

NOV - 8 1994



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

*Karen E. Doud*  
EXECUTIVE SECRETARY

**8-6 SUPPLEMENT**

November 2, 1994

To: Board of Directors (Engineering and Operations--Action)  
(Organization and Personnel--Action)  
(Legal and Claims--Action)  
From: General Manager and General Counsel

Subject: Adoption of Board Findings for Urgent Necessity; Authorization  
and Delegation to the General Manager to Negotiate With  
Systems Integrated, Inc. and Award a Completion Contract Based  
on Urgent Necessity; and Amend Contract With Special Counsel

Report

**Urgent Necessity Findings**

In 1991, Contract No. 1396/Specifications No. 1207 with JWP Controls, Inc. (JWP) was bid and awarded in accordance with competitive bidding procedures. The Contract's completion date was May 18, 1993. Metropolitan terminated the contract with JWP for cause on April 15, 1994 and engaged unsuccessfully in protracted discussions with JWP, Transdyn and Seaboard regarding completion options. Seaboard Surety unreasonably refused to perform its obligation to complete the Contract in accordance with its performance bond.

Among the most critical systems required to be provided under the Contract were the control systems for the Joseph E. Jensen Filtration Plant expansions and the Operations Control Center. Jensen Expansion No. 1 was completed earlier this year and is currently being operated in a semi-manual mode. Jensen Expansion No. 2 is nearing completion and will be operated with a temporary system that consists of all available spare equipment in Metropolitan's possession. Equipment for the Operations Control Center at Eagle Rock is not available and existing systems are in excess of 22 years old. Although staff has made efforts to provide interim measures to mitigate the effects of JWP's deficient contract performance, extensive man-power must be utilized to accomplish work manually which would otherwise be handled more effectively by a computer-based system. The lack of spare equipment and the outdated equipment at Eagle Rock provide the potential for unexpected failure without available replacement systems. Because of these facts, Operations Division staff believe that Metropolitan's ability to provide service is at risk.

The deficiencies in Metropolitan's control systems were identified by the Peer Review Committee in 1993 and the Blue Ribbon Task Force in 1993-1994. Successful completion of the JWP Contract would have addressed the majority of these criticisms. Since issuance of these reports, the criticisms addressed in the reports have become even more acute.

After evaluating potential completion contractors and considering the time attendant to the bidding process, the critical need for the replacement systems, existing delays and Metropolitan's duty to mitigate its damages and mounting mitigation costs, staff has determined that an urgent necessity procurement is the most expeditious approach for contract completion.

A statement of Board Findings for Urgent Necessity is attached as Exhibit A for your Board's consideration and adoption as a basis to approve the completion contract with Systems Integrated, Inc. on an urgent necessity basis.

**Authorization and Delegation to the General Manager to Negotiate With Systems Integrated, Inc. and Award a Completion Contract**

Because of the urgent need for the system, significant time delays caused by JWP's failure to perform and Metropolitan's legal duty to mitigate its losses, staff has evaluated options for contract completion.

Staff considered various alternatives for the completion of Contract No. 1396. Some options involved rebidding and were rejected because of the time required to select a contractor. These delays are unacceptable because of Metropolitan's urgent needs for the control system. The purchase of off-the-shelf type control systems in place of the control system described in Specifications No. 1207 would not produce the required system performance.

The best alternative was to negotiate with the second lowest bidder, Systems Integrated, Inc. (SI) to complete the contract pursuant to the original specifications as a matter of urgent necessity. Discussions were held with SI, who was very interested in completing this contract at its original 1991 bid price of \$7.6 million (which was \$900,000 higher than JWP's bid). SI's proposal was then re-evaluated to determine its current ability to expeditiously provide a system pursuant to the requirements of Specifications No. 1207.

Evaluation criteria included staffing, project backlog, technical qualifications, customer references and financial condition. SI was found to be highly qualified in all areas. Technical qualifications were evaluated in an exhaustive demonstration test and found satisfactory.

Metropolitan contacted the following customer references: the San Diego County Water Authority, the Padre Dam Metropolitan Water District, the City of Oceanside and the Pacific Bell Corporation. All references reported positive contract performance and viewed SI staff as dedicated and very knowledgeable. The references stated satisfaction with the systems delivered and all would consider utilization of SI in the future.

