

T **Transportation Committee**
For the Metropolitan Council meeting of July 11, 2007

ADVISORY INFORMATION

Date Prepared: July 11, 2007

Subject: Senior Community Services' RFP Award Phase Protest regarding Minnetonka Area Dial-A-Ride Transit Service

Summary of Committee Discussion:

Tom Weaver, Regional Administrator, presented this item to the committee. Hill Smith reminded the committee that this is not an action to vote on the contract, but is a vote to affirm the previous action taken, following the appeals process. Weaver gave a background and explained the protest review procedure that was followed. There were no questions from committee members.

Motion by Leppik, seconded by Susag, motion passed unanimously.

Recommendation:

That the Metropolitan Council: (1) affirm the Regional Administrator's May 23, 2007 denial of Senior Community Services' award phase protest regarding the Request for Proposals for Minnetonka Area Dial-A-Ride Transit Services; and (2) affirm its May 23, 2007 action authorizing the Regional Administrator to execute a contract with Midwest Paratransit Services, Inc. to provide Minnetonka Area Dial-A-Ride Transit Services, but for a five-year period beginning September 1, 2007 rather than July 1, 2007.

T Transportation Committee

Meeting date: July 9, 2007

ADVISORY INFORMATION

Date:	June 29, 2007
Subject:	Senior Community Services' RFP Award Phase Protest regarding Minnetonka Area Dial-A-Ride Transit Service
District(s), Member(s):	District 3; Mary Hill Smith
Policy/Legal Reference:	Minnesota Statutes section 473.392 (competitively bid transit service); Metropolitan Council Standards, Procedures and Guidelines for Competitive Procurement of Public Transit Services
Staff Prepared/Presented:	Thomas Weaver, Regional Administrator (651) 602-1723
Division/Department:	Metropolitan Transportation Services

Proposed Action/Motion

That the Metropolitan Council: (1) affirm the Regional Administrator's May 23, 2007 denial of Senior Community Services' award phase protest regarding the Request for Proposals for Minnetonka Area Dial-A-Ride Transit Services; and (2) affirm its May 23, 2007 action authorizing the Regional Administrator to execute a contract with Midwest Paratransit Services, Inc. to provide Minnetonka Area Dial-A-Ride Transit Services, but for a five-year period beginning September 1, 2007 rather than July 1, 2007.

Issue(s)

Whether the Metropolitan Council should affirm the Regional Administrator's May 23, 2007 denial of Senior Community Services' award phase protest as recommended by a three-member Review Panel that reviewed the procurement process for this Request for Proposals (RFP) procurement.

Overview

At its May 14, 2007 meeting the Transportation Committee approved a staff recommendation to award a five-year contract to Midwest Paratransit Services for Minnetonka Area Dial-A-Ride Transit Services. The current provider of the transit service, Senior Community Services, was an unsuccessful proposer and filed an award phase protest. Senior Community Services' protest claims were investigated and evaluated by the Council's Regional Administrator who is the designated Protest Authority for this procurement. On May 23, 2007, Senior Community Services was informed that the Protest Authority found no justification to concur with the protest and denied the protest. At its May 23 meeting, the Metropolitan Council approved a Transportation Committee recommendation to award the Dial-A-Ride transit service contract to Midwest Paratransit Services.

Senior Community Services subsequently requested a Panel Review of the Protest Authority's decision to deny Senior Community Services' protest and a three-member Review Panel was convened as required by the RFP Protest Procedures. The Review Panel consisted of the Regional Administrator and two "neutral panel members." The neutral panel members were employees of the Minnesota Department of Administration and the Minnesota Department of Transportation, both of whom have extensive experience in government procurement and procurement protests. The Review Panel independently reviewed the RFP documents and the RFP Evaluation Panel's evaluation of the proposals, and conducted a "hearing" where representatives of Senior Community Services, Midwest Paratransit Services and Metropolitan Transportation Services could present information to the Review Panel. The Review Panel subsequently issued a written recommendation that includes findings of fact and a recommendation for Council action. A copy of the Review Panel's written recommendation is attached. ([recommendation](#) and [attachment B](#))

The Review Panel concluded the RFP procurement process and the RFP Evaluation Panel's evaluation of the proposals complied with applicable Council procurement procedures and standards, and recommended:

That the Metropolitan Council affirm the Regional Administrator's May 23, 2007 denial of Senior Community Services' award phase protest regarding the Request for Proposals for Minnetonka Area Dial-A-Ride Transit Service.

Related Action

To ensure Dial-A-Ride transit service in the Minnetonka area continued during the award phase protest, the contract with Senior Community Services—which was scheduled to expire June 30, 2007—was extended through August 31, 2007. The Council ratified that two-month contract extension at its June 27, 2007 meeting. The two-month extension of the current contract means the new contract will not commence until September 1, 2007, rather than July 2, 2007 as provided in the Council's May 23, 2007 contract award action. The five-year term of the new contract should cover the period from September 1, 2007 through August 31, 2012.

