

DECISION MEMORANDUM

**TO: COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSIONER KEMPTON
COMMISSION SECRETARY
LEGAL
WORKING FILE**

FROM: CURTIS THADEN

DATE: APRIL 11, 2008

**RE: FORMAL COMPLAINT OF MCKAY CONSTRUCTION SEEKING
REVERSAL OF UNITED WATER IDAHO, INC. DECISION TO NOT
ADD ADDITIONAL CONTRACTORS TO APPROVED CONTRACTOR
LIST.**

On February 19, 2008, the Commission received a "Formal" Complaint (Attachment A) from Mr. Mike McKay on behalf of McKay Construction against United Water Idaho Inc. (UWI). Mr. McKay objects to the decision of UWI to not add new contractors to its Approved Contractor List for 2008. Mr. McKay was unsatisfied with the outcome of the informal procedures to resolve his complaint and has filed this "Formal" Complaint as a result. Mr. McKay requests that the Commission require UWI to evaluate McKay Construction's Application and reinstate McKay's status as an approved contractor on the Approved Contractor List. (McKay Construction was previously on UWI's Approved Contractor List).

BACKGROUND

McKay Construction has over 30 years experience working on UWI projects building water reservoirs as well as water transmission lines. McKay Construction was placed on the UWI list of approved contractors (residential development) in 1997 after meeting all the necessary requirements. In 2005, McKay Construction failed to carry the required \$5 million minimum insurance requirement. Because of the building boom in 2005, McKay Construction was working on many projects outside of UWI's area of impact. Because of this, Mr. McKay decided to drop the \$5 million coverage that UWI required for approved contractors. Mr. McKay noted that the cost of coverage for UWI was above the \$2 million standard requirement for the construction

industry. As a result, UWI removed McKay Construction from the Approved Contractor List in October 2005.

In June of 2007, Mr. Steve Snead, Project Manager for McKay Construction, contacted UWI to re-establish the company as an approved contractor. Mr. Snead was told that McKay Construction would have to go through the approval process again by submitting a pre-qualification package. In December of 2007, Mr. Snead submitted the required paperwork to UWI. In January 2008 Mr. Snead was notified by phone that UWI was not going to add any new contractors to the Approved Contractor List in 2008.

In response to McKay Construction's informal complaint, UWI sent a written response (Attachment B) to the Commission.

In summary, UWI maintains that because of the costs associated with administering new contractors, the length of training, the recent decrease in construction, and the lack of projected projects in 2008, it is not going to add new contractors to the Approved Contractor List in 2008.

Mr. McKay filed a "formal" complaint on February 19, 2008. Mr. McKay provides reasons why he believes McKay Construction meets UWI's qualification requirements and should be reinstated to the Approved Contractor List.

Mr. McKay states that McKay Construction previously met the requirements to be on the Approved Contractor List. He also states that McKay Construction has worked on previous UWI projects and is fully experienced with UWI specifications for installation. Furthermore, McKay Construction states that they have projects lined up with a few developers but are at a disadvantage because they have to subcontract the water project to another contractor on the Approved Contractor List.

Staff notes that in Order No. 26898, Case No. UWI-W-96-4, the Commission approved a Stipulation and Settlement Agreement that put into place a process allowing developers to choose from a list of approved contractors to install facilities within residential subdivisions. The Agreement allows contractors to install water mains and services if they meet certain requirements. UWI was ordered to implement a system of procedures to monitor the Labor in Lieu of Cash program to ensure that the program does not result in an increase in costs to UWI and its customers. Neither the Stipulation nor Order places a limit on the number of contractors who can participate in the program. Likewise, there are no limits specified in UWI's tariff. UWI decided earlier this year to not add more contractors to the current list consisting of 10 contractors. Prior to

this Order, UWI facilities were exclusively installed by one contractor; UWI did not allow other contractors to participate.

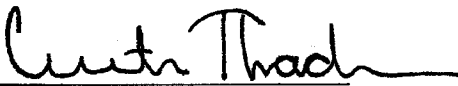
STAFF RECOMMENDATION

McKay Construction was not satisfied with the outcome of the Informal Complaint. Consequently, Mr. McKay filed a "Formal" Complaint. *See* Rules 23, 25 and 54, IDAPA 31.01.01.023, .024 and .054.

Staff recommends that the Commission issue a Summons to UWI directing the United Water Idaho to file a response to the Complaint.

COMMISSION DECISION

Does the Commission wish to accept Mr. McKay's "Formal" Complaint? Does the Commission want to issue a Summons or proceed under Modified Procedure?


Curtis Thaden

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McKAY CONSTRUCTION CO., INC.

