

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: Monday, July 1, 2013

To: Supervisor Marina Dimitrijevic, Chairwoman
Milwaukee County Board of Supervisors

From: Jerome J. Heer, Director of Audits
Audit Services Division, Milwaukee County Office of the Comptroller

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 for payments made over the 19-month period of June 1, 2011 through December 31, 2012. The review is part of an ongoing monitoring effort directed by a Resolution (File No. 10-135) from a previous session of the County Board. Therefore, please refer the attached memo to the Committee on Transportation, Public Works and Transit, as well as to the Committee on Economic and Community Development, for the July meeting cycle.

Please contact me if you have any questions.



Jerome J. Heer

JJH/cah

cc: Scott B. Manske, CPA, Milwaukee County Comptroller
Kelly Bablitch, Chief of Staff, County Board Staff
Jenelle Jensen, Chief Committee Clerk, County Board Staff

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: July 1, 2013

To: Supervisor Michael Mayo, Sr., Chairman, Transportation, Public Works and Transit Committee
Supervisor Patricia Jursik, Chairperson, Economic and Community Development Committee

From: Jerome J. Heer, Director of Audits

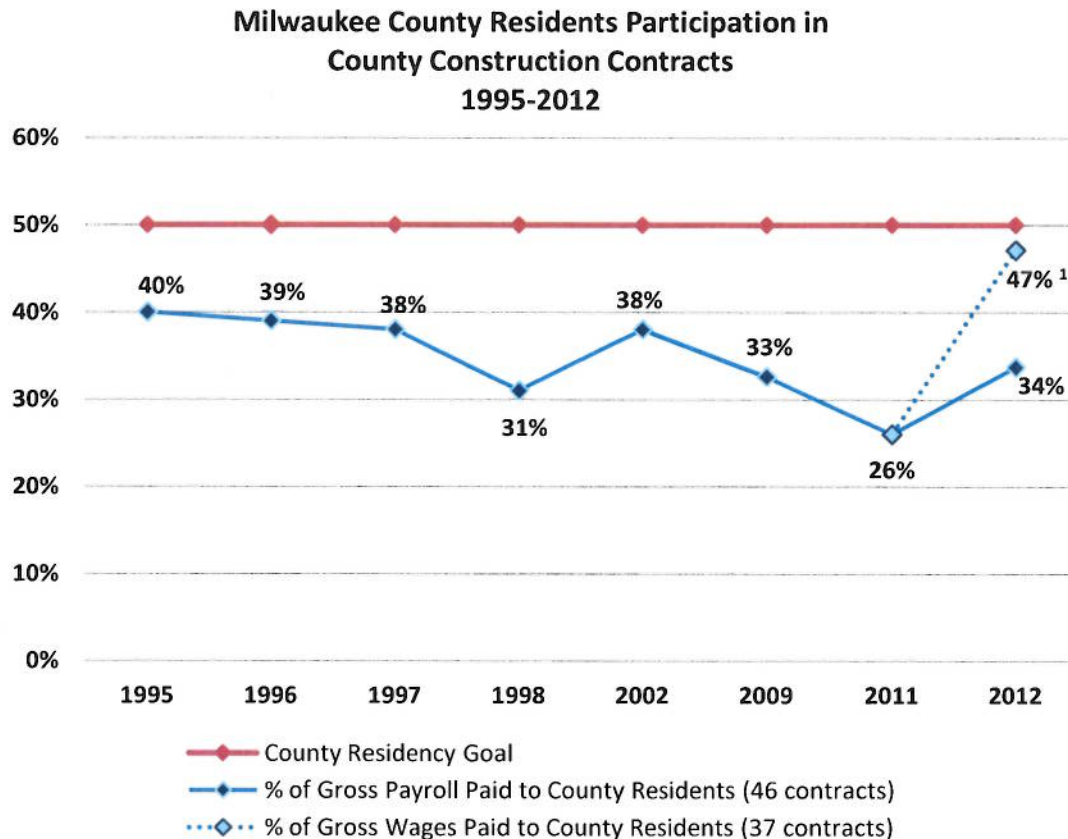
Subject: Residency of Contractor Employees Working on County Construction Contracts (File No. 10-135)

We have completed a review of the residency of construction workers charged to County construction contracts 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 contractors' compliance in achieving goals for percentage of gross payroll paid to Milwaukee County residents over the project period.

The overall percentage of gross wages paid to County residents for 37 projects where a residency goal had been established was 47.1% of \$919,543 in reported gross wages. However, we identified an additional \$882,023 paid under nine other projects where it was unclear if a residency goal had been established. For these nine contracts, only 19.8% of total gross wages were paid to County residents. Assuming the standard 50% residency goal should have been applied to these projects, the overall gross wages paid to County residents for all 46 projects drops to 33.7%.

