

WASHINGTON SUBURBAN SANITARY COMMISSION

MINUTES OF THE COMMISSION MEETING

Wednesday, May 16, 2007

Laurel, Maryland

Chairman Prem Agarwal called the meeting to order at 8:37 a.m. in the Commissioners' Conference Room at the Richard G. Hocevar Building, 14501 Sweitzer Lane, Laurel, MD 20707, with due notice having been given to all members of the Commission and the public.

Vice Chair Botts, Commissioners Marc P. Lieber, Sandra Allen and Juanita Miller were present. Also, present were General Manager Andy Brunhart, General Counsel Jerry Blask and Corporate Secretary Charlett Bundy. Commissioner Starks joined the meeting during the auditorium session.

**Agenda Approval**

Vice Chair Botts moved to amend the agenda to have an open session at the end of the day for voting to adopt an MBE Program. Commissioner Lieber seconded the motion. The motion carried with four affirmative votes. Commissioner Miller voted nay. Next, Commissioner Lieber moved to adopt the amended agenda. Commissioner Allen seconded the motion. The motion carried with five affirmative votes.

**Finance Office**

**March 2007 Status Report.** Mr. Traber advised Commissioners that the March 2007 Status Report had been transmitted to the county governments. He noted that the report contained small capital adjustments.

**WSSC Employees' Retirement Plan Document.** Group Leader Richard Baker discussed the actuary data in the 1983 mortality tables of the Retirement Plan Document. Appendix A will change as a result of the new mortality information and this will only impact those retirees choosing spousal benefits - after June 1, 2007, there will be a slightly higher pension if the retiree chooses joint survivor benefits.

**Engineering and Construction**

**Contract Briefings:** Commissioners were briefed on the following contracts:

1. Water main replacement, Woodbrook Lane (BR/CR4371A06) and
2. Water main replacement, Leland St. (BR4372A06). Both areas have a large amount of failing cast iron pipes necessitating the replacements.
3. 96" Water Transmission Main Inspection Update.
4. 96" Water Transmission Main - One-time Delegation of Authority was sought to this the General Manager's authority to \$1.3

million to allow for approval of contracts related to this transmission main that exceed \$750,000.

#### **Logistics**

**Contract 4953.** Commissioners were asked to approve the first and final year option to this contract for mechanical joint and push-on joint ductile pipe.

#### **General Counsel's Office**

Sr. Counsel Bob Drummer provided a follow-up briefing on the need for an internal standardized procedure for managing the flow of responses to requests pursuant to the Maryland Public Information Act.

#### **General Manager's Report**

Mr. Brunhart highlighted a few of the items from his written report. He noted that the Marlboro Meadows project is still on time table and is actually running about a month ahead of schedule. As for MBE contracts, he noted that 39% of the dollars WSSC awarded for A & E contracts went to MBEs. The Fair Practice Officer completed commission-wide EEO workforce training with an exceptionally high attendance rate among all employees.

Commissioners were briefed on the status of hiring a Deputy General Manager. Mr. Brunhart stated he is reviewing the list of applicants that were screened by the Human Resources Department. He advised of the next steps to reach a hiring decision.

The Utility Master Plan is on schedule with current activity consisting of meetings with Mr. Brunhart's senior staff, consultants and key county employees. Lastly, Mr. Brunhart discussed another aspect of the Utility Master Plan an inventory designed as asset management. For the first time, the company is organizing the assets by process rather than by location which will help with designing a tracking process with the Information Technology Department.

#### **Internal Audit**

**April 2007 Report.** Maxene Bardwell presented the department's monthly audit report to Commissioners. There was one question.

**Proposed Changes to WSSC Code of Ethics.** On behalf of the Ethics Board, Ms. Bardwell presented Commissioners a draft of the proposed changes to certain paragraphs of WSSC's Code of Ethics which consisted of correcting two typographical errors and three substantive changes that are needed to bring the Code within compliance of requirements set out by the State Ethics Code.

A member of the MBE community gave a brief statement on behalf of the group about their opinion of what the WSSC MBE Program should contain.

At 1:01 p.m. Chairman Agarwal called the public meeting to order. Vice Chair Botts and Commissioners Starks, Lieber, Allen, and Miller were present. Chair Agarwal asked Commissioner Miller to lead the pledge of allegiance.