GENERAL CONTRACTOR
PO BOX 2450 EAGLE ID 83616
OFFICE 208-939-6300 / FAX 208-939-6401

SERVING THE BOISE VALLEY SINCE 1946

RECEIVED
2008 FEB 19 PM 2:40
IDAHO PUBLIC
UTILITIES COMMISSION

Idaho Public Utilities Commission
Jean Jewell - Secretary
PO Box 83720
Boise, ID 83720-0074

February 15, 2008

RE: Formal Complaint Request - United Water Idaho, Inc.

Dear Jean,

I am petitioning the Public Utilities Commission to request that a formal complaint be considered against United Water Idaho, Inc. based on the stated facts below.

In December of 2007 United Water Idaho, Inc. (UWI) provided us a Pre-Qualification Contractor Package to re-establish our standing as an approved contractor. On December 14, 2007 Steve Snead of our office met with John Lee of UWI at his office to present and review the pre-qualification package. After review of the packet with John, Steve forwarded a couple of additional items via email on December 17, 2007 that John requested to complete our package. In January Steve made several calls and left messages to inquire on the status of the packet review and was contacted by Scott Rhead of UWI and informed that they had made a decision not to add any new contractors at this time.

After Steve's conversation with Scott, I directed Steve to contact the Public Utilities Commission to look into our options to dispute their findings. After numerous discussions between Curtis Thaden of your office and Steve, and Curtis's efforts to resolve this issue on our behalf with UWI through the informal complaint process, UWI issued the February 5, 2008 letter (enclosed).

In response to the February 5, 2008 letter addressed to your office from United Water Idaho, Inc., I wish to summarize their position and refute each item as follows:

1. In the third paragraph it begins.....*"In the labor in lieu program the contractor works directly for the DeveloperUnited Water has learned that newer, less experienced contractors will lower the quality of installation which often increases future operation and maintenance costs."*

We have worked on numerous UWI prior to 2005 and have continued to work within other municipalities and have never had our quality of installation questioned or been considered a "new" contractor since our company has been doing business in the valley since 1946.

2. In the third paragraph it continues.....*"Once a contractor knows the process and begins their initial project on a United Water installation the United Water inspector will often be required to spend two to three times more than normal inspection time for similar projects. This is because newer contractors are not familiar with United's specifications for installation from hands-on prospective."*

This statement makes little or no sense because we do have a long history with UWI and continue to employ most of the same people we did when we were working in UWI jurisdiction.

3. On page two, first paragraph it states.....*"Through this past experience United Water has learned that each newly approved contractor will go through a two year learning curve before the contractor becomes efficient in United Water process. During this two year time frame United Water incurs more administrative and inspection time."*

Again, this statement is incorrect in regards to our previous work history as stated above.

4. On page two, second paragraph it states.....*"Taking all this into account and due to the recent housing market downturn and lack of anticipated projects for 2008, and the associated cost of administrating new contractors, United Water decided not to add any new contractors to our approved list in 2008."*

I am puzzled why the downturn in the market has any relevance on their decision. We have four developers that have requested us to be placed on UWI contractor list so we can provide them our services. They all feel there is a good chance they will start construction this year. We would be happy to provide letters from each on their intent if requested. Because of the downturn in the market, it has become extremely competitive bidding on projects. Because of their decision not to add us, this gives the approved contractors an unfair advantage to solicit work that we are not able to. Secondly, I would think UWI would take advantage of the downturn to bring on new contractors if the learning curve is such as they have stated, and their inspector's additions man-hours required.


5. On page two, item #1 under The following are answers to your specific questions: *"At the end of December 2007 United Water made its decision.....McKay Construction was previously an approved contractor but choose not to keep United Water insurance requirements and was dropped off the approved list in October of 2005 (See enclosed correspondence with McKay Construction)."*

This is a correct statement, However; please refer to the UWI letter dated August 22, 2005 (attached) specifically paragraph 2 which states.....*"When you are able to meet the required insurance coverage minimums you will be allowed to perform construction on United Water Idaho projects."*

With their statement I feel not only should we be accepted because we followed their pre-qualification process, but even more strongly that we should have been placed back on their list in December when we provided them an insurance certificate letter from our insurance agent that our limits could be increased when required.

In conclusion I am petitioning the Public Utility Commission to review our dispute and if accepted by the commissioners begin the process of formal legal proceeding to have UWI reinstate McKay Construction Co., Inc. as an approved contractor.

