

MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
January 19, 2006

A regular meeting of the Board of Light, Gas and Water Commissioners, City of Memphis, was held in the Board room of the Administration Building, 220 South Main Street, Thursday, January 19, 2006 at 1:30 p.m. The following were in attendance: Rick Masson, Chairman; James L. Russell, Commissioner; Nick Clark, Commissioner; William L. Taylor, Commissioner; Joseph Lee, III, President and CEO; Odell Horton, Jr., Vice President and General Counsel; Diana Veazey, Vice President, Construction and Maintenance; Alonzo Weaver, Vice President, Customer Operations; Christopher Bieber, Vice President, Engineering; Carolyn Turman, Interim Vice President, Human Resources; and Linda Peppers, Vice President and Chief Technology Officer. Vice Chairman Evans was not in attendance. Due to the absence of John McCullough, Dana Jeanes was Acting Secretary-Treasurer.

Commissioner Clark moved that after personally reading and reviewing the typed minutes of the Memphis Light, Gas and Water Board meeting held January 5, 2006, that they be recorded as the official record, seconded by Commissioner Russell and unanimously carried.

The Acting Secretary-Treasurer acknowledged receipt of certified copies of City Council Resolutions dated January 3, 2006, Item Nos. 4 through 9, approving items approved by the MLGW Board at meeting held December 15, 2005. (See Minute File No. 1276.)

1. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of Contract No. 11063, Cable Treatment and Rejuvenation, to Utilx Corporation in an estimated funded amount not to exceed \$500,000.

The project scope is to seek a contractor to treat polymeric-type underground power cables on site in order to restore the cable dielectric strength in

Memphis and Shelby County, Tennessee. The term of this contract shall be for a period of one year with the option for four renewals.

One bid was opened on November 9, 2005, with the only responsive bidder being Utilx Corporation.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of Contract No. 11063 to Utilx Corporation in an estimated funded amount not to exceed \$500,000 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the contract.

2. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of Contract No. 11066, Airline Road Water Main Installation, to Argo Construction Corporation in the funded amount of \$1,580,914.

The project scope is to install 11,300'-30" water main from Highway 64 North to 1300' south of Clear Creek and install 1,250'-16" from termination of 30" north to north side of Clear Creek.

Three bids were opened on November 9, 2005, with the lowest and best bid being submitted by Argo Construction Corporation.

It was moved by Commissioner Clark, seconded by Commissioner Russell and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of Contract No. 11066 to Argo Construction Corporation in the funded amount of \$1,580,914 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the contract.

3. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of Contract No. 11074, Data Integrator, to Decision First Technologies, Inc. in the funded amount of \$55,000.

The project scope is to allow Decision First to provide data integrator software and perform all necessary customization and site training to allow MLGW staff to load data automatically for querying large amounts of data for business decision making. It is further requested that staff be authorized to continue to purchase yearly software maintenance provided the fee does not increase more than 10% over the prior year's cost. The present yearly maintenance cost is \$8,100.

Three proposals were solicited, with one proposal being received on December 16, 2005, from Decision First Technologies, Inc.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of Contract No. 11074 to Decision First Technologies, Inc. in the funded amount of \$55,000 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the contract.

4. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of Contract No. 11085, HVAC Roof RTU at Training Center, to CS3, Inc. in the funded amount of \$301,650.

The project scope is to replace the existing large HVAC RTU at the Training Center located at 4949 Raleigh-LaGrange Road.

Bids were opened on December 21, 2005, with the lowest and best bidder of five being CS3, Inc.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of Contract No. 11085 to CS3, Inc. in an estimated funded amount of \$301,650 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the contract.

5. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of Contract No. 11096, Mobile Sweeper Cleaning, to Horizon of Memphis in the funded amount of \$70,387.01.

The project scope is to perform mobile sweeper cleaning of all trash and debris from MLGW parking lots in Memphis and Shelby County, Tennessee.

Two bidders were qualified, however only one bid was received on January 4, 2006 from Horizon of Memphis.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of Contract No. 11096 to Horizon of Memphis in the funded amount of \$70,387.01 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the contract.

6. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 3 to Contract No. 11020, Janitorial Services, with Kimco Corporation to renew the contract for the first of four renewals in the funded amount of \$697,131.72.

The project scope is to furnish material, labor and equipment necessary for performing housecleaning services at various MLGW facilities beginning February 21, 2006 to February 20, 2007. This renewal reflects a 3% increase for cost of living adjustment and three additional personnel from Change No.1 in the amount of \$72,000. The new contract amount is \$1,372,244.44.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, Change No. 3 to Contract No. 11020 with Kimco Corporation in the funded amount of \$697,131.72 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

7. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of contract for furnishing a direction boring system which is used by distribution crews to install and/or maintain electric, gas and water systems. This equipment replaces existing equipment that will be retired.

Bids were opened on October 5, 2005. The lowest and best complying bidder of three bidders was Vermeer Mid-South, Inc. in the amount of \$204,166.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of contract to Vermeer Mid-South, Inc. is approved for furnishing:

1 – latest model diesel-powered, self-contained, portable, directional-boring system, all in accordance with MLGW Specification No. TDB-05-0502

totaling \$204,166, f.o.b. Memphis, Tennessee, transportation prepaid; said prices being firm; delivery in 45 days after receipt of order.

8. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of contract for furnishing vacuum-interrupting switches for replacement of existing equipment at Substation Nos. 44 and 61.

Bids were opened on November 30, 2005. The lowest and best complying bidder of four bidders was Joslyn Hi-Voltage, Inc. c/o Utility Specialists, Inc. in the amount of \$127,875.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of contract to Joslyn Hi-Voltage, Inc. c/o Utility Specialists, Inc. is approved for furnishing:

5 – three-pole vacuum-interrupting switches, 34kV, 400 ampere with microprocessor-based zero voltage closing control system and low energy solenoid control, all in complete accordance with MLGW specifications dated September 30, 2005, at \$25,575 each

totaling \$127,875, f.o.b. Memphis, Tennessee, transportation prepaid; said prices firm; delivery in 14 weeks after receipt of order.

9. The General Counsel submitted to the Board the December 31 2005 Quarterly Report of the Customer Advocate Committee. It is recommended that the Board approve and uphold the decisions reflected therein. (See Minute File No. 1277.)

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, The attached December 31, 2005 Quarterly Report of the Customer Advocate Committee is approved and the decisions reflected therein are upheld by the Board.

10. The Vice President, Engineering submitted for consideration of the Board invoices received from Tennessee Valley Public Power Association covering the following:

Regular membership dues for 2006 in the amount of \$45,431.90 which are in accordance with rates established by the Board of Directors of Tennessee Valley Public Power Association.

Class B Assessment Fee in the amount of \$5,000 to fund the consulting and legal fees for renegotiating the joint pole use agreement between TVPPA members and BellSouth.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, The Secretary-Treasurer is authorized and directed to have check issued in the amount of \$50,431.90, payable to Tennessee Valley Public Power Association covering membership dues for 2006 and Class B assessment fees for the purpose of renegotiating the joint pole use contract between TVPPA members and Bellsouth. These items are included in the 2006 Budget.

11. The President submitted for approval of the Board position numbers 02307, 05638, 05709, 05806, 06006, 06023, and 03330, as listed on the attached documents. (See Minute File No. 1277.)

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Position numbers 02307, 05638, 05709, 05806, 06006, 06023, and 03330, as listed on the attached documents, are approved.

12. The President recommended to the Board of Light, Gas and Water Commissioners selection of Mr. Armstead Ward for the position of Vice President,

Human Resources, in accordance with salary number S-77184 in the amount of \$147,014.40, annually

It was moved by Commissioner Clark, seconded by Commissioner Taylor and carried, with Commissioner Russell voting no:

THAT, Subject to the consent and approval of the Council of the City of Memphis, Mr. Armstead Ward is selected for the position of Vice President, Human Resources, in accordance with salary number S-77184 in the amount of \$147,014.40, annually.

13. The President recommended to the Board of Light, Gas and Water Commissioners selection of Mr. Sedrick D. Blake, CPA, for the position of General Auditor, in accordance with salary number S-77416 in the amount of \$95,472.00 annually.