On a project basis, we found goals were met (or being met in the case of open projects) in 16 of the 37 projects (43.2%). Three of the nine projects (33%) missing a documented residency goal had met or were meeting an assumed 50% residency goal.

The following chart shows the results of seven prior reviews since 1995, along with current review. The results of the current review are shown under two scenarios, the first assuming all of the nine contracts with missing Contractor Residency Recommendation Forms were subject to the residency goal (solid line), the second assuming none of the nine had a residency goal (dotted line).



Note ¹ : The 47% rate applies if no residency goal is required for the nine contracts missing the recommendation form (results based on 37 contracts)

Source: Payroll information supplied by contractors to the AE&ES unit of DAS-Facilities Management Department of Transportation and Public Works, and reviewed by the Audit Services Division

Contracts Without a Residency Requirement

It should be noted that contractor residency requirements do not apply to all projects. Residency requirements are waived in some contracts due to the specialty nature of the project and the lack of County expertise to perform the work.

Additionally, projects involving direct federal or state pass-through funding are expected from the requirement. 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."

Background

County Board Resolution 95-573 established a residency requirement in County construction contracts. In 2010, a Residency Contracting Workgroup was formed to come up with recommendations to reach the 50% County residency goal and better monitor its achievement. From this, AE&ES formalized procedures for project management staff to follow for all construction contracts. From a procedural standpoint, this included:

1. Preparing a Contractor Residency Recommendation Form to establish the residency goal, and to document reasons for which less than a 50% goal was recommended.
2. Requiring contractors to submit a Resident Utilization Report with every invoice submitted for payment. Contractors are required to report on a cumulative basis the total gross payroll incurred to date, how much of that amount was paid to County residents, and the resulting percentage. This information provides project management staff with the ability to assess compliance with the residency goal on a continuous basis, and take actions noted below if needed to help attain compliance.
3. Upon project completion, requiring contractors to complete, sign and have notarized the Final Payment Affidavit of Compliance With Wage Rate and Contractor Residency Provisions. This form includes a summary of gross payroll dollars paid to both County resident and nonresident workers.

If a contractor is not in compliance with the specifications, the County will notify the contractor in writing of the corrective action that will bring the contractor into compliance. If the contractor fails or refuses to take corrective action as directed, or if the contractor, prime or sub, submits any documents which contain any false, misleading, or fraudulent information, or if the contractor or subcontractor fail to comply with this contract provision, the County may take one or more of the actions listed below.

- Withhold payments on the contract.
- Terminate or cancel the contract, in whole or in part.
- Consider possible debarment of the contractor from bidding for a period of up to two years.
- Any other legal remedies available to the County.

Project management staff need to place more emphasis on following established procedures related to contractor residency.

Specifically, staff need to enforce provisions designed to improve contractor compliance with County residency, and better document actions taken to enforce program requirements. We noted

shortcomings throughout the contract monitoring process which affected project management's ability to consistently achieve residency goals. Specifically,

- Project management staff could not provide us with the Contractor Residency Recommendation Form for 41 projects awarded after the new procedures went into effect in July 2010. This includes a number of federal and state funded projects for which residency goals may not be permitted. However, procedures call for the form to be generated for all projects so that residency goals, or reasons for excluding a residency goal for specific projects, are properly documented.
- Contractors did not routinely submit required Resident Utilization Reports with each request for payment. These forms provide the basis for project management staff to identify contractors who are falling short of their residency goals, and take corrective action as needed.
- The design of the Resident Utilization Report lends itself to improper residency calculations by contractors. We noted 14 projects where contractors overstated the achieved goals on one or more forms submitted to the County during the project. For example, a contractor reported paying 76.4% of its gross wages to County residents on one form, followed by 88.0% on its next submission, whereas the correct percentages were 38.2% and 44.0%, respectively. If the contractors' reported figures were relied upon, project management staff would have concluded that the residency goal was being met, with no follow-up action needed. In nearly all cases, the errors were due to the unnecessarily confusing design of the form, which does not clearly indicate which amounts need to be used for the residency percentage calculation. Using a copy of the form (see attached), we highlight in yellow the amounts that should be used for making the proper residency calculation, and highlight in green the amount erroneously used. A more clearly designed form should prevent such miscalculations in the future.
- Contractors are required to submit documentation supporting gross payroll paid to their workers. This documentation is the basis for summary totals reported on the Resident Utilization Reports, and ultimately the Summary of Gross Payroll Dollars submitted upon project completion. For projects in which contractors submitted both payroll data and Resident Utilization Reports, we found no evidence of project management staff comparing detailed payroll data to amounts reported on accompanying utilization reports (when provided) to verify accuracy. The fact that Resident Utilization Reports contained significant calculation errors in 14 projects reviewed, plus detailed wage data contained no address information for almost 10% of the gross wages (\$171,911) reported in 13 projects, indicates that little more than a cursory review of the data is performed.
- Perhaps one reason this is not done is the labor intensive data entry needed to analyze payroll data. This effort is hampered by the lack of uniformity in the format used by contractors when submitting the data. The County provides a form that contractors may use for reporting their payroll, but there is no requirement for them to do so. Consequently, many contractors submit copies of their own computer-generated payroll reports that can be confusing, often requiring manual calculations to properly reflect fringe benefits paid to workers, an allowable component of gross payroll. This effort could be eliminated by having contractors provide required wage data and other information in an electronic format that better lends itself to verification and analysis.

