall be utilizing this process.

5. A further section is added which outlines the hearing process, the issuance of proposed and final orders and the right to appeal.

Suspension

1. The second enumerated cause for suspension is amended to add a reference to administrative hearing findings. This enumerated cause will read as follows:

Indictment for any of the causes stated in the section above on “Causes for Debarment” including when a cause results from an administrative hearing finding.

2. An additional cause for suspension is added which disallows intimidation or retaliation against employees. This enumerated cause includes the intimidation of, or retaliation against an employee who expresses or shows an interest in asserting any right or entitlement.

3. The notice provision is enhanced to include written notice by certified mail stating the basis for initiation of suspension proceedings, timeframe for submitting a response, and the potential effect of the proposed suspension.

4. The notice provision is further enhanced by the addition of a new section to allow the contractor an opportunity to be heard. The Office of the General Counsel is recommending the inclusion of an administrative hearing process and is currently seeking the input of the operational departments which shall be utilizing this process.

5. A further section is added which outlines the hearing process, the issuance of proposed and final orders and the right to appeal.