



Milwaukee County Board of Supervisors

February 20, 2014

ADMINISTRATIVE DETERMINATION REVIEW COMMITTEE

Notice of Appeal Pursuant to Milwaukee County Ordinance 110.06 and 110.07 for RFP #2013-5600 – Transit Management Services for the Milwaukee County Transit System

Decision of the Committee

Having reviewed the Record and the submissions of the parties and having heard the arguments of counsel, the Administrative Determination Review Committee (the “Committee”) makes the following determinations:

The request for proposals (“RFP”) and the procedures used by the Milwaukee County Department of Transportation (the “Department”) in RFP #2013-5600 were flawed such that the Department’s intent to award the contract to MV Transportation, Inc. (“MV”) was arbitrary and unreasonable. *See* 110.09, (3) and (4). The Department’s administrative determination of intent to award the contract to MV is therefore reversed; and

The RFP is flawed such that making an award to any other proposer would also be arbitrary and unreasonable, and therefore an intent to award a transit management services contract cannot be made by the Department under this RFP.

The Committee’s decision is supported by the following findings and conclusions.

Findings and Conclusions

1. On April 29, 2013, the Department issued its Request for Proposals #2013-5600 (the “RFP”) for transit management services for the Milwaukee County Transit Services. (000036)¹ Five proposals were received. The process is documented in the Record and in the Inter-Office Communication dated January 7, 2014, from Brian Dranzik, Director, Department of Transportation, to Committee Chair Michael Mayo, which is part of the Committee file.
2. On July 26, 2013, following a review, evaluation and scoring process, the Department announced its intent to award the contract to MV Transportation Inc. (“MV”), which had emerged as the highest scoring proposer. (001164-001165)
3. Appeals pursuant to MCO 110.05 were timely filed by proposers Milwaukee Transport Services, Inc. (“MTS”), and Veolia Transportation Services, Inc. (“Veolia). The Department reviewed and denied the appeals pursuant to MCO 110.06. MTS and Veolia timely appealed to a County Board standing committee pursuant to MCO 110.07(a). (000001-000024)
4. The matter was referred to the Finance, Personnel & Audit Committee, a standing committee of the County Board. Pursuant to MCO 110.07(d) and MCO 110.09, the co-chairs of the Finance Committee appointed a review committee of five members, namely this Administrative Determination Review Committee (the “Committee”), and the Finance Committee confirmed the appointments.
5. Pursuant to MCO 110.09, the Committee reviewed the Record (000001-004044). The Committee held preliminary meetings on December 5, 2013, and January 14, 2014, and conducted an all-day hearing on February 18, 2014, that was as extensive as the Committee believed it required in order to apply the designated test, in accordance with MCO 110.09

¹ Citations in this format refer to documents in the appeal Record.

The Committee concluded its deliberations at a meeting on February 20, 2014. The Committee afforded the RFP process a presumption of validity. *See, e.g., Van Ermen v. State DHSS*, 84 Wis. 2d 57, 64 (1978).

6. The Committee made its determinations based upon the following test set out in MCO

110.09:

- (1) Did the Department keep within its jurisdiction?
- (2) Did the Department act according to law?
- (3) Was the action of the Department arbitrary, oppressive, or unreasonable, representing its will and not its judgement? and
- (4) Was the evidence such that the Department might reasonably make the determination in question?

7. The Committee determines that the Department kept within its jurisdiction and acted according to law.

8. However, the Committee determines that the Department's action in announcing its intent to award the contract to MV was arbitrary and unreasonable for reasons including the following:

- a. The \$8.55 million total price proposal from MV for Management Expense and Administrative Expense was a sufficient "outlier" in comparison to the price proposals from the other proposers that the Department should have validated MV's proposal and understanding through interviews, reference checks or other due diligence before issuing the intent to award.²

² Counsel for the Department referred during argument to the potential final contract, but that document is not part of the Record and was not reviewable by the Committee under MCO 110.

