



COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

Department of Transportation
Brian Dranzik, Director

DATE: September 26, 2013

TO: Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors
Janelle Jensen, Committee Clerk

FROM: Brian Dranzik, Director of Transportation

SUBJECT: Notice of Appeal Pursuant to Chapter 110.06 & 110.07 for the RFP#2013-5600 – Transit Management Services for the Milwaukee County Transit System.

The Department of Transportation has been provided two separate notices of appeal pursuant to Chapter 110.06 and 110.07 for an appeal to the County Board Standing committee from Veolia Transportation Services, Inc. and Milwaukee Transport Services, Inc. related to RFP # 2013-5600 – Transit Management Service for the Milwaukee County Transit System. In accordance with Chapter 110.07(c), stating,

“Notice of the appeal shall be filed with the county authority which issued the initial review determination. The authority shall forthwith notify the clerk of the standing committee of the filing of the notice of appeal and proceed to prepare the record needed for the committee review”

The Department of Transportation is hereby providing the notices of appeal for both Veolia Transportation Services, Inc. and Milwaukee Transport Services, Inc. Since this would result in a contract determination, it is my understanding that the appropriate committee that would hear the review is Finance and Personnel instead of Transportation, Public Works and Transit. For that reason, notice is being provided to the committee clerk for Finance and Personnel Committee.

The process for appeals to the county board standing committee is further defined in Chapter 110.07, 110.08 and 110.09 of the Milwaukee County code of ordinances.

A handwritten signature in black ink, appearing to read "Brian Dranzik", is written over a horizontal line.

Brian Dranzik
Director of Transportation

CC: Supervisor Willie Johnson, Jr. Co-Chair of Finance and Personnel Committee
Supervisor David Cullen, Co-Chair of Finance and Personnel Committee
Supervisor Michael Mayo, Sr., Chair of Transportation, Public Work, and Transit
Mark Grady, Corporation Counsel

DAVID R. HALBROOKS

ATTORNEY AT LAW

2924 E Linnwood AV
Milwaukee, WI 53211
(414) 840-0228

September 25, 2013

Via Hand-Delivery & Email (Brian.Dranzik@milwcnty.com)

Brian Dranzik, Director of Transportation
Department of Transportation
2711 W. Wells Street
Milwaukee, WI 53208

Re: *Notice of Appeal Pursuant to § 110.07 of the Milwaukee County
Code of General Ordinances (RFP 2013-5600)*

Dear Director Dranzik,

Veolia Transportation Services, Inc. ("Veolia") is in receipt of your response ("Decision") to Veolia's request for written review which was submitted to your office on September 3, 2013. The Decision is dated September 17, 2013, but was not mailed until September 18, 2013. See Exhibit A attached hereto. As you indicate at the end of the Decision, and pursuant to §§ 110.06 and 110.07 of the Milwaukee County Code of General Ordinances ("Ordinances"), Veolia hereby appeals the Decision to the Milwaukee County Transportation, Public Works and Transit Committee.

Veolia requests that the appeal hearing be a full evidentiary hearing and take place before the Transportation, Public Works and Transit Committee pursuant to § 110.08 of the Ordinances. A full evidentiary hearing is necessary as a result of Milwaukee County's improper denial of Veolia's public records requests dated August 2, 2013.

Veolia has received some of the requested records, records that should have been provided a month ago. These documents are very helpful and should raise serious questions by county members about the process that led to the award. However, Veolia expects to have many new and significant arguments that are not currently in the record and for which Veolia had no mechanism to get into the record as a result of the county's continued partial improper denial of the public records requests. A full evidentiary hearing is therefore necessary.

Thank you for your attention to this matter,

A handwritten signature in black ink, appearing to read "David Halbrooks". The signature is written in a cursive style with a large initial "D".

David Halbrooks, JD
Attorney for
Veolia Transportation Services

Cc: John Hoefft

Enc.

Cc: Transportation, Public Works and Transit Committee (w/ enc.) via email



411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4426
Tel 414.277.5000
Fax 414.271.3552
www.quarles.com

*Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples and Tampa, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin
Washington, DC
Shanghai, China*

Writer's Direct Dial: 414.277.5155
E-Mail: eric.vanschynhle@quarles.com

September 24, 2013

VIA US MAIL, FACSIMILE AND EMAIL

Mr. Brian Dranzik
Director MCDOT
2711 W. Wells St.
Room 300
Milwaukee, WI 53208
brian.dranzik@milwenty.com
Fax: 414-223-1899

RE: MCDOT RFP #2013-5600

Dear Mr. Dranzik:

Milwaukee Transport Services, Inc. ("MTS"), the non-profit, Milwaukee County based, thirty-eight year incumbent manager of the Milwaukee County Transit System, provides this Notice of Appeal pursuant to Sections 110.06 and 110.07 of the Milwaukee County Code of General Ordinances ("MCCO"). On September 17, 2013, MCDOT mailed its Initial Review of MTS's Notice of Review.

