



**DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY**

Board of Directors

Governance Committee

January 9, 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
 - District of Columbia
 - District Issues and Legislation
 - District of Columbia Council Water Quality Legislation
 - District of Columbia Council Proposed Legislation related to the Recent Flooding in the Bloomingdale and LeDroit Park Neighborhoods
 - Status of Execution of IMA
- 3. **Oversight of Fair Employment Practices of Contractors** Kory Gray, Procurement Department
- 4. **District’s New First Source Agreement Comparison with Existing Agreement** ...Loretta Caldwell
LS Caldwell & Associates
- 5. Status of Strategic Plan Initiative “Develop Local Hiring Initiative for Contractors”, George S. Hawkins
General Manager
- 6. Emerging Issues Chairperson
 - DC Compliance Monitoring and Reporting – Clarification**Len Benson
- 7. Agenda for Upcoming Committee Meeting (TBD)..... Chairperson
- 8. Adjournment.....Chairperson
- Committee’s Visit to Onsite Employment Trailer...Gus Bass, Manager, Program Services
Dept of Engineering and Technical Services



DC Water and Sewer Authority

US Department of Labor Prevailing Wage Compliance Overview





DC Water Prevailing Wage Compliance Overview

Three “Types” of Prevailing Wages

Davis Bacon Prevailing Wages

Construction

- Applies to contractors and subcontractors performing on contracts in excess of \$2,000.
- Contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. (Rate is set by the US Department of Labor).

McNamara O’Hara Service Contract Act Prevailing Wages

Goods and Services

- Contractors and subcontractors performing services on prime contracts in excess of \$2,500 to pay service employees prevailing wages.
- Consistent with the wage rates and fringe benefits found prevailing in Washington DC statistical area; or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. (Rate is set by the US Department of Labor).

Walsh Haley Public Contract Acts Prevailing Wages

Manufacturing

- Establishes minimum wage, maximum hours, and safety and health standards for work on contracts in excess of \$10,000 for the manufacturing or furnishing of materials, supplies, articles, or equipment.



DC Water Prevailing Wage Compliance Overview

General Prime Contractor Requirements

Prime Contractor is responsible for the full compliance of all contractors with labor standard provisions applicable to the project. This includes:

- Payment of the locally prevailing wage rate and fringe benefits.
 - The wage determination incorporated into a bid solicitation and related contract award establishes the minimum wage rates and fringe benefits which must be paid for the entire term of the contract.
 - Fringe Benefits can be paid in cash or as an actual benefit (health, dental, retirement, etc). Discretion is given to the employer.
- Posting of applicable prevailing wage rates.
 - Every employer performing work covered by the labor standards of the DBRA must post the WH-1321 “Employee Rights Under the Davis-Bacon Act” at the work site in a conspicuous place for the workers. The wage determination must be similarly posted.
- Correct classification of workers.
- Workers paid weekly
- Submission of certified payrolls to DC Water – Using Standard Form, “WH-347” or similar approved form (Prime and Subs).



DC Water Prevailing Wage Compliance Overview

DC Water Prevailing Wage Compliance Oversight Procedures

Joint Effort

- Department of Procurement
- Department of Engineering and Technical Services (DETS)

Pre-Award

- Determination of appropriate prevailing wage at solicitation initiation
- Inclusion of prevailing wage scale in solicitation language
- Pre-bid/ Pre-proposal Meetings

Post-Award

- Kickoff Meetings
- Certified Payroll Report Review
- Site Visits and Onsite Interviews
- Random Desk Audits and Sample Testing (pay stubs, employee files, etc)
- Semi-Annual survey to Site Superintendents



DC Water Prevailing Wage Compliance Overview

Record Retention

Full documentation of labor standards administration and enforcement.

