

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: April 5, 2011 Consent [X] Regular []
Public Hearing []

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A) a Contract with Hinterland Group, Inc. to construct the Wastewater Lift Station Rehabilitation Project in the amount of \$1,488,751 and; **B)** Supplement No. 1 which cancels Work Authorization No. 6 (R2010-1286) in the amount of \$442,820 with Sheltra & Son Construction Co., Inc. (R2009-0944) for construction of the Wastewater Lift Station Rehabilitation No. 951 and 1080.

Summary: On December 8, 2010, ten (10) construction bids were received for the Wastewater Lift Station Rehabilitation Project, with Hinterland Group, Inc. being the lowest responsive responsible bidder in the amount of \$1,488,751. This contract provides for the rehabilitation of six (6) lift stations within the Department's wastewater collection system. Under the 5% local preference ordinance Chaz Equipment Company, Inc. is the lowest responsive bidder, however due to the County's suspension of Chaz Equipment Company, Inc., the recommendation is to award to Hinterland Group, Inc. The Purchasing Director has suspended Chaz Equipment Company, Inc. in accordance with Section 2-56 of the County's Purchasing Code suspension upheld by Special Master on March 2, 2011. Chaz Equipment Company, Inc. has also been suspended by the City of West Palm Beach. The Small Business Enterprise (SBE) participation goal established by the SBE Ordinance (R2002-0064) is 15.00% overall. The Hinterland Group, Inc. is not a local Palm Beach County Company, but will commit to 20.86% of work by Palm Beach County SBE subcontractors. District 5 (JM)

Water Utilities Department and Sheltra & Son Construction Co. have agreed to cancel Work Authorization No. 6. The two wastewater stations (No. 951 and 1080) that are being cancelled are included as alternates in the Hinterland Group, Inc. bid. Awarding the alternate bid items to Hinterland Group, Inc. will save the County \$32,258. (WUD Project 08-009) District 5 (JM)

Background and Justification: Continues on Page 3

Attachments:

1. Two (2) Original Contracts for Hinterland group, Inc.
2. Two (2) Original Supplement No. 1 to Work Authorizations No. 6
3. Location Maps
4. Engineer's Recommendation & Bid Tabulation Sheet
5. SBE Compliance Review
6. Suspension letter to Chaz Equipment Company, Inc. from Palm Beach County
7. Suspension Letter to Chaz Equipment Company, Inc. from City of West Palm Beach
8. Concurrence of Suspension by Special Master dated March 2, 2011

Recommended By: [Signature] 3/23/11
Department Director Date

Approved By: [Signature] 4-2-11
Assistant County Administrator Date

Continuing from Page 1:

Background and Justification: The Department owns and operates over 800 wastewater lift stations as part of the wastewater collection system. Many of these lift stations have been in service for over 30 years, reaching the end of their useful life. The Department's Capital Improvements Master Plan calls for the rehabilitation of approximately 6 to 8 lift stations annually. This project will provide for the conversion of six (6) lift stations from dry can (outdated technology) to submersible type (current Department standard). These upgrades will improve reliability during hurricane and other emergency events. In addition, as part of the upgrades each lift station will be equipped with a remote telemetry unit which will allow remote monitoring and operation along with a backup battery which will increase the reliability and cost effectiveness of the stations.

On August 17, 2010, the Board of County Commissioners approved Work Authorization No. 6 (R2010-1286) with the Water Utilities Department Continuing Construction Contract with Sheltra & Son Construction Co., Inc. (R2009-0944) for construction of the Wastewater Lift Station Rehabilitation No. 951 and 1080 in the amount of \$442,820. Water Utilities Department (WUD) is in agreement with Sheltra & Son Construction Co. to cancel Work Authorization No. 6. Canceling this work authorization will save the County \$ 32,258. The Small Business Enterprise (SBE) participation goal established by the SBE Ordinance (R2002-0064) is 15.00% overall. The contract with Sheltra & Son Construction Co., Inc. provides for SBE participation of 15.00% overall. This Authorization included zero overall participation. The cumulative SBE participation, including this Authorization, is 15.09% overall. (WUD Project No. 08-009) District 5 (JM)

SUPPLEMENT NO. 1 TO WORK AUTHORIZATION NO. 6

PROJECT: Continuing Construction Contract
WORK AUTHORIZATION NO.6 Lift Station 1080/951
WATER UTIL. DEPT. PROJECT NO. WUD 08-009, (R2009-0944)
SUPPLEMENT NO.: 1
DISTRICT NUMBER: 5

TO:	DOCUMENT NO.	R2009-0944
Sheltra & Son Inc.	AUTHORIZATION DATE:	Aug 18, 2010
P.O.Box 336	NOTICE TO PROCEED:	N/A
IndianTown, Fl. 34956	BUDGET LINE ITEM:	4011-721-W031-6546

You are directed to make the following changes to this authorization:

- 1. Cancellation of Work Authorization No Six(6). (442,820)
- Total: (442,820)

NOT VALID UNTIL SIGNED BY BOTH OWNER AND ENGINEER. SIGNATURE OF THE CONTRACTOR INDICATES HIS AGREEMENT HEREWITH INCLUDING ANY ADJUSTMENT IN THE AUTHORIZATION SUM OR AUTHORIZATION TIME, AND NO ADDITIONAL COST OR TIME INDICATED HEREIN WILL BE RELATED TO THIS SUPPLEMENT

The Original Authorization Sum was	<u>\$442,820.00</u>
Net Change by previous Supplements	<u>\$0.00</u>
The Authorization Sum prior to this Supplement was	<u>\$ 442,820.00</u>
The Authorization Sum will be decreased by this Supplement ..	<u>\$(442,820.00)</u>
The New Authorization Sum indicating this Supplement will be	<u>\$ 0.00</u>
The Authorization Time will be unchanged by 0 days	<u>(0) Days</u>
The Date of Substantial Compl. including this Supplement: ...	<u>N/A</u>
The Date of Final Completion including this Supplement:	<u>N/A</u>

=====
Execution of this supplement acknowledges final settlement of, and releases, all claims for costs and time associated, directly or indirectly, with the above stated modification(s), including all claims for cumulative delays or disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the above stated modification(s) constitutes, in whole or part, a cardinal change to the contract.
=====

Continuing Construction Contract
Project No. WUD 09-044
Contract No. R2009-0944
Supplement No. 1 to Work Authorization No. 6
Project (WUD 08-009, R2010-0000)
District Number: 3

