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March 18, 2015

Via Email Mariyana.Spyropoulos@mwr.org and First Class Mail

President Mariyana T. Spyropoulos
Metropolitan Water Reclamation
District Headquarters
100 East Erie Street
Chicago, Illinois 60611

**Re: 14-366-11 Proposal to Lease for 39 Years Approximately 11.66 Acres of
District Real Estate Located at 3301 South California Avenue in Chicago,
Illinois; Main Channel Parcel 42.03; MWRD File: 11-TM-012/MD**

Dear President Spyropoulos,

The purpose of this letter is to reduce to writing Gardner-Gibson, Inc.'s ("Gardner") objection to the rebidding of the public tender of bids associated with the 39 year lease of approximately 11.66 acres of District real estate located at 3301 South California Avenue in Chicago, Illinois; and known as Main Channel Parcel 42.03, and our opposition to the Authority to issue a three (3) year permit extension to Ameropan Oil Company proposed for the March 19, 2015 MWRD Board Meeting. We are also requesting the Board of the Metropolitan Water Reclamation District ("MWRD") to rescind the authority to rebid the lease associated with the above captioned bid, and award the lease to Gardner, as the highest responsible bidder, and according to the bid agreement.

History

The bid process prior to November 4, 2014 Gardner served a notice of an, "INVITATION TO BID" from the MWRD in relation to,

"PROPOSAL TO LEASE FOR THIRTY NINE (39) YEARS
APPROXIMATELY 11.66 ACRES OF DISTRICT REAL ESTATE LOCATE
AT 3301 SOUTH CALIFORNIA AVENUE IN CHICAGO, ILLINOIS: MAIN
CHANNEL PARCEL 42.03, LEASE NUMBER: 14-366-11."

The bids for the proposal were due on November 4, 2014. Gardner, in reliance on the above mentioned Invitation, devoted considerable resources in evaluating and preparing a fair market rate bid in response to the proposal.

On November 4, 2014, Gardner submitted its proposal consistent with the requirements for bidding on the lease and attended the public bid opening conducted by the MWRD at its headquarters, through counsel for Gardner. At the bid opening there were two bidders, Ameropan Oil Company (current tenant) who bid \$607,010.00 and Gardner who bid \$776,000.00 and, Gardner was the highest bidder by approximately \$175,000.00 more per annum.

On December 4, 2014 the MWRD met, where the board received the report of bid opening of Tuesday, November 18, 2014. At that time there was discussion of the intention of the executive director to seek authority to have the two highest bidders rebid the lease. At that meeting, counsel for Gardner addressed the MWRD board, suggesting that to award the bid to anyone other than the highest bidder; in this case Gardner was unlawful, unfair, and unprecedented and did not provide for transparency in MWRD's dealing. Counsel indicated that in the history of his participation with the MWRD there had not been an occasion where there was a rebid. There are no procedures or conditions established to govern a rebid, and while the option may be included in legislation, there was no rational basis put forth for its use in the immediate circumstances, further, the use of this provision in this situation is discriminatorily applied. At the board meeting, it was agreed that counsel for Gardner would meet with Executive Director David St. Pierre to further discuss these matters.

On December 15, 2014, counsel for Gardner met with Executive Director, David St. Pierre and acting board President, Barbara J. McGowan and counsel reiterated his concerns regarding the rebid of the lease and that Gardner, as the highest bidder, should be the entity entitled to enter lease negotiations. Mr. St. Pierre raised the existence of the provision enabling the MWRD to seek a rebid of a lease contract. While counsel acknowledged its existence in legislation, he also cautioned that he believed the provision was unconstitutional as applied to the existing circumstances, as there was no notice of its use, no clear precedent where it has been used before, and to apply it in this situation would be unlawful because it improperly discriminates against Gardner as applied. The meeting concluded with the Executive Director indicating that if Gardner chose not to participate, that MWRD would return Gardner's bid

deposit without penalty and that after consideration, Gardner would inform the MWRD as to whether it chose to proceed with the bid process.

On March 5, 2015 the MWRD again held a board meeting where the Executive Director specifically sought authorization to solicit amended bids from the two highest bidders for the subject lease. Counsel for Gardner again addressed the Board of Commissioners and opposed any efforts to rebid the lease as against public policy, to do so was a deterrent to an open public bid process and unlawful, since Gardner was the highest qualified bidder, it should be awarded the lease, and that the MWRD was sending the wrong message to the corporate community respecting the openness and fairness of its bidding process. Counsel further stated that the provision allowing for a rebid was improperly applied to this specific situation regarding the bid for this lease.

Lease extension for Ameropan Oil Company

At the upcoming March 19, 2015 Board Meeting for MWRD, the agenda item 15-0308 seeks authority of the board to enter a three year permit extension to Ameropan Oil Company (existing tenant). In a transparent effort to end run the legalities of the bidding process, the MWRD appear to be attempting to remove the highest responsible bidder, Gardner, from any further consideration of an award based on its winning bid by granting a three year extension to the unsuccessful bidder, thereby preventing the successful bidder from receiving the award of the lease, and rendering the award to the unsuccessful bidder, a fait accompli.

Additionally, it appears the MWRD is violating its own statutory requirements, and is failing to protect taxpayer interests by proposing to enter into an extension with the existing tenant for which there is no statutory basis, and at rate which is far below the established market rate. In the prior board meeting, the MWRD has just recently established, by unanimous vote the minimum prevailing market rate. In the "Transmittal Letter" (File# 15-0266) submitted for the board meeting of March 5, 2015, in which the executive director seeks authority to rebid the subject lease, the Transmittal Letter clearly shows the two bid amounts submitted, Ameropan Oil Company (current tenant) shows an annual rental bid of \$607,010.00; Gardner shows an annual bid amount of \$776,000.00.