Recommendation

That the Metropolitan Council:

- (1) affirm the Regional Administrator's May 23, 2007 denial of Senior Community Services' award phase protest regarding the Request for Proposals for Minnetonka Area Dial-A-Ride Transit Services; and
- (2) affirm its May 23, 2007 action authorizing the Regional Administrator to execute a contract with Midwest Paratransit Services, Inc. to provide Minnetonka Area Dial-A-Ride Transit Services, but for a five-year period beginning September 1, 2007 and ending August 31, 2012.

**Panel Review of Regional Administrator's Decision Denying
Senior Community Services' Award Phase Protest
Request for Proposals for Minnetonka Area Dial-A-Ride Transit Service
Metropolitan Council Contract No. 07P042**

**WRITTEN RECOMMENDATION
TO METROPOLITAN COUNCIL**

Recommendation

The Review Panel recommends that the Metropolitan Council affirm the Regional Administrator's May 23, 2007 denial of Senior Community Services' award phase protest regarding the Request for Proposals for Minnetonka Area Dial-A-Ride Transit Service.

BACKGROUND

The following summary is based on the Review Panel members' review of the Request for Proposals ("RFP") documents and related information provided to the panel members as part of the Panel Review process.

On April 10, 2007, the Council issued a Request for Proposals ("RFP") for Minnetonka Area Dial-A-Ride Transit Service. On April 17, 2007, the RFP Administrator conducted a pre-proposal conference that was attended by representatives of Senior Community Services, Inc., Midwest Paratransit Services, Inc. and Contemporary Transportation. At the pre-proposal conference the RFP Administrator and Metropolitan Transportation Services staff provided background information and responded to questions from the three potential proposers regarding the RFP and the transit services that are the subject of the procurement. Senior Community Services, the current contract provider of Dial-A-Ride transit services in the Minnetonka area, Midwest Paratransit Services and Contemporary Transportation submitted proposals in response to the RFP. An Evaluation Panel for this procurement met on May 7, 2007 and conducted an initial technical review. One proposer, Contemporary Transportation, was eliminated from further consideration as a result of the technical review. The Evaluation Panel then reviewed the cost proposals of Senior Community Services and Midwest Paratransit Services.

Through the RFP Administrator, the Evaluation Panel asked whether the cost of a leased garage was included in Senior Community Services' cost proposal for the service. However on May 8, 2007, prior to receiving a definitive answer to that question, the Evaluation Panel concluded Midwest Paratransit Services' proposal was technically superior to Senior Community Services' proposal. The Evaluation Panel's evaluation of the cost proposals showed a difference of approximately \$15,500 between the two proposals over the five-year term of the contract period.

Senior Community Services' costs were the lower of the two numbers. The Evaluation Panel's evaluation and analysis of the cost proposals were based on the cost proposals as submitted by Midwest Paratransit Services and Senior Community Services; the evaluation of Senior Community Services' cost proposal did not include any garage or garage lease costs.

The Metropolitan Transportation Services staff recommendation was considered by the Metropolitan Council's Transportation Committee at its May 14, 2007 meeting. The staff recommend:

That the Metropolitan Council authorize the Regional Administrator to execute a contract with Midwest Paratransit Services, Inc. to provide Minnetonka Area Dial-A-Ride Transit Service from July 2, 2007 to June 30, 2012, in an amount not to exceed \$2,833,857.

The staff report/Executive Summary prepared for the Transportation Committee's May 14 meeting stated that Midwest Paratransit Services' proposal "rated high in driver selection/training, and technical capabilities" and that the Evaluation Panel concluded Midwest Paratransit Services' proposal "is the most advantageous to the Council." Senior Community Services' Program Administrator appeared before the Committee and spoke in opposition to the staff recommendation. The staff recommendation was moved, seconded and passed by the Transportation Committee.

Senior Community Services submitted an Award Phase Protest to the Metropolitan Council by letter dated May 16, 2007 and a subsequent letter dated May 18, 2007. In a letter dated May 23, 2007, the Metropolitan Council's Regional Administrator—the Protest Authority for this procurement—stated that he had "completed an investigation and evaluation of the allegations presented in [Senior Community Services'] protest letter dated May 16, 2007 and follow-up letter dated May 18, 2007." The Regional Administrator found no justification to concur with the protest and denied Senior Community Services' protest. Copies of these letters are attached.

At its May 23, 2007 meeting, the governing body of the Metropolitan Council considered and acted on the Transportation Committee's recommendation. According to the minutes of that meeting, Senior Community Services' Executive Director and CEO, State Senator Gen Olson and two individuals offered comments and spoke in opposition to the Committee recommendation. The Director of Metropolitan Transportation Services presented a summary of the procurement process. The Committee recommendation was moved, seconded and passed.

