

STATE OF NORTH CAROLINA COUNTY OF GUILFORD IN RE: TRANSDEV SERVICES, INC.'S PROTEST OF AWARD OF CONTRACT FOR MANAGEMENT AND OPERATIONS OF TRANSIT SERVICES BY THE CITY OF GREENSBORO/GREENSBORO TRANSIT AUTHORITY	BEFORE THE GREENSBORO TRANSIT AUTHORITY BOARD DECISION
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On August 9, 2018, Transdev Services, Inc. ("Transdev") filed a written protest of the Greensboro Transit Authority ("GTA") Board's August 2, 2018 vote to approve the GTA's Evaluation and Selection Committee's recommendation that Keolis Transit Services, LLC ("Keolis") be awarded the contract for the operations and management of the City of Greensboro Transit Services. In accordance with the procedures established in the City of Greensboro/GTA's Request for Proposals dated June 30, 2017 ("RFP"), the Director of Transportation and Public Transportation Division Manager investigated the protest and, by letter dated September 4, 2018, made his recommendation to the GTA Board. On September 5, 2018, at a duly called special meeting of the GTA Board, the Public Transportation Division Manager presented his recommendation to the GTA Board to deny the Transdev protest and explained the reasoning and support for his recommendation.

At its September 5, 2018 board meeting, the GTA Board reviewed the Transdev protest and the staff recommendation. The Board also heard from representatives of Transdev and Keolis regarding the protest. Then, the Board discussed the protest and after reviewing the staff recommendation, hearing the evidence and considering the presentations of the parties, adopted the recommendation of the Director of Transportation and Public Transportation Division Manager and made the following Findings and Conclusions:

FINDINGS:

1. On June 30, 2017, the City of Greensboro/GTA issued the Request for Proposals for the Management and Operation of Transit Services/Fixed Route, Higher Education Area Transit, and ADA Complimentary Paratransit.

2. The June 30, 2017 procurement resulted in a recommendation for award by the Greensboro City Council, but the award recommendation was rescinded by resolution of the Council in December 2017.

3. Per the City Council resolution, in January 2018, the GTA Board approved using the June 30, 2017 RFP for a third procurement that was issued in April 2018 to the four (4) prior proposers.

4. The GTA Board approved the Evaluation and Selection Committee ("Selection Committee") membership at its March and April 2018 meetings. The Selection Committee composition included seven (7) members and one (1) alternate. Four (4) members on the Selection Committee were employed in the transit field and four (4) members had extensive transit experience. In addition, a GTA staff person with significant transit experience was assigned to the Selection Committee and was a Committee resource.

5. The Selection Committee conducted reviews of three (3) of the four (4) proposers to the June 30, 2017 procurement. Transit, Keolis and Transdev submitted proposals. McDonald, a previous proposer, declined to participate in the fourth procurement. Reviews of the three (3) proposers were held by the Selection Committee on May 23 and June 6, 2018.

6. Over the course of several meetings, the Selection Committee evaluated responses to the RFP, conducted interviews and analyzed each proposal.

7. On August 2, 2018, the GTA Board held a special meeting to review the recommendation of the Selection Committee.

8. The Selection Committee recommended and the GTA Board approved the selection and recommendation of Keolis, (the contractor that the Selection Committee determined to have obtained the highest score pursuant to the terms of the RFP), as the contract award recipient for the Management and Operation of Transit Services/Fixed Route, Higher Education Area Transit, and ADA Complimentary Paratransit.

9. On August 9, 2018, Transdev, who obtained the third highest score pursuant to the terms of the RFP, filed a written protest to the GTA Board's decision to recommended the contract award to Keolis.

10. Transdev protested the GTA Board's August 2, 2018 recommendation on the grounds that (1) the GTA Board held two illegal closed sessions in connection with the process of determining the composition of the Selection Committee and (2) the composition of the Selection Committee ultimately resulted in the Selection Committee making an arbitrary, capricious, wrongful, and unreasonable recommendation because the Selection Committee was deliberately selected to exclude individuals with knowledge of the technical service considerations that make up a majority of the evaluation process.

11. The Transdev protest requests that the GTA Board (1) uphold its protest, (2) provide all committee materials, minutes, notes and other correspondence and communications relating to the RFP and the GTA Board, (3) conduct an investigation of the alleged illegal closed meetings and decision-making irregularities and (4) hold a hearing and reissue the RFP.