#### **AREA PRESS QUESTIONS**

There were no press questions.

#### **PRESENTATION OF WSSC RETIREES**

Four employees retired this month and none were present at the meeting. The retirees were recognized in the following order: Edward K. Cooper, a Senior Database Analyst with the IT Team retired with 20 years and 6 months of service; W.J. Nicholas, III, a Senior buildings and Grounds Inspector in the Property Management Group of Engineering & construction retired with 29 years and 2 months of service; Sieng Tan, an Accountant III in the Accounting Group of the Finance Office retired with 27 years and 10 months of service; and Kyaw Win, a Utility Worker II, in the Systems Control Group retired with 20 years and 7 months of service.

#### **APPROVAL OF MINUTES**

Commissioner Allen moved that the Commission approve the open session minutes from the April 18, and May 2, 2007 Commission Meetings. Vice Chair Botts seconded the motion. With five affirmative votes, the motion carried (Commissioner Miller was temporarily absent from the podium).

#### **EMPLOYEE EXCELLENCE**

Commissioners and the audience were shown another two-minute video of WSSC employees at work at the Anacostia Industrial Asset Group. The film was introduced by Tino Owens, the Employee Liaison Officer.

#### **COMMISSIONERS' ITEMS/COMMENTS**

Commissioner Starks spoke on behalf of the Commissioners, noting that WSSC was honored to recognize the efforts of the MBEs in the WSSC district that had pooled their resources to lobby for passage of the legislation that goes into effect June 1, 2007 and that restores WSSC's authority to create a MBE Program. She also extended a Happy Mother's Day and a Happy Father's Day greeting to staff.

Commissioner Miller read a statement of apology regarding an incident at the April meeting involving the General Manager.

Commissioner Lieber thanked Tom Heikkinen and his staff for the work on creating the new asset management program. Commissioner Lieber noted that the team's approach to asset management was exemplary of best practices in the utility industry. He also praised the inspection and repair of a 96" pipe which integrated engineering, customer care, planning, and intergovernmental relations teams, noting that such

collaboration exemplified the direction WSSC has to take to be on tract to become a world-class utility.

#### **GENERAL MANAGER'S ITEMS/COMMENTS**

Mr. Brunhart remarked on the status of fire hydrant readiness within WSSC's district as representatives from both counties expressed concerned after a fire in the District of Columbia revealed inoperable hydrants there delayed fire fighting at two major fires. Mr. Brunhart advised that of the 40,000 hydrants in WSSC's district, on average, no more than 12 are out of service for more than 7 days.

Lastly, Mr. Brunhart highlighted a congressional reception held in honor of Grid Week, the power industry's national gathering which featured six displays of creative use of energy. WSSC's wind power purchase was featured in one of those six displays.

#### **Customer Care**

- 1. Job Order Contract 4335.** Commissioner Starks moved that the Commission award Job Order Contract 4335 for Job Order Number M02323001, for pipe bursting in sewer mains and for lateral services at various locations in Prince George's County, Maryland, to Anchor Construction Corporation in the amount of \$1,913,992.35. Commissioner Miller seconded the motion. The motion with five affirmative votes. Commissioner Lieber registered a nay vote.
- 2.** Commissioner Allen moved that the Commission award Contract No. P66990, to provide pipe armoring services for a period of 12 months to Highway and Safety Service, Inc in the amount of \$3,500,000. Vice Chair Botts seconded the motion. The motion carried with a unanimous vote.
- 3.** Commissioner Lieber moved that the Commission award four contracts for sewer connections and surveying as follows:  
Contract No. P66532 to ADS Environmental for \$3, 500,000;  
Contract No. P66533 to O'Brien & Gere for \$2,000,000; Contract No. P66253 to URS Corporation for \$1,500,000 and Contract No. P66534 to EBA Engineering/REI Drayco Joint Venture for \$1,000,000. The total cost of the contracts, including option years, if exercised is \$16,000,000.

#### **Engineering & Construction**

**Fiber Repairs to the 96" Water Main.** Commissioner Allen moved that the Commission delegate a one-time authority to the General Manager to award contracts up to \$1,300,000 for emergency carbon fiber repairs to the 96" Potomac Water Transmission Main One Time Delegation of Authority to repair 96" Water Transmission Main. Vice Chair Botts seconded the motion. Commissioner Starks abstained from voting because she missed the briefing. Commissioner Miller was temporarily off the dais. The motion carried with four affirmative votes.

