

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
MARCH 5, 2009

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 2:01 p.m. by Mr. Brown.

I. Roll Call

PRESENT: D. Brown
T. Longo
D. DePiero
S. Kelly
W. O'Malley
G. Starr
R. Sulik

The Secretary informed the President a quorum was in attendance.

II. Oath of Office

Director of Law, Marlene Sundheimer, administered the Oaths of Office to Mayor Starr, and Ms. Kelly, both re-appointed to the Board, and newly appointed Board member Mr. O'Malley.

III. Approval of Minutes

MOTION – Ms. Kelly moved and Mr. Sulik seconded that the minutes of the February 19, 2009 meeting be approved. Without objection, the motion carried unanimously.

IV. Public Session

Executive Director Ciaccia informed the Board that Mr. Norman Edwards registered to speak at public session regarding Resolution Nos. 44-09, 38-09, 39-09 and 40-09, which were on the agenda for Board consideration, and methane gas, CSO-092 and Independence, which did not pertain to any agenda action items. Mr. Al Lewis, Mr. Perry Roberts, Mr. Terach Yisrael and Mr. Ken Bender registered to speak at Public Session regarding Resolution No. 44-09, which was on the agenda for Board consideration.

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Mr. Brown requested that the Public Session participants come forward and address their comments to the Board and each were given five (5) minutes to speak.

Mr. Edwards inquired if the "old MBE/FBE was thrown totally out of the window," and whether the old program still exists or does not exist. Mr. Brown deferred to Ms. Sundheimer and Executive Director Ciaccia. Executive Director Ciaccia advised that the Minority Business Enterprise (hereinafter "MBE") and Women's Business Enterprise (hereinafter "WBE") program exists in the interim.

Mr. Brown inquired whether 15% MBE and 5% WBE participation goals were listed in the bid documents for Resolution Nos. 38-09, 39-09 and 40-09. Executive Director Ciaccia advised that the MBE/WBE participation goals varied from 15% and 5% and 10% and 3%.

Mr. Edwards stated that "we have legitimate bona fide contractors that would like to work with the Sewer District" and it is "a slap in our face" for these contractors, "Nerone, Kokosing and Marous, to submit a bid with all of the multi-millions of dollars of work." Mr. Edwards claimed that "we protested at four or five of his [Marous] projects" and that "Scott Marous will not do the right thing with the City of Cleveland and on the City of Cleveland projects, Battery Park and numerous other projects that we have protested at on his jobs because of non-compliance or non-conformity." Mr. Edwards stated "for them to come down here and submit bids and Kokosing and also Nerone with the hundreds of millions of dollars that they do, as a taxpayer, and I know I am a black taxpayer, but I'm still a taxpayer." Mr. Edwards indicated that "that's a slap in our face."

Mr. Edwards stated that "it was twenty thousand something dollars on almost \$12 million worth of work." Mr. Edwards stated that he could not "understand if a program was in place already" and that the disparity study will be completed in a year. Mr. Edwards questioned whether minority contractors will be "totally excluded from the projects until a disparity study is done," and he stated that "you already have a program that is implemented."

Mr. Edwards requested that the Board "follow the guidelines of the program that is already implemented," and the guidelines stipulated in the bid documents. "We are not asking to juggle the numbers from job to job."

Mr. Edwards stated that he "did not agree with the \$52 million job that went on at the incinerator with no minority participation" for the reason that "they have to have mechanical people install it," therefore, "mechanical people need to be employed on that job, once it's manufactured, it has to be installed" and "he is going to use local people to install it." Mr. Edwards stated "that we were totally wiped out of a \$52 million project" and that there will not be "one African-American or minority working on that project."

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Mr. Edwards stated that six to seven years prior, he tried submitting bids and alleged that legitimate contractors certified with the Board are “denied access to work in the Sewer District.” Mr. Edwards claimed that he was denied as well as several others who were present at the meeting. Mr. Edwards stated that “we have been diligent in turning the paperwork in, and we have followed through just to get the paperwork to stack it in an office to say that we reached out.”

Mr. Edwards stated that he is going to Washington on Monday and plans to “sit down with some people and this has got to go to another level.” The District expects to receive some stimulus money, and “we are being discriminated against” and “left out of projects not only as contractors but as construction workers.” It is not solely about contracts. “We have competent, certified journeymen who have been denied for many, many years to work at this Sewer District.” Mr. Edwards stated that he “cannot understand if those three bids went out” totaling \$12 million why the existing regulations would be taken out. Mr. Edwards stated that “you took out the 15% MBE and 5% WBE,” and stated that he was “totally lost.”

Mr. Brown informed Mr. Edwards that he reached the five minute time limit and that he can address the non-agenda action items he registered to speak on at the second Public Session.

Mr. Lewis reported to the podium to address his concerns involving his experience in trying to do business with the District. Mr. Lewis stated that his company is qualified and has been in business in Cleveland for 25 years. Last year, they were nominated for the Golden Torch Award by the Better Business Bureau for outstanding service. Mr. Lewis advised that they currently have “five Fortune 500 companies” and installed “75 McDonald’s floors in Northeast Ohio.” Mr. Lewis stated that his company conducts business with major organizations from the City of Cleveland, Cuyahoga County, State of Ohio, CMHA, and 50 schools in five districts.

Mr. Lewis stated that his company tried to do business in the late nineties with the housing authority, and he and Mr. Chapman, an electrical engineer, “were certified for about four or five years” and received no work. They received no formal bids and were told that prime contractors would have to contact them directly. Mr. Lewis claimed that “we tried our hardest to get business with the Sewer District” and were advised that they either “didn’t meet the criteria or they would look into it” but were not able to receive District work.

Mr. Lewis stated that his company is not currently certified with the District because “over a period of years of not getting any business, you only have so many times as an

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entrepreneur to spend" money and they chose to spend money in areas where they received results including the State or County.

Mr. Lewis stated that he is a Board member of the Black Contractors Group and "maybe the spirit of the law doesn't say everything it should say as far as inclusion for minorities and African-Americans," but "there is a social and moral issue that is even louder than the law." People living, working and having children in this community are seeking job opportunities.

Executive Director Ciaccia inquired as to the name of Mr. Lewis's company in which he stated the name is Advanced Federated Protection, specializing in the installation of high-tech security maintenance systems. Mr. Lewis stated that they completed work for the "the court, the city and Gund Arena" and installed cameras "to protect areas." Mr. Lewis stated that his company contacted the District awhile back inquiring about camera installation in sewers and that there was no follow-up.

Mr. Roberts reported to the podium and inquired as to the status of the disparity study. Executive Director Ciaccia advised that the disparity study is underway and will take the remainder of 2009 for completion. The District will roll its current MBE/WBE program into a Small Business Enterprise (hereinafter "SBE") program commencing June 2009. Executive Director Ciaccia expects that the disparity study results will support the need for MBE/WBE goals, making the program legally defensible.

Mr. Roberts stated that "for the current contractors doing work for the Sewer District, their minority participation, even with the workforce, is minimal and almost none." Mr. Roberts stated that "EEOC laws should be put in place" and the contractors should be made aware of that "they have to have an affirmative action plan to adhere to according to federal laws."

Mr. Roberts stated that "you do not see blacks or minorities" on projects. Mr. Roberts advised that he lived in Cleveland his entire life and visited projects located at Lee Road, Kerruish Park, Cleveland Heights, East Cleveland and Turney Road.

