



**DISTRICT OF COLUMBIA  
WATER AND SEWER  
AUTHORITY**

BOARD OF DIRECTORS

*Governance Committee  
January 9, 2013  
9:00 a. m.*

**MEETING MINUTES**

Committee Members

Alethia Nancoo,  
Chairperson  
Kathleen Boucher  
Edward Long, Jr.  
Carla Reid  
Alan Roth

DC Water Staff

George Hawkins, General Manager  
Randy Hayman, General Counsel  
Linda Manley, Board Secretary  
William Pickering, Government Relations  
Manager, External Affairs

Chairperson Alethia Nancoo called the meeting to order at 9:15 a.m., and turned the Committee's attention to Agenda Item # 2 – Government Affairs: Update. William Pickering, Government Affairs Manager, first updated the Committee on federal issues. Mr. Pickering pointed out that the new 113<sup>th</sup> Congress will be charged with determining final funding levels for Fiscal Year 2013. Of particular interest to DC Water is whether the new Congress will choose to provide a payment to the Clean Rivers Project as the Continuing Resolution will expire in March. Mr. Pickering informed the Committee that the Government Relations staff and the General Manager are scheduled to meet with staff members from the Senate Appropriations Committee next week to brief them on DC Water's progress on the Clean Rivers Project and update them on the Green Infrastructure Partnership Agreement. Mr. Pickering further informed the Committee that a budget/debt compromise may include additional funding for infrastructure projects and that DC Water was in close contact with industry groups such as NACWA to ensure that water and sewer projects will be eligible for such potential funds.

Mr. Pickering then briefed the Committee on District issues which included the Water Quality Assurance Act (Act). This Act was signed by the Mayor on December 4, 2012 and transmitted to Congress for a 30 – day passive approval process. The approved version reflects EPA's most recent contaminant testing requirements and will potentially provide funding for DC Water to perform research related to endocrine disruptor

compounds. The bill calls for the creation of a Water Quality Advisory Panel that will include subject matter experts who will discuss the results of the additional water quality monitoring and research. DC Water staff is pleased with the amended version of the legislation compared to the introduced version that envisioned the District Government setting water quality standards and testing requirements over and beyond the EPA's existing oversight.

Mr. Pickering then discussed the Bloomingdale legislation. He noted that the DC Council voted to approve both the Bloomingdale and LeDroit Park Backwater Valve and Sand Bag Act and the District of Columbia Flood Assistance Fund Amendment Act on December 17, 2012. However, the bills have yet to be signed by the Mayor. The backwater valve bill tasks the District Government with creating and funding a backwater valve installation program. The amended flood assistance fund legislation would compensate residential and commercial property owners and renters for damage to property caused directly by sewer-line back-ups. The funds used to pay claims would be collected by DC Water on behalf of the District through an additional fee on water and sewer bills. The fee cannot be more than 30 cents per ERU and will be determined by the fund administrator. The amended legislation has been deemed subject to appropriations and will only take effect if additional budget authority is identified to comply with the mandates of the bill.

Mr. Pickering informed the Committee that the revised IMA has been approved by the District Government and Fairfax County has indicated that they will not need to proactively approve the new agreement. Prince Georges County approval is expected on January 15, 2013 with WSSC following suit on February 20, 2013. That would allow for final DC Water approval at the Board's March 7, 2013 meeting.

The Committee Chairperson then turned the Committee's attention to Agenda Item # 3 – Oversight of Fair Employment Practices of Contractors. Mr. Kory Gray of the Procurement Department gave the Committee an overview of DC Water's prevailing wage compliance. Mr. Gray noted that there were three types of prevailing wages – (i) the Davis Bacon Act prevailing wages for construction; (ii) the McNamara O'Hara Service Contract Act prevailing wages for goods and services; and (iii) Walsh Haley Public Contract Act prevailing wages for manufacturing. Mr. Gray then delineated the requirements which must be followed by general prime contractors. These requirements included paying the locally prevailing wage rates and fringe benefits; posting the applicable prevailing wage rates; correctly classifying workers; paying the workers weekly; and submitting certified payrolls to DC Water. Mr. Gray then set out DC Water's prevailing wage compliance oversight procedures. Mr. Gray stated that compliance oversight is a joint effort of the Department of Procurement and the Department of Engineering and Technical Services. Mr. Gray explained that prior to award the appropriate prevailing wage is determined and included in the solicitation language. After the award, kickoff meetings are undertaken to discuss what is expected, site visits and onsite interviews are made, and random desk audits are also undertaken. Mr. Gray noted that DC Water's compliance oversight is more aggressive than the Department of Labor's standards. Also, DC Water retains files relating to the prevailing wage decisions,

certified payroll, and the results of any special compliance reviews for 5 years, even though the industry standard is 3 years.

Mr. Gray then discussed the most common types of infractions found during compliance inspections. Specific infractions included: the improper posting of signage; discrepancies in wage computations; extraordinary deductions; kickbacks or basic underpayments; misclassification of employees; too few or irregular hours; workers being paid below prevailing rates; and work hours reduced to fit a fabricated calculation. Mr. Gray then turned the Committee's attention to actions that were utilized to remediate such infractions. Minor infractions may include a memo to the file and/or an increased number of site visits. Serious and willful infractions may involve one or more of the following: a formal letter or citation; the involvement of the General Counsel; a complaint being sent to the Department of Labor; wage restitution; the withholding of contract payments; potential debarment from further participation; an increased number of site visits; and an increased number of desk audits. Mr. Gray emphasized that the falsification of reports can result in debarment from future contracts as well as criminal penalties.