- Past practice has been for Audit Services Division staff to enter payroll data need for analysis and subsequent reporting on goal achievement. While this effort provides a meaningful product, our results do not provide the same value as if it were done by project management staff on an ongoing basis. Current information would provide project management staff with the ability to identify projects in need of additional efforts to meet contractor residency requirements.
- Project files did not contain evidence of actions that project management staff may have taken to hold contractors accountable for compliance with residency goals before project completion. Discussions with project managers did bring to light some email communication to the contractors, but there was no consistency in documenting such actions in the project files.
- We found no instances where a negative action was taken against a contractor for projects that did not achieve residency goals.

Recommendations

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. To improve its ability to monitor County residency for each construction project on day-to-day basis, we recommend AE & ES management:

1. *Establish and document a residency goal for each project, including documenting reasons for which less than a 50% goal was recommended;*
2. *Require contractors to provide all required forms both during and at the conclusion of each project.*
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.*
4. *Work with contractors to improve participation as needed while the project is still active for projects underachieving on its residency goals; and*
5. *Impose available sanctions when contractors fail to provide required documents and achieve residency goals.*

Supervisor Michael Mayo, Sr., Chairman, Transportation, Public Works and Transit Committee
Supervisor Patricia Jursik, Chairperson, Economic and Community Development Committee
July 1, 2013
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We will continue to work with AE&ES management to ensure that the process in place for accumulating payroll data and monitoring compliance is functioning as intended. Please contact me if you have any questions.



Jerome J. Heer

JJH/cah

cc: Milwaukee County Board of Supervisors
Kimberly Walker, Corporation Counsel
Don Tyler, Director, Department of Administrative Services
Stephen Cady, Fiscal and Budget Analyst, County Board Staff
Greg High, Director, Architectural Engineering and Environmental Services, DTPW
Kelly Bablitch, Chief of Staff, County Board Staff
Jodi Mapp, Committee Clerk, Transportation, Public Works and Transit Committee
Alexis Gassenhuber, Committee Clerk, Economic and Community Development Committee

DEPARTMENT OF TRANSPORTATION & PUBLIC WORKS
MILWAUKEE COUNTY RESIDENT UTILIZATION REPORT*

NAME OF CONTRACTOR _____ TELEPHONE NO. () _____

ADDRESS _____ CITY _____ STATE _____ (ZIP CODE) _____

PROJECT TITLE _____ PROJECT # _____

CONTRACT RESIDENCY REQUIREMENT - % OF EMPLOYMENT OF THE CONTRACT LABOR FORCE WITH EMPLOYEES THAT
RESIDE WITHIN MILWAUKEE COUNTY BASED ON PERCENT OF GROSS PAYROLL DOLLARS _____ %

TOTAL CONTRACT \$ AMT _____ TOTAL CONTRACT PAYMENT YTD \$ _____

CONTRACT % COMPLETE _____ %

TOTAL ANTICIPATED GROSS PAYROLL DOLLARS PER CONTRACT \$ _____ (B) _____

TOTAL ANTICIPATED GROSS PAYROLL DOLLARS TO RESIDENTS PER CONTRACT \$ _____ (C) _____

TOTAL PAYMENT TO RESIDENTS TO DATE \$ _____ (A) _____

PAYMENT TO RESIDENTS % OF ANTICIPATED TOTAL TO DATE _____ A/B _____ %**

COUNTY PROJECT/CONTACT PERSON _____ TELEPHONE NO. _____

REPORT FOR THE PERIOD FROM: _____ TO: _____ 201 _____ FINAL REPORT: () Yes () No

Report Prepared by: _____ Approved by: _____
(Name & Title)

*Directions for completion of report - see reverse side

**If the % of gross payroll paid to resident employees is less than the % anticipated at contract completion, please attach an explanation as to why the residency requirement is not being met at this time.

RESIDENCY UTILIZATION FORM