Mr. Roberts stated that he visited the Kerruish Park site where KM&M was contracted to complete work and he stated that he spoke with one of their superintendents who indicated that he "thought nobody else had 3900 except for us." Mr. Roberts stated that this insulted his intelligence. Mr. Roberts stated that "black people learn things and we have the same instructors and teachers that white people have" and are just as qualified.

Mr. Roberts indicated that there is an existing law which the Sewer District can enforce, and "they do not have to sit back and watch" and "turn a blind eye to it."

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Mr. Roberts stated that he is an Operating Engineer for Local 18 and when he is sent out to work for a contractor, he may work two months, at best, and usually it is "for a week or a couple of days." Mr. Roberts stated that "they act as if black people do not have families to feed and bills to pay, but the fact it is, we do, we exist and we are here." Mr. Roberts stated that "we are not Mexicans coming across the border illegally. We are already here and we have been here for years." Mr. Roberts stated that his "great-grandparents lived here in the early 1900's."

Mr. Roberts stated that "we want to be treated as equal." According to the Constitution, "all men are equal" and this "is all we are asking for" and "we want our fair share of work." Mr. Roberts advised that "we are not begging or asking for handouts, we want to work" and "put in an honest day's work for an honest day's pay" and "we do not want to have to kiss nobody's behind to get it." Mr. Roberts advised that "we want to come to work on time and put in a good day's work and we are not asking for anything special" or "special treatment" but do not want to be treated "substandard" or like "second class citizens".

Mr. Roberts stated that there is a lot going on in the City including stimulus money and "we are concerned that the money does not go around the black community and the City of Cleveland is predominantly black." The work and money in Cleveland is "going out and not going to the people in Cleveland." Mr. Roberts claimed there are only a "few nice houses" in the neighborhood because "people in Cleveland are not getting their fair share." Mr. Roberts stated that "billions of dollars of work is coming through the City and all we want is our fair share." The Board only has to be "fair and honest" and "can make it happen."

Mr. Yisrael reported to the podium and stated that he is the owner of American Construction Company. Mr. Yisrael stated that he understood that the District was conducting studies to determine which minority contractors are available to work. Mr. Yisrael stated that the District could save a lot of money if the District would investigate the characters they are entering into contracts with and less time investigating us.

Mr. Yisrael stated that it was a "shame" that he had to come before the Board to make his "presence known as far as people respecting us." Mr. Yisrael stated that "you brought us here in slave ships and know what we are capable of doing and things are changing. Things will change. We are not going anywhere. We will be down here as often as it takes to make things change for the better. My people want jobs. My people want to bid on these contracts. I think they're qualified. I know they're qualified." If you did as much study on these Caucasian contractors as you claim to do on us, I think you would save money and find out that they're not all qualified. "Some of their character is questionable. Things have got to change." They will change whether it is the Board or someone else. "Things are going to change. We are not going anywhere. We are not

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going away.” Mr. Yisrael stated “do the right thing and be fair. This is not fair. I should not have to come down here and support my brothers because you people are overlooking them. Do the right thing.”

Mr. Bender reported to the podium and referred to Resolution No. 44-09. He inquired as to the Board’s proposed plan in order to “encourage Caucasian contractors to utilize African-Americans on a day by day basis.” Mr. Bender claimed that “often times, we are being denied the opportunities to work in this City and around the country. African-Americans are profusely being denied the opportunities merely because we were brought here on slave ships against our will.”

Mr. Bender alleged that, in 2009, “we face the same difficulties that we faced in the 1800’s” and “nothing has changed” except the faces. Mr. Bender stated that the “same ideas brought up yesterday are being carried out today on a day by day basis” and nobody realizes that “African-Americans are losing the battle.” We see “deplorable neighborhoods, young men being carted off to jail, and young men laying in the gutters.” Mr. Bender claimed that “African-Americans are being denied opportunities to work” and “it is unfair that taxes are being utilized to support big businesses in the City of Cleveland” and “build buildings” while “African-Americans are being told you can’t work on this project.”

Mr. Bender stated that “it is insult to wake up in the morning and see a building being built in my neighborhood” and “it is an insult to wake up and my son asks me, ‘Daddy, why don’t I see anything that resembles me on that job?’” Mr. Bender indicated that he explained to his son that “the same thing that happened in the 1800’s is still happening today.” Mr. Bender inquired as to the message being sent by the Board to “little black kids coming out of the schools every single day and look at a building being built across the street. That little kid has been indoctrinated with a belief that I don’t see anything on that job that looks like me.”

Mr. Bender questioned “how can you all go home and sleep at night knowing you’ve indoctrinated a belief into young kids’ minds that they don’t deserve the right or have the right to be carpenters, painters and electricians.” Mr. Bender stated that “we have a moral obligation. We come down here profusely. I understand this fight truly because it’s and insult to tell my son that he can’t work on a project in his neighborhood.”

Mr. Bender stated that he cannot build in Strongsville, North Ridgeville or any other municipality “because of the simple fact of who I am.” He questioned as to “why should our neighborhoods be any different?” Mr. Bender alleged that he cannot build in Strongsville “without the police department saying something” or being “ticketed on a day by day basis” or without obtaining “the necessary permits to build a building.” Mr. Bender inquired as to why “we should we be any different” and he stated that “we are

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being denied the opportunities to feed our families.” Mr. Bender alleged that “this is economic genocide.”

Mr. Bender stated that he tells his son every day that he is a contractor and tried numerous times to become a “minority.” Mr. Bender defined “minority” as “an exclusive way of getting around the so-called black man” and that it is a “lavish word that nobody wants to talk about.”

Mr. Bender stated that “everybody used the word racism but nobody really wants to talk about racism.” Mr. Bender suggested that we talk about racism, “put it on the table and truly talk about it.” Mr. Bender stated that “everybody wants to say there is no racism, but racism is alive and growing in our neighborhoods.”

Mr. Bender stated that “we deserve the right” and that the “Board should want to do the right thing. It’s not about me. It’s about my son’s son. It’s not about me. It’s about my kid’s kids.” Mr. Bender stated that he is not concerned about himself, rather his concern is about the children coming out of school with the “indoctrination and/or a belief that they cannot be builders because every building in their neighborhood is being built by the so-called Caucasians, and when he looks, the only thing he sees is Caucasians. He drops his head and asks himself why can’t I be? Based upon my color, I have been denied the opportunities to work in this so-called great country that they call America. Well America can’t be great until America wakes up and realizes that the white paper is no good without the black ink.”

V. Executive Director’s Report

Executive Director Ciaccia was asked to postpone his oral report and include it with his March 19th formal report.

VI. Consent Agenda

There were no Consent Agenda items.

VII. Action Items

Contractor/Vendor/Consultant Resolution

Resolution No. 44-09

Encouraging contractors, vendors and consultants seeking contracts with the District to utilize small, disadvantaged, minority- and women-owned enterprises as subcontractors.

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Mr. Brown stated that the Board requested staff craft this resolution based upon discussion held at the February 19th Board meeting wherein it was determined that, irrespective of the District's goals for the project, MBE/WBE participation "was well below what it should be." Mr. Brown stated that it is unfortunate that in 2009, the laws do not give us the tools that we would like to advance several things. Mr. Brown advised that, taking the economic conditions of the region into consideration, the District's ability to employ and provide employment opportunities to the people of the region and to the people that live in the District so that it is inclusive of all constituencies is an important issue for the Board. Mr. Brown indicated that although there are statutory requirements, there are also moral obligations and requirements that cannot be ignored by the Board.