Committee member Alan Roth complimented Mr. Gray on his presentation. Mr. Roth went on to note that he was concerned about allegations that contractors were retaliating against workers bringing up prevailing wage issues and complaints. The contractors allegedly retaliated against the workers by investigating their immigration status. Mr. Roth asked if a process was in place to deduct points from a contractor when DC Water knew that retaliatory actions were taking place. Mr. Roth further asked if the existing regulations were sufficient both pre-bidding and post bidding to address such activity. The General Manager agreed with Mr. Roth's concerns and agreed to follow-up on the issues raised.

The Chairperson then turned the Committee's attention to Agenda Item # 4 – District's New First Source Agreement Comparison with Existing Agreement. Ms. Loretta Caldwell of L S Caldwell & Associates addressed the Committee on the changes between the old First Source Program and the new First Source Program which the District Government hopes to have running by March, 2013. The old Program applied to contractors with contracts of \$ 100,000.00 or more. The new Program applies to contractors with contracts of \$ 300,000.00 or more. The old Program required that 51% of all new hires be District residents. The new Program would require that 20% of all non –construction hours be performed by District residents. Additionally the requirement that 51% of all new hires be District residents will also apply to all projects receiving government assistance totaling between \$ 300,000.00 - \$ 500,000.00. Under the new Program, all construction contracts between \$300,000.00 - \$500,000.00 must decide prior to being accepted by the Department of Employment Services whether the 51% of all the new hires shall be cumulative of all new hires, including those made by a subcontractor at any tier that works on the project, or whether the 51% of all new employees hired shall be met by each individual subcontractor at any tier who works on the project.

Ms. Caldwell then compared the distinctions between the Programs with regards to

construction projects over \$ 5,000,000.00. Under the old Program, 35% of all apprentice hours were to be worked by District residents. However, under the new Program: at least 20% of journey workers hours by trade are to be performed by District employees; at least 60% of apprentice hours by trade are to be performed by District residents; at least 51% of the skilled laborer hours by trade are to be performed by District residents; and at least 70% of common laborer hours are to be performed by District residents.

Unlike the old Program, the new Program requires participants to submit a detailed employment plan that identifies specific details regarding associated jobs and strategies to meet their hiring requirements. The new Program also allows participants to double-count hours worked by District residents who are hard to employ. Ms. Caldwell noted that under the old Program, fines were 5% of both the direct and the indirect labor costs of a contract. Under the new Program, this requirement remains as well as the inclusion of additional pro-rated fines for not reaching specific hiring requirements. The new Program establishes a task force to review workforce intermediary programs implemented in cities with similar programs. The new Program also establishes a workforce trust fund in which in-kind contributions and monetary fines for the willful breach of first source agreements will be deposited for the purposes of establishing and operating a District of Columbia workforce intermediary plan.

Upon the completion of Ms. Caldwell's presentation, a discussion among the Committee members ensued. The fact that DC Water is voluntarily participating in the old Program was pointed out. The Committee had concerns with the big administrative effort which would need to be undertaken under the new Program should DC Water once again choose to participate. The General Manager concurred that the new Program required a large administrative investment and stated that whether the new Program was the optimal way to achieve the ultimate goals of the First Source Program should be examined. The point was made that DC Water has the ability to make its own choices in fulfilling the goals of the First Source Program.

The Chairperson then turned the Committee's attention to Agenda Item # 5 – Status of Strategic Plan Initiative, "Develop Local Hiring Initiative for Contractor. The General Manager noted that this issue was the only outstanding question remaining in the Strategic Plan. The General Manager stated that the concept of local hiring needs to be closely examined as DC Water has projects that are not only funded by the District, but also funded by suburban jurisdictions. The General Manager informed the Committee that he wished to discuss this initiative with the new Board Chairperson.

The Committee Chairperson then turned to Agenda Item # 6 – Emerging Issues. The Department of Engineering and Technical Services (DETS) noted that while they had clarified the issue of DC compliance monitoring and reporting to the full Board, they wished to also clarify it with the Governance Committee. Specifically, they wished to address the issue of a potential conflict of interest with the use of L S Caldwell & Associates for DC Water compliance monitoring and reporting. DETS pointed out that DC Water did not have a direct contractual relationship with L S Caldwell & Associates. Rather, S L Caldwell & Associates has contractual relationships with Brown & Caldwell,

AECOM, JA Underground, and Greely & Hanson. DETS further clarified the misunderstanding through the use of flow charts showing both the functional relationships and contractual relationships among DETS, DC Clean Rivers, the major projects' Program Managers and S L Caldwell & Associates.

The Committee Chairperson then turned to Agenda Item # 7 – Agenda for Upcoming Committee Meeting. The General Manager stated that the upcoming agenda would address specific procurement language for the matters raised in Item # 3 – Oversight of Fair Employment Practices of Contractors. The upcoming Committee agenda would also include an update on the Strategic Plan Initiative, "Develop Local Hiring Initiative for Contractors. This agenda would also include updates on the compliance monitoring program from Ms. Caldwell.

The Committee Chairperson adjourned the meeting at 11:20 a.m. Upon the adjournment of the meeting, Mr. Gus Bass, Manager, Program Services, DETS invited the Committee members to visit the new onsite employment trailer.