By letter dated May 25, 2007, Senior Community Services requested "a Panel Review of the process and decision made by you as Regional Administrator regarding the Minnetonka Dial-a-Ride Transit Service Contract Number 07P042." The Regional Administrator convened a three-member Review Panel and asked the parties to hold open June 8, 2007 (1:00 to 3:00 p.m.) as the date for a Review Panel hearing. At the request of Senior Community Services, the Review Panel hearing was rescheduled. By letter dated June 8, 2007, the Regional Administrator informed Senior Community Services, Midwest Paratransit Services and Metropolitan Transportation Services staff that the hearing had been rescheduled for Friday, June 22, 2007. The letter identified the two "neutral panel members" appointed to the Review Panel and informed the parties of the Panel Review procedures adopted by the Review Panel. A Review Panel "hearing" was conducted on June 22, 2007.

REVIEW PANEL

Upon timely request of a protester, the RFP Protest Procedures contained in the RFP document require the Regional Administrator to convene a three-member Review Panel comprising the Regional Administrator (or the General Counsel, or another designated attorney in the Office of the General Counsel), and “two neutral panel members appointed by the Regional Administrator.” The Review Panel consisted of Thomas Weaver (Regional Administrator), Paul Stembler (Assistant Director of Materials Management, Minnesota Department of Administration) and Scott Peterson (Director of Transportation Finance Management, Minnesota Department of Transportation). Mr. Stembler and Mr. Peterson are “neutral panel members” as that term is defined in the RFP Protest Procedures, and both have extensive experience in government procurement and award phase procurement protests. The Review Panel was assisted by Dave Theisen, an attorney in the Office of the General Counsel. Mr. Theisen was not involved in the procurement process or in the underlying protest.

The Review Panel members were provided with copies of the RFP document as well as copies of Senior Community Services’ and Midwest Paratransit Services’ RFP proposals, documents and information that were part of the evaluation process, and background materials. The RFP Protest Procedures required the Review Panel to adopt procedures for the Panel Review process.

PANEL REVIEW PROCEDURES

The procedures adopted by the Review Panel stated in part:

1. The Review Panel will review whether the process outlined in the Metropolitan Council’s RFP document complies with applicable state law, and whether the Evaluation Panel followed the evaluation processes outlined in the RFP document.
2. The Review Panel will determine whether the Evaluation Panel’s findings and recommendations were supported by the proposals and follow-up communications initiated by the RFP Administrator. The Review Panel will not re-evaluate the scoring of proposals unless it finds that there was no rational basis for the Evaluation Panel’s findings and conclusions.
3. Given the limited scope of this Panel Review, the Review Panel will limit its review and consideration to documents and information that were part of the evaluation process. The Review Panel will not consider documents and correspondence submitted subsequent to the Metropolitan Council Meeting on May 23, 2007 with the following exceptions:
 - (a) The Review Panel will consider Senior Community Services’ letter (dated May 25, 2007) request for a Panel Review.
 - (b) The Review Panel will accept from both the Metropolitan Council and Midwest Paratransit Services a concise response to the issues raised in Senior Community Services’ May 25, 2007 request letter. The responses, if any, should be submitted to [the Regional Administrator’s] office no later than the close of business on Tuesday, June 19, 2007. A copy of the responses, if any, should be provided to Senior Community Services by that date as well.

- (c) Such other information or documents the Review Panel may deem necessary or useful for it to perform its review function.

According to the adopted procedures, the June 22 hearing was an opportunity for the three parties' representatives to present information to the Review Panel. On June 12, 2007, Metropolitan Transportation Services staff submitted to the Review Panel and the two proposers a 27-page comparative summary of the Evaluation Panel's evaluation and findings regarding Senior Community Services' and Midwest Paratransit Services proposals as they relate to the seven (non-cost) selection criteria listed in the RFP.

PANEL REVIEW HEARING

At approximately 1:00 p.m. on June 22, 2007, the Review Panel conducted a hearing that concluded at about 3:00 p.m. Metropolitan Transportation Services was represented by: Arlene McCarthy, Director; and Bruce Dreier, Program Administrator. Senior Community Services was represented by: Benjamin Withhart, Executive Director and CEO; David Fisher, Board President; State Senator Gen Olson, Board Member; Ron Bloch, Program Administrator; Courtney Whited, Transportation Coordinator; and Sue Gallus, Transportation Program Director. Midwest Paratransit Services was represented by: Matt Liveringhouse, Vice President.

At the hearing, Senior Community Services handed out a six-page document and several envelopes with responses to 26 selection criteria evaluation/findings contained in Metropolitan Transportation Services' June 12 summary. At the hearing, Mr. Liveringhouse handed out a three-page outline (and related information) referring to: proposal evaluation criteria, pricing and cost; performance information; and a "wrap up" summary. Mr. Liveringhouse also provided a four-page document with 26 "preproposal questions and Council responses." Metropolitan Transportation Services staff was given an opportunity to review and respond to the handouts provided by Senior Community Services.

Review Panel members asked questions of the parties' representatives after the parties' presentations.

