

Napa County Transportation and Planning Agency (NCTPA)

Board of Directors

SPECIAL MEETING

MINUTES

Wednesday, August 5, 2009

ITEMS

1. Call to Order

Chair Jim Krider called the meeting order at 8:34 a.m.

2. Pledge of Allegiance

Member Jack Gingles, Mayor City of Calistoga, led the salute to the flag.

3. Roll Call

Members Present:

Leon Garcia	City of American Canyon
Joan Bennett	City of American Canyon
Michael Dunsford	City of Calistoga
Jack Gingles	City of Calistoga
Jim Krider	City of Napa
Jill Techel	City of Napa
Bill Dodd	County of Napa
Mark Luce	County of Napa
Eric Sklar	City of St. Helena
Lewis Chilton	Town of Yountville
John F. Dunbar	Town of Yountville

Members Absent:

Del Britton	City of St. Helena
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Non-Voting Members Absent:

JoAnn Busenbark	Paratransit Coordinating Council
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4. Public Comment

*MSC - Motioned, Seconded, and Unanimously Carried

Muriel Fagiani, Napa resident, stated that there is a need for bus route that just services the downtown area only.

5. CONSENT ITEMS (5.1 – 5.2)

At the request of staff, Item 5.1 was pulled from consent.

MSC* DUNSFORD / GARCIA to APPROVE Consent Item 5.2.

5.1 Approval of Meeting Minutes of July 1, 2009

Meeting minutes of July 1, 2009 were pulled at the request of staff. In order to have full complete record of the discussion on RFP #09-041 from the June 17th and July 1st meetings, the minutes of July 1, 2009, along with meeting minutes of June 17, 2009, will be brought back for Board approval at the September 16, 2009 meeting.

5.2 Approval of Chair and Vice Chair for FY 09/10

Board action approve the second year term of Jim Krider as Chair and Cynthia Saucerman as Vice Chair of NCTPA for FY 09/10.

6. REGULAR AGENDA ITEMS – TRANSPORTATION

6.1 Reconsideration Request from MV Transportation to the NCTPA Board of the Executive Directors Denial of the MV Protests of July 6 and July 13, 2009 in Reference to the Award by the NCTPA Board of the Operations, Maintenance of Facilities, and Maintenance of Equipment Contract to Veolia

Paul W. Price, NCTPA Executive Director, reviewed for the Board the protest request from MV Transportation and the reasoning behind NCTPA's denial.

Chair Krider stated that there was consensus from the Board to limit the reconsideration of MV's protest to Issues 1 & 2 only (Failure to abide by RFP for Evaluation/Failure of Veolia to achieve passing score).

Scott Reynolds, from the Law firm of Gaw Van Male, representing MV Transportation, stated the position of MV Transportation is clearly set forth in its protest and supplement. However, MV believes there are a number of questions in which the Board needs to ask and have answered. The Executive Director, in denying MV's protest, stated that it was not timely filed as to the question of whether or not Veolia's proposal was within the competitive range and subject to further consideration. Veolia only scored 79 points of a scale of required 80 for

further consideration. The question is; who drafted the RFP? Who established the competitive range? Did not this Board approve the RFP for release? Who knew better than the staff and the Executive Director that Veolia failed to achieve the score within the competitive range? Why did neither staff nor the Executive Director bring this to the Boards attention in its first staff report? When does a bidder become aggrieved person? The term aggrieved is not defined in the RFP, it typically means unjustly injured. In MV's opinion, it was not unjustly injured until the July 1st hearing when the contract was awarded to Veolia, it was not unjustly injured or aggrieved prior to July 1st because it (MV) had been awarded the contract the prior year and again this year it was recommend for approval. Would you expect such a person to file a protest prior to the anticipated award of the contract and disrupt the RFP process or would you expect it to wait until the final result of the final hearing on July 1st? Whether MV protested or not, Veolia cannot be awarded the contract because to do so would exceed the expressed terms of the RFP that the Board approved. The Board must act consistent with the RFP to do otherwise exceed legal authority the Board established for itself. Part III of the RFP, page 88, states "the contract resulting from RFP, will be awarded to the responsive and responsible offer whose proposal conforming to the requirements of the RFP is determined to be the most advantageous to the Board based on the evaluation criteria". Furthermore, on page 90 of the RFP, it states, "submitted proposals will be deemed acceptable and in the competitive range if the score is at least 80 points out of a 100 after review by the selection committee". So again, the question is; how is a score of 79 points considered to be within the competitive range and conforming to the requirements of the RFP? How is a score not within the competitive range considered to meet the evaluation criteria as required by the RFP? How is an offer awarded the bid when it does not conform to the requirements of the RFP and is not based on the evaluation criteria set forth e in the RFP? Further, Mr. Reynolds wanted to make a few statements on Items 3, 4 & 5: The RFP states that there are five (5) currently used, Veolia certified that it uses six (6). MV based its bid on these facts. Veolia's bid calls for only three (3) road supervisors. So again, the question is; was this proposed and significant difference in operations by Veolia brought to your attention by the staff or the Executive Director? Was the potential impact on safety and the significant reduction in road supervisors brought to your attention as a Board? Was this significant change in the terms of the RFP brought to the attention of MV so that they could revise their bid accordingly? In addition, did the Board know that MV's bid would have been lower than Veolia's had it been provided the knowledge that only three (3) supervisors were sufficient to operate this contract? Finally, how can competing bids be fairly compared when the RFP appears to be a moving target? MV believes the Board should

