

METROPOLITAN ST. LOUIS SEWER DISTRICT BUSINESS DIVERSITY

MBE Utilization and Workforce Program Building Construction Projects

Effective July 15, 2016

PURPOSE

The Metropolitan St. Louis Sewer District (MSD or District) will provide opportunities for the meaningful participation by Minority Business Enterprises (MBE) and for minority and women workforce on Building Construction Projects performed for the District.

The Purpose of this procedure is to establish guidelines for MBE participation by applicable vendors, bidders, contractors, service providers and any person, corporation, business, or other entity performing a Commercially Useful Function (CUF) while doing business with the District on Building Construction Projects. This procedure also establishes guidelines for workforce participation compliance.

MBE UTILIZATION

All certified MBE firms, interested in participating on an MSD contract, regardless of the procurement type, are required to perform a Commercially Useful Function (CUF) in fulfillment of an awarded contract.

The purpose of the CUF requirement is to ensure that MBE firms are ready, willing and able to perform specific requirements for which they are certified and authorized to perform, according to the terms and conditions as set forth in the contract. Work performed by an MBE on MSD contracts must be consistent with industry practices and other relevant considerations and has a necessary and useful role in the transaction (i.e., the firm's role cannot be a superfluous step added to a project in an attempt to obtain credit towards meeting MBE goal requirements). CUF requirements also exist to prevent, to the extent possible, MBEs from being utilized as a "pass through" or "front" for a prime contractor or another subcontractor. A commercially useful function occurs when the MBE firm is responsible for execution of their contract and performs responsibly by managing and supervising the work involved with respect to ordering materials, equipment, supplies, negotiating price, determining quality and quantity, installing (where applicable), and payment for its own materials, **supplies, equipment and labor without requirements for two-party payments**. If in the District's judgment, the MBE (even if certified) does not perform a commercially useful function in performance of a contract, credit towards meeting stated MBE goal will not be counted. When a MBE firm is the manufacturer of materials provided for performance on the contract, or the MBE firm is providing labor in performance of a scope of services that is a necessary requirement for the contract, the MBE firm will generally be considered as CUF, however all labor must be tied to a specific project scope identified on MSD Form A.

A. MBE Requirements.

1. The Metropolitan St. Louis Sewer District (District) has established a MBE (African American and/or Hispanic American) goal of **30.0%** utilization for **building construction contracts** in the amount of **\$50,000** or more. Exceptions will be noted in the contract documents, when required.

2. A bidder who has achieved the the 30.0% participation for MBE utilization as defined herein will be in compliance with the requirements of this specification. A bidder who cannot achieve the 30.0% MBE utilization goal must provide all documentation, as prescribed in paragraph C.3 to demonstrate that good faith efforts were initiated prior to submittal consisting of efforts undertaken to achieve the MBE goals. If the bidder does not demonstrate sufficient good faith efforts, the bid will be rejected as non-responsive.

3. The term Minority Business Enterprises (MBE) refers to:

A Minority Business Enterprise (MBE) is defined as a business that is at least 51% owned, operated and controlled by a minority or minority group members, who are citizens of the United States. "Controlled" means that the minority owner(s) must exercise actual day-to-day management of the business. **For this procedure the only minority groups that will count for MBE participation are African American and Hispanic American.**

4. The District will accept, as prospective MBE participants for these projects, those MBE firms which have been certified for the industry type of service and/or material for which they are contracted by one or more of the following agencies **on or before the date of the bid opening:**

- Missouri State Office of Equal Opportunity
- City of St. Louis
- St. Louis Minority Business Council

Note: **MSD does not accept reciprocity certifications from other certifying agencies.**

B. Pre-Contract Award Obligations:

1. A properly signed bid will certify that the bidder has undertaken the good faith efforts described in this MBE procedure to achieve the stated goal for MBE participation. It is mandatory for each bidder to submit MSD Form A with their bid for consideration of MBE sub-contractors to be utilized to fulfill goal requirements. All other MBE participation information including but not limited to attachments to Form A, Form B, and all attachments and information required to demonstrate good faith efforts (if needed) must also be submitted to MSD with the original bid at the due date and time specified. Failure to submit any of the information as required (on MSD Form A and/or MSD Form B) will result in the bid being rejected as non-responsive.

