

**COUNTY OF MILWAUKEE  
INTEROFFICE COMMUNICATION**

**DATE:** October 7, 2013

**TO:** Supervisor Michael Mayo, Sr., Chairperson, Transportation, Public Works & Transit Committee  
Supervisor Patricia Jursik, Chairperson, Economic & Community Development Committee

**FROM:** Gregory G. High, Director, Architecture, Engineering & Environmental Services Section, Facilities Management Division, Department of Administrative Services

**SUBJECT:** **Residency of Contractor Employees Working on County Construction Contracts (File No. 10-135), DAS-FM Response to Department on Audit Recommendations – Informational Report**

BACKGROUND

In July of 2013 the Audit Services Division of the County Comptroller Office submitted the County Board a review of the residency of construction workers charged to County construction contracts for payments made over the 19-month period of June 1, 2011 through December 31, 2012. The scope was extended to cover a longer time period than previous reviews to better assess the effectiveness of procedures implemented by the Department of Administrative Services – Facilities Management Division's Architectural, Engineering and Environmental Services (AE&ES) unit beginning July 2010. The new procedures were created to help improve compliance by contractors in achieving their contracted percentage goal of gross payroll paid to Milwaukee County residents over the project period.

The Audit report recommended that overall the procedures in place have the potential to significantly improve participation in construction contracts by County residents. However, a more concerted effort by project management staff in following those procedures is still needed to realize residency goals. The report listed five recommendations that AE&ES management should implement to improve its ability to monitor County residency for each construction project on day-to-day basis. In the following section we list each recommendation and provide AE&ES Sections response.

AUDIT SERVICES DIVISION RECOMMENDATIONS AND AE&ES SECTION  
RESPONSES

- 1. Establishing and documenting a residency goal for each project, including documenting reasons for which less than a 50% goal was recommended;*

Response: Upon receipt of the draft Audit report in July of 2013 AE&ES Section immediately implemented a requirement that the approved Residency Goal form that establishes the goal for each construction project be attached to the administrative contract award document before it is routed for approval.

2. *Requiring contractors to provide all required forms both during and at the conclusion of each project.*

Response: AE&ES Section has recently experienced significant turnover in the personnel preparing construction contract invoicing for review and approval. At this time, all invoices for construction contract require that a checklist be attached to the invoice that indicates all required the contractor has submitted residency forms. AE&ES Section staff is being re-trained to emphasize that increased scrutiny is required in this area of invoice review. Invoices will not be processed without all the required forms attached.

3. *Verify reported gross payroll information with accompanying reports as they are provided. This includes revising the Resident Utilization Form to improve the accuracy of reported ongoing residency participation. Also, to facilitate this verification, design a system for use by contractors for reporting payroll data on construction projects that provides for the ability to electronically verify residency information.*

Response: AE&ES Section is responding to this recommendation by requiring changes in the invoice processing. Revisions to the paper forms are in process to allow verification of gross payroll information as they are provided. Electronically verifying any of the invoicing items will require significant changes in the current traditional paper submittals for invoice review and paper certificate of payment process. Commitment of additional staff time and resources and collaboration with CBDP, Economic Development and IMSD to integrate an electronic digital solution has begun. Staff is currently in communication with other local municipal agencies that have already automated portions of their contract compliance monitoring. As this may take some time to implement, AE&ES staff will keep the Audit Services Division informed of the progress.

4. *Work with contractors to improve participation as needed while the project is still active for projects underachieving on its residency goals; and*

Response: The contractors now submit with their bid a signed affidavit that they have read and are aware of the Residency Goal provisions of the contract. AE&ES Section staff currently contacts contractors who are having difficulty in meeting the Residency goal. Typically, a formal letter is sent to the contractor that does not submit the forms or is having a having a residency compliance issue. The letter requires that the contractor respond immediately with a strategy to improve the performance. Some contractors respond in a timely fashion. Others do not. We will continue to reach out to contractors during the bidding period, at the beginning of the projects at the construction kick off meetings and during the course of the project to emphasize the residency compliance issues and potential penalties for non-compliance.

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*5. Impose available sanctions when contractors fail to provide required documents and achieve residency goals.*

Response: Currently, the response to contractors who fail to achieve residency goals is to send a formal letter notifying them that they have not met the goal and if they are awarded another County construction contract in the future and they once again fail to achieve residency goals, one of the following actions will be taken:

- Withhold payment on the contract
- Terminate or cancel the contract
- Debar the contractor from bidding for a period of up to two years
- Resort to any other remedy available to the County at law or in equity

These actions, if imposed, would need to be well thought out in advance. The current DAS-FM policy on imposing these sanctions is to use flexibility with the contractor for an initial failure to achieve residency goal. After the initial failure, the contractor is put on notice that failure in a second contract with Milwaukee County will definitely result in one of the listed actions being taken. To date, we are not aware that we encountered a second failure of a contractor to achieve the residency goal.

Additional considerations are our limited pool of contractors interested in working with Milwaukee County and the willingness by contractors to file claims against the County. These may create more of a problem than we have resources to deal with.

Corporation Counsel has also identified a recently enacted state provision that specifies any public contract “shall be awarded to the lowest responsible bidder” and that

Except when necessary to secure federal aid, **a political subdivision may not use a bidding method that gives preference based on the geographic location of the bidder** or that uses criteria other than the lowest responsible bidder in awarding a contract.

Wis. Stat. § 66.0901(1m)(a)2, (b).

Per Corporation Counsel, the US DOT also prohibits use of “geographical preferences in the evaluation of bids or proposals” in projects using DOT funds. 49 CFR § 18.36(c)(2).

These provisions raise continuing concerns about the scope of the residency goals included in County contracts, at least as they related to “public contracts,” which are defined in § 66.0901(c) as

(c) “Public contract” means a contract for the construction, execution, repair, remodeling or improvement of a public work or building or for the furnishing of supplies or material of any kind, proposals for which are required to be advertised for by law.

We will continue to work with Audit Services Division and Corporation Counsel to ensure that the process in place for accumulating payroll data and monitoring compliance is functioning as intended and in compliance with all applicable laws.

Prepared by: Gregory G. High

Approved by:



Gregory G. High, P.E., Director  
AE&ES Section, DAS-FM Division  
Department of Administrative Services

GGH:

Attachments (1): Audit Informational Report (File No. 10-135)

cc: Chris Abele, Milwaukee County Executive  
Amber Moreen, Chief of Staff, County Executive’s Office  
Supervisor Marina Dimitrijevic, Chairperson, County Board of Supervisors  
Kelly Bablitch, Chief of Staff, County Board of Supervisors  
Jenelle Jensen, Chief Committee Clerk, County Board Staff  
Scott B. Manske, County Comptroller  
Jerome J. Heer, Director of Audits, Audit Services Division  
Don Tyler, Director, Department of Administrative Services  
Vince Masterson, Strategic Asset Coordinator, DAS