Mr. Brown stated that if the District reviewed past contracts, the MBE/WBE participation listed in the bids versus the actual MBE/WBE participation would differ. If the District had the resources to verify payrolls, invoices, and material lists in order to validate that companies were performing the work and getting paid, "then it probably would have been more realistic and honest" as to "what the actual engagement was."

Mr. Brown advised that the District continues struggling with issues including requirements by law, workforce and diversity goals and objectives, lowest and best bid, and defining good-faith efforts. It is the Board's desire to utilize the available tools to make informed decisions. The District is in a "gray area" because there are MBE/WBE goals and objectives; however, the program is not legally defensible.

Mr. Brown stated that people misrepresent "what they pledge and what they actually do" and do not provide good faith efforts or inclusion. The Board's challenge is to create a vehicle or mechanism to conduct due diligence on each contract and identify the level of outreach, inclusion and advertisement that prime contractors made in order to reach out to subcontractors and provide opportunities to work on District contracts.

Mr. Brown stated that although the Board may not like the MBE/WBE participation on certain contracts, they do not have much leverage at this point in time. Resolution No. 44-09 identifies the Board's desired outreach methods, level of due diligence and good faith efforts to be made by prime contractors on District contracts. The Board is desirous of providing a tool until the results from the disparity study are obtained which are expected to support the MBE/WBE goals on District projects.

Mayor Starr requested that Mr. Brown read aloud the heading for Resolution No. 44-09 to inform the audience as to the Board's intent:

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“Resolution No. 44-09 encourages contractors, vendors and consultants seeking contracts with the District to utilize, small-, disadvantaged-, minority- and women-owned business enterprises as subcontractors and to provide reliable employment opportunities to such individuals in the District service area and further encouraging those companies seeking to do business with the District to reach out to small-, disadvantaged-, minority- and women-owned business enterprises and to work with the District’s Office of Contract Compliance to provide subcontracting opportunities to such business enterprises in order to strengthen the economy of the region and to support the individuals, businesses and communities served by the District.”

Mayor Starr advised that he supported Resolution No. 44-09 and he indicated that there was “very convincing and powerful testimony” provided at the Board meeting, and he thanked the Black Contractors Group for attending the meeting to provide their perspective.

Mayor Starr advised that he wanted to include his signature of support on “this very important resolution,” and he suggested that all Board members sign Resolution No. 44-09.

Mayor Starr inquired how the District plans to inform contractors, vendors and consultants of the Board’s request for inclusion. Executive Director Ciaccia advised that Resolution No. 44-09 will be incorporated into all bid packages and requests for proposal (hereinafter “RFP”).

MOTION – Mayor Starr moved and Mayor Longo seconded to amend Resolution No. 44-09 to include signature lines for all Board members. Without objection, the motion carried unanimously.

Mayor Longo stated that during his involvement with the Board, he never heard “any Board member saying that they weren’t in favor of trying to balance the playing field to open the bidding process up so that it was equitable and fair.” Mayor Longo explained that as a Board member, situations arise “where you get legally trapped” whether it be a “union contract or non-union contract,” and that “people are very astute at defending their special interests.”

Mayor Longo stated that the District needs to complete the disparity study “to make certain that we can close the loopholes” and to prevent situations “where somebody can take a legal loophole and say it’s not applicable.”

Mayor Longo stated that according to conversations held with legal counsel as well as the discussions held at the Board meetings, it was determined that there were problems with the District’s existing program guidelines, more specifically, how the program was

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administered and whether it was legally defensible. Mayor Longo indicated that this is “a terrible position to be in” and “we want to get out of that.” Mayor Longo stated that the Board doesn’t want contractors to worry about being able to put in a bid or having a chance to even apply to get work. It should apply to everybody. Mayor Longo advised that leveling the playing field “is so important” and that “it goes back to my great-grandfather when he first came to this country and what they had to go through and having to live through all of that stuff.”

Mayor Longo reiterated that “it is so important to do this especially in the kind of environment we have today.” The economic stimulus is encouraging and he hopes the District receives some of this money and that it does not get siphoned off within the various State agencies and bureaucracies. The District must do what it can to ensure that “the message is sent” and avoid situations leading to “legal quagmires.”

Ms. Kelly indicated that she felt “the pain” expressed at the Board meeting and that “it is continuously disturbing.” Ms. Kelly understood that the District is bound by statutory requirements, but is also “bound by a moral law.” The “morality is that business cannot continue to be performed as it has done in the past,” the Board must be informed. Ms. Kelly inquired if the Board should get outside legal counsel, or if inside legal counsel would make some very strong recommendations as to how the Board can legally enforce Resolution No. 44-09.

Ms. Kelly stated that the wording “to encourage” can be “very weak” and she inquired what “to encourage participation” meant. Ms. Kelly inquired as to how the Board will ensure that contractors are reaching out and “using their best good faith efforts to be inclusive.” The Board needs to use its authority “to the fullest extent of the law.” Ms. Kelly declared that this has to stop; “it’s insulting” and “absolutely insane for people that are qualified not to be included in this process.”

Ms. Kelly advised that the Board may have to go outside of its legal representation it has on the Board and that she was willing to seek outside legal counsel, if necessary. The Board must do what is necessary in order to ensure fairness and that work is allocated in the community.

Mr. Brown stated that he shared in Ms. Kelly’s sentiments, and that the District is “handcuffed by these limitations” or the “inability to enforce expectations.” Mr. Brown stated that if the District goes down the same path, then “business as usual” will continue. The Board and staff must identify the available tools and resources to move beyond business as usual and get the attention of the contracting community. Mr. Brown stated that “these are not idle words,” but are the concerns of the Board and a frustrated staff that continue dealing with individuals that “rightfully or wrongfully continue to use the lay of the land to do business as usual.”

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The District intends to utilize its tools, available resources, identify successful actions taken by other entities and define good faith efforts and how this will be measured. Mr. Brown stated that it is one thing to create opportunities and not receive the desired results versus not being in the game altogether. In addition to passing Resolution No. 44-09, the District needs to identify actions needed in order to "level the playing field."

Executive Director Ciaccia stated that although the resolution states "encouraging," it will have some weight in the contracting community, and he informed the Board that some of the contractors were present at the meeting.

Executive Director Ciaccia stated that it is beneficial for the staff to receive the Board's input and that the Board should seek the assistance of outside legal counsel if that is their desire. Executive Director Ciaccia reminded the Board that the District engaged Colette Holt & Associates, an attorney whom is very knowledgeable of the laws governing affirmative action programs. Ms. Holt recommended that the District "scrap" its existing MBE/WBE program; however, Executive Director Ciaccia rejected this opinion because he felt that "something was better than nothing."

The next step is to develop the SBE program, and although it is a race- and gender-neutral program, it will continue to provide opportunities for the MBEs and WBEs as can be seen with the City of Cleveland's program. Executive Director Ciaccia advised that the District is buttoning up its policies and intends to roll out the SBE program in June 2009. The District will diligently move forward with the disparity study so that there may be opportunity to integrate enforceable MBE and WBE goals in the SBE program or modified SBE program. In the interim, Executive Director Ciaccia decided not to "scrap" the existing MBE/WBE program in an effort to encourage contractors to include MBE/WBE participation when legitimate subcontracting opportunities are available.

Executive Director Ciaccia stated that he will not tolerate pass-throughs on equipment purchases, and if this behavior is observed, he will "report it and deal with it." Executive Director Ciaccia declared that under his watch these, as well as certain other practices, will no longer be tolerated.