2. To establish a bid as responsive, the bidder must document on MSD Form A the proposed utilization and tier level of participation of MBE participants to be utilized for achievement of the stated goals, and/or document on MSD Form B the good faith efforts expended by the bidder to utilize MBE participants. The documentation requirements are outlined in C.3, a-e below. For the purpose of determining the degree of goal attainment through MBE sub-contractor joint ventures, MBE sub-contractors, MBE manufacturers, MBE distributors, MBE suppliers, and MBE brokers, the following methodology will be utilized:

- a. Any **Joint Venture** Sub-contractor consisting of a certified MBE and majority non-certified business enterprise, but functioning as a singular joint entity, will receive MBE participation credit **only** for the MBE's participation based upon a percentage of the dollar amount of the work performed by the MBE entity. Only the verifiable dollar amount as defined in paragraphs c. thru h. below will be allowed to count towards MBE participation goals.
 - b. All bidders including certified MBE's must achieve the required 30.0% MBE (African American and Hispanic American) utilization goal by obtaining the additional participation from certified MBE's.
 - c. A contractor or sub-contractor who has an ownership stake (at any level) in another business entity (whether as a parent or subsidiary) may not use that organization for purposes of meeting goal requirements in a subcontracting capacity on a MSD project. MBE participation must be obtained through utilization of an independent, certified MBE (African American and/or Hispanic American) contractor with no ownership affiliation to the contractor or subcontractor in the hiring capacity.
3. Bidders will be credited 100% for qualified MBE participation of the dollar amount for purchases made from certified MBE (African American and/or Hispanic American) sub-contractors for work performed at the jobsite, but may include limited situations where the sub-contracting activity relative to the work being performed on the contract is performed at an off-site location but meets the CFU needs of the project (i.e. reinforcing steel mats tied at a yard and then shipped to the jobsite, painting of structural steel, etc.), subject to approval by MSD's Diversity Division.
 4. Any **bidder** will be credited with MBE participation for **100%** of the dollar amount of purchases made from:
 - MBE manufacturers who operate or maintain a facility and/or establishment with a manufacturing business that produces on site materials, supplies, items and/or equipment per specification documents; or
 - MBE distributors/suppliers contracted with a manufacturer to distribute products and who will in fact **provide qualified installation** services on MSD's project which meets a CUF for the MSD project. The MBE distributor/supplier must be engaged in marketing, sales, warehousing, distribution, and delivery for the manufacturing entity.
 - a. MBE participation proposed under this category shall require the following attachments to Form A:
 - Evidence that the MBE is certified within the identified manufacturing industry;
 - Product specifications;
 - MBE's location of manufacturing operations;
 - Address of MBE's product marketing, sales, warehouse, distribution; and
 - Evidence of MBE's proposed installation services on the contract.

5. Any **bidder** will be credited with MBE participation of **20.0%** of the dollar amount of purchases made from:
 - MBE distributors and/or suppliers possessing a manufacturer's contract or agreement and engaged in the sales, warehousing, and distribution of materials and/or supplies.
 - MBE participation proposed under this category shall require as an attachment to Form A identification of the address where the sales, warehousing, and distribution activities occur.
6. Any **bidder** will be credited with MBE participation of **3.0%** of the dollar amount of purchases made from:
 - MBE providers of materials, supplies or services acting as a **broker or dealer** and who do not satisfy the requirements for any of the above categories must be certified as a **broker or dealer** in accordance with the requirements of and by one of the acceptable agencies listed in paragraph A.4. above.
7. A sub-contractor may be used for participation at any tier provided the bidder identifies the "tier" level of utilization for the sub-contractor on MSD Form A and submits verification of their certification along with any applicable required attachments at the time of bid submittal.
8. Any non-certified MBE sub-contractor at any tier level **does not** count towards meeting a bidder's MBE participation goals. Therefore, all tiers of MBE sub-contractors are required to subcontract **only** to other certified MBE sub-contractors providing the same services in order to be counted towards meeting the MBE participation goals. Any deviation from this requires immediate notification to and approval by the District.

C. Evaluation of Goal Achievement.

1. As a prerequisite, to demonstrate MBE goal achievement, the bidder must provide the following documentation with their bid:

NOTE: MSD Form A must be used for this purpose.

