

MINUTES OF SPECIAL MEETING OF KISSIMMEE UTILITY AUTHORITY, HELD  
WEDNESDAY, SEPTEMBER 29, 1993 AT 6:00 PM, BOARD ROOM, ADMINISTRATION  
BUILDING, 1701 W. CARROLL STREET, KISSIMMEE, FLORIDA

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Present at the meeting were Chairman Hord, Vice-Chairman Gant, Secretary Bobroff, Assistant Secretary Lowenstein, Attorney Brinson, and President & General Manager Welsh. Mayor Pollet, Director Jones and Director-Elect Schoolfield were not present.

- A. MEETING CALLED TO ORDER at 6:00 P.M. by Chairman Hord.
- B. AWARD OF CONTRACT - SUPPLY THE STEAM TURBINE GENERATOR FOR CANE ISLAND UNIT 2 - IFB #038-93

Mr. Welsh stated that per the direction of the Board two weeks ago, the Steam Turbine Generator has been bid. The bids were received last Thursday. The Engineers and Staff have been evaluating them through the weekend and have a recommendation based on that evaluation which had been given to the Board in their material for this meeting. Mr. Welsh further stated that at approximately 5:55 p.m., just prior to this meeting, he had received a facsimile transmission from Mr. Anthony Guniceo, Asea Brown Boveri (ABB), protesting the evaluation of the bid performed by Black & Veatch. In that letter they requested that we withhold all further procurement activities until a formal written protest from them followed. This letter was a notice of protest.

Attorney Brinson advised the Board it may be in our best interest to allow time for any protest to be evaluated by ABB and given to us. This would ensure that we have given due process to the protesting vendor.

Director Bobroff expressed some concern that we were wasting time and this could be costing us money.

Mr. Welsh had stated that he had just had a conversation with Mr. Michael R. Burgess, Vice President of Business Development Steam Turbine & Medium Gas Turbines of ABB Power Generation, Inc., and also Mr. Carl A. Stendebach, Business Development Manager, ABB Power Generation Inc., just prior to the meeting. At that time they had indicated that they would probably need more like 48 hours, as opposed to 24 hours, to develop their formal protest and they further indicated that Monday evening (October 4th) may be the time which they could get this to us.

Mr. Burgess (ARE) addressed the Board. He confirmed the conversation that Mr. Welsh had related. At the request of Director Gant, Mr. Burgess briefly outlined what the basis of his protest was. They felt that GE (General Electric) had an unfair advantage in that they were the only bidder who could take advantage of a higher guarantee point on the gas turbine. GE had already been the successful bidder for the gas turbine.

They felt that it was unfair that the added performance which they were guaranteeing out of the gas turbine should be used in the evaluation for the award of the steam turbine. GE had guaranteed a combined unit efficiency for both the gas turbine and the steam turbine portions of the combined cycle.

Mr. Burgess further indicated that he felt it was inappropriate to evaluate the gas turbine at the 80°F point when the guarantee point for the gas turbine was at a 95°F ambient temperature. Chairman Hord indicated that this being at the 80° level was at his urging at the last meeting. He had requested that the evaluation take place at something closer to average conditions for this area.

Attorney Brinson inquired of Mr. Burgess whether at this time they were asking for determination on their protest or asking for more time to make a more complete protest. Mr. Burgess indicated that they were asking for more time to make a more complete protest as opposed to a determination this evening.

Director Bobroff asked if we were losing money or getting behind in our schedule because of this delay. Mr. Welsh indicated that, no, we were not at this point since all vendors had indicated two weeks ago that they could keep their original schedule or an August 1st delivery date as long as the award was made by October 6th, which is a week from this evening.

Mr. Vincent Tursi, Sr. Account Executive of ABB, addressed the Board and indicated that they could meet this schedule.

Mr. Hobart Jacobs, Black & Veatch, indicated that they are squeezing the engineering time now but a week would not kill them as long as the vendor could meet the August 1st delivery date. He also indicated that two bidders, Westinghouse and ABB, had agreed to liquidated damages if the delivery date is not met.

Mr. Welsh inquired of Ziggy Biernacki, Power Generation Sales Engineer, General Electric, whether they could still meet the delivery date. He indicated that they could. He also stated that they would be willing to talk about agreeing to liquidated damages and resolve this issue prior to next week.