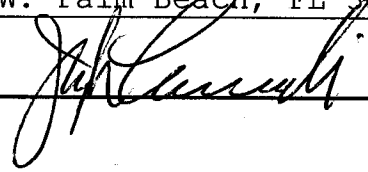
Palm Beach County
ENGINEER
P.O. Box 16097
Address


W. Palm Beach, FL 33416

Sheltra & Son
CONTRACTOR
P.O. Box 336
Address

Indian Town, Fl. 34956

Palm Beach County
OWNER: Karen T. Marcus, Chair
Address: Board Of County
Comissioners



 1/14/11
RICKY SHELTRO / VICE PRESIDENT

ATTEST:

Sharon R. Bock, Clerk & Comptroller

(Deputy Clerk)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

(County Attorney)

PALM BEACH COUNTY

Signed:  _____

Typed Name: Bevin A. Beudet

Title: Director, PBC Water Utilities

Date: 3/23/11

Continuing Construction Contract
Project No. WUD 09-044
Contract No. R2009-0944
Supplement No. 1 to Work Authorization No. 6
Project (WUD 08-009, R2010-0000)
District Number: 3

AUTHORIZATION CATEGORIZATION

OWNER-INITIATED QUANTITY-OVERRUNS/UNDER-RUNS
 DIFFERING SITE CONDITIONS REQUEST BY ANOTHER AGENCY/OUTSIDE
 ZONING/CODE/ORDINANCE CHANGES A. REIMBURSABLE
 ERRORS/OMISSIONS/IN DESIGN B. NON-REIMBURSABLE

Continuing Construction Contract
Project No. WUD 09-044
Contract No. R2009-0944
Supplement No. 1 to Work Authorization No. 6
Project (WUD 08-009, R2010-0000)
District Number: 3

SCOPE OF WORK

Contractor agreed that the Notice to Proceed not be issued because the County obtained bid alternatives that were lower than the current work authorizations price.

Continuing Construction Contract
Project No. WUD 09-044
Contract No. R2009-0944
Supplement No. 1 to Work Authorization No. 6
Project (WUD 08-009, R2010-0000)
District Number: 3

COST SUMMARY

<u>Supp. #</u>	<u>DESCRIPTION</u>	<u>ADDITIONS</u>	<u>(DELETIONS)</u>	<u>NET CHANGE</u>
1	Cancel Work		442,820.00	-442,820.00

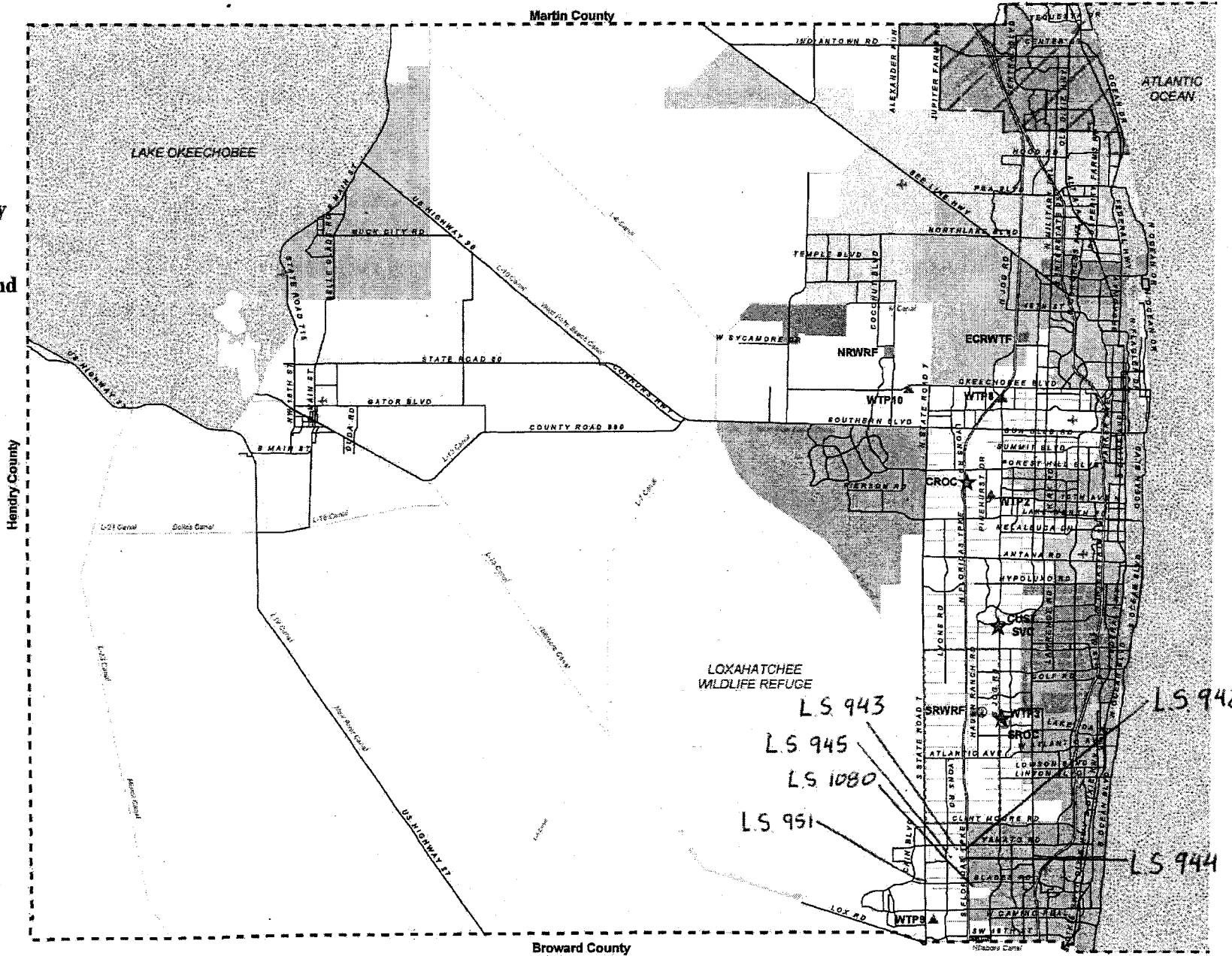
Continuing Construction Contract
Project No. WUD 09-044
Contract No. R2009-0944
Supplement No. 1 to Work Authorization No. 6
Project (WUD 08-009, R2010-0000)
District Number: 3