Sincerely,



Mike McKay
President

2/7
Card

JOHN LEE
Construction Coordinator

UNITED WATER IDAHO INC.
8248 West Victory Road, Boise, ID 83709
P.O. Box 190420, Boise, ID 83719-0420
Tel: 208.362.7329 • Fax: 208.362.3858
john.lee@unitedwater.com



United Water
SVEZ

RECEIVED

2008 FEB -7 AM 9:17

IDAHO PUBLIC
UTILITIES COMMISSIO

February 5, 2008

Mr. Curtis Thaden
Idaho Public Utilities Commission
PO Box 83702
Boise, ID 83702-0074

Dear Mr. Curtis:

United Water has received your letter regarding complaints from Mckay Construction and Schmidt Construction. We want you to know why United Water did not add these contractors to the approved list and that United Water believes it made its decisions based on what we believe is best for our customers.

In the Idaho Public Utilities Commission Case No. UWI-W-96-4 1997 Stipulation and Settlement Agreement United Water was ordered by the Commission to "implement such systems and procedures as are necessary to monitor the implementation of a labor in lieu of cash program to insure that implementation of the program does not result in increased administrative and inspection costs for United and its customers generally".

In the labor in lieu program the contractor works directly for the developer and is frequently more interested in serving the developer's desire of lower initial cost than trying to achieve lower future operation and maintenance cost, therefore from past experience United Water has learned that newer, less experienced contractors will lower the quality of installation which often increases future operation and maintenance costs. When a new contractor is add to the approved list United Water administration must invest a significant amount of time and effort training the contractor in estimating, in construction standards, and in providing as-built information which is all necessary before the contractor can even provide developers with accurate bids base on United Water standards. Once a contractor knows the process and begins their initial project on a United Water installation the United Water inspector will often be required to spend two or three times more than the normal inspection time for similar projects. This is because newer contractors are not familiar with United's specifications for installation from a hands-on perspective.

There were initially six contractors approved in 1997 when the labor in lieu program was implemented. Since then, based on contractor performance, United Water has dropped some and added some so that now there are ten approved contractors on the list. The ten contractors have been able to provide the development community with competitive pricing during the recent building boom.

Through this past experience United Water has learned that each newly approved contractor will go through a two year learning curve before the contractor becomes efficient in the United Water processes. During this two year time frame United Water incurs more administrative and inspection time.

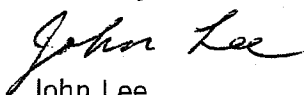
Taking all this into account and due to the recent housing market downturn and lack of anticipated projects for 2008, and the associated cost of administrating new contractors, United Water decided not to add any new contractors to our approved list in 2008.

The following are answers to your specific questions:

- 1.) At the end of December 2007 United Water made its decision not to add contractors and thus did not invest the time to review the six pre-qualification packages which were submitted to United Water in December of 2007. Therefore we have not made any determination as to if McKay Construction and Schmidt Construction meet all requirements. McKay Construction was previously an approved contractor but chose not to keep United Water insurance requirements and was dropped off of the approved list in October of 2005 (See enclosed correspondence with McKay Construction).
- 2.) During any given year United Water will receive requests through out the year from contractors wishing to become approved United Water Idaho contractors. In order to efficiently implement the labor in lieu program United Water will give the pre-qualification package to any contractor requesting the information and at the same time, tell the contractor that United Water does not review completed packages until January of the next year and may or may not add contractors.
- 3.) All six of the contractors submitting completed pre-qualification packages were notified in writing with a letter stating that United Water is not adding any contractors to the approved list in 2008. Some contractors phoned and inquired about approvals and were informed of the decision prior to the written letter.
- 4.) United Water currently has ten approved contractors.

If you have any questions, please feel free to call me.

Sincerely,



John Lee
Construction Coordinator

CC: Patty Foss, Scott Rhead, Greg Wyatt

United Water



United Water Idaho Inc.
8248 W. Victory Road
P.O. Box 190420
Boise, ID 83719-0420
telephone 208 362 7300
facsimile 208 362 3858

July 15, 2005

McKay Construction, Inc.
Mr. Mike McKay
PO Box 3066
Boise, Id 83703

Dear Mr. McKay:

United Water is in the process of revising our pre-qualification contractor requirements for installing water mains in the United Water Idaho's certificated area. Previously approved contractors will not be affected by the new pre-qualification requirements.

Along with the new pre-qualification requirements we are also implementing an annual review process for all contractors. We will evaluate each contractor on each project. I am enclosing a copy of the evaluation form. The form is intended to smooth the flow of projects and capitalize on both Contractor's and United Water's time. You will be rated on a scale from one to five on various stages of your projects. Five is a favorable rating anything below four is unacceptable. These forms will aid us in our annual review process.

