

MINNESOTA SPORTS FACILITIES AUTHORITY

Regular Meeting
Friday, September 14, 2012
9:00 a.m.

Hubert H. Humphrey Metrodome
Halsey Hall Room
900 South 5th Street
Minneapolis, MN 55415

1. CALL TO ORDER

Chair Michele Kelm-Helgen called the meeting of the Minnesota Sports Facilities Authority to order at 9:05 am

2. ROLL CALL

Commissioners Present: Michele Kelm-Helgen, Barbara Butts Williams, Duane Benson, Bill McCarthy, John Griffith

Commissioners Absent: None

3. ADOPTION OF AGENDA

Chair Kelm-Helgen presented the agenda. *A motion was made by Commissioner Benson and seconded by Commissioner Butts Williams to adopt the agenda. Motion carried.*

4. APPROVAL OF AUTHORITY MEETING MINUTES

Approval of Authority Minutes for Regular Meeting of August 24, 2012. *A motion made by Commissioner Butts Williams and seconded by Commissioner McCarthy to approve the minutes. Motion carried.*

5. CHAIR'S REPORT

The new stadium work is ramping up. The MSFA recently put out an RFP for the Architectural Engineer. Five firms responded, which all showcased their work on the MOA field at a public forum on September 5. An interview team has been put together which includes members of the MSFA board and staff, the Vikings, Hammes and outside consultants. This team is currently working on due diligence and will bring back the firms for a second round of interviewing. As the RFP's were due only last week, the board will not make a decision today.

The MSFA board is also working on a process to assure the new stadium will meet requirements for women, minority and disadvantage business workforce.

6. BUSINESS

a Action Items – New Stadium

i. Authorize Chair & Staff to Negotiate & Award Contract – Legal Services

On August 16, 2012 sixteen proposals were received for MSFA Legal Services. The proposals were reviewed by a committee composed of Commissioners Griffith and McCarthy, CEO/Executive Director Ted Mondale, staff member Steve Maki, Scott Stenman from Hammes Company, and Mike Green from Michael Best Law Firm, Madison, WI. Five firms were selected to be interviewed: Dorsey & Whitney; Fabyanske, Westra, Hart & Thomson; Gray Plant Mooty; Leonard, Street & Deinard; and McGrann Shea. Interviews were conducted on August 30, 2012.

The interview committee looked at five key criteria to select the new legal council: expertise and experience; key staff proposed to be assigned to perform work for the Authority; past performance; interview; and hourly billable rate (cost). Based upon the materials submitted by the interviewees and the interviews of the five firms, the committee unanimously recommends that the contract pairing for the above work be awarded to Dorsey & Whitney and Fabyanske, Westra, Hart & Thomas. Dorsey & Whitney has extensive experience in complex development issues and helped build Minnesota's infrastructure, including Metropolitan stadium (circa 1965), Target Field, TCF Stadium, Target Center and the Metrodome. Fabyanske's major areas of practice are real estate and construction.

Recommendation: *The Authority accepts the proposals for Legal Services from Dorsey & Whitney and Fabyanske, Westra, Hart & Thomson, subject to final negotiation by the Chair and CEO/Executive Director. Furthermore, the Authority authorizes the Chair and CEO/Executive Director to enter into a contract for those services upon completion of contract negotiations. Motion made by Commissioner McCarthy and seconded by Commissioner Griffith. Motion carried.*

b. Reports Items

i. Affirmative Action Plan 2012- 2014

It is the policy of the Minnesota Sports Facilities Authority to provide equal opportunity in all areas of employment and to take affirmative action to prevent employment discrimination. MN Statute 473.143 requires the Authority to develop and submit an affirmative action plan to Minnesota Management & Budget (MMB). The plan must include goal-oriented management policies and procedures to eliminate barriers to employment opportunities for minorities, women and qualified disabled persons that are not based on specific job requirements. Since the Authority has a temporary personnel policy and has not yet implemented a permanent policy, MMB recommended that the Authority adopt a temporary "Affirmative Action Plan" and then when the personnel policy is finalized adopt a more comprehensive plan.

The attached Affirmative Action Plan is based on MMB's template and includes a statement of commitment, harassment/discrimination policy, internal harassment/discrimination complaint procedure, reasonable

accommodation policy, and two attachments: Complaint of harassment/discrimination form and Employee request for reasonable accommodation form.

The Authority plans to demonstrate good faith effort to comply with the state's affirmative action requirements and to provide an employment setting that is equally accessible and supportive to all employees. Its employment practices will reflect value and respect for diversity among its employees.

A separate employment plan will be developed to recruit, hire, and retain minorities during the design, development, and construction management of the new stadium facility.

RECOMMENDATION: *The Authority approves the attached "temporary" Affirmative Action Plan 2012 – 2014. A motion was made by Commissioner Griffith and seconded by Commissioner McCarthy. Motion carried. A copy of the Affirmative Action Plan is available in the Authority office.*

ii. Project Labor Agreement Update

The Minnesota Sports Facilities Authority (the "Authority") is authorized to enter into a Project Labor Agreement ("PLA") related to construction of the new stadium. PLAs are specifically authorized under the National Labor Relations Act ("NLRA" or "Act"), 29 U.S.C. §§ 151-169. The NLRA provides specific exceptions from other requirements of the Act in order to permit employers and unions in the construction industry to enter into PLAs. See 29 U.S.C. §§ 158(e) and (f). In its landmark 1993 *Boston Harbor* decision, the United States Supreme Court recognized the value of PLAs in serving the public interest. Accordingly, as a matter of law and public policy PLAs are an appropriate construction management tool in the public and private sectors.