**Palm Beach County
Water Utilities
Department
Service Area (SA) and
Major Facilities**

Legend

- P.B.C.W.U.D. SA
- - - - Mandatory Reclaimed SA
- - - - Palm Beach County Limits
- ★ Administration
- Water Reclamation Facility
- ▲ Water Treatment Facility
- ⊙ Wetlands



Inter-Office Memorandum

Palm Beach County



Water Utilities Department

TO: Bevin Beaudet, P.E., Director
Water Utilities Department

03-02-11 P04:19 IN

DATE: March 2, 2011 *WB*

FROM: Maurice Tobon, P.E., Director of Engineering
Water Utilities Department

03-11-11 P02:19 IN

RE: Notice of Award Recommendation
Wastewater Lift Station Rehabilitation Project
Project No: WUD 08-009

The bid opening for the above referenced project was held on Wednesday, December 8, 2010. Proposals were received from ten (10) contractors. A summary of the results of the bidders' total base bid price is as follows:

<u>BIDDER'S NAME</u>	<u>BASE BID</u>
Hinterland Group, Inc.	\$1,078,189.00
Chaz Equipment Company, Inc.	\$1,110,000.00
TLC Diversified, Inc.	\$1,179,000.00
Metro Equipment Services, Inc.	\$1,219,100.00
Florida Design Contractors, Inc.	\$1,228,289.00
Murray Logan Construction, Inc.	\$1,337,000.00
Intercounty Engineering, Inc.	\$1,390,000.00
Infrastructure Restoration, Inc.	\$1,457,516.00
Lanzo Construction Co.	\$1,560,000.00
Centerline Utilities, Inc.	\$1,671,000.00

Under the 5% local preferences ordinance Chaz Equipment Company, Inc. is the lowest bidder, however due to the suspension of Chaz Equipment Company, Inc. by the County the engineer's recommendation is to award to Hinterland Group, Inc. as the lowest responsive responsible bidder.

The engineer's opinion of probable construction cost was \$1,000,000 for the base bid and \$500,000 for the alternate bid. An evaluation of the low bid is as follows:

1. The Bid Form provided in the Contract Documents was properly executed.
2. Bid security equal to 5% of the total base bid was enclosed on the form provided in the Contract Documents.
3. SBE-MWBE Schedules #1 and #2 provided in the Contract Documents were properly filled out. The low bidder has met the 15% SBE goal established under the SBE Ordinance. (A copy of the Office of Small Business Assistance SBE-MWBE Compliance Review is attached.)
4. The lowest responsive **responsible** bidder acknowledged the two (2) addendums.
5. The contractor holds a valid general contractor's and occupational license.

Water Utilities staff when evaluating the bid carefully considered the overall experience, qualifications, resources and references of the low bidder. Contract award to the low responsive **responsible** bidder, Hinterland Group, Inc. in the amount of \$1,488,751.00 is recommended.

A copy of this notice has been posted at the bid opening location and will be left there for a minimum of five (5) business days.

- c. Brian Shields, P.E., Deputy Director
Maurice Tobon, P.E. Director of Engineering
John E. Rich, P.E., Pipeline Design Manager
Craig C. Williams, Assistant Director Finance & Administration

**PALM BEACH COUNTY
WASTEWATER LIFT STATION REHABILITATION PROJECT - PHASE A
WUD 08-009**

December 8, 2010

BID TABULATION SHEET

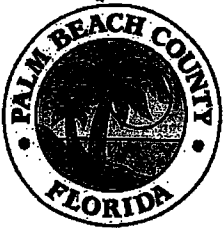
Base Bid				Hinterland Group, Inc.	Chaz Equipment Company, Inc.	TLC Diversified, Inc.	Metro Equipment Services, Inc.	Florida Design Contractors, Inc.	Murray Logan Construction, Inc.	Intercounty Engineering, Inc.	
Item	Description	Unit	Unit Price	Quantity	Price Bid	Price Bid	Price Bid	Price Bid	Price Bid	Price Bid	
1	Wastewater Lift Station Rehabilitation No. 942	LS	N/A	1	\$226,585.00	\$231,500.00	\$250,000.00	\$262,775.00	\$263,624.00	\$290,000.00	\$300,000.00
2	Wastewater Lift Station Rehabilitation No. 943	LS	N/A	1	\$227,692.00	\$232,500.00	\$259,000.00	\$266,775.00	\$261,149.00	\$296,000.00	\$305,000.00
3	Wastewater Lift Station Rehabilitation No. 944	LS	N/A	1	\$229,148.00	\$239,500.00	\$251,000.00	\$258,775.00	\$265,487.00	\$295,000.00	\$305,000.00
4	Wastewater Lift Station Rehabilitation No. 945	LS	N/A	1	\$224,764.00	\$236,500.00	\$249,000.00	\$260,775.00	\$268,029.00	\$286,000.00	\$310,000.00
5	Substantial Completion - Early Completion Incentive	LS	\$3,000.00	30	\$90,000.00	\$90,000.00	\$90,000.00	\$90,000.00	\$90,000.00	\$90,000.00	\$90,000.00
6	Final completion - Early Completion Incentive	LS	\$1,000.00	30	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00
7	Contract Allowances - Section 01020	LS	\$25,000.00	1	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
8	FPL Permanent Power Allowances - Section 01020	LS	\$25,000.00	1	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
Total Items 1-8					\$1,078,189.00	\$1,110,000.00	\$1,179,000.00	\$1,219,100.00	\$1,228,289.00	\$1,337,000.00	\$1,390,000.00
Alternate Bid											
9	Wastewater Lift Station Rehabilitation No. 951	LS	N/A	1	\$204,663.00	\$217,500.00	\$252,000.00	\$278,412.00	\$249,200.00	\$282,000.00	\$367,728.00
10	Wastewater Lift Station Rehabilitation No. 1080	LS	N/A	1	\$205,899.00	\$224,500.00	\$231,900.00	\$280,413.00	\$251,500.00	\$270,000.00	\$358,844.00
Total Items 9-10					\$410,562.00	\$442,000.00	\$483,900.00	\$558,825.00	\$500,700.00	\$552,000.00	\$726,572.00
Addendum No. 1					Yes	Yes	Yes	Yes	Yes	Yes	Yes
Addendum No. 2					Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bid Bond (5%)					Yes	Yes	Yes	Yes	Yes	Yes	Yes

