

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: June 27, 2011

To: Supervisor Lynne De Bruin, Chairperson, Economic & Community Development Committee
Supervisor Michael Mayo, Sr., Chairman, Transportation & Public Works Committee

From: Jerome J. Heer, Director of Audits

Subject: Residency of Contractor Employees Working on County Construction Contracts (File No. 10-135)

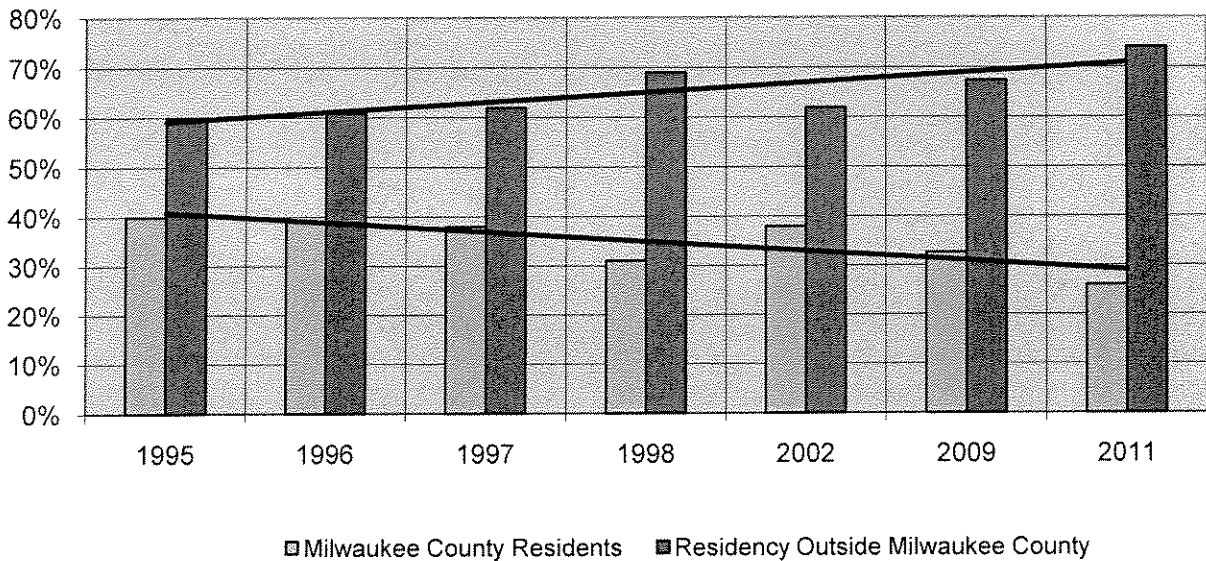
We have completed a review of the residency of construction workers charged to County construction contracts entered into July 1, 2010 through May 31, 2011. Over this period, the County entered into contracts that included a residency goal covering 27 projects totaling about \$8.1 million. Contractors have submitted invoices for only nine projects as of June 3, 2011, with gross wages totaling \$123,758. Each of the nine projects require 50% of the gross wages be paid to County residents.

Given the limited amount of data to analyze to date, it is too early to determine the effectiveness of policies and procedures initiated to improve County resident participation in construction contracts. However, the overall trend thus far has not been positive. To date, only 26% of gross wages have been paid to County residents in the nine projects. Only one project was meeting the residency goal (51% achievement level). It should be noted that, theoretically, the contractors have the ability to become compliant prior to contract completion. According to the Department of Transportation and Public Works (DTPW) management, only one project had reached the point where overall compliance was not likely, resulting in a letter from DTPW to the contractor.

Background

County Board Resolution 95-573 established a residency requirement in County construction contracts. However, Milwaukee County has had limited success in achieving a goal paying 50% of gross wages to County residents, shown in the following chart.

Milwaukee County Construction Contract Payroll Residency Percentages Sample Results 1995 - 2011



Source: Payroll information supplied by contractors to the Department of Transportation and Public Works and reviewed by the Department of Audit.

