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December 8, 2005

Advance Copy by FAX
Certified Mail/Return Receipt Requested

Marshall W. Davert
Vice President
MWH Americas, Inc.
3321 Power Inn Road, Suite 300
Sacramento, California 95826

Subject: NOTICE OF ILLEGAL CONTRACT AND CLAIM
FOR REIMBURSEMENT: VIOLATION OF
GOVERNMENT CODE §12650

Dear Mr. Davert:

This letter is the Los Osos Community Services District's (LOCSD) notification of Montgomery Watson Harza's (MWH) violation of Government Code 12650, the California "False Claims Act". Specifically the LOCSD has investigated the circumstances related to a defective contract between MWH and the LOCSD dated September 1, 1999 including all amendments (Contract). A copy of this contract is included as Attachment A.

The Contract was purportedly signed on September 1, 1999, by Bruce Buell for the LOCSD and attested to by Karen Vega purportedly on the same date. Carol Tate, a Vice President for MWH also purports to have executed the Contract on September 1, 1999. The Contract was amended eight times. The total amount paid on these contracts was \$1,841,987.27.

LOCSD staff has reviewed the circumstances of the award of the Contract and determined that the Contract was not executed in accordance with the LOCSD Board action of November 4, 1999, specifically:

- On November 4, 1999, the LOCSD Board of Directors approved Agenda Item No. 13, "Consideration and approval of Montgomery Watson's contract for Wastewater Project

- Management Services in an amount not to exceed \$288,145.00." Review of the November 4, 1999, LOCSD Board meeting minutes indicate that the Board authorized, by a 3 to 2 vote, the Board President to execute an agreement with Montgomery Watson upon final preparation by legal counsel, see Attachment B and Attachment C.
- The date of execution of the Contract is September 1, 1999. It appears that the date of execution of the Contract is in conflict with the date of the Board's November 4, 1999 authorization. There is no provision in the Board's authorization to back-date the Contract.
- There is no record of the LOCSD Board of Director's taking any action to ratify the Contract.
- On November 5, 1999, LOCSD received MWH's Invoice Number 262856, dated October 29, 1999 in the amount of \$29,979.90 and the period of services for this invoice was August 10, 1999 through October 29, 1999, Attachment D.
- The period of the services and the date of the invoice precede the date of the Contract as well as the date of the LOCSD Board's authorization to enter into the Contract.
- On October 22, 1999, the LOCSD entered into a contract that established an employment relationship with Mr. Bruce Buel as the General Manager, Attachment E. Mr. Buel's first day of service as the General Manager was November 16, 1999.
- The only person authorized to execute the Contract was the Board President. The Contract was executed by Bruce Buel as the General Manager in violation of the LOCSD's Board November 4, 1999, action;
- Mr. Buel was not the General Manager of the LOCSD until November 16, 1999. Since Mr. Buel was not employed by the District until November 15, 1999, he was not an agent for the District and had no authority to execute the Contract and he had no authority to backdate the Contract.

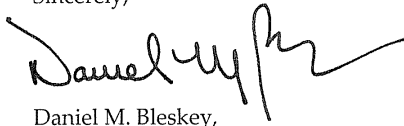
Persons dealing with California public agencies are charged with knowledge of the limitations of authority of its officers and agents; contracts made without authority are invalid and cannot be the subject of ratification or estoppel. (*City of Pasadena v. Estrin* (1931) 212 Cal. 231; *Foxen v. City of Santa Barbara* (1913) 166 Cal. 77, 82 ["all persons

contracting with a municipal corporation must at their peril inquire into the power of the corporation or its officers to make the contract."].) Failure to abide by those procedures and then seek payment from that entity constitutes a violation of the "False Claims Act," specifically Government Code Section 12650.

MWH billed the LOCSD on fifty-seven separate occasions for services falsely claimed under the Contract. Government Code Section 12650 provides the LOCSD with right for reimbursement of three times the amount of the damages plus \$10,000 for each false claim made, plus other damages including but not limited to legal fees, staff costs and other real and punitive damages as may have been incurred. Therefore, the LOCSD is seeking reimbursement from MWH in the amount of \$5,525,961.81 plus \$10,000 for every false claim submitted and attorney fees and interest for the full amounts. Therefore, the LOCSD demands that MWH immediately submit payment to the LOCSD in the amount of \$6,095,961.81 as the first installment of the amounts due the LOCSD. LOCSD staff is continuing to investigate the Legal fees, putative damages and staff time incurred as a result of MWH's violations, including any other currently unidentified amounts that the LOCSD and the citizens of the Los Osos Community Services District are rightfully due.

The LOCSD reserves the right to amend this claim pending further investigation and reserves all civil and criminal remedies available resulting from MWH's violation of the California "False Claims Act"

Sincerely,



Daniel M. Bleskey,
Interim General Manager

Attachments

Cc: LOCSD Board of Directors
John McClendon, Interim District Counsel
Julie Biggs, Special District Counsel
Steve Onstot, Special District Counsel
Alexis Strauss, Director US EPA Region IX
Inspector General of the US EPA
SLO, District Attorney
Attorney General of the State of California