It was moved by Commissioner Taylor, seconded by Commissioner Clark and carried, with Commissioner Russell voting no:

THAT, Subject to the consent and approval of the Council of the City of Memphis, Mr. Sedrick D. Blake, CPA, is selected for the position of General Auditor, in accordance with salary number S-77416 in the amount of \$95,472.00 annually.

14. The Secretary-Treasurer stated that the Pension Board had approved the following amendments to the Memphis Light, Gas and Water Division Retirement and Pension System, as amended and restated effective January 1, 2005 (the "Plan").

The amendments are to Article VI – Section 6.9(a) and Article VII – Section 7.1.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, the Memphis Light, Gas and Water Division Retirement and Pension System is hereby amended as follows:

ARTICLE VI, RETIREMENT AND TERMINATION BENEFITS, Section 6.9(a) shall be amended by deleting the first paragraph and substituting in its place thereof the following:

(a) Termination of Employment. If a Participant terminates employment with the Division before becoming vested in his or her Accrued Benefit or becoming eligible for Disability benefits, the Participant shall be entitled to receive a multiple of the Participant's Accumulated Participant Contributions, without interest or earnings thereon, based on the Participant's Years of Service as set forth in the table below. Payment of

such Accumulated Participant Contribution, without interest or earnings thereon, shall be made to the Participant upon the Participant's written request therefor. If the Participant does not consent in writing to the distribution of his or her Accumulated Participant Contributions as provided hereinabove, such Accumulated Participant Contributions shall remain in the Fund, but shall not accrue interest or earnings thereon from the date the Participant first became entitled to receive such distribution. Such retained Accumulated Participant Contributions shall be subject to distribution, without interest or earnings thereon, to the Participant at any time upon Participant's written consent. If the Participant has filed a grievance in connection with the Participant's termination of employment, the Participant shall have the right to withhold consent to distribution until the arbitration of such grievance is completed and a final decision is rendered thereon or until such other time as the Participant files written consent to such distribution. The Plan Administrator, in accordance with its procedures as from time to time in effect, may distribute death benefits under Section 6.9(b) hereof to the eligible Beneficiaries thereof, as determined in accordance with the terms and provisions of this Plan, with or without written consent of said Beneficiaries, unless such written consent is otherwise required by applicable law; and

ARTICLE VII, PAYMENT OF BENEFITS, Section 7.1 shall be amended by deleting such section in its entirety and substituting in its place thereof the following:

The regular form of benefit under the Plan shall consist of monthly payments for the life of a Participant or Beneficiary, as determined in accordance with Article VI. Although all benefit payments shall be calculated on a monthly basis, such payments shall be made in equal semi-monthly installments unless the Pension Board determines otherwise.

Notwithstanding the foregoing or anything else in the Plan to the contrary, if the monthly benefit payable to any person under the Plan is less than \$100 per month, the Pension Board, in its discretion, may determine that payments shall be made less frequently than monthly or if the Actuarial Equivalent of the total benefit payable to such person is \$1,000 or less, such benefit shall be paid in an Actuarial Equivalent single lump-sum, cash-out distribution.

15. The Secretary-Treasurer stated that the Pension Board had approved the following amendment to the Memphis Light, Gas and Water Division Retirement and Pension System, as amended and restated effective January 1, 2005 (the "Plan").

The amendment is to Article VII, Section 7.7.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, the Memphis Light, Gas and Water Division Retirement and Pension System is hereby amended as follows:

ARTICLE VII, PAYMENT OF BENEFITS, Section 7.7 shall be amended by deleting such section in its entirety and substituting in its place thereof the following:

In the event a Participant or Beneficiary becomes entitled to benefits under Article VI and the Pension Board is unable to locate the Participant or Beneficiary (after sending a letter, return receipt requested, to the Participant's or Beneficiary's last known address, and after such further diligent efforts as the Pension Board in its sole discretion deems appropriate), such benefits shall remain in the Fund until such Participant or Beneficiary is located or until the sixtieth (60th) day following determination by the Pension Board that all diligent efforts to locate the Participant or Beneficiary have been exhausted without success (the "Alternative Distribution Date"). After the Alternative Distribution Date has occurred without location of the Participant or Beneficiary, then the benefits shall be deemed to have been forfeited and the Plan shall have no liability to any person with respect to such benefits.