Mr. Tim Eves, Westinghouse, addressed the Board and indicated that they would meet the August 1st delivery date if given the order on the October 6th date, or at any time thereafter. He also indicated that they would like to express the same concern I as expressed by ABB.

Attorney Brinson indicated that our choices now are to resolve this this evening or to continue the meeting in one week to give time for added protest information.

Director Gant asked for some clarification on the basis of the protest as interpreted by our Engineer. Mr. Hobart Jacobs stated that General Electric has guaranteed a greater combined efficiency between the two machines, the one that they had already agreed to deliver and the one that they were bidding on at this time. They are guaranteeing a higher output from the gas turbine which they were contracted to deliver to us than they had originally guaranteed, as well as a higher output from the steam turbine. He felt as though GE was giving up some margin that they had already built into the machine and taking on the added risk of the \$2,000/kW of liquidated damages.

**Motion by Director Bobroff to continue this meeting on Wednesday, October 6th, at 6:00 p.m., with the understanding that the protest by ABB (Asea Brown Boveri) be delivered both to KUA's offices and to Black & Veatch's offices in Kansas City by 5:00 p.m. EST on the upcoming Monday. Seconded by Director Lowenstein.**

Mr. Vinny Tursi (ARE) indicated to Mr. Welsh that he would try to have their full protest to them by Friday afternoon, as opposed to Monday, to facilitate this process.

Director Gant asked that our Engineers have a complete and thorough summary of analysis of the situation prepared for next week's meeting.

Mr. Tim Eves (Westinghouse) indicated that he would have his concerns in writing to KUA by 4:00 p.m. on Friday of this week.

Mr. Welsh assured Mr. Eves that he appreciated his input and that it, together with the information given by ABB, would be given full consideration in Staff's evaluation and final recommendation to the Board.

**Motion carried 4 - 0**  
**Director Jones absent**

C. OTHER - None

D. HEAR GENERAL MANAGER, ATTORNEY. DIRECTORS

GENERAL MANAGER

Mr. Welsh passed out copies of the Petition of Eminent Domain which had been filed in the Circuit Court for Osceola County. Attorney Brinson explained that these were the condemnation pleadings for a quick taking for the Cane Island to Clay Street 230 kV transmission line right-of-way.

Mr. Welsh reminded the Board that they had scheduled an inspection of the Energy Control Center on the second floor of this building immediately following this meeting.

ATTORNEY - No comments

DIRECTORS

Director Gant stated that he found the visit to the construction site at Cane Island very enjoyable and tremendously informative.

The meeting recessed at 6:45 p.m., to be continued at 6:00 p.m., Wednesday, October 6th.

The meeting resumed at 6:00 p.m. on Wednesday, October 6th.

Present at the meeting were Chairman Hord, Vice-Chairman Gant, Secretary Bobroff, Assistant Secretary Lowenstein, Attorney Brinson, and President & General Manager. Mayor Pollet left at 6:30 p.m.

A. MEETING CALLED TO ORDER at 6:00 p.m. by Chairman Hord.

B. AWARDS & PRESENTATIONS

1. OATH OF OFFICE - WAYNE SCHOOLFIEBD

Attorney Brinson administered the Oath of Office to Wayne Schoolfield who was starting his term as of this meeting. All members congratulated and welcomed Wayne Schoolfield to the KUA Board of Directors as did the President and General Manager.

Director Lowenstein noted that as this was the first meeting of the new Board where all members were present it was necessary to elect officers.

Director Lowenstein moved that the officers of the Board remain as they currently are (i.e., Richard Hord - Chairman, Dr. George Gant - Vice Chairman, Bob Bobroff - Secretary, Harry Lowenstein - Assistant Secretary. Motion seconded by Director Bobroff).

**Motion carried 5 - 0**

**B. AWARD OF CONTRACT - SUPPLY THE STEAM TURBINE GENERATOR FOR CANE ISLAND UNIT 2 - IFB #069-93. This agenda item was erroneously shown as IFB #038 on the agenda and agenda item.**

Mr. Welsh recapped for the Board the sequence of meetings that occurred on September 8, 14 and 29 concluding with this meeting tonight which was a continuation of the meeting on September 29th.