Pursuant to Sections 110.06 and 110.07 of the MCCO, please consider this MTS's Notice of Appeal. This Notice of Appeal is timely under Sections 110.06 and 110.07, MCCO. On September 18, 2013, MCDOT postmarked its initial review of MTS's Notice of Review. Therefore, the deadline to file any notice of appeal by MTS is Wednesday, September 25, 2013.

MTS has filed a Petition for Writ of Mandamus pursuant to Wisconsin Statutes Section 19.35 et seq. for information pertaining to the RFP. See Milwaukee County Circuit Court Case No. 2013-CV-7234. MTS reserves the right to supplement or amend the above grounds for review and reversal in the event that further information is acquired or learned by MTS.

September 24, 2013
Page 2

Sincerely,

QUARLES & BRADY LLP



Eric J. Van Schyndle

Cc: Tim Hansen (via email thansen@hrdclaw.com)

Section 110 Review

Section 110 of the Milwaukee County Ordinances sets out the process for review of a county administrative decision.

MCO 110.02(b) allows an appeal of the “denial in whole or in part after application of a contract.”¹ This creates the right of appeal for an entity that “applies” or bids for business in response to an RFP but is denied that business when the RFP is awarded to another bidder.

Under the ordinance, the steps in the 110 Appeal are as follows:

1. An administrative determination is made, such as selecting the winning response to an RFP.
2. An aggrieved party files a written notice of review within five days after the determination. The notice can include materials supporting the claim.
3. The authority that made the determination, or its designee, has the option to review the initial decision and affirm, reverse or modify it. A written decision explaining the review action is required.
4. The aggrieved party may next appeal to a standing committee of the County Board, in writing, within five days of the written administrative decision.
 - a. The parties to the appeal are the aggrieved bidder and the department that requested the bids.
5. The appeal is heard either a) by the full standing committee or b) by a review committee of three to five members appointed by the chair of the standing committee and approved by the members of the standing committee.
 - a. The committee hearing is supposed to be held within 10 days of receiving the notice of appeal but the time “may be extended at the sole discretion of the committee chair.
 - b. Members of the review committee can be supervisors, county employees or non-county personnel.
6. If the appeal is heard by the full standing committee, the committee has the option (and possibly the obligation: the ordinance is a bit ambiguous) to hold a full evidentiary hearing, with the parties represented by attorneys. The parties may call and cross-examine witnesses and present evidence. The Rules of Evidence

¹ This section is probably intended to have commas around “after application,” so that it would apply to the “denial in whole or in part, after application, of a contract.”

shall generally apply. Hearsay may not form the basis for the committee's decision. Subpoenas may be issued to compel testimony or production of documents. The committee sits in open session except to deliberate on the result. The final vote is in open session. A written decision reflecting the vote of the committee is required within 20 days.

7. If the standing committee refers the appeal to a review panel, the process is much more streamlined. The panel's investigation is limited to a review of the written record (RFP, procedures, bid responses, etc.)
 - a. The review panel is to apply a four-part test:
 - (i) Did the department keep within its jurisdiction?
 - (ii) Did the department act according to law?
 - (iii) Was the action of the department arbitrary, oppressive, or unreasonable, representing its will and not its judgment?
 - (iv) Was there sufficient evidence such that the department might reasonably make the decision it made?
 - b. In practice, a review panel typically would ask for a written brief or written argument from the aggrieved party, along with such supporting evidence as the party wishes to provide. The county would respond in kind. The parties would be invited to argue their positions before the panel and answer any questions from the panel, and a decision would follow.
 - (i) A typical briefing schedule might allow 30 days for the aggrieved party to file its papers, 30 days for the county to respond, 15 days for the aggrieved party to reply to the county's response, and a two hour session for oral argument 15 days after receiving the reply brief.
 - c. The review panel issues a written decision or, if an oral decision is issued, a written decision giving reasons is required if requested by one of the parties within 10 days of the decision.
8. If the appeal is denied, the department may proceed to forward the contract recommendation to the County Board for approval, if Board approval is required, or proceed to execute the contract if Board approval is not required. If the appeal is granted, the department likely would either rescore the bids based on the panel's findings or conduct an entirely new RFP.

--Paul Bargren
November 12, 2013