- a. Name identification of the Certified MBE sub-contractor;
 - b. Identification of the type of services, materials and/or work of the particular sub-contractor to establish the MBE's Commercially Useful Function;
 - c. Total dollar amounts for the MBE's participation. Each MBE must be listed separately;
 - d. Proof of valid certification status for all MBE sub-contractors;
 - e. Check box of the intended percentage of participation for each MBE sub-contractor that is to be credited towards meeting MBE participation; and
 - f. Indicate the tier level of participation for each MBE sub-contractor.
2. MSD reserves the right to conduct on-site interviews and inspections of the MBE's listed on Form A at their place of business for purposes of verifying certification information presented and to determine if the MBE's business is in compliance with MSD's guidelines for MBE participation on its Diversity Program.

3. For bids that do not meet the District's stated MBE goal, the bidder must document and provide all good faith efforts undertaken by the bidder to achieve the stated goal. For a bid to be considered responsive, efforts undertaken shall be concentrated and aggressive so as to reach the intended MBE targets for participation through various means of personal contact, follow-up, and/or actual consultation with qualified certified MBE firms.

MSD Form B - Good Faith Documentation Requirements

The following is a list of minimum requirements (a thru e below) a bidder must complete in order to have demonstrated compliance with meeting the requirements for the District's "Good Faith Efforts". All "Good Faith Efforts" must be undertaken with MBE firms having skills or services relevant to the project being bid, and be "ready, willing and able" to provide those skills or services. Information submitted as validation of "Good Faith Effort" activities will be subject to verification.

a. Advertisements:

- Bidder **must provide documented proof** of all efforts undertaken to extend opportunities to local certified MBE firms through advertisements with locally distributed media within the MSD service area. Advertisements must be published at least fourteen (14) days prior to the bid due date. Examples include: advertising in regional minority trade association newsletters, minority-owned media specifically targeted to MSD's service area, and written notifications sent to minority contractor associations. Proof of advertisements would include copies of the advertisement containing dates published or publication affidavits. All other advertisements must be acknowledged by the intended or targeted recipients.

b. Outreach to identify potential MBE's for work being sought:

- To assist bidders, a listing of certified firms is provided with solicitation documents and a listing of certified MWBE contractors is also provided on MSD's supplier diversity website (www.stlmsd.com) as a resource for bidders to use for purposes of making contact with MBE's to solicit for quotes, bids, etc. However, it is the responsibility of the bidder to verify the current certification status and MBE sub-contractor's qualifications and experience to perform work or supply services or materials as a MBE sub-contractor.
- Any solicitation of letters, e-mails, or faxes sent by the primary bidder to reach certified MBE's must include the specific type of work being sought, or the work delivery schedule conforming to the type of work that the MBE firm is qualified to perform.
- Bidder must provide documented contact with a minimum of two (2) MBE professional or advocacy organizations, each of which has capabilities to assist with identification of potential certified MBE's for subcontracting opportunities. Evidence of contact with the organization must be provided.

- c. Bidder shall host a pre-bid meeting, prior to bid completion, to reach qualified MBE's. A Pre-bid meeting agenda with sign in sheets containing MBE's contact information and signatures must be submitted with bidder's outreach documentation. Announcement of pre-bid meetings, including date and time, should be included in the bidder's advertisement, referenced in paragraph "a." above.
- As an alternative, local construction contractor associations or the equivalent may advertise separately for a single location pre-bid meeting for numerous potential prime and MBE firms. The prime contractor shall submit sign in sheets showing their attendance and documenting the attendance of MBE firms with outreach documentation.
- d. Written Correspondence and Notifications: In order to provide verification of "good faith" efforts:
- Bidder must provide copies of efforts to solicit bids and/or material quotes from qualified MBE's through timely notifications to solicit business via letters. Those solicitations should be dated or postmarked a minimum of fourteen (14) calendar days prior to bid opening. Solicitations may be sent using the following methods:
 - Registered or certified mail with a returned receipt required, or
 - E-mail notifications with acknowledgement by recipient or confirmation via returned "read" receipts, or
 - Faxed documentation with acknowledgement by recipient or confirmation receipts, or
 - Courier with proof of the MBE's acceptance signature
 - Verifiable proof of all such notifications must be submitted as confirmation of the bidder's due diligence to secure qualified minority participants within MSD's service area.
 - Bidder shall provide the listing used to solicit bids and must attempt to contact an adequate number of certified MBE's, whether sourced from MSD's website listing (www.stlmsd.com) or other MSD approved certifying agencies, must be contacted in relevant work categories, as designated in the following table:

