

Committee Report

T Transportation Committee

Item: 2007_57

Reconsider

For the Metropolitan Council meeting – April 25 2007

ADVISORY INFORMATION

Date Prepared: April 25, 2007

Reconsideration and Indefinite Postponement of Council March 28, 2007 Action;

Subject: Approval of Resolution 2007-13, Cancelling Bus Procurement Solicitation No. 7216

Summary

Council Member M Smith noted that while she believes the Council's original March 28, 2007 action, with respect to Business Item 2007-57 authorizing the Regional Administrator to negotiate and execute a contract for 314 transit buses with Gillig Corporation was correct, the changed situation arising from the legislative action that has developed since that time justifies a reconsideration of the Council's vote on Business Item 2007-57.

Regional Administrator Weaver noted the Legislature put conditions on the Council's \$7.8 million deficiency appropriation request based on the Council's rejection of this solicitation (Senate File 846.) The Senate has adopted the Conference Report and House is expected to follow suit. The bill is expected to be signed and become law.

Recommendation: (3 separate actions)

That the Metropolitan Council reconsider the vote at the March 28, 2007 meeting whereby the Council adopted a motion pursuant to Business Item 2007-57, authorizing the Regional Administrator to negotiate and execute a contract for 314 transit buses with Gillig Corporation and taking other actions.

That the Metropolitan Council indefinitely postpone the vote on the original main motion (Business Item 2007-57, dated March 28, 2007).

That the Metropolitan Council adopt Resolution 2007-13 cancelling Bus Procurement Solicitation No. 7216.

METROPOLITAN COUNCIL
390 North Robert Street, Saint Paul, MN 55101
651/602-1000 TDD 651/291-0904

RESOLUTION NO. 2007-13

**RESOLUTION CANCELLING
BUS PROCUREMENT SOLICITATION NO. 7216**

WHEREAS:

1. On or about October 13, 2006 the Council issued Solicitation No. 7216 for the purchase of 314 Metro Transit buses with an option to purchase additional such vehicles.
2. The Council received proposals from two vendors, New Flyer and Gillig, to provide the buses as requested in the solicitation. After discussions with the two vendors, the Council issued a Request for Best and Final Offer (BAFO) from each of the vendors. On or about February 6, 2007 each of the vendors submitted a BAFO.
3. After reviewing the BAFOs submitted by the vendors, the Council's Evaluation Panel concluded that the BAFO of New Flyer contained material deviations from the requirements of the solicitation and recommended that it be rejected by the Council and that the contract be awarded to Gillig.
4. On March 28, 2007, the Council adopted a motion adopting certain findings and conclusions, rejecting the BAFO of New Flyer because of material deviations and authorizing the Regional Administrator to negotiate and execute an agreement with Gillig for procurement of the buses.
5. On April 4, 2007, New Flyer submitted a formal protest of the Council's action. Gillig subsequently submitted a response to New Flyer's protest and both parties have submitted rebuttals to the other party's documents. The protest is currently pending.
6. Senate File No. 846 is currently pending before both houses of the Minnesota Legislature. That legislation contains a deficiency appropriation to the Metropolitan Council in the amount of \$7,847,000 for transit purposes. The deficiency appropriation currently contains language that provides that the deficiency appropriation is not available unless the Council cancels its Solicitation #7216, the procurement that was the subject of the Council's March 28, 2007 action.
7. It is likely that Senate File 846 will become law in the near future in its current form.
8. The Council finds that the loss of the deficiency appropriation amount of \$7,847,000 would significantly affect the Council's ability to provide transit service in the Twin Cities Metropolitan Area.
9. The Council further finds that the bill contains the clear direction of the Legislature that the Council should cancel its current procurement for the buses for the purpose of carrying out a new solicitation.

NOW, THEREFORE, be it resolved by the Metropolitan Council as follows:

1. Council staff is directed to cancel Solicitation No. 7216 for the purchase of 312 Metro Transit buses with an option to purchase additional such vehicles, for the purpose of carrying out a new solicitation. This direction is effective on the date on which the act embodied in Senate File 846 becomes law and if the law contains language substantially as described above that conditions receipt of the deficiency appropriation on the cancellation of Solicitation No. 7216.
2. The Protest Authority for this procurement is advised to extend the time period for the ongoing protest procedure on this matter (1) for two weeks, or (2) until such time as the legislation referenced above is enacted, whichever occurs first.
3. If the above-referenced legislation is enacted with the condition that the deficiency appropriation is contingent on cancellation of Solicitation No. 7216, then the Council's action in paragraph 1 above becomes effective. In such case, the Council
 - finds that New Flyer's protest is rendered moot; and
 - directs the Protest Authority to advise the parties that the solicitation is cancelled, that the protest is moot, and that no formal decision or response will be rendered with respect to the protest.

However, Council staff is directed to prepare a report analyzing the claims and allegations submitted by the vendors in the protest proceedings for presentation to the Council.

4. If the above-referenced legislation is not enacted with the described condition, then the Council's action shall not become effective. In such case, the Protest Authority is directed to complete the protest procedure and report back to the Council on the results of that process at the next regularly scheduled meeting of the Council.

Adopted this 25th day of April, 2007.

Peter Bell, Chair

Pat Curtiss, Recording Secretary

Committee Report

T Transportation Committee

Item: 2007_57

Revised

For the Metropolitan Council meeting – March 28, 2007

ADVISORY INFORMATION

Date Prepared: March 14, 2007

Subject: Authorization to Award Contract for 314 Transit Buses

Summary of Committee Discussion:

Staff responded to committee questions about fleet defect and training requirements.