Mr. Welsh indicated that at the last meeting Director Bobroff had questioned whether these delays were costing us money in terms of delay of the project. At that time it was indicated that it was not, in that all the vendors had indicated during the meeting on September 14th that they would meet their delivery schedules as long as an Award of Bid was developed by October 6th, which was this evening.

Director Bobroff questioned what we would be losing if the decision was delayed. Mr. Hobart Jacobs, Black & Veatch, the Project Manager for Cane Island said that he had not calculated

anything directly, but in a rough way may be done on the basis of a loss of revenue. This could be as much as \$60,000 a day and this may be the best way to look at it for a delayed cost.

Mr. Welsh requested that Attorney Brinson recap for the Board where we are in terms of the Bid Protest and the procedures which we should follow.

Mr. Brinson indicated that we had received two Notices of Protest but only one formal protest. This formal protest was from ABB. Mr. Brinson suggested that the Board hear what ABB may have to say to the Board and it was their burden to convince the Board that their protest was valid.

Director Schoolfield asked how many of the bidders were in the room. Chairman Hord said that he recognized representatives from Westinghouse, ABB and General Electric (GE) and then asked if there was any representatives from Dresser Rand. There were no representatives from Dresser Rand in the audience.

Mr. Mike Burgess, Vice President of Business Development, ABB, addressed the Board concerning the protests which had been formally filed with KUA. In summary Mr. Burgess said that the results of the evaluation performed by Black & Veatch hinges on a previously purchased gas turbine. Evaluating the bids in this manner he felt gave GE an advantage not given to other bidders. He referred to the protest which he had sent in to KUA.

Mr. Burgess also indicated that he felt GE had not guaranteed their steam turbine, that they had guaranteed a combined output, but not an individual output from the steam turbine. He felt it was very difficult for ABB to accept the evaluation which includes equipment which is not part of the proposal. In summary, he felt that the bid had not been fairly evaluated by Black & Veatch.

Director Bobroff asked if they had not provided additional blades in equipment which they had proposed at the earlier meeting in September. Mr. Burgess said that this was fully discussed that evening before the Board made their decision on awarding them the bid (this award was subsequently withdrawn when it was determined that the additional equipment offered by ABB after the bid was opened was an unfair bidding procedure).

Chairman Hord asked that a representative from Black & Veatch address the Board on those additional blades.

Mr. Don Schultz, a Partner at Black & Veatch, indicated that he thought the additional efficiency which ABB had originally offered was due

to a correction of an error and only found out at the September 8th meeting that they planned additional blading.

Mr. Burgess said that a Letter of Transmittal which clearly showed that additional blading was being offered had been sent to Black & Veatch. He then asked that their legal representative discuss some of the procedural issues on this protest.

Director Schoolfield asked what ABB was recommending as a remedy to this situation. Mr. Burgess stated that he recommended we purchase the ABB steam turbine generator.

Ms. Leslie O'Neil, an attorney representing ABB, addressed the Board. She said that she thought our procedures were incorrect and that we should be suspending all procurement activities until the Bid Protest is resolved.

Chairman Hord said that is not correct. We are not proceeding on any purchase activities until the Bid Protest is resolved.

Ms. O'Neil indicated that she felt that the playing field ought to be leveled, that one bidder to be able to enhance their bid in a way that others can't was unfair. She stated that our attorney had stated that an unfair advantage should not be given to other bidders. What he didn't say was that if a contract is awarded that violates the law, then it is voided. If that one bidder had been evaluated differently than all the other bidders, they, therefore, had an advantage and that we should throw one out due to it not being evaluated on an apples-to-apples situation.

Ms. O'Neill indicated that our options were as she saw it: No. 1, to throw all the bids out; No. 2, to eliminate the improper bid.

Director Hord asked that Black & Veatch address the Board on the protest of their evaluation procedures as put forth by ABB.

Mr. Schultz stated that they felt that all bids were responsive and that GE did guarantee an output on the steam turbine alone. He also stated that the additional enhancements were a benefit to KUA and in our best interests. He felt he could not speak directly as to whether they violated competitive bidding law in that he is not a lawyer. He further stated that all bidders had been advised prior to the bid that the turbines would be evaluated at a temperature of closer to the ambient temperature in this area as opposed to 95°.

Director Bobroff asked how many bids had been evaluated by Black & Veatch in the past. Mr. Schultz said that he did not really have that number in his head but it was perhaps several hundred. Director Bobroff asked if they thought they had learned how to do it by this time and Mr. Schultz said that they felt they have and did know how to evaluate the bid properly.

