City Document.—No. 19.

not catalogued

CITY OF BOSTON.

19

REPORT

ON THE

PETITION OF LUTHER MUNN AND OTHERS.

In Common Council, April 29, 1847.

Laid on the table, and ordered that 250 copies be printed.

Attest, W. P. GREGG, *Clerk C. C.*

The Standing Committee on Water, to whom was recommitted the petition of Luther Munn and others and Joseph W. Coburn and others, with the report of the Water Commissioners, and to whom was also committed the memorial of William Stearns and others, praying for a hearing of the said petitioners by the Committee, in reply to the said report of the Water Commissioners, and who were directed to give an ample and satisfactory hearing to all parties who felt themselves interested or injured, unanimously

REPORT:

That in compliance with the request of the said petitioners they notified a meeting of the Committee on Tuesday afternoon, the 13th inst., when seven members of the Committee being in attendance, the memorialists appeared by their counsel, J. C. Park, and George D. Wilmot, Esqrs. The Water Commissioners were notified of the intended hearing, but did not attend. The first-named gentleman in behalf of the petitioners addressed the Committee at length in explanation of the grounds on which they requested a hearing in reply to the report of the Water Commissioners and in specifying the particulars in which they considered the reply of the Commissioners to the complaints in their petition unsatisfactory.

The first point on which they deny the sufficiency of the reply of the Commissioners, is that in which they allege that the offer of Messrs. Gonder and others, to whom they awarded the contract for the

reservoir, was lower than the offers of either of the petitioners. The counsel of the petitioners presented a statement of the quantities of stone masonry and concrete, supposed to be required for the reservoir, based on the advertised proposals, and of brick work and earth excavation based on certain assumed quantities. Upon this statement a computation was made of the cost of the work according to the bids of Messrs. Gonder and others and of Messrs. Munn and others, producing a result showing the cost of the terms offered by the latter to be less by $1268 than on the terms of the former which were accepted. The substance of the statements and comparison for producing these results is as follows:

				By Gonder and others.		By Munn and others.	
10,000	cubic yards	Stone masonry,	*a*	$11.00,	$110,000.	$11.50,	$115,000
4,500	do.	Concrete,	*a*	11.00,	22,500.	4.00,	18,000
200	do.	Brick work,	*a*	11.00,	2,200.	8.66,	1,732
8,000	do.	Excavation,	*a*	.25 cts.	2,000. at	.12½ cts.	1,000
2,500	lbs.	Iron work,	at	.12 cts.	300. at	0.	0
					$137,000		$135,732
					135,732		
			Excess,		$ 1,268		

In explanation of this comparison, Mr. Whitwell, the Chief Engineer, has presented the Committee with a statement which he says was prepared by him before the opening of the proposals for the reservoir, by which the amounts of each proposal were tested. It was not supposed that these were strictly correct, they were only approximate and as near as the circumstances of the case would admit; his statement was as follows:

12,050 cubic yards of Stone masonry,
5,000 " " Concrete,
2,000 " " Excavation.

The brick work and iron were considered too trifling in amount to be regarded in the comparison—the former not exceeding 50 yards and the latter consisting only of the railing around the circular tower. These quantities give the following comparison of cost, at the rates of the respective bids:

	Cubic yds.	By Gonder and others.		By Munn and others.	
Stone masonry,	12,050	*a* $11.00,	$132 550	*a* $11.50,	$138,575
Concrete,	5,000	*a* 5.00,	25,000	*a* 4.00,	20,000
Excavator,	2,000	at .25 cts.	500	at .12½ cts.	250
			$158,050		$158,825
					158,050
		Difference,			$ 775

This latter statement, made by Mr. Whitwell, presents the results on which the decision of the Commissioners, that the bid of Messrs. Gonder & Co. was the lowest, was founded. As this estimate of quantities is stated by the Engineer to have been prepared by him for the use of the Commissioners before the opening of the proposals, and that it was adopted as the basis of comparison on the belief on his part that it was as near an estimate of the several quantities of work required as the circumstances of the case would permit, the Committee do not perceive what other authority the Commissioners could properly adopt as the basis of their decision. There does not therefore appear to be any good reason for adopting now another rule of comparison.

The next point on which the petitioners consider the report of the Water Commissioners unsatisfactory, is the statement that after the opening of the proposals, but before a comparison had been made, and before any of the bids had been communicated to any person, they permitted Messrs. Gonder and

others to amend one of the items of their bid, by which the aggregate amount of their offer was materially varied. As this could not affect the interests of the City injuriously, the Committee deem it superfluous to go into any discussion of the question whether this permission was proper under the circumstances of the case. The whole duty and responsibility of making the contract, and of the mode of making it, devolved upon the Commissioners; and an incidental question of this nature, arising in the discharge of this duty, is not one on which this Committee deem it proper to express an opinion.

Another point on which the petitioners maintained that the reply of the Commissioners in their report is unsatisfactory, is that which relates to the making of contracts without previously advertising for proposals. In reply to this, as well as to the complaint that "citizens of other States have been appointed Engineers, at exorbitant salaries, whose interests and feelings are not in harmony with those of our own citizens," and that "contracts have been entered into with contractors from abroad for portions of this work without any public notice whatever being given," the Commissioners remark, in their report, that "the act of the Legislature, as well as the ordinances of the City Council, under which they hold their appointment, confers on them the authority, and makes it their duty, to appoint Engineers and to make contracts at their discretion, and according to their judgment of the interests of the City, without any restriction in either case to citizens of any particular State, or in the making of contracts to any special form of notice." And further, that "as most of the contracts are yet to

be executed, it is obvious that inconvenience might result from a publication of these contracts at the present time." As other contracts are also to be made for similar work, the Committee are not aware that any useful purpose can be served at the present time by entering into an investigation of those, which, as the Commissioners remark, it is obviously within the scope of their authority to make in the manner which they may deem most for the interest of the City.

The Committee are of opinion that the power of making contracts is judiciously entrusted to the discretion of the Water Commissioners, and that it is not expedient for the City Council to interfere with the free exercise of that discretion, so long as there is reason to believe that it is executed in good faith and with sound judgment for the accomplishment of the work entrusted to their charge, in a durable style of workmanship, and in an expeditious and economical manner.

The Committee conclude with declaring the opinion, unanimously, that nothing has been shown to justify the complaints, in the original petitions submitted to the City Council, of "unusual and improper measures" being adopted by the Water Commissioners, either in the appointment of Engineers who are citizens of other States, or in the influence exerted by those Engineers, to the injury of our own citizens. They are further of the opinion, that the petitioners acted under an erroneous impression in supposing that the Commissioners, in awarding contracts for the water works, "have disregarded the more favorable estimates proposed by citizens of this City," and that an undue preference was shown to others, and that

contracts were entered into without regard to sealed proposals," whereby "many thousands of dollars have been needlessly expended." They therefore recommend that the said petitioners have leave to withdraw their petition.

For the Committee,

JOSIAH QUINCY, Jr., *Chairman.*

Boston, April 29, 1847.