SI has recently signed an agreement with a surety company to provide bonding capacity for all contracts up to \$10 million.

SI is a women-owned and disadvantaged business enterprise.

A completion contract with SI on an urgent necessity basis will require a 2/3 vote of the Board pursuant to Public Contracts Code section 21567, which is uniquely applicable to Metropolitan.

#### **Amendment of Agreement No. 4633 with Special Counsel**

Because of the foreseeable extended litigation concerning this matter, it is necessary to amend Agreement No. 4633 with special counsel, Katherine E. Stone to increase the maximum amount payable from \$50,000 to \$250,000. Ms. Stone is a WBE/DBE.

#### Recommendation

#### **ENGINEERING AND OPERATIONS FOR ACTION**

It is recommended that your Board (1) find that an emergency exists and adopt the Board Findings of Urgent Necessity; (2) authorize the General Manager to negotiate with Systems Integrated, Inc. for the completion of Computer-Based Control System Procurement, Specifications No. 1207/Contract No. 1396 and (3) delegate to the General Manager the authority to award a completion contract as a matter of urgent necessity pursuant to Administrative Code section 8103(b) and in form approved by the General Counsel.

**ORGANIZATION AND PERSONNEL COMMITTEE FOR ACTION**

It is recommended that your Board authorize the General Counsel to amend Agreement No. 4633 with Katherine E. Stone to increase the maximum amount payable from \$50,000 to \$250,000 to provide additional legal services for litigation related to MWD v. JWP, Controls et. al.

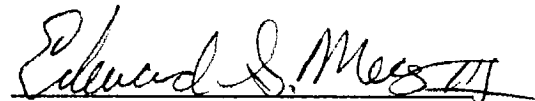
**LEGAL AND CLAIMS COMMITTEE FOR ACTION**

It is recommended that your Board authorize the General Counsel to amend Agreement No. 4633 with Katherine E. Stone to increase the maximum amount payable from \$50,000 to \$250,000 to provide additional legal services for litigation related to MWD v. JWP, Controls et. al.

John R. Wodraska  
General Manager

Submitted by:

  
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N. Gregory Taylor  
General Counsel

  
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Edward G. Means, III  
Chief of Operations

Concur:

  
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John R. Wodraska  
General Manager

Attachments

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**EXHIBIT A****BOARD FINDINGS OF URGENT NECESSITY**

The Board of Directors of the Metropolitan Water District of Southern California (Metropolitan) hereby finds and declares that:

1. Contract No.1396/Specifications No. 1207 (the "Contract") with JWP Controls, Inc. ("JWP") for a computer-based water control "SCADA" system was bid and awarded in accordance with competitive bidding procedures; and
2. It was necessary to terminate the Contract because JWP failed to perform, effectively assigned the Contract without permission, and had become insolvent; and
3. Metropolitan demanded Seaboard Surety (Seaboard) fulfill its obligations under the performance bond for completion of the contract. Seaboard has unreasonably refused to do so. Instead, Seaboard unreasonably insisted that Metropolitan enter into a completion contract which limits Seaboard's obligation under its bond and utilize Transdyn as the completion contractor. Transdyn is not qualified to be the completion contractor.
4. Because of the critical need to replace outdated control systems in Metropolitan's facilities, JWP's delays and failure to perform the Contract, Seaboard's refusal to honor its bond, Metropolitan's duty to mitigate its damages and mounting mitigation costs, the completion of the Contract has now become a matter of urgent necessity.
5. The Contract provides that upon termination Metropolitan may procure the articles or materials necessary to complete the Contract in such manner as it may deem proper.
6. The current delays, the acute need for the control systems specified under the Contract and the further delay associated with the bidding process necessitates an urgent necessity procurement of the Contract equipment.
7. Systems Integrated, Inc. ("SI"), the second lowest bidder on the original 1991 contract, is well-qualified and is available to complete the Contract.

THEREFORE, the General Manager is delegated the authority to negotiate and award a completion contract for Contract No. 1396/Specifications No. 1207 as a matter of urgent necessity in a form approved by the General Counsel.