**Finance Office**

1. **Resolution No. 2007-1775.** Commissioner Miller moved to approve Resolution No. 2007-1775 that adopts a five-year funding schedule for other post-employment benefits. Vice Chair Botts seconded the motion. The motion carried unanimously.

2. **Trust Agreement for Other Post-Employment Benefits.**

Commissioner Lieber moved that the Commission approve the Trust Agreement for the Retiree Other Post Employment Benefits Trust. The Trust will be funded in a phased-in approach over five years, beginning in Fiscal Year 2008. Vice Chair Botts seconded the motion. The motion carried unanimously.

**General Counsel's Office**

**Public Information Act Requests Standard Procedure.** Commissioner Lieber moved that the Commission approve Standard Procedure L-07-01 concerning requests for WSSC records under the Maryland Public Information Act. Vice Chair Botts seconded the motion. The motion carried unanimously.

At 1:45 p.m. the meeting then adjourned to the Commissioners' Conference Room for the afternoon session.

**AFTERNOON SESSION -  
COMMISSIONERS' CONFERENCE ROOM**

The meeting resumed in the Commissioners' Conference Room at 2:22 p.m.

**Commissioners**

1. **Corporate Secretary's Monthly Report.** Ms. Bundy provided Commissioners a report of her monthly activities.

2. **Commissioners' Travel Reimbursement SOP.** This item was tabled to the June meeting.

3. **Commissioners Working Retreat.** The date was changed to July 33-34, 2007. Ms. Bundy was directed to try to find a place for that weekend.

At 2:31 p.m. Commissioner Allen moved to close the meeting pursuant to: 1. Subtitle 5 of Title 10 of the State Government Article, Maryland Code: Section 10-508(a) (13) a) to approve Closed Session Minutes from April 18, 2007 and May 2, 2007; and b) to receive the Internal Audit Manager's Initial Assessment; Section 10-508(a) (7) to obtain legal advice on proposed MBE Program; and 3. Section 10-508(a) (13) to conduct the General Manager's Performance Evaluation. Vice Chair Botts seconded the motion. The motion carried unanimously.

**AFTERNOON CLOSED SESSION  
COMMISSIONERS' CONFERENCE ROOM**

At 2:32 p.m. the meeting was closed. In attendance were Chair Agarwal, Vice Chair Botts, Commissioners Starks, Lieber, Allen, and Miller. Also in attendance were General Manager Brunhart, Corporate Secretary Charlett Bundy, General Counsel Jerry Blask, and at 3:20 p.m. SLMBE Director Towanda McNeil and Attorney Franklin Lee joined the meeting for the discussion on the legal advice on the MBE Program.

**CLOSED SESSION MINUTES**

Commissioner Starks moved to approve the closed session minutes for the closed sessions of the April 18, 2007 and May 2, 2007 Commission meetings. Vice Chair Botts seconded the motion. Commissioner Allen abstained from voting on the May 2<sup>nd</sup> minutes because she was absent May 2, 2007. The motion passed with four affirmative votes for April 18, 2007 and three affirmative votes for the May 2, 2007 minutes. Commissioner Lieber was temporarily out of the room.

**INTERNAL AUDIT**

Internal Audit Manager Maxene Bardwell then joined the meeting (2:35 p.m.) to discuss her assessment of the Internal Audit office staff and working process. Ms. Bardwell left the meeting at 1:22 p.m.

**GENERAL COUNSEL'S OFFICE**

At 3:23 p.m. Ms. McNeil and Attorney Lee joined the meeting. Commissioners engaged in a discussion of a document prepared by Attorney Lee that outlined legal advice about the MBE Program implementation options.

At 3:00 p.m., Commissioner Lieber moved to open the meeting. Commissioner Allen seconded the motion. The vote to open the meeting was unanimous so the meeting continued in open session.

**AFTERNOON OPEN SESSION CONTINUED**

At 4:03 p.m. the meeting was opened. Several motions were made to implement an interim MBE Program.