- b. MV's response to Question 18 from the Department in its July 23, 2013, communication to MV showed that MV itself was confused by the RFP.³ At a minimum, this confusion should have been clarified by the Department before issuing its intent to award to make sure the intent to award was based on a fully informed proposal.
- c. The fact that all 200 Price Proposal points (20% of the total) would be awarded to the lowest total price in the Management Expense and Administrative Expense categories, and that higher price proposals would be given points proportionate to the low price on a strictly arithmetic basis was not explained in the RFP (*see* 000057). This scoring process – unknown to the parties – unreasonably and arbitrarily gave undue weight to a proposer who would divert some management or administrative expenses to the operating categories. This scoring approach also unreasonably reduced the weight given to the objective evaluation of the technical factors, where there was no comparable award of a maximum of 800 points to the highest scorer.
- d. Reliance by the Department on the “Adequate price competition” factor listed as preferred in the Price Analysis provisions of the FTA Pricing Guide (MTS Br., Ex. C) was not adequate because “[t]he lowest final price [was] not reasonable,” *see* final factor on Ex. C.

³ MV's response stated: “The County did not provide a breakdown of the costs within these three components, and therefore the company allocated the costs into the three categories based on experience with similar services. If selected, the company respectfully requests to sit down with the County to decide on a final allocation between the three cost components, based on the County's interpretation of the individual cost elements. Then the final amounts written into the contract would be binding to MV for the contract term.” (001662)

- e. In evaluating the MV price proposal, the Department did not consider items 4, 5 and 6 in the forms of price analysis set out in the Price Analysis provisions of the FTA Pricing Guide (MTS Br., Ex. C.)⁴
9. An attempt to award the transit management services contract to any other proposer based on this RFP would be unreasonable and unsupported by evidence for similar reasons, namely that the RFP’s pricing directives were confusing, and the scoring system in which all 200 Price Proposal points would go to the lowest proposal but the top technical score would not get all 800 points was unclear, unexplained, placed undue (but unknown) weight on two price categories and did not necessarily reflect the announced goals of the RFP.
10. In addition, the evidence was not such that the Department might reasonably issue the intent to award to MV, for reasons including the following:
- a. MV’s Price Proposals did not track the specifications of Section 3.6 of the RFP.
Specifically:
 - i. Section 3.6 (*see* 000053) directed that “Management Expense” be “Inclusive of all salary, benefits and associated employment costs for executive management personnel,” but MV’s Response specified, “This category is limited to Internal Service Charges. Other ‘Direct Service’ Management costs are captured as Operations expenses.” (002666.)

⁴ These are:

- (4) Comparison to previous purchases
- (5) Comparison to a valid Grantee independent estimate
- (6) Value analysis

ii. Section 3.6 (000053) directed that “Administrative Expense” be “Inclusive of all salary, benefits and associated employment costs for support functions” and include costs for administrative equipment, supplies and materials, services, travel, costs related to contracted services other than paratransit and costs of all supervisory staff not included in Management Expense.”

However, MV’s Response said its Administrative Expense category was “Composed of Professional Services, Commodities, Depreciation, Major Maintenance, New/Replacement Capital, Capital Outlay Contracts and Other Charges.” (002666.)

iii. The discrepancies between the categories as requested by the Department in Section 3.6 and the different categories as included in MV’s response were evidence that MV’s bid could have been non-responsive, but that evidence was not adequately explored by the Department before it issued the notice of intent to award.

b. MV’s inconsistent definitions in the Management Expense and Administrative Expense categories, plus MV’s decision to include “Other ‘Direct Service’ Management Costs” as Operations expenses (002666) did not provide sufficient evidence upon which to evaluate total management costs in comparison to the other proposers.

11. To the extent reasons listed in item 8 also show lack of evidence and reasons listed in item 10 also show arbitrary or unreasonable action, they may be so applied.