16. The Manager, Electric Engineering presented for consideration of the Board, a Lease Agreement with Time Warner Communications, property being shown on the attached sketch (see Minute File No. 1277) and more particularly described as follows:

PART of a parcel of land conveyed to the City of Memphis for the use and benefit of the Memphis Light, Gas and Water Division by deed of record and described in Book 3740, Page 74, in the Register's Office of Shelby County, Tennessee.

COMMENCING at a stake found in the northeasterly line of Mt. Moriah Road, 520 feet southeastwardly from the northeastwardly projection of the centerline of south Mendenhall Road, said spike being in the south line of the City of Memphis property as described in Book 5391, Page 222, in the Register's Office of Shelby County, Tennessee; thence North 81 degrees 04 minutes 55 seconds East with the said south line of the City of Memphis property a distance of 1442.16 feet to an iron pin set at the southeast corner, said iron pin being in the west line of the Albert Preston Daniel property as described in Instrument Number Y9-8065 in the Register's Office of Shelby County, Tennessee; thence North 01 degrees 40 minutes 40 seconds West with the east line of the said City of Memphis property and the west line of the said Albert Preston Daniel Property a distance of 499.74 feet to an iron pin found at the northwest corner, said iron pin being in the southerly line of the A Preston Daniel, Jr. and Kenneth L. Daniel property as described in Instrument Number BH-4075 in the Register's Office of Shelby County, Tennessee; thence North 81 degrees 04 minutes 55 seconds East with the northerly line of the said Albert Preston Daniel property and the southerly line of the said A. Preston Daniel, Jr. property a distance of 450 feet to an iron pin found at the northeast corner of the said Albert Preston Daniel property and the southeast corner of the said A. Preston Daniel, Jr. and Kenneth L. Daniel property, said iron pin being the TRUE POINT OF BEGINNING; thence North 81 degrees 04 minutes 55 seconds East with the northeastwardly prolongation of the northerly line of the said Albert Preston Daniel property a distance of 200.83 feet to a point; thence South 02 degrees 23 minutes 30 seconds West a distance of 250.75 feet to a point; thence South 24 degrees 45 minutes 30 seconds East a distance of 108.00 feet to a point; thence South 39 degrees 52 minutes 30 seconds East a distance of 345.17 feet to a point; thence South 81 degrees 04 minutes 55 seconds West a distance of 740.73 feet to a point in an east line of the said Albert Preston Daniel property as described in Instrument Number Y9-8065; thence

North 01 degrees 40 minutes 40 seconds West with the said east line of the said Albert Preston Daniel property a distance of 151.23 feet to a point in a south line of the said Albert Preston Daniel property; thence North 81 degrees 04 minutes 55 seconds East with the said south line of the said Albert Preston Daniel property a distance of 300.00 feet to a southeast corner; thence North 01 degrees 40 minutes 40 seconds West with the east line of the said Albert Preston Daniel property a distance of 499.74 feet to the TRUE POINT OF BEGINNING. Containing 4.87 Acres.

1. The term of the lease is for five (5) years commencing January 1, 2006 and ending December 31, 2011, with the option to renew or extend the lease for one (1) additional and consecutive term of five (5) years.

2. Lessor shall be paid an annual rental fee as follows:

January 1, 2006 through December 31, 2011 = \$6,600 Annually
= \$33,000 (5-year term)

An increase of 10% will be charged for the exercise of the second term.

January 1, 2012 through December 31, 2017 = \$7,260 Annually
= \$36,300 (5-year term)

3. Lessor reserves the right to install, operate and maintain, on the premises, any necessary facilities, equipment and appurtenances required by Lessor in conjunction with its current utility operations, provided that said installation, operation and/or maintenance does not interfere with Lessee's facilities, equipment or business operations. Lessor's employees, agents, or assigns will use reasonable care in making all installations or repairs.
4. Lessee agrees to carry 1 million (\$1,000,000) Liability Insurance Policy on leased property.
5. All utility easements of record.
6. It is the sole responsibility of Lessee to obtain and comply with all Local, State and Federal Laws.
7. The leased property is to be used by Lessee for the purpose of paving, parking, and other various activities associated with the daily operations of a Service Center.