Mr. Brown suggested that a "context" or "framework" be developed to address the issues including providing subcontracting opportunities, addressing workforce requirements, holding contractors accountable, and defining what is meant by making good faith efforts.

Mr. Brown acknowledged Executive Director Ciaccia's point regarding pass-throughs and front companies which were used in order to meet MBE/WBE participation goals, and he stated that somebody is receiving payment for appearing to be an MBE or WBE

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which is a "farce" and that the District does not need this either. Mr. Brown stated that "not adding value to the project is not having program" altogether.

Mr. Brown suggested that the Board must establish "real parameters" on the "five or six goals that are tantamount to this initiative "that we can measure success by and if we're able to articulate that and create a work plan for that, then I think we will have at least done our due diligence in promoting a program that is not only defensible, but is a good program, that is real in terms of the outcomes that we're trying to accomplish, and creates expectations in the contracting community about what the District expects with its contracting opportunities."

Mayor Longo stated that he forgot about the advice given by Ms. Holt regarding scrapping the MBE/WBE program. Mayor Longo inquired if, for "a few extra dollars," could the disparity study results be expedited, and he stated that "there has to be a way when someone's feet is put to the fire that they can move a little bit quicker" and provide feedback by April or May. Mayor Longo alleged that "there has to be some way to shortcut or expedite or speed this process up" so the Board "can make firm decisions."

Executive Director Ciaccia replied that the District's SBE program is race- and gender-neutral, legally defensible, and provides the District with more leverage. The SBE program is scheduled to commence in June 2009, and staff is in the process of finalizing the policies related to the SBE program.

Executive Director Ciaccia informed the Board that the disparity study will take the remainder of 2009 to complete, but he intends to engage Ms. Holt on Mayor Longo's request to "fast track" this program.

Ms. Kelly stated that although Ms. Holt is an expert in her field, she felt that the Board should engage a local firm that "has their pulse on this community, that is invested in this community" and "knows what is going on in this community, not someone outside of the community."

Executive Director Ciaccia stated that "Cleveland had to change its program for a reason" and if the Board was desirous of spending money on a local attorney, then this was in their purview.

Mr. Brown stated that the Board needed to see a scope or action items as to the engagement of an outside attorney and inquired how long this would take. Executive Director Ciaccia inquired if the Board was desirous of determining if Ms. Holt's disparity study results could be received sooner. Mr. Brown affirmed and added that the Board also wanted to know what tools are needed in order to "drive the tenets of this resolution" so "encouragement" would have "parameters of expectation." Mayor Long added that it

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could then work with the disparity study. Executive Director Ciaccia requested that staff consult on these issues and will provide the Board with an update at its next meeting.

MOTION – Mayor Longo moved and Ms. Kelly seconded to adopt Resolution No. 44-09 as amended. Without objection, the motion carried unanimously.

Mayor DePiero stated that he appreciated the passage of Resolution No. 44-09 which was an important statement by the Board. Mayor DePiero referred to comments made regarding the engagement of outside legal counsel, and he advised that although he is not an expert in this area, he believed the federal courts have settled how these programs should be established, and if set up properly, they can then be enforced.

Mayor DePiero suggested the District inquire from Ms. Holt as to whether there are other interpretations of the law and questioned whether the Board should engage outside legal counsel. He stated that he thought this area of the law was pretty well settled depending upon the facts. Mayor DePiero stated that he appreciated Ms. Kelly's desire to act on implementing the resolution, as well as her other concerns, but he wanted the Board to consider whether it would be expend funds to retain outside legal counsel when the "law is pretty well settled" on this issue.

Authorization to Advertise

No discussion ensued on Resolution Nos. 45-09 and 46-09.

Resolution No. 45-09

A one (1) year requirement contract to perform cleaning on interceptors at East 91st Street and East 17th Street. Anticipated expenditure not to exceed \$80,000.00.

Resolution No. 46-09

A two (2) year requirement contract for industrial cleaning services at all WWTPs. Anticipated expenditure not to exceed \$340,000.00.

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 45-09 and 46-09. Without objection, the motion carried unanimously.

Authorization to Purchase

No discussion ensued on Resolution No. 47-09.

Resolution No. 47-09

Authorization to purchase a twenty-five (25) passenger bus from Transportation Equipment Sales Corporation for use at the Southerly WWTP. Cost is \$46,358.04.

MOTION – Ms. Kelly moved and Mr. O’Malley seconded to adopt Resolution No. 47-09. Without objection, the motion carried unanimously.

Authorization to Enter into Agreement

No discussion ensued on Resolution No. 48-09.

Resolution No. 48-09

Agreement for sponsorship of the 2009 Water Resource Restoration Sponsor Program.

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution No. 48-09. Without objection, the motion carried unanimously.

Authorization for Payment of Emergency Services

No discussion ensued on Resolution No. 49-09.

Resolution No. 49-09

Payment to Kenmore Construction for the Mill Creek Interceptor Main Branch Emergency Gravity Bypass Sewer Construction. Cost is the first and final payment in an amount of \$211,781.60.

MOTION – Mr. Sulik moved and Ms. Kelly seconded to adopt Resolution No. 49-09. Without objection, the motion carried unanimously.

Authorization for Contract Modification

No discussion ensued on Resolution Nos. 50-09 through 52-09.

Resolution No. 50-09

Contract No. 3193 with T. G. Adams and Associates, Inc. Cost not to exceed \$50,000.00.

Resolution No. 51-09

Final contract modification with Broadway Excavating for close-out of the Walworth Run Outfall Repairs (WOR) project – Contract No. 3438. A cost decrease of \$64,119.14, bringing the total contract price to \$184,380.86.

Resolution No. 52-09

Transfer of District contracts from Metcalf & Eddy to AECOM USA, Inc.

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 50-09 through 52-09. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

No discussion ensued on Resolution No. 53-09.

Resolution No. 53-09

Contract with LABLynx, Inc. for the annual maintenance and support of the laboratory and pretreatment information systems. Cost not to exceed \$30,000.00.

MOTION – Mr. Sulik moved and Ms. Kelly seconded to adopt Resolution No. 53-09. Without objection, the motion carried unanimously.

Resolution No. 38-09

Contract with Kokosing Construction Co., Inc. for the Cuyahoga Valley Interceptor Lift Station Improvements – Contract LS-3. Cost not to exceed \$6,020,200.00.

Mr. Brown referred to discussion held at the February 19th Board meeting wherein the Board requested the contractors be present to discuss the lack of MBE participation and low WBE participation on the lift station contract. Mr. Brown pointed out that Kokosing Construction Co., Inc. (hereinafter “Kokosing”) listed .52% WBE participation whereas the District set MBE/WBE goals at 15% and 5%. Mr. Brown deferred discussion to Executive Director Ciaccia.

Executive Director Ciaccia advised that the engineer’s estimate for the Cuyahoga County Valley Interceptor Lift Station Improvements – Contract LS-3, was \$5,932,000. The District received nine very close bids to the engineer’s estimate. Kokosing was determined to be the lowest and best bid, and was 2% lower than the next bidder which

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was North Bay Construction. Executive Director Ciaccia added that North Bay Construction and the Bay Mechanical Electrical Company, the third lowest bidder, are non-union companies.

Executive Director Ciaccia advised that of the 48 companies that requested bid packages, five companies were MBEs or WBEs. Of the 25 companies in attendance at the pre-bid meeting, three companies were MBEs.