***MSC - Motioned, Seconded, and Unanimously Carried**

sustain its protest and award the contract to MV or in the alternative, the Board should resend its contract to Veolia and issue a new RFP.

Member Dunbar asked for clarification on the contract point total, and the claim that Veolia's scoring did not meet the minimum requirement and any wording that is in the RFP that specifics when the five (5) day protest period begins.

Paul Price, NCTPA Executive Director, responded: (1) in terms of the protest period begins, it (the RFP) clearly states that it is when the protester knew or should have known of the circumstances arising from the protest. They (MV) should have know what the scoring was on the June 12th and certainly should have known by the Board meeting of June 17th; (2) in terms of the point spread, they (Veolia) actually scored a little more than 79 points as there was rounding of the score. Had the point total been an issue, the Board could have addressed it in findings at the time of the Board award of July 1st. However, since it was not made a protest, it is not an issue and need not be dealt with through the Board or through any findings as to Boards decision process awarding points or not awarding points for various issues raised by staff.

***MSC TECHEL / GARCIA to APPROVE** upholding the decision of the Executive Director in his denial letter of July 15, 2009 as to "Protest Grounds No. 1 & No. 2" in MV Transportation's Reconsideration request of July 23, 2009. Additionally, the remaining items in MV Transportation's letter of July 23, 2009 are a post award reconsideration request which, according to the RFP #09-01, is not subject to Board reconsideration. Therefore, it the Board will not hear MV Transportation's Reconsideration request for their "Protest Grounds No. 3, No. 4, and No. 5" and refer MV Transportation to the procedures identified in RFP #09-01.

6.2 Approval of Transit Services Contract with Veolia in Response to RFP #09-01

Paul W Price, Executive Director, advised the Board that under the conditions of the NCTPA Procurement Manuel, the NCTPA Board may proceed with procurement in spite pending protest as long as the Board determines at least one (1) of the following three (3) conditions exist:

1. That the items to be procured are urgently needed.
2. Delivery or performance would be duly delayed by failure to make the award promptly.
3. Failure to make prompt award would otherwise cause undue harm to NCTPA.

Mr. Price asked that the Board make a finding that all three conditions exist and authorize the Executive Director to sign the contract with Veolia Transportation.

Susan McGuigan, NCTPA Legal Counsel, stated for clarification, that under the terms of the RFP the Board only need to make one of these findings, they do not need to make all three. The Board is certainly may make all three; but only one is needed.

MSC* SKLAR / TECHEL to APPROVE (1) that Finding No. 3 Failure to make prompt award would otherwise cause undue harm to NCTPA, exist under the conditions of the NCTPA Procurement Manuel, (2) award a 5-year contract with two 1-year options, for the Operations and Maintenance of Facilities and Equipment of the Napa County Transportation and Planning Agency Transit Services to Veolia Transportation, and (3) authorize the Executive Director to execute the contract.

7. **ADJOURNMENT**

Approval of Next Regular Meeting Date of Wednesday September 16, 2009 and Adjournment

The next meeting will held in the NCTPA Conference Room on Wednesday September 16, 2009.

The meeting was adjourned by Chair Krider at 9:17 a.m.