12. Pursuant to Part II, F (2)(e)(i) of the RFP, upon a receipt of a protest, GTA gave notice to other proposers in the procurement and allowed each proposer to submit information regarding the merits of the protest.

13. No other proposer protested or challenged the procurement or submitted any information regarding the protest filed by Transdev.

14. Pre-Award Protests are permitted under the RFP pursuant to Part II, Section F. Consistent with this section, Transdev is an Interested Party as an actual bidder and has a direct economic interest affected by an award.

15. Transdev submitted its protest in writing through its representative, J. Nathan Duggins, III of Tuggle Duggins, Attorneys at Law. The protest included documentation, evidence and legal authority as required by Section F of the RFP.

16. The protest, however, was not certified by a representative of Transdev or notarized as required by the RFP.

17. Part II, Section F, Subsection 2(c) of the RFP specifically states that: "The protest must be certified . . . and be signed by the protester, and be notarized." The failure to meet this requirement is a material defect in the protest and subjects the protest to denial without further review or action by the City of Greensboro/GTA.

18. Transdev argued that pursuant to Rule 11 of the North Carolina Rules of Civil Procedure, the signature of a licensed North Carolina attorney satisfies both the certification and notarization requirements. The GTA Board, however, finds that an attorney's certification does not satisfy the requirement of a licensed notary or of certification on behalf of the protestor as required by the RFP.

19. Transdev alleges that the GTA Board held two illegal closed sessions, one on March 27, 2018 and another on June 26, 2018, in connection with the process of determining the composition of the Selection Committee.

20. A public body may conduct a closed session for any of the narrowly defined reasons set forth in N.C. Gen Stat. 143-318.11.

21. The March 27, 2018 meeting of the GTA Board was a duly called and properly advertised public meeting. Members of the public attended the meeting and were present throughout the course of the meeting.

22. The GTA Board did not ask the public to leave the March 27th meeting; it only asked Transdev to leave the room as the GTA Board discussed the RFP. Members of the public remained in the room throughout the course of the meeting.

23. Transdev was the incumbent contractor for the procurement and pursuant to Part II, Section G of the RFP, Transdev was prohibited from having contact with the GTA Board on matters pertaining to the RFP.

24. The GTA Board finds that at the time the GTA Board reached the Agenda Item for discussion of the Transit Services RFP, Transdev had already stood up and began leaving the room voluntarily.

25. A review of the official minutes of the March 27th GTA Board meeting confirms that Transdev's departure was completely voluntary.

26. Transdev did not object to the GTA Board's Chair's request to leave the meeting at any time after the meeting or at any subsequent meetings of the GTA Board.

27. Transdev raises this issue for the first time in its August 9th protest.

28. Transdev's claims regarding the March 27th meeting are time barred.

29. Transdev also alleges that the GTA Board held an improper closed session on June 26, 2018.

30. At the June 26, 2018 meeting, the GTA Board moved to go into a Closed Session to discuss a legal matter with the GTA Board's attorney. The verbatim transcript of the Board minutes reveals that a motion was made by a Board member that was refined by the staff

attorney. The motion was to go into Closed Session to discuss a legal matter with the Board's attorney. The motion was properly seconded and the vote was unanimous.

31. N.C. Gen. Stat. 143-318(a)(3) authorizes the GTA Board to go into a closed session "[t]o consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged." The statute also allows the GTA Board to "consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure." N.C. Gen. Stat. 143-318(a)(3).

32. A GTA Board Member, Ms. McQueary, made a motion, as amended by Counsel Dickens, to "go into a Closed Session to discuss a legal issue with the Board's attorney." The GTA Board went into Closed Session to discuss a legal defect in the composition of the Selection Committee. Specifically, the RFP stated that the makeup of the Selection Committee would "include no less than the officers, employees and agents of the GTA and may include other qualified transit professionals internal and/or external to the GTA." As of June 26, 2018, the Selection Committee did not have an officer of the City of Greensboro/Greensboro Transit Authority.

33. A defect in the composition of the Selection Committee could have resulted in a legal challenge and protest if not corrected, and the GTA Board met with its legal counsel in Closed Session to be informed of the defect and to discuss how to resolve this defect and avoid potential litigation over this issue.