Executive Director Ciaccia advised that Kokosing tried to address good faith efforts in their bid package; however, it is undefined as to what constitutes a good faith effort. Kokosing completed bid documents indicating that an advertisement was placed in the *Call & Post*, and Executive Director Ciaccia had a copy of said advertisement. Kokosing provided the District with a spreadsheet of 23 MBE/WBE companies that they contacted or attempted to contact, which is not a requirement. Of the 23 companies, eight indicated that they would submit quotes and five actually submitted quotes to Kokosing. Kokosing included in their bid package copies of the faxes sent to the MBE/WBE firms that they requested bids from.

The subcontracting opportunities for the LS-3 contract were for electrical, mechanical and HVAC work. Kokosing received nine bids for electrical work. Novotny Electrical submitted the lowest bid of \$733,000; however they are not a MBE or WBE firm. The second lowest bidder was CJ Management's bid of \$760,000 and this is a MBE company. Executive Director Ciaccia advised that there were three other MBEs, but their bids were significantly higher.

Executive Director Ciaccia explained that six bidders submitted mechanical or HVAC bids. Ogrinic Mechanical submitted the lowest bid of \$800,000 and Coleman Spohn, an MBE firm, submitted a bid of \$908,000. Executive Director Ciaccia advised that this information was submitted to the District subsequent to the bid.

Executive Director Ciaccia informed the Board that North Bay Construction, the second lowest bidder on the LS-3 project, listed Minority Electric as an MBE and WBE firm, and listed their subcontracting electrical bid at \$1.487 million as compared to Kokosing's subcontracting electrical bid of \$733,000 received from Novotny Electric. Executive Director Ciaccia advised that there seem to be some issues with either the first or second bid due to the significant difference in price; however, it is within the District's best interest to accept the lower bid.

According to Executive Director Ciaccia, Kokosing is including additional subcontracting opportunities bringing the total amount of subcontracting work to \$116,500. This is still below the District's subcontracting goals for this particular project, but is an improvement. Executive Director Ciaccia advised that the staff will

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continue working with Kokosing to identify and increase subcontracting opportunities for this project.

Executive Director Ciaccia informed the Board that representatives from Kokosing were present at the meeting to address any of the Board's concerns. Mr. Jim Salerno identified himself as the area manager for Kokosing in Cleveland and Mr. John Rego was introduced as the Vice President of Engineering and Estimating. Mr. Brown thanked Mr. Salerno and Mr. Rego for attending the meeting and advised that each had opportunity to hear the Board's concerns, and he requested their perspective on these issues.

Mr. Rego responded to the podium and advised the Board that he has been with Kokosing for 25 years. Mr. Rego indicated that he read the meeting minutes from the February 19th Board meeting and apologized for not being present at the meeting to address the Board's concerns; however, it was indicated that their attendance was not necessary.

Mr. Rego understood and empathized with the Board regarding their concerns, and he advised that Kokosing is placed in an awkward position as well. They compete for work and there were nine bidders on this project. Mr. Rego advised that they are faced with very difficult decisions, and it would be easier to make decisions if the majority of subcontracting quotes were received from MBEs or WBEs.

Mr. Rego stated that Kokosing is mostly a "self-performing contractor" and does a lot of their own work. They focus their attention in areas that will be subcontracted including electrical, plumbing, HVAC, and painting.

Mr. Rego stated that Kokosing is placed "in a difficult situation" in determining how to remain competitive on jobs while meeting subcontracting goals. Mr. Rego assured that Kokosing tries to demonstrate good faith efforts and believed that they "did a pretty good job of that." Mr. Rego advised that Kokosing performed half a dozen jobs for the District in the past six or seven years, and he thought their "record speaks pretty positively" as far as meeting the District's goals.

Mr. Rego indicated that Kokosing is attuned to employment issues on projects and does not deny anyone employment; however, Kokosing is a union contractor and the majority of their employees are obtained through the union halls. Mr. Rego assured that Kokosing does not "desire to discriminate whatsoever."

Mr. Rego stated that Kokosing holds high standards on their contracts and are a safe contractor that finishes their projects on time or ahead of schedule. Kokosing is not a "change order oriented contractor" and believes that the best money made is by completing the job ahead of schedule and within budget.

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Mr. Rego appreciated Mr. Edwards' point of view, and indicated that he would question it as well. Mr. Rego was hopeful that Mr. Edwards was fully informed as to Kokosing's efforts made on contracts and understood that this is an ongoing issue on every project.

Mr. Rego stated that the Board's resolution [Resolution No. 44-09] "is a step in the right direction" and that he hoped they "could develop additional teams." Mr. Rego hoped the Board appreciated Kokosing's situation of having to remain competitive while trying to meet subcontracting goals.

Mayor Starr stated that on a \$6 million contract, Kokosing submitted zero percent MBE and a half percent WBE on their bid for this project. He requested clarification as to how Kokosing provided half percent WBE when the District's goal is typically 5%.

Mr. Salerno stated that it may help to truly understand the makeup of these projects. The process equipment specified for contract LS-3 is very expensive and is a large component of the project cost. Mr. Salerno stated that Kokosing analyzed the project and that out of a \$6 million contract, allowances of half a million were set aside for potential change orders. General conditions need to be incorporated as well. In addition to the \$700,000-worth of self-performed labor and equipment, Kokosing needed to include the process equipment and permit construction material. Approximately \$1.7 million was left for the subcontracting opportunity. The electrical and HVAC bids accounted for \$1.45 million. They received a good number of minority business quotes, unfortunately, the bids were not low. Mr. Salerno stated that left the subcontracting opportunity to under \$250,000 "which is a very small part of a \$6 million contract."

Mr. Salerno stated that half of the recently added subcontracting participation will either go to a MBE or WBE firms, and he assured the Board that Kokosing will continue its efforts to find qualified firms to complete the subcontracting work. Mr. Salerno explained that 5% of a \$6 million contract is \$300,000 and this amount was not available for subcontracting after the mechanical and HVAC were decided.

Mayor Starr inquired if Mr. Salerno stated that there was \$500,000 set aside in a contingency fund. Mr. Salerno affirmed and indicated that the actual "direct cost on the project is \$5 million-something" and the District's bid form requires a 10% contingency "if the project develops a change order" while its underway.

Mayor Starr inquired if Kokosing was a local, regional or national company. Mr. Salerno replied that Kokosing is based in Columbus and the company originally started in Fredericktown. Offices are located in Cleveland, Elyria, Mansfield, Fredericktown and Columbus.

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Mayor Starr inquired as to how many full-time employees Kokosing employs wherein Mr. Salerno stated that last year's average was 1,600.

Mayor Starr questioned how many of those 1,600 employees were minorities. Mr. Salerno stated that "we are in compliance with the federal mandates" and "work with federal organizations, ODOT particularly." Last year, Kokosing had "16 point-something, 5%, 6% minority." Mayor Starr inquired as to how much. Mr. Salerno stated that it's 16.34% and that 1.9 million man hours were worked in Ohio last year; 302,000 hours were worked by minorities and 7.82% or 144,000 hours were worked by females.

Mayor Starr stated that as Board members, one side wants to set a standard, and on the other side, which is the contractors and the vendors, there is a law trying to guide them in a very confusing manner. Mayor Starr inquired as to Executive Director Ciaccia and the staff's recommendation regarding this contract. Executive Director Ciaccia replied that as stated in the document, the recommendation is to award the contract to Kokosing, the lowest bidder.

Mayor Starr inquired if Executive Director Ciaccia believed that Kokosing made a good faith effort to comply. Executive Director Ciaccia stated that what constitutes a good faith effort is undefined; however, Kokosing complied with completing the required bid documents. Based on the documents submitted by Kokosing, Executive Director Ciaccia concluded that Kokosing made a good faith effort.