| Number of MBE's in Relevant Work Category | Minimum Number of MBE's Contacted Based on MSD's Website List |
|--|--|
| Five or Less | All Available MBE's |
| Six to 10 | At Least Five MBE's |
| 11 or More | At Least 50% of Available MBE's |

e. Contracting in Good Faith with Interested MBEs

- It is the bidder's responsibility to identify and make portions of the project work available to qualified MBE firms and to select those portions of the work or material needed consistent with the available MBE firms, so as to facilitate MBE participation. Evidence of such contracting outreach includes the names, addresses, and telephone of MBE's that were considered; a description of the information provided regarding the plans and specifications for the work selected; and evidence as to why additional agreements could not be reached with the MBE's to perform this work.
- A bidder using good business judgment would consider a number of factors in deciding to contract with MBE firms and would take a firm's price and capabilities as well as project goals into consideration. Good faith effort include those additional steps taken to do business with MBE's such as negotiations, one-on-one meetings, etc., the bidder takes beyond sending the initial request for a quote to reach an acceptable agreement for participation with the MBE. The ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. A bidder is not, however, required to accept higher quotes from MBE's if the price difference is excessive or unreasonable.

- f. Bidder must provide a justification statement which provides the reasons why the Bidder could not attain the required goals and describing in detail the efforts undertaken to reach the goals.

D. Post Contract Award Requirement:

1. Within fifteen (15) calendar days after notice of award of the contract, MBE verification letters signed by all the MBE participants or copies of all MBE related sub-agreements signed by both the contractor and MBE sub-contractors must be submitted to the District. If a bidder fails to submit the required information and documentation within fifteen (15) calendar days after notice of award, the District may withdraw the notice of award and the bid security of that bidder will be forfeited to the District.

E. Contractual Compliance Requirements:

1. For the purpose of validating Diversity compliance on any MSD project, the District will perform on-site monitoring; require validation of payments reported as made to participating MBE's on the project; and conduct audits of records pertaining to the project in order to verify the participation of MWBE's performing work on the contract.
2. During construction the contractor must submit monthly online subcontractor utilization reports to the District or its assigned project Construction Manager (CM) using the online Prism Reporting system. MSD will verify that the contractor has reported their monthly MBE and Non-MBE involvement participation upon receipt of each progress payment request until the Final Payment Application for the project is submitted. On months where there is no MBE activity, contractor must still submit a report indicating no activity was performed for that month.

3. Changes to the contractor's original or previously approved MBE utilization (MSD Form A) will only be considered by the District for one of the following reasons:
 - a. The named MBE sub-contractor is unable to meet the delivery requirements of the contract schedule.
 - b. The named MBE sub-contractor is dilatory in complying with the requirements of the contract documents.
 - c. The named MBE sub-contractor is prevented from performing due to bankruptcy, insolvency or circumstances related to the failure of the business.
 - d. The type and amount of work to be performed by the MBE sub-contractor is less than what the contractor could have reasonably assumed at the time of the bid.

The contractor must promptly report to the District, in writing, any proposed changes in the utilization of MBE sub-contractors, and include appropriate written justification documentation, signed off by both the contractor and the affected MBE. All contract modifications to any MBE participation and/or MBE scope of work requires a written District Change Order to the contract prior to final close out of a project.