- Files maintained for five (5) years after completion of project (industry standard is three (3) years).
- Files include:
 - Labor wage rate decisions
 - Certified payrolls
 - Photos taken and results of site visits
 - Results of any special compliance reviews
- Payroll Reports logged into compliance database(s)



DC Water Prevailing Wage Compliance Overview

Compliance Issues

Types of Infractions

- Signage not posted or not posted in conspicuous place (most common)
- Signage posted, but rates and worker rights still not effectively communicated to workers (very common)
- Discrepancies in wage computations
- Extraordinary Deductions
- Fringe Benefits not paid to workers
- Gross wages do not evenly compute
- Kickbacks or Basic Underpayments
- Misclassification of employees
- Too few or irregular hours
- Workers paid below prevailing rate(s)
- Work hours reduced to fit fabricated calculation



DC Water Prevailing Wage Compliance Overview

Compliance Issues

Infraction Remediation

Minor discrepancies may involve one or more of the following:

- Memo to file
- Formal correspondence may not be required; corrections tracked and noted
- Increased Number of site visits

Serious and Willful Violations may involve one or more of the following:

- Formal Letter/Citation
- General Counsel Involvement
- Complaint sent to US DOL
- Wage restitution
- Contract Payment Withholding
- Potential debarment from further participation
- Increased Number of Site Visits
- Increased Number of desk audits

Falsification of report can result in debarment from future contracts and criminal penalties.



DC Water Prevailing Wage Compliance Overview

Addendums

- Definitions
- Sample DOL Poster
- Sample WH-347
- Certified Payroll Report Review Process Details
- Site Visit/ Onsite Interview Process Details



DC Water Prevailing Wage Compliance Overview

Addendum 1

Definitions

Deductions – Legally permissible deductions

Fringe Benefits – Health Insurance Premiums, Retirement, Life Insurance, Vacation, and Other Paid Leave

Laborer, Mechanic, etc – collectively refers to any worker performing physical labor on the project

oExclusions: Administrative, Clerical

oApprentices and Trainees – workers on the project. Can be paid less than prevailing wages if registered with an approved program

Overtime – Time and one half for excess of 40 hours worked each week

Prevailing Wage - "Prevailing wage" is determined by wage and benefit surveys of the local construction market that are conducted periodically by the Department of Labor. **Prevailing Wages are not Union Rates.** Depending on the local market, resulting prevailing wage rates can be 1) collectively bargained rates, 2) a mix of collectively bargained and non-bargained rates, or 3) a weighted average of wage rates. Only when collectively bargained wage rates are shown to prevail in an area, based on these survey results, will the prevailing wage be the same as the "union scale."

Site of Work – Site where Davis-Bacon wages apply



DC Water Prevailing Wage Compliance Overview

Addendum 1

Definitions Continued.

Prevailing Wage Determination

- A "wage determination" is the listing of wage rates and fringe benefit rates for each classification of laborers and mechanics which the US DOL Administrator of the Wage and Hour Division has determined to be prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential).
- The wages listed are the minimum wages (and fringes) that must be paid on the particular project.
- The wages are "locked" and the minimum paid is non-negotiable.
- **Prevailing Wages are not Union Rates.** Depending on the local market, resulting prevailing wage rates can be 1) collectively bargained rates, 2) a mix of collectively bargained and non-bargained rates, or 3) a weighted average of wage rates. Only when collectively bargained wage rates are shown to prevail in an area, based on these survey results, will the prevailing wage be the same as the "union scale."



DC Water Prevailing Wage Compliance Overview

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

- PREVAILING WAGES** You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.
- OVERTIME** You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.
- ENFORCEMENT** Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.
- APPRENTICES** Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.
- PROPER PAY** If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:



or contact the U.S. Department of Labor's Wage and Hour Division.

For additional information:

1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV



U.S. Department of Labor
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



Rev. Dec. 2008

OMB No.: 1215-0149
Expires: 12/31/2011

NAME OF CONTRACTOR OR SUBCONTRACTOR ADDRESS _____

PAYROLL NO. _____ FOR WEEK ENDING _____ PROJECT AND LOCATION _____ PROJECT OR CONTRACT NO. _____

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK		
			OT (EST.)	HOURS WORKED EACH DAY									FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS				
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(e). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)



DC Water Prevailing Wage Compliance Overview

Certified Payroll Review

Checklist

- a. Classification of workers (work performed)
- b. Full Name and Address appear on the Payroll Report
- c. Social Security Number
- d. Number of hours worked (Standard, Overtime, Double time)
- e. Rate of Hourly Pay (To be verified against the prevailing wages for classification)
- f. Deductions
- g. Total Net Pay
- h. Explanation of Fringes and how paid
- i. Original signature from an authorized company employee.
- j. If a contractor does not have employees reporting to the project for the reporting week, but has previously reported, the contractor must submit a “no work” report.
- k. Payroll Retention/ Inspection – Each contractor must keep a set of payrolls for 3 years after the project is completed.



