

ORDINANCE NO. 96-10

AN ORDINANCE DECLARING PUBLIC  
BIDDING DISADVANTAGEOUS AND  
AUTHORIZING THE PURCHASE OF  
PEM FUEL CELLS FROM BALLARD  
POWER SYSTEMS, INC.

WHEREAS, Ballard Power Systems, Inc. ("Ballard") is a company dedicated to the development of clean burning, energy efficient, environmentally sound proton exchange membrane fuel cell systems ("PEM Fuel Cell Systems") for the generation of energy; and

WHEREAS, The Chicago Transit Authority ("CTA") is interested in testing clean burning, energy efficient and environmentally sound methods of powering buses; and

WHEREAS, The PEM fuel cell system technology is newly developed and has not yet been fully adapted to the transit industry; and

WHEREAS, The CTA and Ballard are desirous of entering into an in-service test program for PEM fuel cell buses (the "Program") in which Ballard would deliver to the CTA three 40-foot New Flyer Industries Ltd. low-floor transit buses (the "Fuel Cell Buses") powered by Ballard PEM fuel cell systems in order that CTA might evaluate the performance, cost and maintenance requirements of said Fuel Cell Buses; and

WHEREAS, The Program, an in-service test effort involving experimentation with the application of new technology, to be supported by 80% federal funds and 20% state funds, has been approved by the Central Area Transportation Study ("CATS") and the Illinois Department of Transportation ("IDOT") and is the subject of a grant application pending with the Federal Transit Administration ("FTA") upon which action is anticipated in or about February of 1996; and

WHEREAS, The timely completion of the Program requires that Ballard begin fabrication of the PEM fuel cells with all deliberate speed; and

WHEREAS, The CTA wishes to facilitate the timely completion of the Program in a manner which would not be economically unfavorable to the CTA; and

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WHEREAS, Section 54.3-5 of the CTA's Regulations Governing Purchases and Sales Transactions provides that contracts which the Board determines are not suitable for competitive bidding need not comply with competitive bidding and public notice requirements upon a determination by the Chicago Transit Board that competitive bidding is disadvantageous; now, therefore:

BE IT ORDAINED BY CHICAGO TRANSIT BOARD  
OF CHICAGO TRANSIT AUTHORITY:

SECTION 1. That based on the aforementioned information, the Chicago Transit Board hereby determines that competitive bidding to procure the PEM fuel cells and/or related costs to be used in the Program is disadvantageous.

SECTION 2. That the Chairman of the Chicago Transit Authority, or her designee, is authorized to enter into an agreement with Ballard to purchase PEM fuel cells and/or related costs in an amount not to exceed Five Hundred Eighty Thousand dollars (\$580,000.00) subject to a written determination (the "Determination") as described in Section 3 below, and provided that Ballard shall first deliver to the CTA a Letter of Credit or comparable form of security in equivalent amount in the CTA's favor guaranteeing repayment of the purchase price of the PEM fuel cells or related costs in the event that a contract for implementation of the Program is not entered into within one year of the effective date of this ordinance.

SECTION 3. Prior to the execution of the agreement with Ballard to purchase the PEM fuel cells and/or related costs, the Chairman of the Board and the President jointly shall execute and file with the Secretary of the Board a Determination which shall establish:

- A. That the purchase price of the PEM fuel cells and/or related costs pursuant to this ordinance does not exceed Five Hundred Eighty Thousand Dollars (\$580,000.00) on the date of execution of the Determination;

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- B. That the agreement to purchase the PEM fuel cells and/or related costs from Ballard provides that, before payment, Ballard shall first deliver to the CTA a Letter of Credit or comparable form of security in equivalent amount in the CTA's favor guaranteeing repayment of the purchase price of the PEM fuel cells or related costs in the event that a contract for implementation of the Program is not entered into within one year of the effective date of this empowering ordinance; and
- C. That no legal or regulatory prohibitions have been identified since passage of this ordinance which would make entry into a contract with Ballard to purchase said PEM fuel cells and/or related costs not in the best interests of CTA.

SECTION 4. This ordinance shall be in full force and effect from and after its passage.

APPROVED:

  
Chairman

January 10, 1996

PASSED:

  
Secretary

January 10, 1996