It was moved by Commissioner Clark, seconded by Commissioner Taylor

and unanimously carried:

THAT, The leasing of the property as described in the above preamble to Time Warner Communications Company for the above stated terms and consideration be and is hereby approved; and

THAT, The President of the Division or his designated representatives be and is hereby authorized to execute the appropriate Lease Agreement.

17. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 5 to Contract No. 10783,

Emergency Aid Agreement, with Dillard Smith Construction Company to approve the reimbursement of costs which includes labor, equipment, meals, lodging and administrative fees as a result of Distribution Support's request for emergency aid due to the November 15 and 16, 2005 storm, in the funded amount of \$20,289.13.

The project scope is MLGW's request of Dillard Smith Construction Company to perform emergency restoration work to our electric system due to said storm in accordance with the pre-existing Emergency Aid Agreement.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Change No. 5 to Contract No. 10783 with Dillard Smith Construction Company in the funded amount of \$20,289.13 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

18. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 1 to Contract No. 11038, Labor and Benefits Cost Assessment, with Public Financial Management, Inc. to change the scope for additional assessment of compensation and benefits in an estimated funded amount of \$77,330.

The project scope has changed to assess MLGW post-retirement medical benefits and compensation for non-bargaining unit employees. The new contract amount is \$145,427.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, Change No. 1 to Contract No. 11038 with Public Financial Management, Inc. in an estimated funded amount of \$77,330 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

19. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Expedited Procurement Request for

Change No. 1 to Contract No. 11077, Flu Shots, with Wellness First, Inc. in the funded amount of \$3,162.

The project scope has changed due to the increased number of employees/retirees receiving flu shots in 2005. The new contract amount is \$28,662.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Change No. 1 to Contract No. 11077 with Wellness First, Inc. in the funded amount of \$3,165 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

20. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Expedited Procurement Request for contract with ASAP Software Express for MLGW's requirements of Microsoft products.

This expedited procurement request is necessary to allow MLGW to come into compliance with Microsoft regulations. On February 17, 2005, the Manager, Procurement and Contracts requested the Board's consideration to exercise an option to extend the contract for enrollment in the State of Tennessee Select Agreement for Microsoft products for an additional 12-month period. The extension was to Purchase Order No. 119303 with Software Plus and the request was made to allow MLGW to continue purchasing Microsoft software licenses and upgrades for use on Division-owned desktop computers at the State of Tennessee pricing levels. MLGW has been advised by both the State of Tennessee and Microsoft that government agencies wishing to enroll under the State of Tennessee's agreement are required to utilize the State's vendor. MLGW has recently been notified that the State of Tennessee's contract is now with ASAP Software Express. Additionally, staff further requests cancellation of Purchase Order No. 119303 with Software Plus due to the change in State of Tennessee's Select Agreement for Microsoft products.

It was moved by Commissioner Clark, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of contract to ASAP Software Express is approved for furnishing:

Requirements of Microsoft products until April 14, 2006

totaling \$69,377.38, approximately, f.o.b. Memphis, Tennessee, our dock, transportation prepaid; said price being firm.

21. Mr. William R. "Dick" Gardiner, 1734 Gosnold Bluff Road, appeared before the Board to discuss various issues.

22. Ms. Sandra Kinsey, 7613 Dexter Hills, appeared before the Board to discuss various issues.

23. Ms. Susan Carter, 5329 Laurie Lane, appeared before the Board to discuss various issues.

24. Mr. Bill Hawkins, Assistant Business Manager, IBEW Local 1288, appeared before the Board regarding Item No. 2.

25. Mr. Joseph Kyle, 704 S. Parkway, East, appeared before the Board to discuss various issues.

There being no further business presented, the meeting was adjourned.

SEE MINUTE FILE NO. 1277.

Acting Secretary-Treasurer