DC Water Prevailing Wage Compliance Overview

Site Visits and Onsite Interviews

Systematic spot interviews with the contractor's project employees. Conducted Semi-Annually on most projects/ Quarterly on others. (DOL standard is Semi-Annual).

Purpose:

Ensure proper display of DBA posters and wage rates.

Observe workers in natural setting and confirm that work matches classification(s).

Random interview(s) with workers.

The interviews are used to determine whether the Davis-Bacon wage rate decision and other labor standards provisions of the contract are being fully complied with, and that there is no misclassification of employees.

All answers and statements made by the employees, whether orally or in writing, are treated as confidential. An employee's identity will **NOT be disclosed to the contractor.**

A good cross-section of the contractor's project employees will be selected for interviews. Selection criteria include race, sex, job classification, and age. Minorities, Nonminority, and Females in each trade, job classification, or occupation are interviewed (if possible).



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

Briefing on:

Bill 19-50 - "District of Columbia
Workforce Intermediary Establishment and
Reform of First Source Act of 2011"



Wednesday, January 9, 2013

DCWATER.COM

CHART OF NEW PROGRAM CHANGES

(NOTE: THIS LIST DOES NOT INCLUDE FINAL CHANGES)

No.	OLD PROGRAM	NEW PROGRAM
1	All contractors with contracts of \$100,000 or more	All contractors with contracts of \$300,000 or more
2	51% of all new hires to be District residents	a. 20% of all non construction hours worked shall be performed by District residents; to require that in each government assisted construction project, totaling \$300,000 or more,
3		All construction contracts between \$300,00 and \$5,000,000 1) The Mayor shall include in each government-assisted project or contract that receives government assistance totaling between \$300,000 and \$5,000,000, the provision that at least 51% of the new employees hired to work on the project or contract shall be District residents. Collective bargaining agreements shall not be the basis for a waiver from this requirement.



These are the major changes, please note there are others.

CHART OF NEW PROGRAM CHANGES

(NOTE: THIS LIST DOES NOT INCLUDE FINAL CHANGES)

No.	OLD PROGRAM	NEW PROGRAM
4		<p><i>All construction contracts between \$300,00 and \$5,000,000</i> “(A) Prior to the employment agreement being accepted by the Department of Employment Services, each beneficiary covered by this paragraph shall choose whether the 51% of the new employees hired shall be cumulative of all new hires, including those made by all subcontractors at any tier who work on the project or contract, or whether the 51% of the new employees hired shall be met by each beneficiary covered by this paragraph and each individual subcontractor at any tier who works on the project or contract.</p>
5	35% of all apprenticeship hours to be worked by District residents	<p><i>All construction contracts over five million dollars (\$5ML)</i></p> <ul style="list-style-type: none"> a. At least 20% of journey workers hours by trade shall be performed by District residents, b. At least 60% of apprentice hours by trade shall be performed by District residents, c. At least 51% of the skilled laborer hours by trade shall be performed by District residents, and d. At least 70% of common laborer hours shall be performed by District residents,



These are the major changes, please note there are others.

