



Judicial Watch

Because no one is above the law!

VIA FEDERAL EXPRESS

September 7, 2005

Fairfax County Board of Supervisors
Office of the Government Executive
12000 Government Center Parkway
Fairfax, VA 22035-0013

Re: RFP06-805744-32 "Management of Day Laborer Sites"

Dear Sir/Madam:

Judicial Watch, Inc. represents concerned residents and taxpayers of Fairfax County. These residents and taxpayers wish to express their opposition to the appropriation of any taxpayer funds for the establishment or operation of "Day Laborer Sites" in Fairfax County, and, in particular, RFP06-805744-32 "Day Laborer Site Strategy" (formerly titled "Management of Day Laborer Sites"). We understand that this matter is scheduled to be addressed at 10:00 a.m. on Monday, September 12, 2005 during the public hearing to amend the Appropriation Level in the Fiscal Year 2006 Revised Budget Plan.

According to RFP06-805744-32, as amended on June 30, 2005:

The purpose of this Request for Proposal is to enter into a contract with a qualified Contractor(s) to provide day laborer site strategy and related services in accordance with the terms and conditions of the Request for Proposal. The objective is to develop a program that will assist in making the areas where day laborers currently gather safe and orderly for day laborers, employers, residents, and local businesses. Day laborers include workers who gather at street corners, parking lots, strip malls, or official hiring sites seeking daily or hourly employment from employers and private citizens. Current sites identified in Fairfax County as informal gathering areas are proposed for support through this effort, located in the Annandale, Culmore, and Herndon areas of the County. Offerors may submit a proposal for all day laborers gathering sites, or individual site. The County will work with the selected Contractor(s) and support this effort.

RFP06-805744-32, § 1.1. In addition:

Site strategy is defined as the provision of services to assist with the organization of day laborers and their employers; to provide a link to business owners and residents to meet everyone's concerns; to build the capacity of day laborers to self-manage; to support the day laborers and their employers to understand their legal rights and responsibilities; to encourage the acquisition of jobs and employment and training opportunities that will lead to more stable employment opportunities. Site strategies may include referrals to other services, public or private, responding to the needs of the residents.

Id. at § 1.2. Tasks to be performed by the manager(s) of the proposed sites include:

a. Coordinate recreational, cultural and off-hours activities to support day labor organizing efforts. Create opportunities for social interaction and build cooperation and solidarity among day laborers served through this program which will manifest itself in positive community activities.

* * *

d. Develop strategy to support hiring of day laborers through developing connections with potential employers. Develop a plan to match employers' needs with employees' skills.

Id. at § 8.1.

Our clients' concerns are numerous, but center on the use of taxpayer resources to facilitate illegal activity.

As you undoubtedly know, it is unlawful for employers to hire undocumented workers. Federal law expressly prohibits the recruiting or hiring of an alien if it is known that the alien is not authorized to work in the United States. 8 U.S.C. § 1324a(a)(1)(A). In addition, it is unlawful to hire any individual for employment in the United States without complying with federal employment eligibility verification requirements. 8 U.S.C. § 1324a(a)(1)(B)(i).

It cannot be reasonably disputed that users of the proposed "Day Laborer Sites" will include undocumented workers. In June 2004, Fairfax County published the results of a survey of day laborers taken in the Fall of 2003. *See* Dep't of Systems Management for Human Services, "An Account of Day Laborers in Fairfax County," June 2004 ("Fairfax County Survey"). The survey interviewed two hundred and one (201) day laborers at four (4) "informal" day laborer sites in Fairfax County, including a site in Herndon. *Id.* at 5. The results of the survey showed that the overwhelming majority of day laborers interviewed -- some eighty-five

percent (85%) -- preferred permanent employment to day labor. *Id.* at 15. Of this eighty-five percent (85%), approximately eighty-five percent (85%) cited the lack of documentation as being a barrier to obtaining permanent employment. *Id.* It thus appears very likely that the site will be used by undocumented workers and employers of undocumented workers for illegal activities, namely the employment of undocumented workers.¹

As it is currently written, RFP06-805744-32 contains no provision for screening day laborers who use the proposed sites to determine whether, in fact, they are eligible to work in the United States. RFP06-805744-32 does not even attempt to address in any meaningful way the illegal employment of undocumented workers or the facilitation of such illegal employment by Fairfax County. Failing to ensure that the day laborers at the proposed sites are eligible to work in the United States makes it very likely that taxpayer resources will be used to facilitate violations of federal law.

Moreover, by establishing and operating the proposed "Day Laborer Sites," Fairfax County will likely be violating federal law. Federal immigration laws make it illegal to "encourage or induce an alien come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law." 8 U.S.C. § 1324(a)(1)(A)(iv). Federal immigration laws also make it unlawful to aid or abet the commission of such acts. 8 U.S.C. § 1324(a)(1)(A)(v)(II). Certainly, facilitating the illegal employment of undocumented aliens, as is contemplated by RFP06-805744-32, may be deemed encouraging or inducing an alien to come to, enter, or reside in the United States, or, at a minimum, aiding and abetting such conduct. *See, e.g., United States v. Oloyede*, 982 F.2d 133 (4th Cir. 1992).

In addition to being illegal under federal immigration laws and/or facilitating illegal conduct, it is likely that the establishment and operation of the proposed "Day Laborer Sites" also is illegal under Virginia law. We are aware of no Virginia statute expressly authorizing counties to establish or operate such sites. In the unlikely event that the establishment and operation of such sites can be fairly implied from powers expressly granted to Fairfax County by Virginia law, it nevertheless is likely that establishment and operation of the proposed sites is illegal because it is not a reasonable method of implementing any implied powers conferred on the county by Virginia law. *See, e.g., Arlington County v. White*, 259 Va. 708 (2000). The proposed sites also may violate Va. Code § 63.2-503.1, among other applicable provisions of law.

¹ According to the Fairfax County Survey, day laborers frequently complain about improper and abusive practices by employers, including lack of sufficient breaks, non-payment and under-payment, abandonment, discrimination, and threats of violence. Fairfax County Survey at 16. Using taxpayer funds to facilitate black market labor makes the Fairfax County complicit in such reprehensible practices.

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For Fairfax County to use taxpayer resources in this manner is akin to a county operating its own "red light" district or illegal drug market to enable persons who participate in such activities to have a safe, orderly, well-regulated environment in which to engage in their illicit transactions. While the intentions behind RFP06-805744-32 may be well-meaning, the establishment and operation of "Day Laborer Sites" is neither good public policy nor a lawful use of taxpayer resources, and our clients are firmly opposed to it. We trust that Fairfax County will reject it.

Nonetheless, should taxpayer resources be used for the establishment and operation of "Day Laborer Sites" in Fairfax County, our clients are prepared to challenge the sites in court as an illegal use of taxpayer funds and an *ultra vires* act, among other bases, and will seek declaratory and injunctive relief, attorney's fees, costs, and any other relief to which they are entitled.

Thank you for your attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.



Paul J. Orfanedes
Director of Litigation