



# **Determination of Suspension or Debarment of ChemWare Governing Board Item #37**

## Determination of Suspension or Debarment of ChemWare

**Consideration of whether or not ChemWare should be suspended or debarred from doing business with the South Florida Water Management District pursuant to Rule 40E-7, Part II, Florida Administrative Code.**



# Determination of Suspension or Debarment of ChemWare

## CHRONOLOGY

- **Contract executed with ChemWare effective August 6, 2007 for development of Ecological Database software by August 19, 2008**
- **Contract was amended 3 times to extend the term by a cumulative total of one year through August 15, 2009**
- **District issued Cure Notice for failure to meet Statement of Work requirements on July 13, 2009**



## Determination of Suspension or Debarment of ChemWare

- Failure to cure resulted in notification of default termination on August 14, 2009 pursuant to Rule 40E-7.217 Florida Administrative Code
- Contract was awarded for the fixed amount of \$624,639 of which the District paid \$501,395.16 leaving an unpaid balance \$123,243.84
- ChemWare denied that it was in breach and filed a lawsuit against the District



## Determination of Suspension or Debarment of ChemWare

**Negotiations ensued to arrive at a settlement agreement which includes the following:**

- **ChemWare will not receive final payment for the \$123,243.84 balance under the contract**
- **ChemWare retains rights to any proprietary custom software developed under the Contract**
- **District retains rights to use technical deliverable documentation**



## Determination of Suspension or Debarment of ChemWare

- District will receive credit for two years of software maintenance support on the Laboratory Information Management System (“LIMS”) software licensed by the District and maintained by ChemWare pursuant to a previous Contract dated September 8, 2005
- Credit amount of \$133,836 will be applied to annual maintenance fees owed by the District in equal increments over the next five years
- Each party bears their own attorneys fees and costs



## Determination of Suspension or Debarment of ChemWare

**Suspension Rule requires Governing Board to determine whether or not to suspend or debar a vendor by considering the following factors in Section 40E-7.218 Florida Administrative Code.**



	<b>Suspension Factor Checklist</b>	<b>Yes/ No</b>	<b>Comments</b>
<b>Monetary</b>			
1	Was there an economic impact of the material breach to the District?	Yes	
<b>Delay &amp; Ramifications</b>			
2	Did the breach cause or will cause a delay in the completion of a District project?	Yes	
3	Did the breach lead to a substantial delay?	Yes	
4	Did the delay impacted legislative deadlines?	No	
<b>Misconduct &amp; Gravity</b>			
5	Was there willful or gross misconduct?	No	
6	Was there a commission of fraud or a criminal offense?	No	
7	Was there a lack of business integrity or business honesty?	No	
8	Did the contractor knowingly do business with a suspended contracting entity?	No	
9	Did the breach involve a violation of the District's SBE Contracting Rule.	No	

<b>Suspension Factor Checklist</b>		<b>Yes/ No</b>	<b>Comments</b>
10	Did the Contractor violate Federal or State antitrust statutes?	No	
11	Was there falsification or destruction of records?	No	
12	Was there embezzlement, theft, forgery, bribery, falsification of statements, etc?	No	
13	Did the breach involve discrimination?	No	
<b>Number of Offenses</b>			
14	Has the contractor materially breached a contract with the District in the past and if so, how many times since the effective date of this rule?	No	
15	Was the contractor on another Federal or State suspension or debarment list at the time it breached its District contract?	No	
16	How many times has the contractor defaulted?	1	
<b>Mitigation</b>			
17	Can the contractor pay the re-procurement costs in a timely manner?	N/A	
<b>Procurement Director's Recommendation:</b> No suspension. A Settlement Agreement will be executed containing remedies that ChemWare has agreed to			

# Determination of Suspension or Debarment of ChemWare

## Staff Recommendation:

**That the Governing Board issue an order not to suspend or debar ChemWare, Inc. from doing business with the District**





**Approval of a settlement  
agreement with ChemWare, Inc.  
Governing Board Item #38**

## Approval of a settlement agreement with ChemWare, Inc.

### Staff Recommendation:

Approval of a settlement agreement with ChemWare, Inc. regarding a contract dispute, styled ChemWare, Inc. V. South Florida Water Management District, filed against the District in the 15th Judicial Circuit Court for Palm Beach County, Florida, case no. 50-2009-ca-034767

