

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