Mayor Starr inquired as to what other trades Kokosing requested bids for besides electric. Executive Director Ciaccia stated HVAC.

Mayor Starr inquired as to the amount of bid packages that were distributed wherein Executive Director Ciaccia advised that 48 bid packages were distributed.

Mayor Starr questioned what other measures the Board can take because "it is not happening mathematically and numerically." Mayor Longo commented that this is the reason for conducting a disparity study.

Ms. Kelly referred to Executive Director Ciaccia's comment when he stated that the proposals were not "apples to apples" and she inquired if there was some discrepancy in the subcontractors' quotes. Executive Director Ciaccia clarified that comparing Kokosing's bid to the next lowest bidder may not have been an "apples to apples comparison." Executive Director Ciaccia indicated that it was questionable as to how the next lowest bidder's electrical bid of \$1.5 million, which they purported would go to an MBE, was double the amount of Kokosing's subcontracting bid of \$773,000. Executive Director Ciaccia stated that this "is the kind of stuff that really raises issues" about the "legitimacy of some of the numbers" that the District received.

Mr. Rego stated that all electrical bids were listed on a spreadsheet and Kokosing received a number of bids in close proximity to the low bid that was used. Mr. Rego advised that he was not interested in speculating as to what the other bidders' methodology was.

Ms. Kelly asked Mr. Rego his opinion on Kokosing's historical track record of MBE/WBE participation on District contracts. Mr. Rego replied that over the previous District contracts, Kokosing has 25% MBE and over 6% WBE participation, and will not drop below 20% MBE or 5% WBE if you include this contract.

Ms. Kelly inquired if the District verified that the subcontractors actually submitted bids. Executive Director Ciaccia advised that he had a copy of Kokosing's spreadsheet listing the subcontractors they requested bids from, but he did not have the actual bids in his possession. Tiffany Jordan, Contract Compliance Manager, contacted the subcontractors listed and some remembered being called whereas some did not. Ms. Kelly requested Ms. Jordan address this issue.

Ms. Jordan advised that she reviewed the documents submitted by Kokosing and that the Contract Compliance Officers contacted all MBEs and WBEs listed and the information provided by Kokosing was consistent. Ms. Kelly questioned Ms. Jordan's comment because, according to Executive Director Ciaccia, some of the MBEs and WBEs did not recall being contacted and she questioned "what was that about?" Ms. Jordan stated that according to the spreadsheets submitted by Kokosing as well as the internal spreadsheet created by her office, some of the MBEs and WBEs do recall being contacted whereas some do not. MBEs and WBEs are constantly being contacted by contractors for quotes, and whether they are utilized on the contract is the significant issue. MBE and WBE firms listed on the District's registry may have been contacted by many prime contractors to submit quotes on several different bidding opportunities.

MOTION – Mayor Longo moved and Mayor DePiero seconded to adopt Resolution No. 38-09. A roll call vote was taken and Mr. Brown commented "that he is going to hold his nose and vote yes," but this "stinks." He understood the explanations provided and is aware that some due diligence was conducted; however, the District needs to do more. The motion carried with one "no" vote by Ms. Kelly.

Resolution No. 39-09

**Contract with Marous Brothers
Construction for the Big Creek
Interceptor 3D Valley and Ardoyne
Connection – Contract BCI-3D-VAC.
Cost not to exceed \$595,685.00.**

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Executive Director Ciaccia advised that Resolution No. 39-09 is awarding a contract for the Big Creek Interceptor 3D Valley Ardoyne Connection – Contract BCI-3D-VAC, to Marous Brothers Construction (hereinafter “Marous”) for \$595,685. This project was initially part of the BCI-3D contract awarded to KM&M which involved the polyurea blistering which is the subject of litigation. The District needs to complete this job and declared KM&M in default of their contract. There are two contract components needing completion including the shaft on Ardoyne and Valley which has been incomplete for some time. The street is blocked severely impacting the residents in this area. According to Executive Director Ciaccia, “there is a lot of angst in that community about completing this job.” BCI-3D-VAC is scheduled for completion by July or August of 2009.

Executive Director Ciaccia advised that the District received seven bids and Marous’ bid was determined to be the lowest and best bid and was 17% lower than the next bidder. Executive Director Ciaccia advised that the District’s goals for this project were 10% MBE and 3% WBE whereas Marous submitted their bid with 5.03% MBE and 4.2% WBE participation. At the time of the bid proposal, Marous proposed to use the company A & A Safety which was not certified with the District, therefore, could not be counted as MBE participation.

Executive Director Ciaccia advised that 18 bid packages were distributed and 10 contractors attended the pre-bid meeting, and three of the 10 contractors present were MBE or WBE firms. Marous submitted documents with the bid package indicating good faith efforts made.

Executive Director Ciaccia advised that the second lowest bidder was Independence Excavating (hereinafter “Independence”) who had 10% MBE and 3% WBE participation, but their bid was significantly higher than Marous. Executive Director Ciaccia compared the bids between Marous and Independence and pointed out that Marous proposed to use Rockport Ready Mix at \$25,000 whereas Independence proposed to use United Ready Mix at \$39,000, for the same type of work. Both companies submitted Granger Trucking; however Marous listed the work at \$15,000 whereas Independence listed it for \$29,500. Independence listed Interstate Safety Company at \$9,800 whereas Marous listed A & A Safety, an MBE, at \$1,500. Executive Director Ciaccia added that staff is working with Marous in an attempt to increase subcontracting opportunities.

Mr. Mark Ricchiuto of Marous responded to the podium and advised the Board that there is 12.6% MBE and 5.5% WBE participation on the contract.

Mr. Brown commented that Mr. Ricchiuto heard the testimonies from the gentleman expressed during Public Session as well as the Board’s sentiments. Mr. Ricchiuto indicated that he did and advised that Marous also takes this issue very seriously. Mr.

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Ricchiuto advised that one full-time person and one part-time person in Marous' Human Resources Department are dedicated to ensuring that Marous is in compliance and that problems are being addressed.

Mr. Ricchiuto advised that, on this particular project, it will cost Marous about "\$10,000 to get the numbers where they need to be," but Marous understood the importance of ensuring that "everybody's got a shot at this and we're spreading the profits around." Mr. Brown appreciated Mr. Ricchiuto's attitude on this issue and stated "that is exactly what it takes."

Ms. Kelly inquired as to the number of employees employed by Marous and inquired as to how many are minorities and women. Mr. Ricchiuto advised that employment at Marous varies between 400 and 650 people due to fluctuation in their field operations. He advised that he came prepared to discuss subcontracting issues, and he apologized for not knowing the employment figures off hand; however, he did not want to provide the Board with inaccurate employment information, so he would obtain the correct workforce information and provide it to the Board.

Ms. Kelly inquired if Mr. Ricchiuto had an approximate number wherein Mr. Ricchiuto advised that he did not want to guess at this information and preferred providing the Board with accurate information.

Mr. Brown stated that the MBE/WBE goals for this project were 10% and 3% and Marous increased MBE/WBE participation to 12% and 5%. Mr. Ricchiuto affirmed and he advised that \$108,000 of the total \$595,895 contract will go to MBE firms, which is overall 18.1% participation.

MOTION – Mayor Longo moved and Mayor DePiero seconded to adopt Resolution No. 39-09. Mr. Brown advised that Marous exceeded the MBE/WBE participation goals on this project and would forego roll call so long as there were no questions from the Board. Without objection, the motion carried unanimously.