ISSUES

As stated in the Review Panel's June 8, 2007 letter to the parties and Regional Administrator Weaver's opening statement at the hearing, the Review Panel's review is limited to determining:

- (1) Whether the RFP process complied with applicable law and policies; and
- (2) Whether there was a rational basis for the Evaluation Panel's decision.

Applicable Law and Policies

Minnesota Statutes section 473.392 requires the Metropolitan Council to competitively bid transit service in accordance with standards, procedures and guidelines adopted by the Council. The Review Panel believes the RFP document itself and the Evaluation Panel's evaluation of the proposals for this RFP complied in all material respects with the Metropolitan Council's adopted standards, procedures and guidelines, and therefore complied with the requirements of Minnesota Statutes section 473.392.

Evaluation Panel Decision

Our review of the RFP document, the proposers' responses to the RFP, and the documents and information that were part of the evaluation process, show the Evaluation Panel followed and applied the seven "Selection Criteria" described at Page 10 of the RFP document, as required by the RFP document and Metropolitan Council transit services procurement standards, procedures and guidelines. Our independent review of the documents and procedures for this procurement show the Evaluation Panel's findings, conclusions and recommendations (*i.e.*, that, considering price and quality, Midwest Paratransit Services' proposal is the best value for the Metropolitan Council) are supported by the documents and information that were before the Evaluation Panel at the time of their evaluation. Unlike an Invitation for Bid process under which soliciting agencies typically must accept the lowest responsible bid, the RFP process is a competitive procurement process that allows an agency to select the proposal that, in its judgment, represents the most advantageous proposal to the agency. In this case, the RFP document expressly states (in part) at Page 2: "The Council by this RFP does not promise to accept the lowest cost or any other proposal * * *."

The Evaluation Panel evaluated the RFP proposals as submitted by Senior Community Services and Midwest Paratransit Services, as the panel should have. Our review of Senior Community Services RFP proposal indicates that not all of the information in the proposal was entirely accurate, complete or clear, as evidenced by some of the statements made by Senior Community Services representatives at the hearing that were intended to clarify or supplement information contained in Senior Community Services' proposal. For example, Senior Community Services' proposal refers to a "boundary-free Hennepin County dial-a-ride transportation program" and states that this contract is important to Senior Community Services' goal of implementing a boundary-free program. The Review Panel believes it was reasonable for the Evaluation Panel to conclude or interpret these statements in the proposal to mean Senior Community Services intended to use Metropolitan Council buses outside the designated service area. Although Senior Community Services stated at the hearing that it does not intend to (and would not) operate Metropolitan Council buses outside the designated service area, Senior Community Services does not expressly state so in its RFP proposal. Similarly, statements in Senior Community Services' RFP proposal relating to the operation of wheelchair lifts in sub-zero weather and its references to bus rentals were not clarified until Senior Community Services did so at the hearing.

Once the RFP procurement process moves from the solicitation phase into the award phase, the RFP procurement process generally is not an iterative process of inquiry and clarification between soliciting agencies and proposers. Proposers are expected to submit proposals that accurately, completely and clearly respond to RFP requirements. To ensure the competitive integrity of an RFP solicitation, evaluation panel members are expected and required to review and evaluate the RFP proposals submitted to them based on the information contained in those proposals. The Evaluation Panel did so in this case.

Garage Lease Issue

The garage lease cost has been raised throughout this protest and was raised again at the Review Panel hearing. The Review Panel believes the garage lease issue is outside the parameters of this Panel Review and is a non-issue for the following reason. Our review of the record shows that the cost of the garage lease was not included in the Evaluation Panel's evaluation when it con-

cluded Midwest Paratransit Services' proposal was the better proposal and the best value for the Metropolitan Council. If anything, Senior Community Services benefited from the Evaluation Panel's non-consideration of the garage lease cost because Midwest Paratransit Services' proposal includes the cost of garage facilities. Nevertheless, the difference between the two cost proposals as submitted by the proposers is only about \$15,500 over the five-year term of the contract (or about \$3,100 per year) and represents approximately one-half of one percent (0.55%) of the recommended maximum contract price (\$2.8 million) for this procurement. This very small difference is insignificant and immaterial for the purposes of recommending a contract award under an RFP procurement of this type and magnitude.