Mr. Burgess asked Mr. Schultz if the cover letter on the GE bid didn't indicate that they were giving combined guarantees in lieu of individual unit guarantees. Mr. Schultz said this may be subject to interpretation; however, it was his interpretation this was in addition to the guarantee of the steam turbine alone.

Mr. Burgess stated that where liquidated damages is involved it was his experience the equipment is always evaluated at the guaranteed level upon which liquidated damages are based.

Mr. Schultz indicated the specification didn't require liquidated damages; however, the bidders had proposed this. Mr. Burgess stated he believed there was a request for a \$2,000 per day for liquidated damages.

Mr. Schultz stated the specifications did not include liquidated damages. Both ABB and Westinghouse had suggested the liquidated damages; and GE had been asked during the period in the complex bidding procedure, when prices had not been disclosed, whether they would consent to liquidated damages.

Mr. Brinson asked if ABB was asking that we find either GE or all bidders non responsive. Ms. O'Neil indicated they are asking that we find GE non responsive.

Mr. Brinson suggested to the Board they should hear from GE and that their findings of General Electric being non responsive could be very material to them.

Ms. O'Neil stated another alternative would be to throw all the bids out and rebid it.

Director Bobroff indicated he would like to hear from Black & Veatch whether they felt the GE bid was responsive.

Ms. O'Neill stated it was their position that the GE bid was non responsive.

Chairman Hord asked Black & Veatch to advise Director Bobroff if, in their opinion, the GE bid was responsive. Mr. Schultz responded he felt it was responsive.

Director Bobroff questioned whether Black & Veatch felt the other three bids were responsive. Mr. Schultz stated he felt they were.

Director Bobroff inquired whether any of the other bidders had knowledge of what each other's bid was during the evaluation period under our complex bid procedures. Mr. Schultz said to his knowledge they did not.

Mr. Burgess asked Mr. Schultz whether the 511 KW credit given to GE because of their gas turbine allows for a competitive and fair situation. Mr. Schultz replied he couldn't speak to fair, but that he felt it was extremely competitive and that it was a real advantage for KUA.

Chairman Hord stated he felt it was his responsibility to represent the rate payer in the most economical way. If something can save us money then he must take a real hard look at it.

Mr. Burgess stated that he understood what GE is offering is something of value. However, he did not know what enhancements, if any, were made by GE to the machine. He did know, however, that guarantees are made in a different way when a company has control over all equipment. When all equipment is put together in a plant, many times you have more efficiency and output than the individual guarantees of the pieces. Unless there is something special that GE is doing, then probably, the 511 KW will be there regardless of who the steam turbine is awarded to.

Chairman Hord inquired whether this was speculation on Mr. Burgess's part. Mr. Burgess indicated that it was an educated speculation.

Mr. Schultz (Black & Veatch) said they had considered the possibility that there may not be anything different done to the gas turbine. He said, however, GE had indicated they were enhancing the design of the gas turbine and he had to believe this; but regardless of whether they were or were not, the reality of it is they were willing to guarantee it with the effect that we can rely on it and recoup liquidated damages if it is not delivered to us. Chairman Hord asked if we will endure this advantage at 80° as well as 95°. Mr. Schultz

indicated yes, but the guarantee is at the 95° point.

Mr. Tim Eves, Westinghouse, indicated Westinghouse had some similar concerns but they were not putting forth a formal complaint or protest. Mr. Brinson asked if Westinghouse thought the GE bid was non responsive. Mr. Eves indicated that he thought it was not.

Mr. Eves further pointed out that Westinghouse had offered a complete power pack to KUA earlier and KUA was not interested in a turnkey type project. There was no evaluation done for the combined plant output when an optional combined plant was offered with the original gas turbine. GE had offered a combined plant output and their combined plant output was the least attractive. In the Nueter Erickson offer for the heat recovery steam generator, the additional steam output was not given any value. He indicated he thought KUA was not interested in combined output. Based on the events of the past they didn't include additional plant output in their proposals.

Mr. Ziggy Biernacki, Power Generation Sales Engineer, General Electric, stated that it was intended in their bid to offer a guarantee for the steam turbine individually in addition to a guarantee on the combined plant output. If this had not been his intent he would not have included a number for the steam turbine output. He had no other statement to make at this time.