We also need to have updated information regarding the insurance requirements that United Water contractors are required to carry. I am enclosing a copy of page 3 of our standard contract that refers to the insurance coverage amounts. Please send us your insurance coverage information by July 27th, 2005.

If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in cursive script that reads "John Lee".

John Lee
Construction Coordinator

Enc: Evaluation Form
Page 3 Main Extension Contract

United Water



United Water Idaho Inc.
8248 W. Victory Road
P.O. Box 190420
Boise, ID 83719-0420
telephone 208 362 7300
facsimile 208 362 3858

August 16, 2005

McKay Construction
Mr. McKay
PO Box 3066
Boise, ID 83703

Dear Mr. McKay:

On July 15th I requested information from you regarding proof of insurance coverage necessary to become an approved United Water contractor. As of this date I have not received any proof of insurance from you.

Our files indicate that we have not received any insurance information from you since January of 2004. It is imperative that you send your proof of insurance by September 1, 2005. United Water will not allow McKay Construction to start any new projects until we have received information from your insurance agent that proves McKay Construction meets the necessary limits.

I am enclosing a copy of my previous request and the insurance liability minimums required.

If you have any questions, please feel free to call.

Sincerely,

John Lee
Construction Coordinator

Enc: Letter Dated July 15, 2005
Page 3 Main Extension Contract

United Water



United Water Idaho Inc.
8248 W. Victory Road
P.O. Box 190420
Boise, ID 83719-0420
telephone 208 362 7300
facsimile 208 362 3858

August 22, 2005

McKay Construction, Co, Inc.
Mr. McKay
PO Box 2450
Eagle, ID 83616

Dear Mr. McKay:

Thank you for your response to my request for updated insurance information. The information, which you sent to us, indicates that you do not have the minimum insurance necessary to be an approved United Water Contractor.

When you are able to meet the required insurance coverage minimums you will be allowed to perform construction on United Water Idaho projects.

If you have any questions, please feel free to call.

Sincerely,

John Lee

Construction Coordinator

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">■ Complete items 1, 2 and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature <i>John Lee</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to: Mr. McKay McKay Construction, Inc PO Box 2450 Eagle, ID 83616	B. Received by (Printed Name) <i>BOB TENNY</i> C. Date of Delivery
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:
PS Form 3811, August 2001	
Domestic Return Receipt	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
7003 3110 0001 1948 8723	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
2ACPRI-03-P-4081	

SVZ

United Water 

United Water Idaho Inc.
8248 W. Victory Road
P.O. Box 190420
Boise, ID 83719-0420
telephone 208 362 7300
facsimile 208 362 3858

September 19, 2005

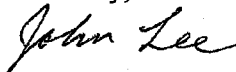
Mr. McKay
McKay Construction, Inc.
P.O. Box 2450
Eagle, ID 83616

Dear Mr. McKay:

We still have not received verification from either you or your insurance provider that your company carries the minimum insurance required by United Water Idaho to be an approved contractor. If we do not receive verification of the necessary insurance minimums by September 30, 2005, we will have no alternative but to remove McKay Construction, Inc. from our approved contractor list.

If you have any questions, please feel free to call.

Sincerely,



John Lee
Construction Coordinator

Enc: Letter Dated August 22, 2005

United Water



United Water Idaho Inc.
8248 W. Victory Road
P.O. Box 190420
Boise, ID 83719-0420
telephone 208 362 7300
facsimile 208 362 3858

October 4, 2005

Mr. McKay
McKay Construction, Co, Inc.
PO Box 2450
Eagle, ID 83616

Dear Mr. McKay:

The letter is to inform you that McKay Construction, Inc. has been removed from United Water Idaho's list of approved contractors. This decision results from a failure to provide our office with a Certificate of Insurance from your insurance carrier guaranteeing minimum insurance coverage as required by the contract. As stipulated in our September 19, 2005 letter to you, this Certificate of Insurance was to be in our office by September 30, 2005.

If you have any questions, please feel free to call.

Sincerely,

John Lee
Construction Coordinator

Enclosure: Letter Dated September 19, 2005

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>[Handwritten Signature]</i></p>
<p>1. Article Addressed to:</p> <p><i>Mr. McKay McKay Construction P.O. Box 2450 Eagle, ID 83616</i></p>	<p>B. Received by (Printed Name) <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>ROBERT TENNY</i></p> <p>C. Date of Delivery</p> <p><i>OCT 6 2005</i></p>
	<p>D. Is delivery address different from item B? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below.</p> <p><i>[Circular Postmark: OCT 6 2005]</i></p>
	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express-Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>