FINDINGS OF FACT AND RECOMMENDATION

The Protest Procedures in the RFP require the Review Panel to "issue a written recommendation to the Metropolitan Council" which "will include findings of fact and a recommendation for Council action."¹

Based on its review of the applicable Metropolitan Council procurement policies and standards, the RFP document, the RFP proposals, the documents and information that were part of the evaluation process and related information made available to the Review Panel members as part of the Panel Review process, and based on its consideration of the statements and information presented at the June 22 hearing, the Review Panel makes the following:

Findings of Fact

1. The RFP document and the Evaluation Panel's evaluation of the proposals for this RFP procurement complied in all material respects with the Metropolitan Council's adopted standards, procedures and guidelines. The RFP document and evaluation process complied with the requirements of Minnesota Statutes section 473.392.
2. The Evaluation Panel evaluated the RFP proposals using the seven selection criteria stated on Page 10 of the RFP document.
3. The Evaluation Panel evaluated the RFP proposals based on the information contained in the proposals and there was a rational basis for the Evaluation Panel's decision. Senior Community Services' RFP proposal was less detailed, less clear and less responsive to the RFP requirements than the proposal submitted by Midwest Paratransit Services.
4. The Evaluation Panel did not include the cost of the garage lease as part of its evaluation of Senior Community Services' proposal.

¹ The Protest Procedures require the Review Panel to issue its written recommendation to the Metropolitan Council "no later than fourteen (14) working days after receipt of the request for review." The hearing initially was scheduled for June 8 so the Review Panel could comply with the fourteen-day requirement. However, when Senior Community Services indicated June 8 would not work and requested that the hearing be rescheduled, the Regional Administrator exercised his discretion under the Protest Procedures and waived the fourteen-day time period. The waiver and rescheduled hearing are contained in the June 8, 2007 letter to the parties.

5. The RFP document and the Metropolitan Council's transit services standards, procedures and guidelines for competitive procurements do not require the Metropolitan Council to award the contract to the lowest cost proposer. The RFP document and the procurement standards and procedures expressly reserve to the Metropolitan Council the right to award a contract to the proposer whose proposal, in the judgment of the Metropolitan Council, is most advantageous to the Metropolitan Council.
6. The \$15,500 difference between the two proposals over the five-year term of the contract period is approximately one-half of one percent (0.55%) of the recommended maximum contract price (\$2.8 million) for this procurement. Under an RFP procurement of this type and dollar amount, this difference is insignificant and immaterial for the purposes of recommending a proposal that represents the most advantageous proposal to a soliciting agency.

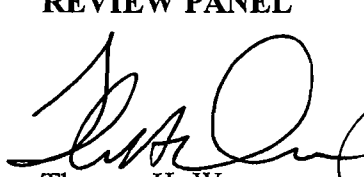
Based on these findings of fact, the Review Panel makes the following:

Recommendation for Metropolitan Council Action

That the Metropolitan Council affirm the Regional Administrator's May 23, 2007 denial of Senior Community Services' award phase protest regarding the Request for Proposals for Minnetonka Area Dial-A-Ride Transit Service.

REVIEW PANEL

June 28, 2007



Thomas H. Weaver
Regional Administrator
Metropolitan Council



Paul R. Stambler
Assistant Director
Materials Management
Department of Administration



Scott R. Peterson
Director, Transportation
Finance Management
Department of Transportation

Attachments

- cc: Benjamin F. Withhart, Senior Community Services
 Matt Liveringhouse, Midwest Paratransit Services
 Arlene McCarthy, Metropolitan Council
 Mary Hill Smith, Metropolitan Council Member
 Chris Gran, RFP Administrator

SCSPROTESTRPT

REVIEW PANEL WRITTEN RECOMMENDATION TO METROPOLITAN COUNCIL

**Panel Review of Regional Administrator's Decision Denying
Senior Community Services' Award Phase Protest**

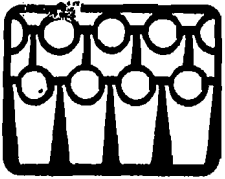
**Request for Proposals for Minnetonka Area Dial-A-Ride Transit Service
Metropolitan Council Contract No. 07P042**

ATTACHMENTS

May 16, 2007 letter (re: Award Phase Protest) from Senior Community Services Program Administrator Ron Bloch to Chris Gran, RFP Administrator.

May 18, 2007 letter (re: Award Phase Protest) from Senior Community Services Program Administrator Ron Bloch to Chris Gran, RFP Administrator.

May 23, 2007 letter (re: Protest Authority Decision) from Regional Administrator Thomas Weaver to Ron Bloch, Senior Community Services.



SENIOR COMMUNITY SERVICES

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Website: www.seniorcommunity.org

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◆ Supporting Positive Aging

- Transportation
- Community Senior Centers

◆ Caregiver Support Services

- Senior Outreach

◆ Frail Elder Support Services

- H.O.M.E.
- Senior Outreach

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May 16, 2007

Christopher Gran
RFP Administrator
Metropolitan Council
515 N. Cleveland Avenue
St. Paul, MN 55114

RE: Award Phase Protest

Dear Mr. Gran:

- a) Protester: Senior Community Services
10709 Wayzata Blvd., Ste 111
Minnetonka, MN 55305
Phone--(952) 541-1019
Fax--(952) 541-0841
e-mail--scs@seniorcommunity.org
- b) Project: Minnetonka Area Dial a Ride Transit Service
Contract Number 07P042
- c) Party: Senior Community Services (SCS) is an actual proposer
- d/e) Statement/Evidence: SCS responded to the RFP and submitted its proposal in a timely manner including the required costs. On 5/14/07, at the Met Council Transportation Committee meeting, Bruce Dryer, Met Council staff member and RFP Evaluation Panel member, said that SCS' proposal had been the lowest bid/cost but the addition of garage lease costs had caused another vendor, the recommended vendor, to be lower.