CHART OF NEW PROGRAM CHANGES

(NOTE: THIS LIST DOES NOT INCLUDE FINAL CHANGES)

No.	OLD PROGRAM	NEW PROGRAM
6	Not previously required.	Require beneficiaries to submit a detailed employment plan that identifies specific details regarding associated jobs and strategies to meet their hiring requirements
7	Single counting of District residents	<p>Allow beneficiaries to <i>double-count</i> hours worked by District residents who are hard to employ;</p> <p><i>(EXCERPT DEFINITION OF HARD TO EMPLOY)</i></p> <p>“(7) “Hard to employ” means a District resident who is confirmed by a District of Columbia government agency as:</p> <p style="padding-left: 40px;">“(A) Ex-offenders who have been released from prison within the last 10 years;</p> <p style="padding-left: 40px;">“(B) Participants of the Temporary Assistance for Needy Families program;</p> <p style="padding-left: 40px;">“(C) Participants of the Supplemental Nutrition Assistance Program;</p>



These are the major changes, please note there are others.

CHART OF NEW PROGRAM CHANGES

(NOTE: THIS LIST DOES NOT INCLUDE FINAL CHANGES)

No.	OLD PROGRAM	NEW PROGRAM
7 Cont'd	Single counting of District residents	<p>“(D) Residents who are living with a permanent disability verified by the Social Security Administration or District vocational rehabilitation program;</p> <p>“(E) Residents who have been unemployed for 6 months or more in the last 12-month period;</p> <p>“(F) Homeless District residents;</p> <p>“(G) Participants in or graduates of the Transitional Employment Program established by section 2102 of the Transitional Employment Program and Apprenticeship Initiative Establishment Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 32-1331); and</p> <p>“(H) Those individuals who qualified for inclusion in the Work Opportunity Tax Credit Program as certified by the Department of Employment Services.</p>
8	Request waiver based on listed factors in the FSEA including outside of Metropolitan statistical area	To require documentation evidencing best efforts to comply with First Source requirements prior to obtaining a waiver from the First Source act.



These are the major changes, please note there are others.

CHART OF NEW PROGRAM CHANGES

(NOTE: THIS LIST DOES NOT INCLUDE FINAL CHANGES)

No.	OLD PROGRAM	NEW PROGRAM
9	Fines were 5% of direct and indirect labor costs of the contract	5% fines kept the same however now also include additional pro-rated fines for not reaching specific hiring requirements.
10	<i>NOTE: I have not seen a copy of these recommendations, however have requested same and will share them upon receipt.</i>	Require the Mayor to implement all of the major recommendations in the D.C. Auditor’s May 6, 2010 Report on Compliance with the First Source Act and the Living Wage Act and apply such to all government assisted projects in the District totaling \$300,000 or more.
11		To modernize First Source recordkeeping, improve controls and procedures, and provide online public access to executed First Source Employment Agreements,
12		The Mayor shall transmit each employment agreement to the Department of Employment Services no less than 7 calendar days in advance of the project or contract start date, whichever is later, and no work associated with the relevant government assistance can begin on a project or contract until the employment agreement has been accepted by the Department of Employment Services."



These are the major changes, please note there are others.

CHART OF NEW PROGRAM CHANGES

(NOTE: THIS LIST DOES NOT INCLUDE FINAL CHANGES)

No.	OLD PROGRAM	NEW PROGRAM
13		Establish a task force to review workforce intermediary programs implemented by the governments of Boston, Minneapolis, San Francisco, and any other similar programs implemented in other cities;
14		Establish a workforce intermediary program which shall engage beneficiaries of proposed government-assisted projects prior to the disbursement of District funds or the disposition of District property and develop an in-depth employment plan,
15		To establish a workforce trust fund in which in kind contributions and monetary fines for willful breach of First Source agreements shall be deposited for the purposes of establishing and operating a District of Columbia workforce intermediary program.
16		To provide online public access to executed First Source employment agreements, current compliance status of each project, and the contact information for the relevant compliance officer



These are the major changes, please note there are others.