**PALM BEACH COUNTY
WASTEWATER LIFT STATION REHABILITATION PROJECT - PHASE A
WUD 08-009**

December 8, 2010

BID TABULATION SHEET

Base Bid				Infrastructure Restoration, Inc.	Lanzo Construction Co.	Centerline Utilities, Inc.	
Item	Description	Unit	Unit Price	Quantity	Price Bid	Price Bid	Price Bid
1	Wastewater Lift Station Rehabilitation No. 942	LS	N/A	1	\$317,164.00	\$343,000.00	\$375,000.00
2	Wastewater Lift Station Rehabilitation No. 943	LS	N/A	1	\$314,626.00	\$348,000.00	\$378,000.00
3	Wastewater Lift Station Rehabilitation No. 944	LS	N/A	1	\$329,541.00	\$352,000.00	\$374,000.00
4	Wastewater Lift Station Rehabilitation No. 945	LS	N/A	1	\$326,185.00	\$347,000.00	\$374,000.00
5	Substantial Completion - Early Completion Incentive	LS	\$3,000.00	30	\$90,000.00	\$90,000.00	\$90,000.00
6	Final completion - Early Completion Incentive	LS	\$1,000.00	30	\$30,000.00	\$30,000.00	\$30,000.00
7	Contract Allowances - Section 01020	LS	\$25,000.00	1	\$25,000.00	\$25,000.00	\$25,000.00
8	FPL Permanent Power Allowances - Section 01020	LS	\$25,000.00	1	\$25,000.00	\$25,000.00	\$25,000.00
Total Items 1-8					\$1,457,516.00	\$1,560,000.00	\$1,671,000.00
Alternate Bid							
9	Wastewater Lift Station Rehabilitation No. 951	LS	N/A	1	\$303,242.00	\$290,000.00	\$342,000.00
10	Wastewater Lift Station Rehabilitation No. 1080	LS	N/A	1	\$295,196.00	\$310,000.00	\$353,000.00
Total Items 9-10					\$598,438.00	\$600,000.00	\$695,000.00
Addendum No. 1					Yes	Yes	Yes
Addendum No. 2					Yes	Yes	Yes
Bid Bond (5%)					Yes	Yes	Yes



**Office of
Small Business Assistance**

50 South Military Trail, Suite 2N-172
West Palm Beach, FL 33415
(561) 616-6840
Fax: (561) 616-6850
www.pbcgov.com/osba

**Palm Beach County
Board of County
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- Shelley Vana, Vice Chair
- Paulette Burdick
- Steven L. Abrams
- Burt Aaronson
- Jess R. Santamaria
- Priscilla A. Taylor

County Administrator

Robert Weisman

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DATE: December 27, 2010

TO: Victor M. Gutierrez, E.I., Pipeline Design
Section
Water Utilities Dept., Engineering Division

THROUGH: Allen F. Gray - Manager, Palm Beach County
Office of Small Business Assistance

FROM: Patricia M. Wilhelm, Small Business Development
Specialist II

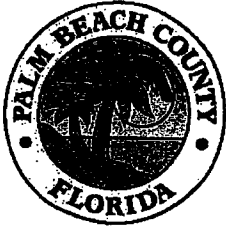
SUBJECT: Water Utilities Department Wastewater Lift
Station Rehabilitation Project-Phase A

File: Project No. WUD 08-009

The following is a Compliance Review of SBE participation on the above-mentioned project.

LOW BIDDER: **HINTERLAND GROUP, INC. (BASE BID)**
5580 State Road 524
Cocoa, FL 32926
Phone: 321-633-7066
Bid Opening: December 8, 2010
Bid Amount: \$1,078,189.00
Goal: 15% Overall
Goal Achieved: 20.86%

SBE Participation:
(SB) All Lake Electrical
Contractors, Inc. \$ 225,000.00 20.86 %



2ND LOW BIDDER: CHAZ EQUIPMENT Co, INC. (BASE BID)
3180 FAIRLANE FARMS RD.
SUITE 1
 WELLINGTON, FL 33414
 Phone: 561-333-2109
 Bid Amount: \$1,110,000.00
 Goal: 15% Overall
 Goal Achieved: 23.56 %

Office of
 Small Business Assistance
 50 South Military Trail, Suite 2N-172
 West Palm Beach, FL 33415
 (561) 616-6840
 Fax: (561) 616-6850
 www.pbcgov.com/osba

SBE Participation:

(B)	Concrete Experts	\$ 14,720.00	1.33%
(SB)	C.R Dunn	\$205,357.00	18.51%
(SMW)	E & N Construction	\$ 24,863.90	2.23%
(WB)	Lawrence Fence Corp	\$ 16,580.00	1.49%
		<hr/>	
		\$261,520.90	23.56 %

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- Burt Aaronson
- Jess R. Santamaria
- Priscilla A. Taylor

County Administrator
 Robert Weisman

3RD LOW BIDDER: TLC DIVERSIFIED, INC. (BASE BID)
 2719 17th St. E
 Palmetto, FL 33421
 Phone: 941-722-0621
 Bid Amount: \$1,179,000.00
 Goal: 15% Overall
 Goal Achieved: 21.80%

(SB)	Dennis Leavy & Assoc	\$ 13,600.00	1.15 %
(WB)	Bird's Eye View	\$ 1,065.00	.09 %
(WB)	Lawrence Fence Corp	\$ 16,580.00	1.40 %
(SB)	Quinco Corp	\$ 6,191.00	0.52 %
(SB)	Sunnyland Irrigation	\$ 5,624.00	0.48 %
(SB)	All Lake Electrical	\$ 214,072.00	18.16 %

\$ 257,132 21.80 %

EVALUATION

The low bidder. HINTERLAND GROUP, INC. has met the SBE goal for this project.

c: Tammy Fields, Assistant County Attorney
 File

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Purchasing Department

50 South Military Trail, Suite 110
West Palm Beach, FL 33415-3199

(561) 616-6800

FAX: (561) 616-6811

www.pbcgov.com/purchasing

January 20, 2011

Via FED EX: (561) 333-2109

Via FAX: (561) 333-2180

Mr. Robert H. Wright, Vice President
Chaz Equipment Company, Inc.
3180 Fairlane Farms Road, Suite 1
Wellington, FL 33414

RE: Suspension of Chaz Equipment Company, Inc.