SCS has had a number of separate contracts with the Met Council pertaining to the Minnetonka Area Dial-a-Ride service, one of which is for the garage lease. This garage lease has led to confusion and an error in determination of the pending award of this bid. On correction of this issue SCS would be the most effective and most advantageous choice to the Council.

SCS received two e-mails from Christopher Gran after the proposal submission and during the Evaluation Panel process (copies enclosed). The first e-mail asked if the lease payment for the proposed garage was included in the cost proposal.

The response was no, the lease for the garage had been a separate contract and was not included in the Minnetonka Dial-a-Ride cost proposal. The second e-mail asked if it was our intention that the Council will continue to make the garage lease payments. The response was that yes, it was our intention to continue to operate the Minnetonka Dial-a-Ride as we did currently with the Council reimbursing SCS for the garage.

The Evaluation Panel then acted incorrectly, prejudicing SCS' proposal, by adding the garage costs to SCS' actual bid costs. SCS intended, and still intends, to try to negotiate with the Met Council separately for continued reimbursement of the garage lease costs. During that negotiation it is clearly the prerogative of the Met Council not to reimburse SCS for the garage lease. In conversation with Bruce Dryer on 5/16/07 he indicated that the elimination of the garage costs would probably have made the difference in the recommendation of another provider over SCS. The injury is the pending approval of this contract to another vendor.

f) Remedy: Award the Minnetonka Area Dial a Ride Transit Service contract to SCS based on lower costs or Extend of the current Minnetonka Area Dial a Ride Transit Service contract with time to re-bid.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Bloch". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ron Bloch
Program Administrator

Ron Bloch

From: Ron Bloch
Sent: Tuesday, May 08, 2007 3:47 PM
To: 'Christopher Gran'
Subject: RE: Question re Proposal

Chris

Yes, it is our intention to continue to operate the Minnetonka DAR as we are currently with the Council reimbursing Senior Community Services for the garage (as Paul Colton said they would when he negotiated and advised us to enter into the garage lease).

ron

> -----Original Message-----

> From: Christopher Gran [mailto:christopher.gran@metc.state.mn.us]

> Sent: Tuesday, May 08, 2007 1:18 PM

> To: Ron Bloch

> Cc: Bruce Dreier; Jody Jacoby

> Subject: Question re Proposal

>

>

> Ron, one more question for your response:

>

> Is it your intention that the Council will continue to make

- > the garage lease payments?
- >
- > Again, your prompt response is appreciated.
- >
- > Chris
- >

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Ron Bloch

From: Ron Bloch
Sent: Tuesday, May 08, 2007 7:49 AM
To: 'Christopher Gran'
Subject: RE: Proposal for Minnetonka Dial-A-Ride Transit Service

Chris

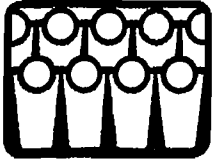
No, the lease for the garage had been a separate contract and we have not included it in the Minnetonka DAR cost proposal.

ron

- > -----Original Message-----
- > From: Christopher Gran [mailto:christopher.gran@metc.state.mn.us]
- > Sent: Monday, May 07, 2007 8:00 PM
- > To: Ron Bloch
- > Cc: Bruce Dreier; Jody Jacoby
- > Subject: Proposal for Minnetonka Dial-A-Ride Transit Service
- >
- >
- > Ron:
- >
- > The Evaluation Panel bruce dthas the following question regarding your
- > proposal:

- >
- > Is the lease payment for the proposed garage included in your
- > cost proposal?
- >
- > Your prompt response is appreciated.
- >
- > Chris Gran
- >

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- * Community Senior Centers

♦ Caregiver Support Services

- * Senior Outreach

♦ Frail Elder Support Services

- * H.O.M.E.
- * Senior Outreach

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May 18, 2007

Christopher Gran
RFP Administrator
Metropolitan Council
515 N. Cleveland Avenue
St. Paul, MN 55114

RE: Award Phase Protest

Dear Mr. Gran:

Senior Community Services wishes to add the following statement to the original Protest letter - Minnetonka Area Dial a Ride Transit Service Contract Number 07P042 - mailed 5/16/07:

The Evaluation Panel acted incorrectly, prejudicing SCS' proposal, by adding the garage costs to SCS' actual bid costs. The garage is not necessary to operate the Minnetonka Area Dial-a-Ride service and therefore should not have been added to the cost of the service. Senior Community Services can operate, and has successfully operated, the service without the garage.