The Authority is authorized to set prevailing wage rates for this project; these labor rates must be agreed to by a contractor before the Authority and the contractor execute a contract. Specifically, the authorizing legislation for construction of the stadium (2012 Laws, Ch. 299) (the "Stadium Act"), Section 15 [473J.11], Subd. 1(c), provides that the Authority may contract for materials, supplies, and equipment in accordance with Minnesota Statute 471.345, the Uniform Municipal Contracting Law ("UMCL"). Subdivision 7 of the UMCL, Minimum labor standards, provides:

Minimum labor standards. Nothing in this section shall be construed to prohibit any municipality from adopting rules, regulations, or ordinances which establish the prevailing wage rate as defined in section 177.42, as a minimum standard for wages and which establish the hours and working conditions prevailing for the largest number of workers engaged in the same class of labor within the area as a minimum standard for a contractor's employees which must be agreed to by any contractor before the contractor may be awarded any contract for the furnishing of any labor, material, supplies, or service.

By its terms, Minn. Stat. § 471.345 authorizes the Authority to adopt rules establishing prevailing wage rates. This authority includes the power to enter into a PLA, which would set prevailing wage rates for the duration of the stadium project.

In exercising the powers granted to it by the Minnesota Legislature, the Authority should consider that the stadium project is one of the largest public works projects ever authorized in this State and is currently one of the largest construction projects authorized to be built in this Country. The Federal Government, the largest purchaser of construction services in the world, is subject to a February 2009 Executive Order that specifically allows Federal Agencies to require project labor agreements on large-scale Federal construction projects. The reason this authority exists—and is encouraged to be exercised on large construction projects—is that PLAs give project owners, building contractors and labor forces a unique opportunity to anticipate and avoid potential labor problems that might otherwise arise and interrupt or delay project progress.

PLAs maximize job stability, efficiency and productivity, and, most importantly, minimize the risks and inconveniences to the public that often accompany large, expensive public works projects. Specifically, a project-specific PLA is designed to provide a steady supply of skilled labor on complex projects, coordinate the work of multiple crafts, establish a peaceful means of dispute resolution without strikes or lockouts, and help to ensure that the project is completed on time and without costly labor overruns. These are the primary reasons why PLAs are commonly used on large, complex stadium projects, including stadium projects built in Minnesota. The Metrodome, Target Field and TCF Bank Stadium were all built under PLAs. Outside of Minnesota, the following stadiums were built using PLAs: Miller Park, Milwaukee, Wisconsin; Gund Arena, Cleveland, Ohio; Cleveland Browns Stadium, Cleveland, Ohio; Comerica Park, Detroit, Michigan; Nationals Park, Washington, D.C.; Lucas Oil Stadium, Indianapolis, Indiana; Citi Field, New York, New York; and Safeco Field in Seattle, Washington.

Although the use of PLAs is increasingly common on large publicly financed construction projects, PLAs are not without controversy. Opponents charge that by using PLAs and their requirements, PLAs actually raise project costs because open-shop (non-union) contractors are discouraged from bidding on projects that have PLAs. As a result, open-shop contractors contend that there is frequently an absence of open-shop bidders on PLA projects, which, in turn, results in fewer bidders for the project. Therefore, open-shop contractors argue the overall cost of the project with a PLA will be higher.

Recognizing there are many reasons why contractors—union and non-union—may choose not to bid on certain projects, we were unable to find any published study that empirically demonstrates that a PLA requirement was itself the cause of a decrease in the number of bidders on a large construction project. Further, we are unaware of any credible analysis showing that fewer bidders translate into higher actual project costs. This is not surprising given the current depressed construction market in this State. Competition among union and open-shop contractors for publicly bid projects at the local, State and Federal levels remains at a high level.

In conclusion, weighing the arguments for and against PLAs, a PLA requirement makes sense for a large publicly funded stadium project because a PLA promotes a planned approach to labor relations, allows contractors to more accurately estimate labor costs and schedules, and reduces the risks of costly disruptions. Specifically PLAs offer protection against potential labor strikes, lockouts, or other work stoppages for the duration of the project. History tells us that work stoppages on large public projects

can increase project costs by millions of dollars due to extra costs caused by construction delays or disruptions. Notably, during the projected construction period of the new stadium numerous collective bargaining agreements of local construction craft unions are scheduled to expire. The only way the Authority can protect itself and the taxpayers against work stoppages during this period and for the term of the project is to enter into a PLA, a comprehensive labor relations agreement that supersedes all craft agreements, setting uniform terms and conditions, for this project.

RECOMMENDATION: *That the MSFA Board Support a Project Labor Agreement. Motion made by Commissioner McCarthy and seconded by Commissioner Benson. Motion carried.*

7. PUBLIC COMMENT

Seven individuals came forward to address the MSFA Board.

Avi Viswanathan; Topic: Reduce racial disparity

George Garnett; Topic: Reduce minority disparity

Louis King; Topic: Reduce racial disparity

Al Flowers; Topic: Jobs for minorities

R.A. Edwards; Topic: Minorities in the workplace

Barb Lau; Topic: waived after hearing previous public comments

Jachai Lockhart; Topic: Contracting method and how it will affect hiring process.

8. DISCUSSION

None

9. ANNOUNCE FUTURE MEETINGS

a. Friday, September 14, 2012 at 10:30am – Tour Xcel Center; St. Paul, MN

b. Wednesday, September 26, 2012 at 10:00am – Tour Lucas Oil Field; Indianapolis, IN

c. Friday, October 5, 2012 at 9:00am – Regular MSFA Board meeting

10. ADJOURNMENT

There being no further business to come before the Authority, a motion was made by Commissioner Butts Williams and seconded by Commissioner Benson to adjourn the meeting. Motion carried. Chair Kelm-Helgen adjourned the meeting at 9:56 am