Dear Mr. Wright:

As you are aware, serious public corruption charges are currently pending in the Fifteenth Judicial Circuit Court of Palm Beach County, Florida against one or more principals of Chaz Equipment Company, Inc. Due to the serious nature of the charges and based upon the recommendation of the Palm Beach County Water Utilities Department, Chaz Equipment Company, Inc. is hereby suspended from doing business with Palm Beach County during the pendency of said criminal charges. In accordance with Section 2-56 of the Palm Beach County Code, I have determined that the serious nature and magnitude of the public corruption charges materially and adversely affect the responsibility of your company. In addition, it is duly noted that Chaz Equipment Company, Inc. has been suspended by the City of West Palm Beach during the pendency of the criminal charges.

The suspension of your firm is effective upon the date of this letter and shall be in force during the pendency of the criminal charges unless determined otherwise by a Special Master. You may request a hearing before a Special Master pursuant to Section 2-55 of the Purchasing Code (extract attached) no later than 4:00 p.m., January 30, 2011. Your written request to convene the hearing must be accompanied by a protest bond in the amount of \$1,000.00, remitted by money order, certified, cashier's or bank check payable to Palm Beach County. You are advised to familiarize yourself with the Palm Beach County Code, which provides that your protest bond shall be forfeited if your protest is not upheld by the Special Master. Please note that the hearing before the Special Master is limited to those issues related to this determination. Lastly, it is your obligation to ensure that a verbatim record of the hearing is made, in case you decide to appeal the decision of the Special Master to the Circuit Court.

Sincerely,

Kathleen M. Scarlett, Esquire
Director, Purchasing Department

Attachment

cc: Jon Van Arnam, Assistant County Administrator
Mike Jones, Assistant County Attorney
Dawn Wynn, Assistant County Attorney
Bevin Beaudet, Director, WUD
Maurice Tobin, Director of Engineering, WUD

**Palm Beach County
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or service. Once on the list, prequalified contractors shall issue quotes for each individual order or take turns via rotation, depending upon the language within the applicable solicitation.

- (9) *Items for resale.* All applicable user county departments shall implement policies and procedures regarding the procurement of items for resale. The user county department shall conduct a thorough market research analysis of the available items for resale in order to determine the specific types of goods to be procured. A marketing analysis shall not result in the purchase of goods without a competitive or alternate source selection process conducted by the purchasing department.
- (10) *Sales tax recovery program for construction-related purchases.* Purchase orders for the purchase of goods, materials, or equipment in any dollar amount, additive or deductive, included in a capital improvement project, and the corresponding change order required to implement those purchases, may be approved by the director of purchasing or by the director of the appropriate construction department in accordance with the county's sales tax recovery program.

(g) *Informal competitive solicitation process.* Solicitations for goods or services valued less than the mandatory bid or proposal amount shall be made in accordance with policies and procedures established by the purchasing department for requests for quotes and requests for submittals.

(h) *Waiver of requirements for competitive selection for professional and consultant services.* The board may waive the requirements for competitive selection and approve professional or consulting services upon recommendation of the administrator.

(Ord. 05-062, § 5, 12-20-05; Ord. No. 08-009, §§ 3, 4, 4-15-08)

Sec. 2-55. Protested solicitations and awards.

(a) *Right to protest.* After posting of the recommended awardee, any bidder or proposer who is aggrieved in connection with the recommended

award may protest in writing to the director of purchasing. The right to protest is limited to those procurements of goods or services solicited through an invitation for bid or a request for proposal. Recommended awards less than the mandatory bid or proposal amount cannot be protested.

(b) *Notice of protest.* The protest shall be submitted within five (5) business days after posting of the award recommendation. The protest shall be in writing and shall identify the protestor and the solicitation, and shall include a factual summary of the basis of the protest. Such protest is considered filed when it is received and date/time stamped by the department of purchasing. Neither the director of purchasing nor a special master shall consider any issue not submitted in writing within the time frame specified for the notice of protest.

(c) *Authority to resolve.* Protests filed in accordance with subsection (b) hereinabove shall be resolved under the provisions of this section.

(1) The director of purchasing shall have the authority to:

a. Uphold the protest. The protest may be upheld based upon a violation of the provisions of this purchasing code or of any other county ordinance, resolution, policy, or procedure, or upon discovery of an irregularity or procedural flaw that is so severe as to render the process invalid. If the upholding of the protest will result in a change of the recommended awardee, a new recommended award shall be posted in accordance with subsections 2-54(c)(8) and (d)(7) herein above. If the upholding of the protest will result in a cancellation of the protested solicitation, a recommendation to uphold the protest and cancel the solicitation will be made to the administrator, who may then direct the cancellation of the solicitation.

b. Deny the protest. If the protest is denied, the protestor has the right to



request that the protest be referred to a special master in accordance with subsection (c)(4) hereinbelow.

- c. Refer the protest directly to a special master with no determination made by the director of purchasing, in accordance with subsection (c)(4) hereinbelow.
- (2) When a protest is filed by a certified SBE contractor or where the protest involves a small business issue, the director of the office of small business assistance will act in conjunction with, and with authority equal to, the director of purchasing in arriving at the determination to be made in this step of the process. After reviewing the facts surrounding the issues raised in the written protest, the director of purchasing, and the director of the office of small business assistance may make the determination to:
 - a. Uphold the protest in accordance with subsection (c)(1)a. herein above.
 - b. Deny the protest in accordance with subsection (c)(1)b. herein above.
 - c. Refer the protest to a special master in accordance with subsection (c)(4) hereinbelow, in those instances when a determination is not unanimous between the director of purchasing and the director of the office of small business assistance. In this specific instance, the protestor will be exempt from posting a protest bond.
 - (3) The director of purchasing shall issue a written statement of the determination within a reasonable period of time. The written statement shall provide the reason(s) for said determination and shall be provided to the protestor and to any other party to the protest.
 - (4) Upon receipt of a denial of the protest, the protestor may request a hearing before a special master. The request for a hearing shall be in writing to the director of purchasing and shall be made within five (5) business days of issuance of the director of purchasing's determination. The request for a hearing shall be accompanied by a protest bond of one thousand dollars (\$1,000.00) which shall be remitted in the form of a money order, a certified check, a cashier's check, or a bank check payable to the county.
 - (5) At no time shall a protestor, party, or any other person, contact a special master regarding any issue pertaining to or involving the protest. Contact between the county and the special master shall be limited to scheduling and other administrative issues, including the provision and copying of public records pertinent to the protest.
 - (d) *Establishment of rules.* The purchasing department shall establish rules and regulations by separate policy and procedure detailing the selection of special masters, the protest process, and the conduct governing protest hearings.
 - (e) *Authority of special masters.* Special masters shall have the jurisdiction and authority to hear and decide protests.
 - (1) The special master shall make a recommendation as to whether the protest should be upheld or denied.
 - (2) If the special master determines the solicitation or the award recommendation is in violation of federal, state or local law, policy, procedure, or regulation, the special master shall either make a recommendation to cancel the solicitation, or to cancel the award recommendation and post a new award recommendation after reevaluation based on the special master's determination of the facts in the case. In these instances, the purchasing department shall return the protestor's bond to the protestor.
 - (3) If the special master upholds the solicitation or award recommendation, the special master shall recommend that the director of purchasing proceed with the posted award recommendation. In these instances, the protestor's bond shall be forfeited.