Sincerely,

Ron Bloch
Program Administrator

May 23, 2007

Ron Bloch
Senior Community Services
10709 Wayzata Blvd., Ste 111
Minnetonka, MN 55305

Subject: Protest Authority Decision
Award Phase Protest of Senior Community Services
Minnetonka Area Dial-A-Ride Services
RFP #7408
Council Contract Number 07P042

Dear Mr. Bloch:

Pursuant to the Council's Protest Procedures, I am the Protest Authority for the referenced Award Phase Protest submitted by your firm Senior Community Services ("SCS"). I have completed an investigation and evaluation of the allegations presented in your protest letter dated May 16, 2007 and follow-up letter dated May 18, 2007. The following sets forth an overview of the background facts, my findings and an analysis of each of the issues raised by your correspondence, and my conclusions.¹

BACKGROUND FACTS

1. On April 10, 2007, the Metropolitan Council ("Council") issued a Request for Proposals ("RFP") for Minnetonka Area Dial a Ride Transit Service. The services solicited by the RFP will commence on July 1, 2007 and essentially replace the services provided by SCS under two existing contracts that expire on June 30, 2007. Senior Community Services and two other firms submitted proposals to the Council by the May 1, 2007 due date for the RFP.
2. The evaluation panel for this procurement met on Monday, May 7th and carried out an initial technical review of the proposals. The technical review eliminated one proposer from consideration, leaving SCS and Midwest Paratransit for further consideration. The panel then reviewed the cost proposals of these two proposers. That review

¹ It should be noted that Section 5 of the Instructions to Proposers clearly states that the RFP Administrator shall serve as the contact person for receiving all communications regarding the RFP and that "[p]roposers may be disqualified if any unsolicited contact related to this RFP is made with an employee or representative of the Council during the proposal process except as provided in these instructions." I understand that SCS has made a number of contacts with employees or representatives of the Council other than the RFP Administrator since its proposal was submitted. While not addressed in this document, these contacts in and of themselves could subject SCS to disqualification from this procurement.

initially indicated that there was an approximately \$15,000 difference² in cost between the two proposers out of a projected five year contract cost of about \$2.5 million.

3. However, the review of SCS cost proposal raised a question regarding the costs proposed that could not be conclusively answered with the submitted proposal. Specifically, the RFP requires the contractor at its cost to provide a facility for maintenance and storage of vehicles used in providing the service. Council staff was aware that SCS currently leases a garage for these purposes under a current contract with the Council that expires on June 30, 2007, at a current annual cost of approximately \$58,000 per year. However, the SCS cost proposal did not appear to include the lease costs for such a facility. Accordingly, an e-mail was sent to SCS the evening of May 7th requesting clarification as to whether the lease payment for the garage was included in SCS's cost proposal for the service. The next morning SCS responded to the e-mail indicating that the lease costs for the garage "had been a separate contract and we have not included it in the Minnetonka DAR cost proposal." (underlining added)
4. This response did clarify that the garage costs were not included in SCS's cost proposal but seemed to suggest that SCS may be expecting that those costs would continue to be paid by the Council in some manner under a new contract. Accordingly, a further follow-up question was e-mailed to SCS on Tuesday, May 8th at 1:18 p.m. inquiring as to whether it was SCS's intention that the Council continue to make payments for the garage lease if SCS were awarded the contract for services under the RFP.
5. Prior to receiving a response to that inquiry, the panel reconvened on Tuesday, May 8th at 1:30 p.m. and concluded that the proposal submitted by Midwest Paratransit Services was technically substantially superior to that submitted by SCS and was the proposal most advantageous to the Council. The panel's conclusion was based on the costs proposed by SCS in its RFP but with the understanding that those costs might, in fact, be higher if SCS intended that the Council continue to make those payments for the garage lease that were not included in the cost proposal.
6. Subsequently, a response to the Council's second e-mail was received by the Council on Wednesday, May 8th at 3:47 p.m. indicating that SCS did intend for the Council to continue "reimbursing Senior Community Services for the garage." At the current garage lease rate this would have the effect of increasing SCS's cost proposal amount by approximately \$290,000 over the five year term of the contract without taking into account any possible increases in SCS's future lease costs over the current annual amount.
7. SCS submitted an Award Phase Protest to the Council by letter dated May 16, 2007. SCS submitted a follow-up letter on the protest dated May 18, 2007.

² This difference amount is based on the weighting factors prescribed in the RFP.

FINDINGS AND ANALYSIS OF ISSUES

Before analyzing the issues raised by SCS's protest, I want to address a couple of inaccuracies in your protest letter of May 16, 2007. First, you state that the proposal submitted by SCS included "the required costs." In fact, as discussed further below and as conceded in later e-mails from you, the proposal pointedly did not, as it should have, include the costs associated with the lease of a garage required in order to provide the service. Second, you state that "[i]n a conversation with Bruce Dryer [sic] on 5/15/07 he indicated that the elimination of the garage costs would probably have made the difference in the recommendation of another provider over SCS." Mr. Drier was a member of the evaluation panel and I am informed that he does not agree that such a statement was made to you. To the contrary and as discussed further below, the evaluation panel's decision was not affected by the consideration of garage leasing costs.