4. Before **final payment** will be authorized by the District, , the contractor must submit a MWBE Payment Verification Confirmation Form (signed by both the contractor and the MBE sub-contractor) for each MBE sub-contractor utilized on the project indicating the full amount paid to date. Contractor must indicate on the Verification Form whether this amount represents full or partial payment of all amounts owed to the MBE sub-contractor. In a case where the total final payment to the MBE sub-contractor cannot be made until the District makes its final payment to the contractor, the contractor shall also indicate on the form the amount to be paid upon receipt of final payment from the District. Upon receipt of final payment from the District, and subsequent payment of any outstanding payments owed to MBE sub-contractors, the contractor shall record final payment into Prism and submit a new MWBE Payment Verification Confirmation Form for each MBE sub-contractor receiving such outstanding payment confirming their receipt of final payment.
5. In the event the contractor fails to conform to meeting its MBE obligations, the contractor must furnish to the District, in writing, the reasons for failure. If, in the sole judgment of the District, there have not been sufficient good faith efforts taken on the part of the contractor to meet its full contract MBE participation obligations, the District will advise the contractor, in writing, of corrective actions to be initiated. If the contractor fails to fully initiate the corrective actions in a timely manner, the District may withhold the equivalent amount, which should have been paid to the MBE(s), from any payments and/or institute appropriate actions pursuant to the provisions that have been incorporated into the contract specifications. An equivalent amount shall be defined as that portion of the MBE goal per party that was not met, as initially set forth on MSD Form A or by an approved MSD contract change order agreement.

F. Disclaimer

The District's implementation of this MBE procedure and its requirements does not constitute any endorsement of any MBE. By submitting a bid to the District, the bidder agrees to hold harmless the District, its officers and employees, for all claims arising out of this bid or any contract connected thereto.

WORKFORCE REQUIREMENTS

Building Construction contracts in an amount of \$500,000 or greater require compliance with workforce participation goals during project construction as follows:

A. Workforce Requirements

- 30.0% Minority workforce participation per trade;
- 7.0% Woman workforce participation per trade;
- 40.0% Total minority and woman apprentices (for any apprentices used).

Minority is defined as a male or female African American, Asian American, Hispanic American or Native American.

B. Contractual Requirements for Workforce

1. The contractor must comply with all applicable workforce contractual requirements at the onset of all MSD projects. **All “boots on the ground” workforce activity on a MSD project must be reported. This includes the workforces of both certified and non-certified subcontractors.**
 - a. At least fifteen (15) days prior to mobilization, contractor is required to submit a 60 Day Project Workforce Plan to the District forecasting the anticipated workforce utilization for the first 60 days of the project schedule for the Prime contractor and **a ll** sub-contractors providing labor as a component of their scope of work who will have workers on the project in the first 60 days of the project schedule. **Contractor is required to use the appropriate “60 Day Workforce Plan Template” provided by MSD’s Diversity Department and located at the following website link: <http://www.stlmsd.com/our-organization/diversity-msd/diversity-policies-and-forms>**
The following information is required to be included in the plan:
 - Project Information
 - Name of each worker
 - Trade/Craft of each worker
 - Gender of each worker
 - Ethnicity of each worker
 - Employment Status of each worker, i.e., New Hire, Union Hall Hire, etc.
 - Length of employment with the Prime contractor or sub-contractor
2. In the event a contractor is not meeting the workforce goal requirements at the onset of a project, contractor must **also complete and include a “Project Workforce Plan” schedule (also found at the website link listed above)** which identifies the contractor’s plans for meeting the workforce goal requirements and in addition which demonstrates the “good faith efforts” undertaken by both the contractor and sub-contractors to meet the workforce requirements. To meet “good faith effort” the contractor must provide the following to the District:

- a. Documented proof of regular contact with the resources listed below requesting availability of qualified workers must be provided to the District along with responses received to the request for diverse workforce from the following:
 - MSD's Bud Training Program (SLATE)
 - MSD's First Source Hiring Program (SLATE)
 - Documented contact with union affiliates (if applicable)
 - b. An Action Plan to fulfill contract workforce obligations by the end of the project must be provided with documentation.
3. All actions of good faith must include the steps listed in 2. a-b. Failure to meet these minimum contract obligations will subject the contractor to sanctions on doing future work with the District up to and including a complete prohibition from performing work on any District projects for a time period to be decided solely by the District.
 4. Upon receipt of contractor's 60 Day Project Workforce Plan by the District, contractor will receive acknowledgement via email that the Plan has been received and is under review. Within 5 business days of acknowledgement, contractor will receive a notice of acceptance or request for additional information. This process will continue until an acceptable plan is on file. The contractor is prohibited from proceeding with any portion of the work having a workforce component until the Plan has been deemed acceptable by the District.
 5. Monthly Workforce Reporting Requirements: To be in compliance with MSD's labor and workforce reporting requirements contractor must utilize MSD's **Diversity online Workforce Reporting System located at the following website link: www.msddiversityreporting.com**. Contractor shall submit monthly workforce utilization reports online by the 10th of each month for the previous month. Certified Payrolls detailing actual utilization for the past month for the Prime contractor and all sub-contractors performing work in the month being reported. If the workforce goals have not been met, the report shall also include documentation of specific "good faith efforts" performed in the past month as well as the planned actions to be taken by the contractor and the sub-contractors to fulfill workforce contractual requirements.
 - a. As part of its monthly reporting, documented proof of "good faith effort" activities including initial and ongoing contact with the programs listed above must be provided along with documented responses from each entity contacted to request diverse workers.
 6. During the life of the Community Benefits Agreement ("CBA"), MSD shall ensure that the First Source Hiring Program and Training Programs are material terms on all new MSD CIRP contracts; all amended or renewed CIRP projects and voluntary extensions of existing CIRP projects. Under these CIRP projects the requirements for use of these programs shall commence as of the effective date of the contract. MSD shall actively monitor performance of the BUD and First Source Hiring Programs, shall enforce the requirements for use of the BUD and First Source Hiring Programs and shall take appropriate enforcement actions to address noncompliance.