34. The current GTA Board Secretary, Janet Wallace ("Wallace") decided to resign her position and nominate Cheryl McQueary ("McQueary"), who was already on the Selection Committee, for that position.

35. The GTA Board properly adjourned the Closed Session and resumed its Open Session where a motion was made and properly seconded to accept the resignation of Wallace as GTA Board Secretary. This motion was approved unanimously. Another motion was made and properly seconded to nominate McQueary for the position of GTA Board Secretary, and McQueary was unanimously elected as the GTA Board Secretary.

36. The June 27th meeting was not illegal and met the requirements of the statutes.

37. Transdev also alleges in its protest that the “composition of the Selection Committee ultimately resulted in the Selection Committee making an arbitrary, capricious, wrongful, and unreasonable recommendation, because the composition of the Selection Committee was deliberately selected to exclude the individuals with knowledge of the technical service considerations that make up a majority of the evaluation process.”

38. Transdev fails to explain what part or what aspect of the Selection Committee’s recommendation was “arbitrary, capricious, wrongful, and unreasonable.” Transdev merely states, “No one affiliated with GTA served on the Selection Committee, and as a result there was no member who could adequately assess the technical service components of the RFP bids.”

39. An individual affiliated with the GTA served on the Selection Committee. Also, Candyce Brown, the GTA’s Central Contracting Specialist, was the Project Manager of this procurement, and she served as the Facilitator of the Selection Committee. She was a reference for the Selection Committee when they asked her specific questions.

40. The Selection Committee also included representatives from other transit agencies, such as the Piedmont Authority for Regional Transportation (“PART”), High Point Transit System (“Hi Tran”), and Winston-Salem Transit. These representatives had knowledge of the needs of any transit system, and the RFP described in detail the specific needs of the GTA.

41. The RFP provided the current staffing levels provided by the incumbent contractor, Transdev, and the two GTA Board Members who served on the Selection Committee had intimate knowledge on whether the current staffing levels provided by Transdev were sufficient to meet the needs of the GTA transit system.

42. Transdev's assertion that "the Selection Committee did not have anyone who could speak to GTA's technical needs or the service component of the proposed bids" is without merit.

CONCLUSION

1. Transdev submitted its protest in writing through its representative, J. Nathan Duggins, III of Tuggle Duggins, Attorneys at Law that was not certified nor notarized as required by the RFP. Part II, Section F, Subsection 2(c) of the RFP. The protest is defective and provides a basis for its denial without further review or action by the City of Greensboro/GTA.

2. The signature of a licensed North Carolina attorney does not satisfy the requirement of a licensed notary or of certification under the RFP.

3. The March 27, 2018 meeting of the GTA Board was properly noticed and complied with the North Carolina Open Meetings Law because the public was not excluded from the meeting.

4. Even if we were to assume, *arguendo*, that the March 27th GTA Board's discussion and vote comprising the Selection Committee constituted an improper "Closed Session", pursuant to N.C. Gen. Stat. 143-318.16A, Transdev had 45 days from May 22, 2018, the date the minutes of this meeting were released to the public, to file a lawsuit in the Guilford County Superior Court to declare the actions of the GTA Board in selecting the composition of the Selection Committee null and void. Transdev's claim is time-barred.

5. The motion calling for a June 27th Closed Session does not have to cite the specific section of the statute and met the requirements of the statute. Further, N.C. Gen. Stat. 143-318.11(a)(3) authorizes the GTA Board “to discuss any *legal* issue with its attorney” (emphasis in original).

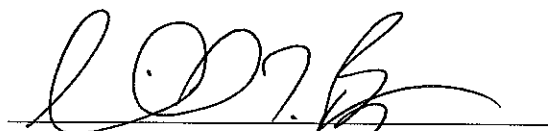
6. The Board’s actions on March 27, 2018 and its actions on June 26, 2018 were legal and proper and did not constitute unlawful or improper closed sessions in violation of the North Carolina Open Meetings Laws.

7. Based upon the review of the protest and supporting documents, the presentations, the evidence and the staff recommendation, the GTA Board denies Transdev’s protest dated August 9, 2018.

8. Further, based upon the protest and supporting documents, the presentations, the evidence and the staff recommendation, the GTA Board recommends the contract award for the operations and management of the Greensboro Transit Services to Keolis.

This the 11th day of September 2018.

Signed


Richard T. Bryson
Chairman, GTA Board