

# MENDOCINO COUNCIL OF GOVERNMENTS

Approved MINUTES

Special Meeting

Monday, September 15, 2014

County Administration Center, Board of Supervisors Chambers

ADDITIONAL AUDIOCONFERENCE LOCATION:

Caltrans District 1, 2430 6<sup>th</sup> St., Eureka

**The Mendocino Council of Governments (MCOG) meets as the Board of Directors of:**

Mendocino Regional Transportation Planning Agency (RTPA) and  
Mendocino County Service Authority for Freeway Emergencies (SAFE)

**1. Call to Order / Roll Call .** The meeting was called to order at 1:32 p.m. with Directors Rex Jackman (Caltrans/PAC) on the conference telephone, Benj Thomas, Doug Hammerstrom, Larry Stranske, John Pinches, Susan Ranochak, and Dan Gjerde present; Chair Gjerde presiding. Director Trevor Sanders arrived subsequently.

Staff present: Phil Dow, Executive Director and Janet Orth, Deputy Director for Administration. Also present from County of Mendocino were Douglas Losak, Interim County Counsel; David Grim, Deputy CEO; Janelle Rau, General Services Agency; and Nicole French, Executive Office.

**2. Convene as RTPA**

**3. Recess as RTPA - Reconvene as Policy Advisory Committee.**

**Public Expression.** John Feliz, Jr. of Redwood Valley spoke as a public administration student and intern in the Mendocino County Executive Office interested in observing the workings of government.

**4 - 5. Consent Calendar.** Upon motion by Hammerstrom, second by Thomas, and carried unanimously on roll call vote (*7 Ayes – Jackman/PAC, Thomas, Hammerstrom, Stranske, Pinches, Ranochak, and Gjerde; 0 Noes; 0 Abstaining; 1 Absent - Sanders*): IT IS ORDERED that consent items are approved:

**4. Approval of September 4, 2014 Executive Committee Minutes – as written**

**5. Amendment of Resolution Approving Mendocino Transit Authority's Revised Grant Application for Federal Transit Administration (FTA) Section 5311(f) Intercity Bus Program Funds – “Expansion of Route 65 Service” – Increasing Grant from \$300,000 to \$330,000**

## **Resolution No. M2014-03R**

Approving Mendocino Transit Authority's Grant Application for Federal Transit Administration (FTA) Section 5311f Intercity Bus Program Funds –

“Expansion of Route 65 Service”

(Reso. #M2014-03R is incorporated herein by reference)

Director Sanders arrived at 1:44 p.m., after Consent Calendar.

**6 - 9. Regular Calendar.** Mr. Losak as Interim County Counsel introduced the agenda items, noting that when the Administrative & Fiscal and Transportation Planning Services contract issues arose, he had directed staff to include two closed session items for today. On further study, he believed it inappropriate to convene a closed session for the Planning contract, as it would not meet the legal standard. The Administrative contract meets the standard for closed session as concerning an independent contractor serving as executive officer of the board. However, new rules in the statute, resulting from the recent City of Bell case, indicate this cannot be done in a special meeting. He apologized for the late notice of this situation and then answered questions, including:

- There is no provision to allow going into closed session to negotiate the contracts today. (Losak)
- What is the correct process now? (Hammerstrom)
- An agreement with Davey-Bates Consulting (DBC) is closer than with Dow & Associates. Direction from the board is needed on certain issues including COLA and health insurance costs; counter-proposals have been made and terms agreed to date with DBC. The remaining issue is purely cost and cost increases. (Losak)
- The next meeting on September 29 could be considered special as it will be held out of town. The next regular meeting would be November 3. (Dow)
- Discussion of dates, locations, definition of a regular meeting, and the adopted board calendar. (Gjerde, Losak, Pinches)
- The meeting could be convened Sept 29 and the item continued to later that week. (Pinches)
- Suggestion to get as far along as possible today, so all that would remain is ratification of the contract. (Hammerstrom)
- The current Administrative contract expires September 30. (Dow) It is up to the contractor to agree to an extension or not. (Pinches) The contractor would like to hear from the Board members what they want to see in the next Administrative contract. (Dow)

The Chair proceeded to Agenda Item #9. Mr. Losak handed out copies of a binder including the proposals for both Administrative & Fiscal and Transportation Planning Services.

**9. Discussion and Possible Action to Adopt Professional Services Contract for Transportation Planning Services.** Mr. Losak drew attention to the handout's Tab D, Page 30 of the Davey-Bates Consulting (DBC) proposal. Ms. Lisa Davey-Bates introduced herself and discussed her cost proposal, addressing the anticipated healthcare cost increases raised in negotiation with Counsel, which she attributed to the Affordable Care Act. Chair Gjerde asked her to elaborate, and she cited her documentation. Discussion included the following (not necessarily in order)

Cost-of-Living Adjustments (COLA) and Healthcare Costs:

- How has this been structured in past contracts? Only COLA increases were included. DBC would have business impacts if costs rise higher than the Consumer Price Index (CPI) rate. (Hammerstrom, Davey-Bates)
- Healthcare costs vary widely and are difficult to determine in advance. (Pinches)
- Discussion of whether the cost of health insurance premiums are included in the CPI or not; if so, the proposal would be double dipping. Various research and opinions were expressed. (Hammerstrom, Losak, Davey-Bates)