The BUD and First Source Hiring Programs provide access to targeted Minority and Women applicants for MSD projects. Contractors shall receive from the Programs prompt, cost-free eligibility lists of available qualified and trained applicants when requested for MSD Projects. MSD requires contractor participation in the BUD and First Source Hiring Programs with regard to all job vacancies on MSD projects by:

- a. Prime Contractors and their subcontractors;
- b. Contractors and subcontractors entering into or receiving an extension in the scope of an existing project contract, an amendment or renewal of an existing project in which the CBA was in effect at the time of the original contract.

Nothing contained in the CBA or MSD guidelines shall require contractors who are subject to collective bargaining agreements with union affiliates to comply with utilization of SLATE Programs which violates any component of bargaining agreement terms. **Conflicts regarding the use of these programs with collective bargaining agreements must be provided to the District along with good faith effort documentation.**

- c. Contact Information for BUD Training and First Source Hiring Programs: St. Louis Agency on Training and Employment (SLATE)
Program Administrator: CJ Neu
1520 Market Street, Suite 3050
St. Louis, MO 63103
(314) 657-3551,
Phone (314) 641-8440,
<https://www.stlouis-mo.gov/government/departments/slate/construction-intake-center.cfm>
www.stlworks.com
Applicant Intake Referrals Email: Constructionintake@stlworks.com

7. For the purposes of validating workforce compliance on any MSD project, the District will perform on-site monitoring in order to confirm workforce compliance as described in paragraph A above.
8. Failure to meet the "Good Faith" effort requirements listed above will subject the contractor to sanctions on doing future work with the District up to and including a complete prohibition from performing work on any District project for a time period to be decided solely by the District.

FINAL CONTRACT AND ANNUAL DIVERSITY COMPLIANCE EVALUATIONS

- A. Upon submission of contractor's final payment request, MSD's Diversity Division will conduct a final evaluation of both vendor and workforce goal attainment on all contracts with vendor and/or workforce goals prior to release of contractor's final contract payment. A contractor is considered to be in compliance with MSD's Diversity Program guidelines upon successful utilization of the MBE subcontractors proposed on contractor's originally submitted MSD Form A and satisfaction of workforce utilization goal requirements. Any deviation from contractor's originally approved MBE's, requires contractor to have an approved change order with appropriate justification documentation. Final contract payments will not be approved without the required documentation.

- B. For contracts exceeding \$500,000, to meet workforce requirements, contractor must have on file an Initial 60 Day Workforce Plan, all required monthly Workforce Utilization Reports for Prime and Subs, all required certified payrolls for Prime and Subs, and any additional required workforce compliance documentation such as good faith effort documentation in the event contractor did not meet workforce requirements. Failure to meet workforce compliance requirements can subject the contractor to sanctions on doing future work with the District up to and including a complete prohibition from performing work on any District project for a time period to be decided solely by the District.

- C. On an annual basis, each pre-qualified contractor requesting to continue as an approved pre-qualified contractor will be evaluated and scored on performance compliance with meeting vendor and workforce goals. Failure to meet vendor and workforce compliance requirements can subject the contractor to sanctions on doing future work with the District up to and including a complete prohibition from performing work on any District project for a time period to be decided solely by the District.