First, Commissioner Lieber moved that the commission adopt a SLMBE standard procedure effective June 1<sup>st</sup> that would have the following characteristics. We would adopt on an interim basis old MBE SP 96-01 as amended by Resolution 97-1521. We would have a specific expiration date of September 1<sup>st</sup> which is basically 90 days from June 1<sup>st</sup>. The only purpose for this interim period is to allow WSSC staff the opportunity to write a more permanent MBE Program and present options to Commissioners so that Commissioners would be able to vote and set

policy. There shall be no possibility of extending the interim program past September 1<sup>st</sup>. In the event that the Commissioners do not determine a more permanent program September 1<sup>st</sup>, it would revert to the status quo ante as of today. The Commissioners would direct staff to adopt a 25% annual aspirational target. The characteristics of the program that we would direct staff to have would include time lines, phase-ins, resource use in order to be able to adopt and implement a program. We would direct staff that any aspirational targets would be evaluated on a contract-by-contract basis. The main characteristic of the program is the final SLMBE Policy would be based on a detailed summary of updated findings about the on-going effects of discrimination in the WSSC-relevant market place. The SLMBE policy would be based on those findings and would provide various program features and policy rules directed at alleviating the specific barriers and on-going effects of discrimination that have been identified in disparity updates and other relevant evidence.

Vice Chair Botts asked if Commissioner Lieber would amend the motion to leave out the aspirational targets. Commissioner Lieber agreed to the amendment as no one offered a second without the amendment. Vice Chair Botts then seconded the motion. Commissioner Lieber and Vice Chair Botts voted yea; Chair Agarwal and Commissioners Starks, Allen and Miller voted nay. The motion failed.

Commissioner Miller then moved that the Commission adopt as an interim MBE Program, the program that was in place prior to the sunset and that is consistent with the standard procedure which includes mandatory, across the board, in all four areas and is not to exceed May 1, 2008. By that time we should have a permanent policy in place. Commissioner Starks seconded the motion. The vote was three yea votes from Chair Agarwal and Commissioners Starks and Miller and then three nay votes from Commissioners Lieber, Allen and Vice Chair Botts. The motion failed for lack of a majority.

Commissioner Lieber made another motion. He moved that the Commission direct the SLMBE Office and General Manager to establish a final SLMBE Policy subject to Commission approval that is based on a detailed summary of updated findings of the Commission of ongoing effects of discrimination in the WSSC relevant marketplace and that this final SLMBE policy is based upon those findings and that the final SLMBE policy provides various program features, policy tools directed at alleviating specific barriers and ongoing effects of discrimination identified in disparity updates and other relevant updates. This final SLMBE policy will provide time lines and phase-ins for implementation of the policy. The general direction of the policy will be consistent with the orange briefing that the SLMBE Office supported by Franklin Lee presented to the Commission a couple of months ago, i.e., annual goals,

contract-by-contract implementation, race neutral policies that we discussed and that the Commission directs staff to consider some of the specific suggestions brought to the Commission by the MBE community today including the suggestion about submittal requirements, reporting requirements, monitoring, compliance section including the consequences of not being in compliance and criteria for graduation. Implementation would be as soon as possible but no sooner than June 1, 2007. Vice Chair Botts seconded the motion. The motion failed as there was no majority vote: Chair Agarwal, Commissioners Starks and Miller voted "nay" while Vice Chair Botts and Commissioners Lieber and Allen voted, "yea."

Commissioner Starks moved that the Commission adopt the SP 96-01 for 90 days not to extend past September 1, and effective September 1 the Commission would adopt Number 9 and direct staff to a target goal of 25%. Commissioner Lieber asked what happens if no program has been developed by September 1<sup>st</sup> what would happen. Commissioner Starks said "we would go immediately into 9." Commissioner Lieber commented, "I think that the whole thing about 9 is that time is needed to be specific. Commissioners would have to agree on the specifics." Commissioner Miller seconded the motion. The vote was three nay votes from Vice Chair Botts, Commissioners Lieber and Allen and three yea votes from Chair Agarwal and Commissioners Starks and Miller. The motion failed for lack of majority.

Vice Chair Botts then moved to adopt SP MBE 96-01 to expire September 1 with the provisions adopting Number 9 without any specific target goals. Chair Agarwal asked if Mr. Botts would amend his motion to say the goal would be modified based on the study data. Vice Chair Botts agreed to the amendment. Then Commissioner asked Vice Chair Botts to clarify would happen on September 2<sup>nd</sup>. Mr. Botts stated, "We would go to option 9, with a specific policy and procedures that have been provided to us by our SLMBE Office." The motion failed for a lack of a second.