Chairman Hord asked if there was any other information that could come to the Board on making their decision. Director Gant suggested they hear from Staff for their opinion on this.

Mr. Welsh indicated he felt it was in the best interest of our rate payers to take the best deal offered to us. Our Engineers have indicated what GE has offered to us, in terms of additional output from the gas turbine, provides us with some real value and we ought to take this into account in the best interest of our rate payers.

Director Gant asked if we can resolve this tonight. Attorney Brinson said that you can resolve this administratively. It is the Board's obligation to determine if the GE bid is responsive.

Director Bobroff asked if Mr. Schultz after hearing all that he has heard here tonight, and based on his knowledge of bids and bid evaluation, if he was satisfied that the GE bid was responsive. Mr. Schultz replied that he has determined that all the bids were responsive.

Mr. Burgess again addressed the Board clarifying that their protests were: one, that allowing credit to GE for the additional output for their gas turbine was unfair and gave them a competitive advantage; and two, that the evaluation should have been at the guaranteed point, i. e., 95°.

Mr. Brinson asked Mr. Burgess if he was asking that we declare the GE bid non responsive. Mr. Burgess said we should declare the GE bid non responsive or throw out the additional kilowatts included in their evaluation.

**Director Lowenstein moved that the ABB protests be declared not valid and that the GE bid was responsive. Seconded by Director Bobroff.**

**Motion carried 5 - 0**

Mr. Welsh stated that with the Bid Protest having been resolved this puts us back to the point of hearing the evaluation which was

scheduled for last week's meeting and deciding on a bid award.

Mr. Brinson stated that he thought the terms of our motion, if we so elect to award the bid, should be accept the bid versus award of contract.

Ben Sharma, Director of Power Supply, said the results of the rebid directed by the Board were received on September 23. Black & Veatch had evaluated it. The results of their evaluation had previously been forwarded to the Board. He asked that Mr. Schultz (Black & Veatch) review the bid evaluation which had been forwarded to the Board.

Mr. Schultz reviewed the evaluation with the Board responding to clarification questions by various Board members. Mr. Schultz reviewed, on a table by table basis, the details contained in Black & Veatch's evaluation report.

Chairman Hord questioned if the cost of operation would be the same one year from now as it is today. Mr. Schultz indicated yes.

Mr. Brinson suggested that the Board may want to hear from any of the bidders prior to making a final decision. Mr. Burgess, ABB, indicated that the 511 KW credit at \$1,300 per KW resulted in approximately \$650,000 advantage which more than overwhelms all the other bidders. He indicated as long as that is allowed they had the advantage.

Director Bobroff stated that he thought in that situation KUA would be receiving this advantage.

Mr. Eves, Westinghouse, said that he felt that the added output from the gas turbine would be there regardless of who puts in the steam turbine. He also stated we would get more out of a Westinghouse steam turbine because of their larger blades which are 23 inches.

**Director Bobroff moved that we accept the bid from General Electric for supply of the Cane Island Unit 2 steam turbine generator equipment for the not to exceed price of \$5, 72 6, 087 and authorize the Chairman and Secretary to execute the contract upon successful negotiation of the Scope of Work and terms and conditions with GE. Seconded by Director Lowenstein.**

Director Gant stated this is a very difficult type of process, we have the recommendations of Staff, our Attorney and Engineers, we are doing the best job that we know how to do.

**Motion carried 5 - 0**

**E. HEAR GENERAL MANAGER. ATTORNEY, DIRECTORS**

**GENERAL MANAGER**

Mr. Welsh stated he has had discussions with Black & Veatch, our engineers, and indicated that there will be no more rushing of the bid process. We will use our complex bidding procedure and allow plenty of time for both the evaluation to take place and for any protest of the evaluation to be fully considered by all vendors and submitted to us prior to the scheduled bid award at a regular Board meeting.

Mr. Welsh handed out a newspaper article which highlighted KUA's participation in the Bureaucratic Softball Bash which is a fund raiser scheduled for 9:00 a.m. Saturday morning. He invited any of the Board members to attend who cared to.



**ATTORNEY** - No comments

**ADJOURNMENT:** Meeting adjourned at 7:45 p.m.

*Richard L. Ford*  
CHAIRMAN

SECRETARY