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

Briefing on:

**DC Water Compliance Monitoring and Reporting
for Major Projects Construction**

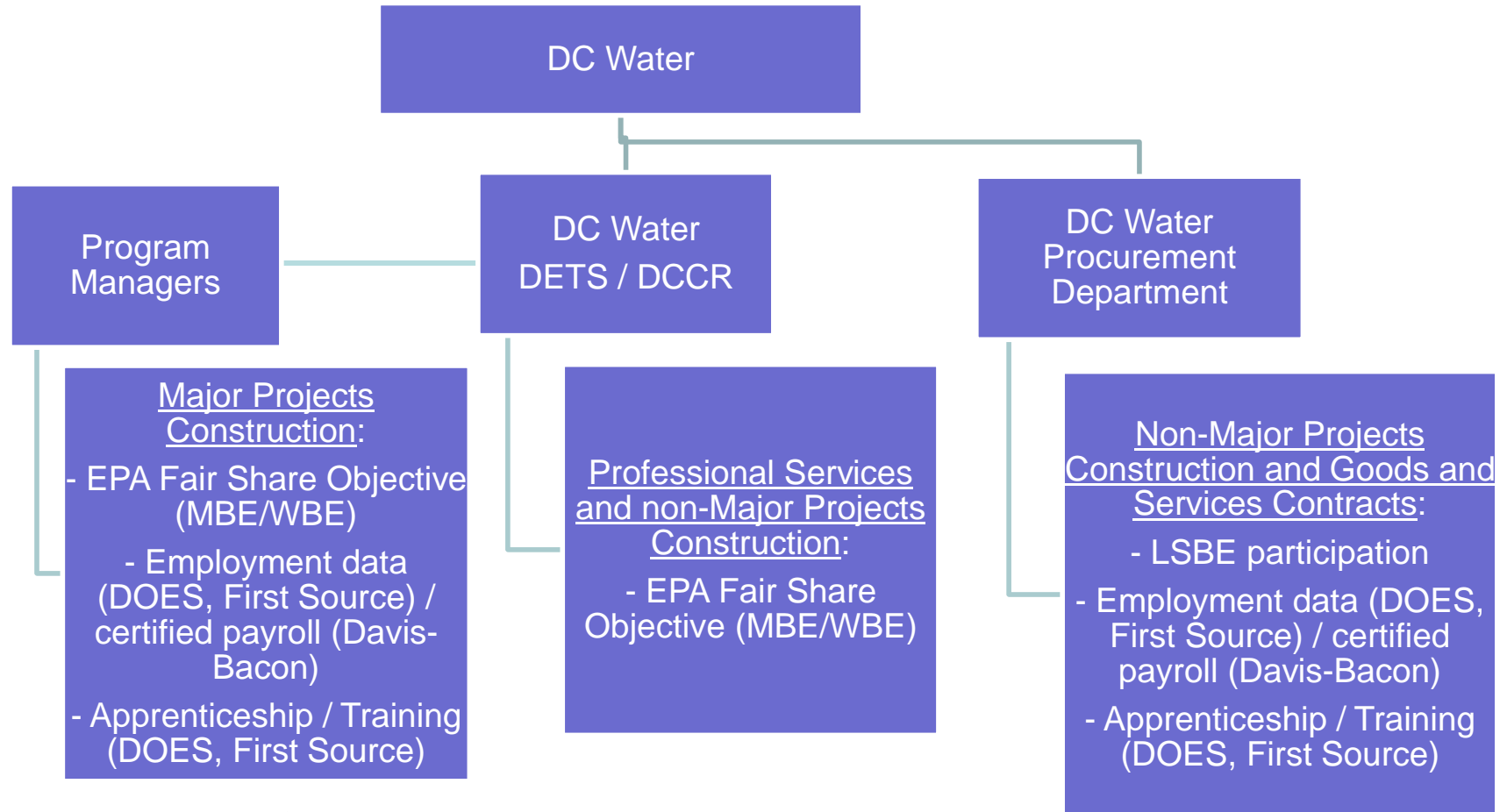
Presented to:

