



OFFICE OF THE COUNTY EXECUTIVE
Milwaukee County
CHRIS ABELE • COUNTY EXECUTIVE

March 10, 2014

Supervisors,

I am writing you today to try to reach a compromise on the transit situation.

As you may be aware, counsel has examined the options that are available and has indicated it is very likely an appeal of the decision of the Administrative Determination Review Committee (ADRC) to Circuit Court would be successful. This is a road I am willing to explore, but like you, I would rather work toward a solution together.

While I strongly disagree with the ruling from the ADRC, and believe the committee's action was illegal and political in nature, my biggest concern is the broader appeal process, the message this appeal process sends to vendors and ultimately the detrimental impact on our services.

Milwaukee County does not follow the Administrative Appeal Process laid out in state statute (Chapter 68). In 1997, then County Executive Tom Ament's administration, proposed a different process that is known as Chapter 110 and it was adopted by the Board. The County's Chapter 110 process currently does not specify qualifications, require procurement expertise or require any specific skill set to hear a Chapter 110 procurement or contracting appeal. Lacking that requirement allows elected officials and other individuals with limited to no expertise in procurement and contracting, and with possible conflicts of interest, to hear these appeals. Allowing elected officials to serve in this way is directly contrary to best practice.

According to the American Bar Association (ABA) [2000 Model Procurement Code for States and Local Governments], appeals should be heard by a Chief Procurement Officer or someone in a similar position. According to ABA Model Code, the County may also set up a Procurement Appeals Panel to hear a subsequent appeal. The ABA recommends that such a panel be made up of experts. If an aggrieved party disagrees with county's final decision, they can then appeal to court of law.

The National Institute of Governmental Purchasing, Inc. (NIGP) agrees with the ABA's best practices. NIGP looked at some counties across the Country to see how they handle this issue. They note that Waukesha, Wisconsin and Fairfax County, Virginia each have single individual procurement experts hear all appeals. NIGP also looked at Gwinnett County, Georgia, where any appeal goes directly to court of law. The Interim County Attorney in Gwinnett County says that since that process was put in place in the 1990's only two decisions have been challenged in court. In both cases the court sided with the County experts who awarded the original contract.

Given this context, I am proposing that we reach a solution that would allow us to move forward with a new RFP and avoid a potential costly court action. I will commit that neither the DOT or I

will take this issue to court if a majority of the Board makes a commitment to work with me and the Comptroller's Office to change the Chapter 110 process to follow best practices, including specifically to remove politicians from the appeals process. If at least ten Supervisors will commit by March 19, 2014 to changing this process as set forth above, we will not move forward with legal action. This compromise will allow the DOT to move forward with reissuing the RFP for transit with an improved and clear appeals process. My hope is that by working together, we can together improve transit service for our community.

Sincerely,

Chris