- (4) In making contract awards for procurements in an amount equal to or greater than two hundred thousand dollars (\$200,000.00), per annum, the board, upon recommendation of the director of purchasing, may accept or reject the recommendation of the special master.
- (5) In making contract awards for procurements of less than two hundred thousand dollars (\$200,000.00) per annum, the director of purchasing may accept the special master's recommendation or, if the director of purchasing determines the special master's recommendation is not in the county's best interest, the original award recommendation may be referred to the board for approval. At that time, the board may accept or reject the recommendation of the special master.
- (6) Nothing contained herein shall limit or divest the board of its authority pursuant to F.S., ch. 125, part IV, as referenced in section 2-51 of the purchasing code.

(f) *Stay of procurement during protests.* Notwithstanding anything contained herein to the contrary, in the event of a timely protest, the director of purchasing shall stay the award of the contract unless the director of purchasing, with the advice of the county attorney and after consultation with the using county department, makes a determination that the award of the contract without delay is necessary to protect substantial interests of the county.
(Ord. 05-062, § 6, 12-20-05; Ord. No. 08-009, § 5, 4-15-08)

Sec. 2-56. Suspension and debarment.

(a) *Authority.* The director of purchasing may suspend or debar for cause the right of a vendor, contractor or subcontractor to be included in the renewal of an existing contract or any solicitation process; and any bid, proposal, submittal, or quote received from that vendor, contractor or subcontractor shall be rejected. Board shall have the power to waive or lift such suspension or debarment.

(b) *Suspension and debarment.* A vendor, contractor or subcontractor may be suspended for a period not to exceed two (2) years as determined by the director of purchasing, or may be permanently debarred. A suspended or debarred vendor or contractor shall not bid or propose as a subcontractor during their suspension or debarment; and, a suspended or debarred subcontractor shall not bid or propose as a vendor or contractor during their suspension or debarment. A suspension or debarment may be based upon the following:

- (1) Failure to comply with the conditions, specifications or terms of a contract with the county, including but not limited to the unilateral withdraw of a bid, quote, submittal, or proposal that has been received from the recommended awardee.
- (2) Any misrepresentation in connection with a solicitation or any misrepresentation of fact upon which the county has based a decision, including but not limited to a misrepresentation by a vendor, contractor or subcontractor on a small business application, or a local preference affidavit.
- (3) Charged and convicted by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (4) Charged and convicted by a court of competent jurisdiction for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a county government contractor. If charges are dismissed or the vendor, contractor or subcontractor is found not guilty, the suspension or debarment shall be lifted automatically upon written notification and proof of final court disposition.
- (5) Any other cause the director of purchasing determines to be so serious and com-

elling as to materially and adversely affect the responsibility of a vendor, contractor or subcontractor, including but not limited to suspension by another governmental entity for substantial cause.

- (6) Violation of the ethical standards set forth in local, state or federal law.

(c) *Decision.* Upon a determination to suspend or debar a vendor, contractor or subcontractor, the director of purchasing shall notify the vendor, contractor or subcontractor in writing of the suspension or debarment along with the reasons for the action taken.

(d) *Finality of decision.* The suspension or debarment shall be final and conclusive unless the suspended or debarred vendor, contractor or subcontractor initiates protest proceedings. Protests will be initiated under the procedures provided in section 2-55 hereinabove except that:

- (1) The preliminary review by the director of purchasing as set forth in section 2-55(c)(3) hereinabove will be waived.
- (2) The suspension or debarment shall be in effect pending result of the protest.
- (3) The allowable time for protesting the suspension or debarment shall be ten (10) calendar days after the date of notification of said suspension or debarment.
- (4) The board of county commissioners, upon recommendation of the director of purchasing, may accept or reject the recommendation of the special master.

(Ord. 05-062, § 7, 12-20-05; Ord. No. 08-009, § 6, 4-15-08)

Sec. 2-57. Vendor preferences.

The purchasing department shall strictly comply with the small business enterprise (SBE) ordinance, the local preference ordinance, and all pertinent county policies and procedures, to ensure that the SBE preference and the local preference are awarded accordingly.

(Ord. 05-062, § 8, 12-20-05)

Sec. 2-58. Conflict of interest.

(a) *Special masters.* Special masters shall be subject to a policy and procedure implemented by the purchasing department relating to outside counsel conflicts of interest. In addition, the ethics rules promulgated by the Florida Bar pertaining to conflicts of interest shall apply. If a special master is unable to provide a fair hearing for any reason, the special master shall not accept the case and shall immediately notify the director of purchasing of the conflict. The purchasing director shall reassign the case to a special master who does not have a conflict with the case.

(b) Neither the director of purchasing, the directors of the construction departments, nor any member of his/her staff shall be financially interested or have any personal beneficial interest, directly or indirectly, in any purchase or contract of any supplies, materials, equipment or services used by or furnished for the county pursuant to the purchasing code. Further, the director of purchasing, the directors of the construction departments, and every member of his/her staff are prohibited from accepting or receiving from any person, firm or corporation to which any purchase or contract may be awarded, any money, rebate, gift or anything of value or any promise, obligation or contract for future reward or compensation.

(Ord. 05-062, § 9, 12-20-05)

Secs. 2-59—2-70. Reserved.

*Part B. Minority/Women Business Enterprises**

Sec. 2-71. Short title.

This part B shall be known and may be cited as the "Palm Beach County Minority/Women Business Enterprise Ordinance."