Commissioner Lieber moved that we go into closed session pursuant to Maryland Article 29, Section 10-508(a) (1) to discuss the General Manager's evaluation. Vice Chair Botts seconded the motion. The vote was tied: three nay votes from Chair Agarwal, Commissioners Miller and Starks and three yea votes from Vice Chair Botts and Commissioners Lieber and Allen. Without a majority, the motion failed.

Commissioner Miller moved that we adopt mandatory across the board as an interim program and when we come back in June that will be the program that will be in place and at our July meeting we will resolve the issue of what will come next by September 1<sup>st</sup>. Commissioner Starks seconded the motion. Chair Agarwal and Commissioners Miller and Starks



voted yea. Vice Chair Botts and Commissioners Lieber and Allen voted nay. The motion failed for lack of majority.

Commissioner Starks moved that Commission adopt the old SP MBE 96-01 for 90 days and not be extended by September 1<sup>st</sup> and also put in place Number 9 with a target goal of 25%. She amended the motion to remove the percentage of the target goal. Commissioner Lieber asked what happens on September 2<sup>nd</sup>. Commissioner Starks replied, "We go right into Number 9. We implement the contract-by-contract. It is fully up and running." Commissioner Lieber asked if there would be another Commissioner approval and in unison everyone agreed that the vote at this meeting would constitute the action for September 1<sup>st</sup> and thereafter. Commissioner Lieber stated he did not understand the motion. Number 9 says SLMBE would come back to us and say what they might implement. Commissioner Starks said she clarified that the Number 9 means the SLMBE office would come back with a contract-by-contract with target options so the Commissioners could make some decisions about what they want to direct the SLMBE to do next. Commissioner Starks restated her motion. She refused the amendment because it would be less work for all. Commissioner Miller seconded the motion. The motion failed because the vote was tied: Chair Agarwal, Commissioners Starks and Miller voted yea and Vice Chair Botts and Commissioners Lieber and Allen voted nay.

Vice Chair Botts then said, "Fellow Commissioners, I move that we adopt the old SP 96-01 as amended by Resolution 97-1521 with an effective date of June 1, to expire September 1, at which time the Commission will adopt option number 9 with the aspirational goal of 25%." Commissioner Starks seconded the motion. Commissioner Lieber asked what it means to adopt No. 9. Vice Chair Botts said, "The SLMBE staff will come back with specifics of a policy and procedure for implementing but we will go to a contract-by-contract basis with an aspirational goal of 25%." Commissioner Lieber asked if Commissioners expect the SLMBE to implement that plan. Vice Chair Botts responded, "We will get it done by September 1 we mean that we will have sessions, presentations, and whatever we need to get the framework in place for September 1." Corporate Secretary stated this motion had been voted stated previously but Commissioner Starks said that the motion was different because it contained Resolution 97-1521.

Chair Agarwal then called for a vote on the motion. Commissioners Lieber and Allen voted nay; Commissioner Miller abstained because she did not understand the content of the motion; Chair Agarwal, Vice Chair Botts and Commissioner Starks voted yea, so the motion carried with three affirmative votes.

**AFTERNOON CLOSED SESSION RESUMED  
COMMISSIONERS' CONFERENCE ROOM**

Commissioner Allen moved that meeting go into closed session pursuant to Maryland Article 29, Section 10-508(a) (13) to complete the discussion on the General Manager's evaluation. Commissioner Lieber seconded the motion. The motion passed unanimously. At 6:50, the motion carried and the meeting was closed. The General Manager, Corporate Secretary and SLMBE Director Towanda McNeil then left the meeting so the six Commissioners could conduct the General Manager's performance evaluation.

The Commissioners reached consensus on an award of the General Manager's bonus after tallying his evaluation.

Vice Chair Botts then moved to end the closed session. Commissioner Starks seconded the motion. At 7:50, the closed session ended.

**ADJOURNMENT**

Immediately thereafter, Commissioner Lieber made a motion to end the meeting. It was seconded by Commissioner Allen. The vote was unanimous. At 7:52 p.m. Chair Agarwal declared the meeting was adjourned.

          //signed//            
Charlett Bundy, Esq.  
Corporate Secretary