We have updated the chart to include current payroll data reviewed to date. Since 1995, the highest residency rate has been about 40%. In 2010, a Residency Contracting Workgroup was formed to come up with recommendations to reach the 50% goal and better monitor its achievement. The workgroup offered the following six recommendations:

1. A 50% County residency goal should be included in bid documents and contracts for all public works projects, including Time and Materials contracts.
2. Contracts will be awarded to the lowest responsive, responsible bid with the residency goal identified as a factor in the responsiveness of a bid.
3. The basis for the goal shall be the percentage of gross payroll dollars expended on the project.
4. Prior to implementation of revisions to bid and contract documents, the Office of Corporation Counsel will review draft language to ensure that implementation of the policy will be as defensible as possible.
5. Monitoring of goal achievement shall be done by the Department of Audit on a sample basis similar to the process used when the residency goals were initiated in 1995. Contractors will be required to provide invoices that facilitate monitoring efforts. The reports will be provided on a semi-annual basis.

6. Consideration will be given to the establishment of waiver opt-out charges and/or liquidated damages that may generate funds that could be targeted to job training.

With this guidance, the Department of Transportation and Public Works (DTPW) established new procedures that became effective with contracts bid out beginning July 1, 2010. New language was added to bid documents and final contract language. Perhaps more importantly, contracts spelled out the following four negative actions that could be taken against contractors not meeting contract terms, including the stated residency requirement.

1. Withhold payments on the contract.
2. Terminate or cancel the contract, in whole or in part.
3. Consider possible debarment of the contractor from bidding for a period of up to two years.
4. Any other remedy available to the County at law or in equity.

Discussions with the Director of Architectural Engineering and Environmental Services disclosed concern over the process for determining which action to take against contractors out of compliance with the residency requirement, including the contractor currently identified as noncompliant. Another related matter is the use of incentives to foster compliance.

Contracts Without a Residency Requirement

It should be noted that since the new procedures were implemented effective July 1, 2010, the County has also entered into contracts for an additional 17 County construction projects that do not include a residency requirement. The value of these contracts, totaling an estimated \$51.2 million, is over six times the value of contracts that include the residency requirement.

Residency requirements were waived in seven projects totaling \$2.9 million due to the specialty nature of the project and the lack of County expertise to perform the work.

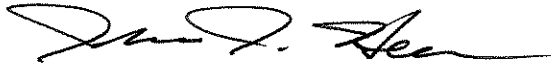
The remaining ten projects, totaling \$48.3 million, were airport or roadway projects involving direct federal or State pass-through funding. According to a Corporation Counsel opinion, "... the County may not apply a geographical preference to projects funded directly by the federal government or by the State when it merely "passes through" federal funds for local projects." Given the large dollar amount of these contracts, other options to encourage winning contractors to utilize Milwaukee County's workforce should be documented and evaluated. The Chairman of the Board has instructed Corporation Counsel to work with the Contractor Residency Workgroup to address this issue.

Supervisor Lynne De Bruin, Chairperson, Economic & Community Development Committee
Supervisor Michael Mayo, Sr., Chairman, Transportation & Public Works Committee
June 27, 2011
Page Four

Conclusions

DTPW took prompt action to re-initiate the policy of the Board to promote employment of County residency. Although there have been relatively few payments made for contracts covered by the renewed contractor residency initiative, the trend is not favorable. In addition, further work is needed to address two key issues: 1) the applicability of the initiative to Federal and State funded projects and 2) application of appropriate incentives and disincentives.

Please contact me if you have any questions.



Jerome J. Heer

JJH/cah

cc: Milwaukee County Board of Supervisors
John Jorgensen, Acting Corporation Counsel
Pat Farley, Director, Department of Administrative Services
Stephen Cady, Fiscal and Budget Analyst, County Board Staff
Jack Takerian, Director, Department of Transportation & Public Works
Greg High, Director, Architectural Engineering and Environmental Services, DTPW
Terrence Cooley, Chief of Staff, County Board Staff
Jodi Mapp, Committee Clerk, County Board Staff
Linda Durham, Committee Clerk, County Board Staff
Martin Weddle, Research Analyst, County Board Staff
Glenn Bultman, Research Analyst, County Board Staff