



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** 14-0399, **Version:** 1

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### **TRANSMITTAL LETTER FOR BOARD MEETING OF MAY 1, 2014**

#### COMMITTEE ON PROCUREMENT

Mr. David St. Pierre, Executive Director

Authority to increase purchase order and amend agreement with the law firm of Tabet, Divito & Rothstein, LLC to represent the District in an appeal filed with the Illinois Appellate Court entitled Metropolitan Water Reclamation District of Greater Chicago v. Terra Foundation, et al., Case No. 13-0307, in an amount of \$60,000.00, from an amount of \$700,000.00, to an amount not to exceed \$760,000.00, Account 101-30000-601170, Purchase Order 3076305

Dear Sir:

On February 7, 2013, the Board of Commissioners authorized the Director of Procurement and Materials Management to issue a purchase order in the amount of \$300,000.00 to the law firm of Tabet, Divito & Rothstein, LLC ("Tabet") for the purpose of representing the District in an appeal filed with the Illinois Appellate Court, entitled Metropolitan Water Reclamation District of Greater Chicago v. Terra Foundation, et al., Case No. 13-0307. The appeal seeks to overturn a judgment entered against the District by Judge Kathleen M. Pantle of the Circuit Court of Cook County in the amount \$36,432,047.00. At the center of the dispute is the alley located between the District's Main Office Building and the newly-developed Ritz Carlton Residences immediately east of the alley. In their counter-claim against the District, the Ritz developers claimed that the District interfered with their right to use the alley pursuant to several easements they hold, thereby delaying their construction project and causing them to incur significant damages. In entering the above judgment, the trial court ruled on the side of the developers.

As of April 17, 2014, the attached list of change orders has been approved. The effect of these change orders has resulted in an increase in the amount of \$400,000.00 from the original amount awarded of \$300,000.00. The current value is \$700,000.00. The prior approved change orders reflect a 133% increase of the original contract value.

When requesting the previous increase, Tabet agreed that the increase would be sufficient to cover its fees and costs for the following tasks: 1) reviewing the Ritz developers' response brief, which, at that point in time, had not yet been filed; 2) researching issues raised in the response brief; 3) drafting and filing the District's reply brief; 4) presenting oral argument before a panel of assigned appellate judges; and 5) advising the District on the implications of the Appellate Court's ruling on the appeal, once it is issued. Tasks 1 through 3 have since been completed, and Tasks 4 through 5 are expected to be completed in the near future, as oral argument on the appeal is set for May 7, 2014. Since all these tasks were foreseeable in this type of appeal, Tabet is not requesting any additional funds to see them to completion.

However, in conjunction with filing its response brief, the Ritz developers also filed a 15-page motion to amend its original pleading against the District, which was not a foreseeable development, as motions to amend are not typically raised in appellate court proceedings. Responding to the motion fully and effectively was vital to the District's position on appeal. Accordingly, Tabet reviewed the motion and its attached affidavits, performed extensive legal research on the issues raised therein, then drafted and filed an extensive response brief

arguing that the motion should be denied. To compensate Tabet for responding to this unexpected filing, an increase to the purchase order in the amount of \$60,000.00 is hereby requested.

This change order is in compliance with the Illinois Criminal Code since the change is germane to the contract.

It is hereby recommended that the Board of Commissioners authorize the Director of Procurement and Materials Management to execute a change order to increase the purchase order and amend the service agreement in an amount of \$60,000.00 (8.6% of the current contract value), from an amount of \$700,000.00, to an amount not to exceed \$760,000.00.

Funds are available in Account 101-30000-601170.

Requested, Ronald M. Hill, General Counsel; RMH:STM:CMM:TN:vp

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management

Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for May 1, 2014

Attachment