*Editor's note—Ord. No. 88-4, adopted Feb. 23, 1988, effective Mar. 7, 1988, amended this Code by adding provisions designated by the editor as ch. 2, art. III, div. 2, pt. B, §§ 2-71—2-79. The existing provisions of div. 2, § 2-51 et seq., were designated pt. A. Subsequently, Ord. No. 88-4, as amended by Ord. No. 91-27, was repealed by § XXVI of Ord. No. 91-34, adopted Sept. 17, 1991, effective Sept. 27, 1991. Sections I, III—XXV of Ord. No. 91-34 were included as a new pt. B,



PROCUREMENT DIVISION
PO Box 3366
West Palm Beach, FL 33402
TEL: (561) 822-2100
FAX: (561) 822-1564

VIA CERTIFIED MAIL
RETURN RECEIPT #7008 3230 0003 2556 3366
Via Fax: 561-333-2180
Via Email: Gary@chazequipment.com
Via Email: Howard@chazequipment.com

August 13, 2010

Chaz Equipment Company, Inc.
Attention: Gary F. Czajkowski
3180 Fairlane Farms Rd, Ste 1
Wellington, Florida 33414

Subject: Letter of Suspension

Dear Mr. Czajkowski:

We understand that there are criminal charges currently pending in the Fifteenth Judicial Circuit Court of Palm Beach County, Florida against one or more principals of Chaz Equipment Company, Inc. for an incident relating to Chaz Equipment Company, Inc. obtaining or attempting to obtain a public contract. Please be advised that during the pendency of the criminal charges that Chaz Equipment Company, Inc. is suspended effective immediately from participation in procurement for the City of West Palm Beach.

You are notified of Chaz Equipment Company, Inc's right to file a written notice of appeal of this Suspension to the City Commission within 10 days of receipt of this letter and appeal the decision of the City Commission to the appropriate court in the Fifteenth Judicial Circuit of Palm Beach County.

Randy Sherman
Finance Director

cc: Claudia McKenna, City Attorney
Donna Levengood, Interim Procurement Official
Howard Wight, Chaz Equipment Company Company
File

GOREN, CHEROF, DOODY & EZROL, P.A.

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MICHAEL D. CIRULLO, JR.
JULIE F. KLAHR
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DELRAY BEACH, FL 33483
PHONE: (561) 276-9400

JACOB G. HOROWITZ
SHANA H. BRIDGEMAN
ANNABELLA BARBOZA

STEVEN L. JOSIAS, Of Counsel

PLEASE REPLY TO FORT LAUDERDALE

March 2, 2011

**VIA FACSIMILE (561) 242-6705
& U.S. MAIL**

Kathleen M. Scarlett, Director
Purchasing Department
Palm Beach County, Florida
50 South Military Trail, Suite 110
West Palm Beach, FL 33415-3199

RE: Palm Beach County, Florida ("County") Contract Services as Special Master
Suspension of Chaz Equipment Company, Inc.

Dear Ms. Scarlett:

On February 24, 2011, I presided over the above-referenced suspension protest hearing involving Chaz Equipment Company, Inc.'s ("Chaz") protest of Palm Beach County's determination to suspend Chaz from doing business with Palm Beach County during the pendency of pending criminal charges against one or more principals of Chaz. Chaz's protest is filed pursuant to §2-55 of the Palm Beach County Code of Ordinances. Chaz contends that the suspension is inherently unfair and prejudicial to Chaz as there are no indictments pending against the company itself. Upon review of the evidence in this matter and all arguments of the parties, Chaz's argument must fail on the grounds that there was insufficient evidence presented that the County's decision to suspend Chaz was without substantial basis. Therefore, it is recommended that the County's suspension be upheld.

DOCUMENTS SUBMITTED INTO EVIDENCE

In advance of the hearing, the County forwarded for my review in order to prepare for the hearing a copy of the suspension letter issued by the County to Chaz dated January 20, 2011, Chaz's request for a hearing to review the suspension, and a copy of the applicable sections of the Palm Beach County Code of Ordinances.

During the hearing, each party submitted exhibits into evidence as follows:

CHAZ:

Exhibit 1 – Powerpoint presentation (shown during the hearing a copy provided thereafter)

COUNTY:

County Exhibit 1 – Palm Beach County Letter of Suspension for Chaz Equipment Company, Inc.

County Exhibit 2 – Chaz Equipment Company, Inc.'s request for hearing dated 1-24-11

County Exhibit 3 – Corporate Information – Chaz Equipment Company, Inc.

County Exhibit 4 Amended Information, Florida v. Gary Czajkowski and Steven White, dated 6-10-10

County Exhibit 5 – City of West Palm Beach Letter of Suspension for Chaz Equipment Company, Inc. dated 8-13-10

County Exhibit 6 – Palm Beach Police Department Probable Cause Affidavit for Gary Czajkowski dated 4-12-10

County Exhibit 7 – §2-52, Palm Beach County Purchasing Code

County Exhibit 8 - §2-56, Palm Beach County Purchasing Code

LIST OF INDIVIDUALS IN ATTENDANCE

The following individuals attended the hearing:

Michael Jones, Assistant County Attorney
Joseph Lawrence, Esq., Chaz Equipment Co.
Howard Wright, Chaz Equipment Co.
Maurice Tobon, County Water Utilities Dept
Brian Shields, County Water Utilities Dept
Dawn Wynn, Senior Assistant County Attorney
Kathleen Scarlett, County Purchasing Dept.

Michael Jones, Esq. represented the County as legal counsel. Joseph Lawrence, Esq. represented Chaz Equipment Company, Inc.

LIST OF WITNESSES

The following individuals testified as witnesses at the hearing:

Howard Wright
Brian Shields
Dawn Wynn
Kathleen Scarlett

SUMMARY OF THE ISSUES

The parties agree that the facts in this case are not in dispute. In June 2010, the Palm Beach County State Attorney's Office filed an Amended Information charging Gary F. Czajkowski and Steven M. White with certain enumerated felony offenses resulting out of transactions related to the Town of Palm Beach. These charges stem from activities alleged to involve public corruption. Gary F. Czajkowski was at that time, and still is, a principal and majority owner of Chaz Equipment Company, Inc.

Based upon the criminal charges filed against Mr. Czajkowski, the City of West Palm Beach suspended Chaz from participating in their procurement during the pendency of the criminal charges. Chaz did not appeal nor protest this suspension by the City of West Palm Beach. Chaz proffered at the hearing that the reason for not appealing West Palm Beach's decision was due to the belief that the criminal trial was imminent and resolution of the matter was anticipated to occur quickly, thereby resolving its suspension. To date, the criminal matter has not gone to trial, nor have the charges against Mr. Czajkowski been resolved in any other fashion, and the suspension is therefore lingering longer than expected.