Issue 1

Claim: *"SCS has had a number of separate contracts with the Met Council pertaining to the Minnetonka Area Dial-a-Ride service, one of which is for the garage lease. This garage lease has lead to confusion and an error in determination of the pending award of this bid."* [May 16 letter]

Response: It is true that there has been some confusion with respect to the lease costs of a garage in connection with SCS's providing of services under its proposal. This confusion arose because of SCS's failure to clearly include all costs, including garage costs, in its proposal as required by the RFP and this omission necessitated the follow-up e-mails inquires described above.

The Council does have a number of separate agreements with SCS for the providing of transit services. Some agreements are grants that support locally controlled services, while others are contracts to operate service under the direction of the Council. However, none of these agreements is for a "garage lease." The reference in the protest letter is apparently to the fact that under existing contract number C-97-67 the Council has for the past several years been reimbursing SCS for the cost of a garage lease used in providing service under that contract. However, that contract expires on June 30, 2007 and any obligation that the Council might have under that contract for payment of garage leasing will not extend beyond that date. Accordingly, any costs that SCS would need to incur for this purpose under the new contract that is the subject of this RFP should have been included in its cost proposal submittal for the RFP

More importantly, it's clear that the evaluation panel's decision as to the most advantageous proposal was not in any manner affected by any confusion as to the inclusion or exclusion of the garage lease costs in your proposal. Although the panel requested follow-up information in order to understand the total cost that

would be incurred by the Council under the SCS proposal, the garage lease costs were ultimately not a significant factor in the panel's decision as further discussed below. In fact, the panel's decision was made prior to receipt of your e-mail which made it absolutely clear that the SCS proposal contained additional costs not included with the proposal submittal. Thus the decision, if anything, was made in the context of a proposal cost that was less than an actual cost that should have included the garage leasing amounts.

Issue 2

Claim: *"The Evaluation Panel acted incorrectly, prejudicing SCS' proposal, by adding the garage costs to SCS' actual bid costs. The garage is not necessary to operate the Minnetonka Dial-a-Ride service and therefore should not have been added to the cost of the service. Senior Community Services can operate, and has successfully operated, the service without the garage. SCS intended, and still intends, to try to negotiate with the Met Council separately for continued reimbursement of the garage lease costs."* [May 16 letter as revised by the May 18 submittal]

Response: There is no indication that the evaluation panel at any time added the garage costs to SCS's actual proposal costs. In fact, as noted above, the panel's decision was made prior to final clarification of this issue and, if anything, in the context of a more favorable cost amount for SCS, i.e., without considering the additional costs for garage leasing.

I also note the following with respect to your other comments in connection with this issue:

- Whether or not SCS feels a garage is necessary to operate the service, the solicitation documents clearly required that the contractor provide such a garage. Other proposers included the cost for such a facility in their proposals. Their cost proposals would presumably have been significantly reduced if this requirement were eliminated.
- The suggestion that SCS intended to negotiate separately with the Council for reimbursement of garage lease costs again assumes that the garage lease costs were a factor in the evaluation panel recommendation which they were not. Further, such negotiations would not be appropriate given the fact that the other proposers had included such costs in their cost proposals.

Issue 3

Claim: *"On correction of this issue SCS would be the cost effective and most advantageous choice to the Council."* [May 16 letter]

Response: By correction, I assume you refer to not including garage leasing costs in SCS's proposal costs. As noted above, SCS's garage costs were not a factor in the evaluation panel's decision with respect this procurement. The panel's decision was made prior to final confirmation from SCS that it intended that garage lease costs be reimbursed by the Council under this contract and in the context of a cost difference between SCS and Midwest Paratransit (without taking into account the increased amounts for garage leasing) of approximately \$15,000 over a five-year term. This difference amounts to approximately ½ of 1 percent of the projected total contract amount of \$2.5 million. Without taking into account the additional costs that would be attributable to the garage lease, the panel clearly viewed this cost difference as immaterial and the costs for the two proposals to be, for all practical purposes, equal.

The panel found Midwest Paratransit's technical proposal to be substantially better than that of SCS. Given that the costs of the two proposals were in essence equal (without taking into account SCS's increased cost for garage leasing), the panel found that the Midwest Paratransit proposal was the most advantageous to the Council. Inclusion of SCS's projected costs for its existing garage lease at current rates would have added approximately \$290,000 to its proposal cost. I would expect that the addition of these substantial costs to SCS's proposal would only have reinforced a decision in favor of Midwest Paratransit that had already been arrived at on the basis of the technical merit of the two proposals without taking into account such additional costs.

CONCLUSION

Based on the above findings and analysis, I find no justification to concur with your protest. Therefore the protest is denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Weaver', written in a cursive style.

Thomas Weaver
Regional Administrator