

Mass Transit Memorandum
No. 061209-1

June 12, 2009

TO: Honorable Mayor McElroy and City Council Members

FROM: Ryan McCrady, City Manager
Paul McChancy, Mass Transit Administrator *P.M.C.*

SUBJECT: Response to Post-Award Protest – McDonald Transit Associates, Inc.

SUMMARY
RECOMMENDATION: Staff recommends that Council adopt a Resolution authorizing the Mayor to send a letter to McDonald Transit Associates, Inc., denying their protest of the Council's decision to award the transit management contract to First Transit, Inc.

BACKGROUND: On June 1, 2009, the Decatur City Council voted to award a contract to First Transit, Inc., to manage the Transit System. On June 9th, the City received a letter from Robert T. Babbitt, President of McDonald Transit Associates, Inc., protesting the award. Mr. Babbitt claims that "First Transit was asked to and agreed to modify their competitive proposal" and that "the objective criteria were not used" by the Council. Staff has studied these allegations and has drafted the attached letter in response to the protest. The letter concludes that the arguments and assertions contained in Mr. Babbitt's Post-Award Protest letter are without merit.

POTENTIAL
OBJECTION: McDonald Transit Associates, Inc. may submit a protest to the Federal Transit Administration (FTA).

INPUT FROM
OTHER SOURCES: None

STAFF REFERENCE: Paul McChancy, Mass Transit Administrator

BUDGET/TIME
IMPLICATIONS: If a protest to the FTA were upheld, then the City would be required to void the contract award, and to issue a new Request for Proposals. Since this process would take about 4 months to complete, the City would need to negotiate an interim contract extension with First Transit.

RESOLUTION NO. R2009-

**RESOLUTION AUTHORIZING LETTER
RESPONSE TO POST-AWARD PROTEST
McDONALD TRANSIT ASSOCIATES, INC.**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DECATUR, ILLINOIS:

Section 1. That the Mayor is hereby, authorized and directed to respond to the post-award protest letter sent by McDonald Transit Associates, Inc., dated June 5, 2009, concerning the Council's decision to award a contract for management of the Transit System to First Transit, Inc., and to state the Council's finding that the arguments and assertions contained in their letter are without merit.

PRESENTED AND ADOPTED this 15th day of June, 2009.

MICHAEL T. McELROY
MAYOR

ATTEST:

CELESTE F. HARRIS
CITY CLERK



CITY OF DECATUR ILLINOIS

#1 GARY K. ANDERSON PLAZA

DECATUR, ILLINOIS 62523-1196

June 15, 2009

Robert T. Babbitt, President
McDonald Transit Associates, Inc.
3800 Sandshell Drive, Suite 175
Fort Worth, Texas 76137

RE: Post-Award Protest
Request for Proposals – Transit Management
City of Decatur, Illinois

Dear Mr. Babbitt,

On June 9, 2009, the City of Decatur received your Post-Award Protest letter, dated June 5, 2009, concerning the Decatur City Council's decision to award a transit management contract to First Transit, Inc. In your letter you state two complaints:

- "During the Council meeting, First Transit was asked to and agreed to modify their competitive proposal. Our firm was not given the same opportunity." and
- "In the council meeting, the objective criteria were not used."

Concerning your first complaint, you do not state what modification of their proposal First Transit was allegedly asked to make. I assume that you are referring to the issue of providing an annual customer service survey as part of the management fee. The video of the June 1st City Council meeting shows that there was discussion about annual surveys, and that First Transit stated that the firm would provide an annual survey at no additional charge. But the video clearly shows that First Transit was not asked to modify their proposal. Please also note that the contract was not amended to require an annual survey at no additional charge. The contract was prepared by staff and delivered to the City Clerk before the City Council meeting, and it was not changed in any way during or after the meeting.

Concerning your second complaint, the City Council did consider the objective criteria specified in the Request for Proposals (RFP) before making its decision. Council members were informed before the meeting of the seven criteria that were used by the Evaluation Committee to score the two firms. In Attachment 1 to your letter, you included the following documents that were sent to all Council members by the City Clerk before this meeting:

- A memo from the City Manager and the Mass Transit Administrator summarizing the procurement process and the Evaluation Committee's work;
- The Bid Tabulation sheet showing the transit management fees proposed by both firms; and

- The Evaluation Committee's scoring sheet, which gives the Committee's average score for each of the seven evaluation criteria listed in the RFP.

During the Council meeting, both firms were given the opportunity to present their qualifications without time limitation. The Council also listened to a presentation from the Amalgamated Transit Union on their opinion of the qualifications of both firms. The Council then had an opportunity to ask questions of the two firms, and to question the three members of the Evaluation Committee about why each member favored one firm over the other.

You will note that Section 13 *Proposer Evaluation and Selection Process* of the RFP ends with the following sentence:

"The firm receiving the most points will be recommended by the Committee to the City Council, whose decision shall be final."

Clearly the City Council has the final authority to accept or to reject the recommendation of the Evaluation Committee. In this case after lengthy discussion and consideration of all of the evaluation criteria, the City Council voted to award the management contract to a firm that was not recommended by the Committee.

Based on our review of pertinent information related to this procurement process and the procedures utilized in this contract award, the City of Decatur makes the following determinations:

- 1) The City's selection process guaranteed full and open competition among all proposers;
- 2) The City of Decatur followed the selection procedures specified in the RFP;
- 3) The Decatur City Council did not ask First Transit to modify their proposal, and the Council did not amend the contract;
- 4) The City's decision to award the management contract to First Transit, Inc. was based on the full and open discussion of all factors and was not an arbitrary decision; and
- 5) The Decatur City Council awarded the contract to the responsible firm whose proposal was determined to be most advantageous to the City's transit system, with price and other evaluation factors considered, as defined in the Request for Proposals.

Therefore, the Decatur City Council finds that the arguments and assertions contained in your Post-Award Protest letter are without merit.

Sincerely,

Michael T. McElroy
Mayor

cc. Marisol Simon, Administrator
Federal Transit Administration Region 5