Mr. Brown excused himself from the Board meeting. The meeting was turned over to Mayor Longo who conducted the meeting until he excused himself.

Resolution No. 40-09

Contract with Nerone & Sons, Inc. for the Easterly Aeration Tank Rehabilitation – Contract ATR-3. Cost not to exceed \$5,363,000.00.

Executive Director Ciaccia advised the Board that there were nine bidders for the Easterly Aeration Tank Rehabilitation – Contract ATR-3 and Nerone & Sons, Inc.

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(hereinafter "Nerone") was the lowest and best bid by 4%. The District's MBE/WBE goals for the ATR-3 project were 15% and 5%. Nerone met the WBE goal with 7.67% participation; however, failed to meet the MBE requirement with only .89% participation. Executive Director Ciaccia advised that of the 23 companies that requested bid packages, eight were MBEs. Of the 16 contractors that attended the pre-bid meeting, four were MBEs or WBEs. Nerone included in their bid package advertisements they submitted to the *The Plain Dealer* as well as the faxes sent to various MBEs attempting to prove good faith efforts in reaching the District's participation goals.

Executive Director Ciaccia advised that Nerone provided subcontracting in two areas including painting and concrete restoration. Nerone received eight bids for painting, five of which were MBEs or WBEs. Summit submitted the lowest bid of \$370,000, and although Summit is a WBE, Nerone cannot receive WBE credit because they are not certified with the District.

Executive Director Ciaccia advised that Nerone received two bids for concrete restoration and chose the higher bid from Jadco Company for \$289,000 over Suburban Maintenance's bid of \$271,500 for the reason that Jadco Company is a WBE firm. Nerone met the WBE participation goal for this contract. Executive Director Ciaccia advised that if the District credited Nerone for the work to be completed by Summit this would result in 13.2% WBE participation, but still does not meet the District's MBE goal. Executive Director Ciaccia advised that Tom Nerone was present at the meeting to entertain any of the Board's questions.

Ms. Kelly inquired as to why companies choose not to be certified when there is an opportunity for work. Executive Director Ciaccia advised that it is the contractor's preference and, he explained that his sister-in-law, for example, is a WBE food distribution firm and that she has no interest in being certified in any government program, which is her preference. She gets enough work and is not dependent upon government contracts; however, if an opportunity arose, she would provide a quote like any other subcontractor.

Ms. Kelly inquired if, during the bidding process, is the District's certified subcontractor list accessible to prime contractors. Executive Director Ciaccia indicated that this list is available, and that in this case, included in Nerone's bid package was the District's certified MBE/WBE list.

Ms. Kelly inquired that if the contractor had a list of the certified MBEs/WBEs, why would the contractor not seek out a certified contractor. Mr. Nerone advised that they did; however, they were not competitive, and he distributed information to the Board. Mr. Nerone advised that his company contacted 67 MBEs and WBEs and received quotes from nine firms of which four of these companies were used in their pricing.

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Mr. Nerone found the District's methodology in calculating MBE/WBE goals to be flawed for the reason that the percentage is based on the total contract amount. The bid of \$5,363,000 has a contingency allowance of \$654,400 which is undefined and MBE/WBE cannot apply to this amount because the contractor is unsure as to what type of work this may include, if any. Mr. Nerone explained that bonds, insurance, and licensing are fixed costs not applicable to MBE/WBE subcontracting, and Nerone's general requirements are \$150,000. Mr. Nerone stated that, included in the information he provided, is an outline of other costs that cannot be applied to MBE/WBE participation.

Mr. Nerone stated that the aeration tanks at Easterly will be replaced, and this is a very large equipment package. To his knowledge, there are no MBE vendors that manufacture this type of equipment, and the equipment package total was about \$2.2 million and miscellaneous materials were approximately \$100,000. Mr. Nerone stated that if you deduct those costs, the remaining contract amount is \$2,138,000 of which \$1.3 million is work performed by Nerone, including the installation of the equipment packages.

Mayor Longo questioned if Nerone's workforce is comprised of 9.09 females and 11.36 minorities. Mr. Nerone replied that "as of today, yeah" but this varies contingent upon the workload. In the summer, these numbers change due to increased workforce.

Mr. Nerone stated that his company "gave \$370,000 to a non-minority painter" and he was made aware that the contractor is now "claiming to be 51% owned by female, but not certified with the District." Mr. Nerone referred to his handout and advised that the next MBE in close proximity to Summit's quote was \$300,000 higher, and Nerone had to "make a judgment call."

Mr. Nerone stated that "this is a competitive bidding process" and "it is abundantly clear that you're interested in the low bid." The District does not apply a weighting system on the amount of MBEs used, and if Nerone "took the gamble and used a minority contractor to do the painting," Nerone could have lost the job, which has happened in the past. Mr. Nerone stated that "when we point out the fact that we have more minority than the other contractors, that falls on deaf ears and the job gets awarded to our competitor," therefore, Nerone "chose to use a non-minority painter because the gap was so large."

Mr. Nerone indicated that Nerone chose the higher concrete restoration contractor because it is a WBE firm. He advised that Nerone is "not very popular right now" with Suburban which was the lowest bidder for concrete restoration work on this project. Mr. Nerone speculated that Suburban would most likely never provide a quote to Nerone again; however, in order to make a good faith effort, Nerone chose Jadco for the concrete restoration work.

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Mr. Nerone stated that "if you look at the percentages after the fixed costs, the percentage of labor in the subcontractors that we've given away is relatively high," and he hoped the Board would take this into consideration.

Mr. Sulik inquired if Nerone plans to utilize the WBE firm [Summit] even though they will not receive WBE credit wherein Mr. Nerone stated "yes".

Mr. Sulik inquired if a WBE firm is being utilized but is not certified with the District, the WBE credit cannot be applied to this project. Executive Director Ciaccia indicated that this is correct, and that this situation arose in another bid as well.

Executive Director Ciaccia referred to the comments made by Mr. Nerone regarding the fixed project costs incorporated into the bids. Executive Director Ciaccia indicated that incorporating the contingency allowance into the amount used to determine MBE/WBE participation goals is "crazy" and that the District's goal is to "not use one penny of that contingency allowance." Therefore, he questioned as to why the District should expect contractors to secure MBEs, WBEs or SBEs for money that is not intended to be used. Executive Director Ciaccia advised that the District must ensure contractors do not use pass-throughs for major equipment when trying to meet the MBE/WBE goals.

Executive Director Ciaccia stated that the District will need to consider the issues involving "fixed costs" when determining project goals under the SBE program. Executive Director Ciaccia advised that unless the District identifies legitimate MBEs or WBEs and includes these estimates in the bid packages, then "there is no sense in putting it in there as a number to work the numbers against." Executive Director Ciaccia advised that staff has struggled with this issue and that internal discussions are ongoing as the SBE program develops.

Mayor Longo stated that these things need to be pinned down, and he inquired as to how the District intends to address fixed costs issues. He inquired if the District should consider "as part of the equation," the woman and minority makeup of a company. Mayor Longo understood the District's contingency allowance policy and the intent to keep change orders under control. He stated that if he was a contractor, and "there's a half a million or \$654,000, I'm going to say that's my money, I'm going to get it one way or the other," and he advised that the District "should not be in that position." Executive Director Ciaccia commented that the District has to recognize that change orders may be needed through the course of the project, and Mayor Longo advised that "it is a good rule of thumb."

