

M E M O R A N D U M

TO: Governing Board Members

FROM: Carolyn Ansay, General Counsel

DATE: November 15, 2012

SUBJECT: Agreement settling dispute with Morrison Pump Company, Inc. (Morrison) and the Suspension of Morrison from contracting with the District for three years for the Purchase of Horizontal Axial Flow Submersible Pumps

Background:

The District and Morrison entered into District Contract No. 4500000062, dated June 9, 2006, resulting in the District's purchase of 15 horizontal axial flow submersible pumps. The pumps failed and a dispute arose between the District and Morrison as to the cause of the failure.

The proposed Agreement resolves this dispute by installing the appropriate seal and refurbishing the pumps.

In addition, staff recommends based upon the factors set forth in Rule 40E-7.218, Florida Administrative Code, that Morrison be suspended from contracting with the District for three years for the purchase of horizontal axial flow submersible pumps.

In making its recommendation, staff reviewed the following factors:

- (a) The economic impact of the material breach to the District;
- (b) Whether the breach caused or will cause delay in the completion of a District project;
- (c) If the breach caused a delay in performance, whether it was a substantial delay;
- (d) If the breach caused a delay in performance, whether the District will be impacted in attempting to meet legislative deadlines;
- (e) Whether the breach involved willful or gross misconduct;
- (f) Whether the breach involved the commission of fraud or a criminal offense in connection with the obtainment or performance of the District contract;
- (g) Whether the breach was a violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors and bid rigging;

- (h) Whether the breach involved the falsification or destruction of records;
- (i) Whether the contracting entity was on the District's suspension list at the time it breached its current contract with the District;
- (j) Whether the contracting entity has materially breached a contract with the District in the past, and if so, how many times since the effective date of this rule;
- (k) Whether the contracting entity was on another Federal or State suspension or debarment list at the time it breached its current contract with the District;
- (l) Whether the breach involved discrimination on the basis of race, color, creed, national origin, sex, age or handicap;
- (m) Whether the breach involved the commission of embezzlement, theft, forgery or bribery; falsification of statements or claims; receipt of stolen property; or obstruction of justice;
- (n) Whether the breach involved the commission of any other offense indicating a lack of business integrity or business honesty;
- (o) Whether the breach involved knowingly doing business with a suspended contracting entity;
- (p) Whether the breach involved a violation of the District's MBE Contracting Rule;
- (q) Whether the contracting entity can pay re-procurement costs in a timely manner.

Funding Source:

The Agreement and the suspension will not result in any expenditure of District funds.

Staff Recommendation:

The Governing Board should approve this item because the Agreement resolves the dispute between the District and Morrison

If you have any questions, please do not hesitate to call Frank Mendez at ext. 6260.