The Transmittal Letter from the executive director, Mr. St. Pierre, establishes the minimum acceptable bid at \$814,800.00 per year for the lease agreement which is 5% higher than the highest bid of \$776,000.00 which, of course, was the Gardner bid. The Transmittal Letter was ratified by unanimous vote of the board in executive session, approving the Transmittal Letter, and giving the executive director the authority to rebid the subject lease. The point here is the MWRD board has recognized and endorsed a market rate lease of "minimally \$814,800.00 per annum" for the subject property (and has received a legally binding bonafide market rate bid of \$776,000.00).

Yet, in what we can only view as favoritism and bias toward the existing lessee, the MWRD is now willing to provide the existing lessee a below the market lease rate on a three year extension contract. Notwithstanding that the three year contract extension would make a mockery and sham of this whole bidding process, utterly destroying any economic value Gardner

has attained by being the highest responsible bidder in the process. This effort by MWRD appears also to violate the substance of its own statute. There is language in 70 ICLS 2605 8c [4] which, ironically, is cited in the executive director's Transmittal Letter, which states,

Upon the executive director's tentative agreement with one or more amended bids... The amendments may not result in a diminution of the terms of the transaction and must result in an agreement that is equal to or greater in value than the highest responsible bid initially received.

Clearly, the MWRD has an obligation not to issue a contract that lessens the market value and deprives the taxpayers of the value established by a fair market driven bidding process. Certainly that is the case here, where the MWRD itself, has established a "minimum acceptable initial annual rental amended bid" at \$814,000.00. Can MWRD lawfully propose to charge the existing tenant and unsuccessful bidder less than market rate. Clearly, this appears to contravene MWRD's own statute, and smacks of favoritism and bias on behalf of the current lessee, and to the detriment of Gardner and the public. . The peculiarities surrounding what initially appeared to be an open and honest and fair bidding process has taken a turn for the very bad, and has become a mockery. The MWRD board must take steps to correct this potential debacle.

By authorizing a rebid, the MWRD board violated its own RFP and Bid process.

If the MWRD does not now act to reconsider and deauthorize its authority to rebid the lease contract (File# 15-0266) and award the subject lease to Gardner, the highest responsible bidder, it is in violation of, and has breached its own contract which was established by Invitation to Bid, Lease Number 14-366-11. As counsel for Gardner has said to the MWRD Board and Executive Director on several occasions, the MWRD board is violating not only the federal law pertaining to equal protection for bidders on government contracts such as Gardner, the MWRD is also violating its own bid documents which are contractual agreements. In fact the bid document refers to itself as a contract. *See page 1-3 of Invitation to Bid*. In delineating the terms and procedure for the conduct of the bid there is no mention of the provision that this particular Invitation to Bid would be subject to a potential rebid. In fact the provisions of the Invitation to Bid are crystal clear and unequivocal as to the conditions for the lease to be awarded utilizing mandatory statutory language,

"The lease shall be awarded to the highest responsible bidder in accordance with the bid procedures set forth by state law 70 ICLS 2605/8c et seq. and subject to the acceptance and approval of the bid by the Board of Commissioners of the District. The highest bidder will be required to provide financial statements and/or other information to establish its financial responsibility,"

Invitation to Bid, page 1-1

As one can see, the clear language of the contracts requires that the "lease shall be awarded to the highest responsible bidder.

On several occasions, counsel for Gardner was questioned as to whether he was familiar with the state statute providing for a rebid of the top two bidders, to which he replied that he understood there was some optional provision to that effect.

"If there is more than one responsible bid, the Board of Commissioners may authorize and direct the Executive Director to solicit from the two highest bidders written amendments to their prior bids".

70 ICLS 2605/8c [4] (emphasis mine)

As is evident from the statute, the language is optional, the statute uses the word "may". There is no basis for the application of this provision five months after the bid was opened. The absurdity of this is further illustrated by the fact that no one on MWRD staff or any Commissioner has ever seen this provision used on any bid for the lease of property in the lifetime in MWRD proceedings. When asked whether this procedure had ever been employed before, the Executive Director, nor any one on his staff, could cite one such instance, nor could any of the Commissioners.

We respectfully request that MWRD Board vote to rescind its authorization to rebid Lease Number 14-366-11, as a rebid would be in direct conflict with its mandatory contractual obligations in the Invitation to Bid, Lease Number 14-366-11. We also request the MWRD Board, pursuant to its own legally binding contract established by the Invitation to Bid, Lease Number 14-366-11, award the lease to the highest responsible bidder, Gardner. We further request the MWRD Board refrain from considering Agenda item 29, Report 15-0308, as there is no statutory authority to issue a three year extension to Ameropan Oil Company under the present circumstances. This is particularly true at a grossly inadequate market rate rent that violates the board's fiduciary duties to this public body and the granting of which, will emasculate the current bidding process. We believe these actions will irreparably harm Gardner, and any value it may have achieved as the highest and responsible bidder, let alone the many hours and significant expenditure of sums Gardner has put forth over the last six months participating in the MWRD bid process.

The time is running out for the MWRD Board to act fairly, transparently and according to the law, and to be true to responsible public policy.

Respectfully Submitted,
On behalf of Gardner-Gibson, Inc.



Timothy W. Wright, III

cc: Board of Commissioners
Ronald M. Hill
David St. Pierre