Governance Committee
Alethia Nancoo, Chairperson

January 9, 2013



Compliance Monitoring and Reporting Oversight Responsibilities

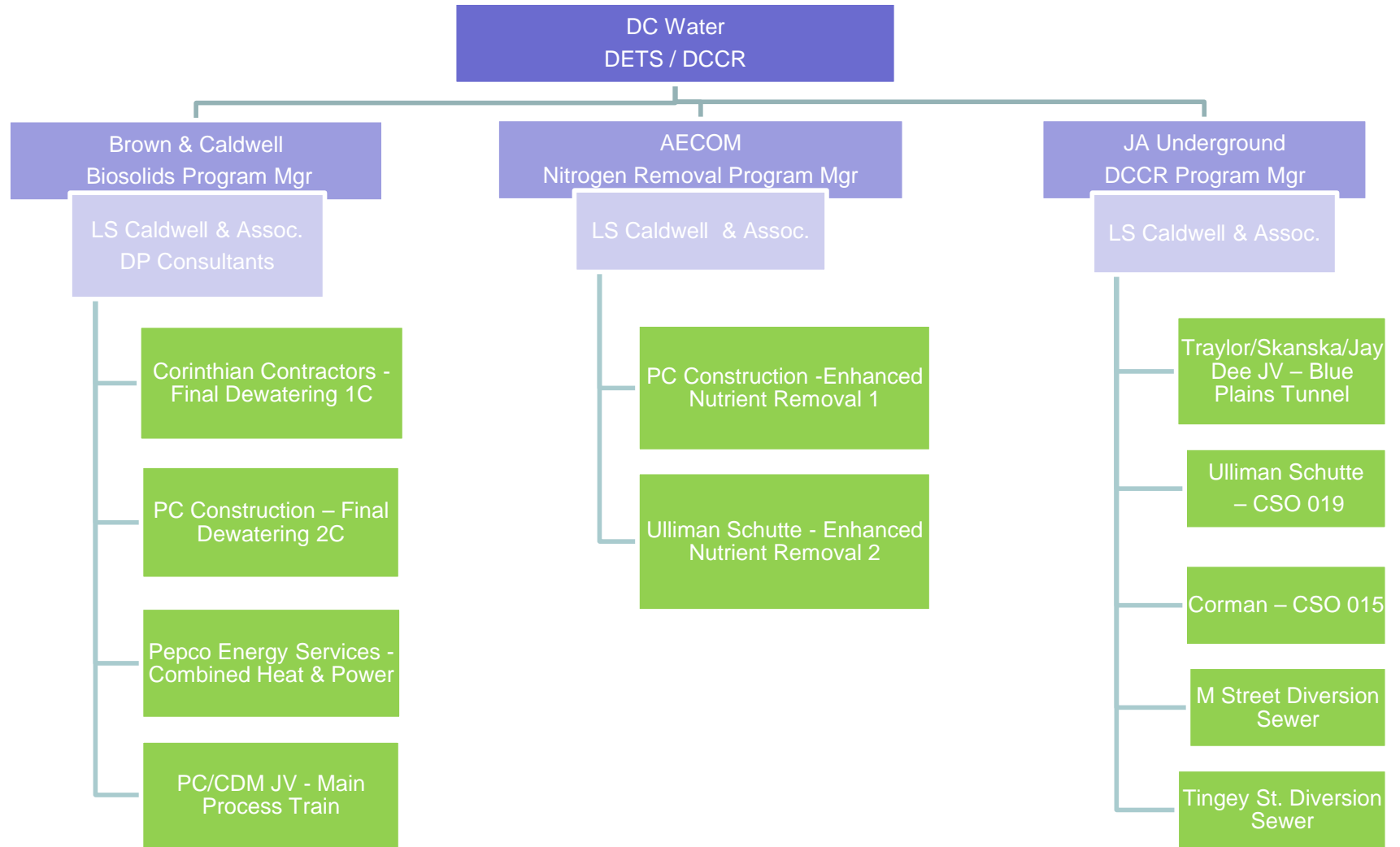


Notes: Reporting to Board of Directors

1. DETS / DCCR report periodically to Governance Committee on Major Projects Construction contractors ONLY.
2. All other compliance reporting is by Procurement through annual reports as required by the DC Water Business Plan.
3. Major Projects include all CIP contracts under the following Programs: Nitrogen Removal, Biosolids, and DC Clean Rivers.



Compliance Monitoring & Reporting Major Projects Functional (Non-Contractual) Relationships





Compliance Monitoring & Reporting Major Projects Oversight Contractual Relationships