In its request for this protest hearing, Chaz asserted its position that the County is not legally authorized to suspend Chaz Equipment Company, Inc. and to do so would be an abuse of the County's authority as there has been no conviction of the company or anyone else. Moreover, it is Chaz's position that the company itself was not charged nor convicted and therefore the company should not be penalized for the alleged actions of one individual.

Despite the fact that the individual facing criminal prosecution is a majority owner of Chaz, Howard White, Vice President and a minority owner of Chaz, testified that Chaz operates under Mr. White's General Contractor's license and he therefore has primary supervisory authority over all work conducted under that license. It is Chaz's assertion that since Mr. White is not charged with any crimes, it would be unfair to penalize the remaining employees and owners of Chaz who are not facing any criminal prosecution.

Chaz further maintained that in all of the opportunities that it has had to work with the County in the past, Chaz performed its obligations to the satisfaction of the County and the County experienced no issues or problems working with Chaz. On cross-examination of Brian Shields, Chaz further elicited from Mr. Shields that he was not aware of any concerns ever having been raised about Chaz's ability to perform the work for which Chaz was contracted to perform, nor was the County aware of any payment problems associated with any of the contracts with which Chaz previously participated. The prior good working relationship between the County and Chaz was undisputed.

Through testimony at the hearing it was established that the suspension of Chaz was only considered after Chaz submitted a bid to the County for a pending Request for Proposals regarding the rehabilitation of a number of the County's lift stations. Once the bids were opened and the local preference was applied, Chaz was the apparent low bidder. Upon considering whether or not Chaz was a responsible bidder as defined in §2-52 of the County's Code, Brian Shield testified that he was concerned with Chaz's ability to perform under the contract in the event of a conviction on the pending criminal charges against Mr. Czajkowski. Mr. Shields further testified that in such an event, the County would be in the middle of a contract with Chaz which would then be considered to be a convicted entity under the Public Entity Crime pursuant to §287.133, Florida Statutes, and the County Code. Mr. Shields expressed his concerns the effect of such a conviction would have on Chaz's ability to procure materials, maintain bonds and otherwise have the ability and resources necessary to complete any individual project which may already be in progress not to mention the remainder of the contract. Considering how costly it is to suspend a lift station repair in the middle of the project and the need to for timely, cost effective completion, Mr. Shields testified as to his trepidation over the impact of a delay midstream.

The propriety of the decision to suspend is not within the purview of this hearing. The sole issue at the hearing was to determine whether sufficient evidence existed to substantiate the County's determination. It is the protestor's burden to establish by clear and convincing evidence that the termination and suspension should be overturned. Based upon the provisions of the County Code and the testimony elicited at the hearing, it is this hearing officer's opinion that the protestor failed to meet its burden and the suspension should be upheld.

RATIONALE IN SUPPORT OF RECOMMENDATION

Chaz asserted that due to its prior work history with the County and other governmental agencies, its ability to perform timely and without incident posed no risk to the County to continue to do work with Chaz. Chaz even went so far as to offer to not require any payment from the County until the work under the contract was completed. While it was clear that this offer was genuine and sincere, this hearing officer has no authority to require the County to accept such offers or modifications to the vendor's bid. Nevertheless, even with such an offer on the table, it would do little to alleviate the County's concerns should Chaz be unable to perform following a conviction. The County is required to make a determination on each proposal as to whether the bidder or proposer is a "responsible bidder" as set forth in §2-56 of the County Code and that they demonstrate "the capability in all respects to fully perform the contract requirements and who has the integrity and reliability to provide reasonable assurance of good faith and performance." The potential for non-completion goes to the heart of this requirement. While past performance is usually a good indicator of such responsibility, Chaz was not previously subject to having one of its owners facing criminal charges.

The next argument raised by Chaz was that the County was precluded from making any determinations regarding a suspension or debarment at this time when there had been no conviction of anyone. If the County had made its determination pursuant to §287.133, Florida Statutes, or the terms and provisions of §2-56(b)(3) or (4), Chaz's argument would succeed. However, the testimony of the County staff and the language of the suspension letter clearly indicate that the County's determination was made pursuant to §2-56(b)(5) which authorizes the director of purchasing to base a suspension or debarment upon

[a]ny other cause the director of purchasing determines to be so serious and compelling as to materially and adversely affect the responsibility of a vendor, contractor or subcontractor, *including but not limited to suspension by another governmental entity for substantial cause.*

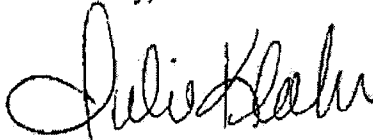
Emphasis added. The express language of this provision is plain and clear requiring no further interpretation to apply it to the current circumstances. Despite any of the foregoing analysis by the County staff, the mere fact of the existence of the suspension of Chaz by West Palm Beach would substantiate the County's determination to suspend Chaz. Nevertheless, the County did not merely rely upon such suspension, but instead weighed the facts surrounding the current circumstances, the type of services to be performed, and evaluated its concerns regarding the responsibility of the vendor to complete the contract.

Chaz also argued at the hearing that the County Code was inconsistent as written since §2-56(b) requires a conviction for debarment or suspension under sub-sections (3) and (4), but leaves it up to the discretion of the director of purchasing in sub-section (5) where no such conviction exists. While Chaz's characterization of these provisions may or may not be accurate, this hearing officer is without authority or jurisdiction to overturn any portion of the Code, but must instead apply the County Code as written, especially when its terms are plain and clear on their face.

CONCLUSION

As Chaz made all too clear during the hearing, this case is troubling in that many innocent people will be negatively affected by the decision to suspend Chaz from doing business with the County until the criminal charges are resolved. However, the authority of this hearing officer is limited to reviewing whether the County has a sufficient basis upon which to make its decision to suspend and whether the protestor presented clear and convincing evidence that it did not. While Chaz's pleas did not fall on deaf ears, insufficient evidence exists to meet the protestor's burden to overturn the suspension. Based upon the foregoing analysis, it is this hearing officer's recommendation to uphold the County's decision of suspension and deny the protest.

Sincerely,



JULIE F. KLAHR

JFK:

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