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Executive Director Ciaccia advised that the District needs to keep working through this issue while moving forward with the SBE program and identify "what actually are the subcontracting opportunities."

Executive Director Ciaccia advised that Nerone as well as the other contractors self-perform on their projects, and that every bid is going to be different because they do not all self-perform in the same areas. Executive Director Ciaccia suggested that the District needs to concentrate setting its goal on the self-performance or subcontracting opportunities and not include the fixed costs. Expecting contractors to meet the MBE/WBE participation goals based on the entire bid amount will lead to the use of front companies and pass-throughs, and these goals are not achievable. Executive Director Ciaccia suggested that the District focus on "real goals" providing "people real opportunities."

Ms. Kelly inquired if the subcontracting amount for this contract, in actuality, is 2.139 million, after omitting the amount of fixed costs.

Executive Director Ciaccia stated that staff would need to consider that there will be self-performance on contracts, and then determine the reasonable amount of subcontracting opportunities.

Mr. Sulik commented that if the subcontracted work by Summit on this contract was considered, then 33% of the subcontracted costs would be completed by MBEs or WBEs. Mr. Nerone clarified that it would be 39%.

Mr. Nerone commented that due to comments made earlier during Public Session, "a lot of the Board members inferred that we're hiding behind the law trying to circumvent the intent of the program," but "this is a two-way street." Mr. Nerone advised that his company solicited and spent money on advertisements, and to his knowledge, "none of the people sitting here or very few people responded to our solicitations." Mr. Nerone stated that "we can't drag them in here and force them to give us competitive quotes," and he indicated that "a certain amount of effort has to come from them" as well. Mr. Nerone stated that Nerone would be "happy to use them" provided they submit competitive bids.

Mr. Nerone suggested that the District clarify its guidelines for the incentive program and establish a measurement system providing a better understanding of the benefits to the program. Otherwise, they are unsure as to the District's intent.

Mayor Longo stated that if the District considers the minority and female makeup of an entire company, measurements and benchmarks will need to be established; however, this may get too complicated. Executive Director Ciaccia inquired if Mayor Longo was

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referring to the workforce issue wherein Mayor Longo commented that this “is a very important part all of this.”

Executive Director Ciaccia advised that the District requires contractors be in “affirmative action compliance” according to the federal standards. Contractors must submit an affidavit indicating their company’s workforce, and this information is evaluated and factored into the bid. As the District develops its SBE program, staff is hopeful that the disparity study results will support the reintroduction of MBE and WBE goals in the District’s subcontracting program. Moreover, there are subcontracting opportunities in goods and services.

Mayor Longo suggested that this discussion be held because “we have enough on our plate right now.” Executive Director Ciaccia stated that he understood; however, “we have not concentrated on the workforce issue yet.” Mayor Longo commented that “it’s a lot deeper than we’re discussing here,” and he inquired if the Board had any further questions.

Ms. Kelly commented that the spreadsheet was very helpful and Mayor Longo agreed.

MOTION – Mayor DePiero moved and Mr. O’Malley seconded to adopt Resolution No. 40-09. A roll call vote was taken, and the motion carried unanimously with all voting yes.

VIII. Information Items

1. 2009 Budget Overview.

Ms. Demmerle advised that she would present the 2009 Budget Overview incorporating the Finance Committee’s recommendation to the Board at its next meeting; however, the recommendation to adopt the 2009 budget will be made at the March 19th meeting as well.

Without objection, the Board held the 2009 Budget Overview in abeyance until the March 19th Board meeting.

As Chair of the Finance Committee, Mr. Sulik recommended the adoption of the 2009 budget. Furthermore, Mr. O’Malley attended the Finance Committee meeting and obtained a lot of information on District operations.

IX. Open Session

There were no items for discussion.

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X. Public Session (any subject matter)

Mayor Longo excused himself from the Board meeting. The meeting was turned over to Mayor DePiero who conducted the remainder of the meeting.

Mr. Edwards reported to the podium and stated that “we turn numbers in to the contractors; these same contractors have been here. Nerone & Sons has been here on this project with the Sewer District for I don’t know how long, and has gotten tons of emergency work over \$25,000.” Mr. Edwards alleged that this is illegal because according to the Board’s Bylaws, “they are supposed to stay in those guidelines and hopefully the federal authorities are doing their due diligence on this right now.”

Mr. Edwards stated that he was “appalled” that these contractors and Executive Director Ciaccia claimed to have reached out. Mr. Edwards alleged that front companies exist and legitimate companies are not desirous of obtaining certification with the District because prime contractors “do not want black contractors on their projects.” Mr. Edwards claimed that these contractors were certified and submitted quotes, but are “bypassed time and time again” by Marous, Nerone and Kokosing.

Mr. Edwards stated “shame on Kokosing” and they just concluded a \$42 million project at Hopkins Airport awarded by the City of Cleveland. Mr. Edwards stated that “they have the guidelines that they had to follow, the minority participation that they have to follow-- Kokosing, Nerone and Marous, these same guidelines.” Mr. Edwards alleged that “these guys have done hundreds of millions of dollars in this area, so for them to come in here and give this Board and present this Board in 2009. It’s a slap down. It’s degrading to me. It’s a total slap in my face.”

Mr. Edwards stated that he will “see Avery Friedman when I leave from here.” Mr. Edwards stated that the District has “guidelines of 15 and 5” and he inquired why these “guidelines were not followed.” Mr. Edwards suggested that if the District has guidelines in place and is taken to court, then it should take on any legal challenges.

Mr. Edwards stated that the District “just got out of litigation” with Nerone & Sons and it cost “millions and millions, so to bring these people and to bring in their spreadsheets--”

Mr. Edwards stated that “Lonnie Coleman told me that he’s reached out and he does \$30 million a year. It was a \$20,000 or \$30,000 gap in the mechanical number. Who is saying with the relationship that they have and the continuation of the good old boys’ network. Our numbers are never going to be right. They’re going to tell their friends who they want on the job and that’s why the black contractors are bypassed and this--”

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Mr. Edwards indicated that he was "lost at words" but he appreciated Ms. Kelly for "voting against it." Mr. Edwards commented that he was "very surprised" at Mayor Starr "for voting on that issue" because they had discussions.

Mr. Edwards claimed for "these contractors that have not complied, every project that they're on in the city and in this county we will protest. I will tell the Mayor in the City. I will tell Cuyahoga County. When I get to Washington D.C., if they never get a job here, I could care less. That is racism. It's blatant racism."

Mr. Edwards inquired how Nerone obtained "all these millions of dollars worth of work and did not bid on these projects." Mr. Edwards stated "tell me something. Help me cheat. I won't follow the guidelines either. Give me the millions of dollars worth of emergency work. This is totally outrageous. I am surprised and saddened at this Board except for Ms. Kelly. Let's go!"


Mr. Lewis was informed that in order to speak at Public Session, he needed to sign in and list the items to be discussed prior commencement of the meeting. Mr. Lewis registered to speak on Resolution No. 44-09, which was an agenda action item discussed at the first Public Session, therefore, any additional topics could be discussed at the next Board meeting.

XI. Executive Session

Mayor DePiero stated that there were no matters for discussion in Executive Session.

XII. Adjournment

MOTION – Mayor DePiero stated business having been concluded, he would entertain a motion to adjourn. Mr. Sulik moved and Mayor Starr seconded the motion to adjourn at 4:02 p.m. Without objection, the motion carried unanimously.



Dean E. DePiero, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



Darnell Brown, President
Board of Trustees
Northeast Ohio Regional Sewer District