Recommendation:

That the Metropolitan Council approve and adopt the Findings and Conclusions attached as [Exhibit A](#); reject the Best and Final Offer submitted by New Flyer of America, Inc., due to New Flyer's material deviations from the requirements of the specification, and that the Metropolitan Council authorize the Regional Administrator to negotiate and execute a contract with Gillig Corporation for the purchase of 314 forty-foot transit buses, with an option for up to an additional 300 buses, in accordance with the Council's specification and Gillig's Best and Final Offer dated February 2, 2007, contingent on satisfactory results from the Buy America Pre-Award Audit and if any proposer protests any action recited in Paragraph 2, the Council reserves the right to review the decision by any protest authority which is in any way inconsistent with the findings, conclusions or action of the Council regarding this procurement.

T Transportation Committee

Meeting date: March 12, 2007

ADVISORY INFORMATION

Date:	March 5, 2007
Subject:	Authorization to Award Contract for 314 Transit Buses
District(s), Member(s)	All
Policy/Legal Reference:	Council Policy 3-3 Expenditures – Procurement of Goods and Services Over \$250,000
Staff Prepared/Presented:	Brian Lamb, General Manager Vince Pellegrin, Chief Operating Officer Julie Johanson, Assistant General Manager-Administration Jan Homan, Director of Vehicle Maintenance Chris Gran, Director of Purchasing
Division/Department:	Metro Transit

Proposed Action/Motion

That the Metropolitan Council reject the Best and Final Offer submitted by New Flyer of America, Inc., due to New Flyer's material deviations from the requirements of the specification, and that the Metropolitan Council authorize the Regional Administrator to negotiate and execute a contract with Gillig Corporation for the purchase of 314 forty-foot transit buses, with an option for up to an additional 300 buses, in accordance with the Council's specification and Gillig's Best and Final Offer dated February 2, 2007, contingent on satisfactory results from the Buy America Pre-Award Audit.

Issue

Metro Transit must purchase 314 forty-foot transit buses during 2007 to 2011 to replace the 314 forty-foot buses that are scheduled for retirement during those years.

Overview and Funding

As a key component of the Council's Going Greener initiative, Metro Transit will replace 314 retiring buses over the next five years with 164 standard clean-diesel buses and 150 hybrid diesel-electric buses. The new fleet will significantly reduce tailpipe emissions, fuel consumption, and operating costs.

Metro Transit solicited proposals from bus manufacturers for 314 forty-foot, low-floor transit buses, including an option for up to 300 additional buses. Proposals were submitted by New Flyer of America and Gillig Corporation. Proposers were required to submit separate technical and price proposals, which were evaluated independently using the criteria set forth in the solicitation document. The Evaluation Panel concluded that both proposals fell within the competitive range. The Evaluation Panel met with each proposer to review their proposal in detail, including discussion of the proposer's requests for deviations and to clarify information or questions the Evaluation Panel had concerning the proposal. Based on these discussions, the Council amended its specifications and issued a Request for Best and Final Offers (BAFO) to the two proposers.

In evaluating the New Flyer BAFO, the Evaluation Panel found that New Flyer took material deviation from the Council's requirements. The New Flyer BAFO stated that "fleet defect clauses of any kind are valid only for the first year of the 2 year bumper to bumper warranty and they do not carry over nor are they applicable and/or valid for year 2." This deviates from the Council requirement for a two-year period for identifying fleet defects. The New Flyer BAFO also stated: "Training will be tracked as a dollar amount, and not by hours. All training performed for the duration of the contract will be charged to the Met Council at cost. Once training dollars are used up, the contractual training is considered complete, regardless of the actual number of hours provided."

This deviates from the Council requirement that the contractor provide 3,000 hours of training. The costs associated with these requirements were not included in the New Flyer BAFO. During discussions with the proposers, before the Request for BAFOs was issued, the Evaluation Panel thoroughly discussed the requests to change the fleet defect and training requirements. The Evaluation Panel by addendum did modify the fleet defect standard from 15 percent to 30 percent, and modified the training requirement from 5,000 hours to 3,000 hours. The Evaluation Panel determined the two-year fleet defect period and the 3,000 training hours were in the best interests of the Council. It was concluded that the New Flyer BAFO took material deviations from the requirements of the specification, and therefore could not be evaluated and must be rejected.

The Evaluation Panel rated the Gillig BAFO as “very good”. The proposal was rated particularly high in the areas of vehicle design and maintainability, quality assurance, history of performance of the proposed vehicle, delivery schedule, and warranty coverage. The proposed base price of \$346,462 (plus \$9,880 for extended warranty and \$3,230 for delivery) for the diesel bus and \$521,462 (plus \$37,000 for extended warranty and \$3,230 for delivery) for the hybrid bus is fair and reasonable when compared with recent prices paid by other transit agencies. The base prices are firm for the first 132 buses to be delivered in 2007 and 2008, and the total cost is \$56,558,904. The base price after the first 132 buses is subject to a Producer Price Index escalation. Assuming 3.3 percent annual escalation during 2009-2011, the total contract estimate for the 314 buses is \$149,318,090.

Gillig proposes delivery of the diesel pilot and the hybrid pilot buses by August 2007, and delivery of the first 132 buses completed by May 2008. Thereafter, the annual deliveries will be completed each June.

This procurement includes an option for up to 300 additional buses – 150 diesel and 150 hybrid buses. The Council may approve exercising an option at any time over the next five years if there is a need for additional buses and if funding is available.