SAFE Motorist Aid Call Box Program:

- The contracts will drive budget development of the Five Year Plan update, when it should be the reverse. Suggestion to keep the same budget until the new plan is adopted next fiscal year. (Losak)

- Explanation of increases in the DBC proposal. (Davey-Bates)
- Discussion of the amount of increases compared to current budget and other budget line items. Reference to Tab B and Tab D, Page 31 of the handout. (Gjerde, Davey-Bates, Losak, Pinches)
- No interest in debating a \$500 increase over five years. (Pinches)
- Increasing costs over the plan is an unworkable way for the agency to do business. (Hammerstrom)
- Annual revenue is approximately \$90,000 per year [not shown in handout]. (Davey-Bates)
- Review of the annual fund balance, noting the handout showed only the budget; staff reported the approximate actual balance, which was much higher at \$822,000.
- The fund balance was not depleted as planned because call box installations were not being done as they should have. (Losak)
- Mr. Dow approached the podium to describe call box activity and reason for delays in expenditures, citing various statewide lawsuits, changes in technology and other challenges. Mendocino County SAFE is first in the nation to install call boxes with satellite reception. When the fund balance exceeded \$900,000, the agency was not in a position to use it and now is able to spend the funds where needed. The coastal development permit goes to public hearing imminently, so the next round of additional Route 1 installations can be completed soon.
- Budgeting for SAFE at this point is simply guessing. (Losak)
- Further description of current SAFE program status. (Davey-Bates)
- Call for the question. (Thomas)
- The negotiator wants direction on several points: health insurance, COLA and SAFE. (Gjerde)

**A motion was made** by Director Pinches, seconded by Director Ranochak, to accept the DBC proposal as submitted. **Discussion on the motion:**

- The amount of increase annually for healthcare is uncertain; suggestion of another method to deal with it, perhaps retroactively. (Gjerde)
- Request to clarify motion; does it refer to DBC's proposal or contract under negotiation? (Losak) It refers to DBC's proposal as submitted under the Request for Proposals, which is a fair and reasonable response and there are no other bidders. Opinion that MCOG can either accept or turn it down. The RFP distribution was extensive and Caltrans approved of the process. (Pinches)
- Further questioning of healthcare costs as related to CPI; suggestion to include a not-to-exceed figure in the contract. (Hammerstrom, Thomas, Davey-Bates)
- What are Counsel's comments? (Gjerde) It is the Board's decision. At least the out-of-pocket healthcare costs are included in CPI. Research indicates 3-4%, or up to 5-6% increases. In the contract agreement to date, it would go back to the Board if over 3%. Further comments on the SAFE program. (Losak) Counsel's analysis of SAFE is not accurate. (Pinches)
- Agreement with Chair's suggestion that if cost goes up, contract comes back to board for approval, as a method to absorb it. (Sanders)
- Board is not so much looking for the best deal as the best company to do the agency's business. Advised to start off on the right foot with new staff. If not happy with performance, there is a 120-day termination clause. (Pinches)
- Repeated request to confirm intent of the motion. (Losak)

**The motion was clarified** by Director Pinches, to approve the scope of work and cost in the DBC proposal as terms for the contract. Director Ranochak as the second agreed to the clarification. **The motion carried** on roll call vote (*5 Ayes – Jackman/PAC, Thomas, Sanders, Pinches, Ranochak; 3 Noes – Hammerstrom, Stranske, and Gjerde; 0 Abstaining; 0 Absent*): IT IS ORDERED that the scope of work and cost for the Transportation Planning Services contract between MCOG and Davey-Bates Consulting shall be as originally submitted in the Davey-Bates Consulting proposal.

**6. CLOSED SESSION pursuant to Government Code § 54957 – PUBLIC EMPLOYEE APPOINTMENT: Administrative and Fiscal Services.** “For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee . . .” Cal Gov Code § 54957(b)(4)

Mr. Losak cited text regarding the closed session. The Board could convene on September 29 and continue to the next available day, as suggested by Director Pinches, which would be a continuance of a regularly scheduled meeting.

This item was postponed by County Counsel to a regular meeting for legal reasons. The Chair continued the item to the next regular meeting on September 29, 2014.

**7. CLOSED SESSION pursuant to Government Code § 54957 – PUBLIC EMPLOYEE APPOINTMENT: Transportation Planning Services.** “For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee . . .” Cal Gov Code § 54957(b)(4)

This item was cancelled by County Counsel for legal reasons.

**8. Discussion and Possible Action to Adopt Professional Services Contract for Administrative and Fiscal Services.** Mr. Dow asked the Chair for permission to speak and asked whether the Administrative proposal could be discussed at all today. Mr. Losak answered in the negative; the statute is clear that it cannot be discussed in open session. Mr. Dow asked whether the Board could recess for 10-15 minutes and report out. Mr. Losak stated it would not be useful as the Board could not take any action; because of the role as CEO of a public agency, compensation could not be discussed, and the proposal could not be treated as independent contractor. Mr. Dow further requested a discussion of disagreements over basic facts. Mr. Losak denied any discussion. Chair Gjerde directed all further discussion to the September 29 meeting in Boonville.

A brief discussion followed on schedule, logistics, and availability to attend September 29. No action was taken. The Chair continued the item to the next regular meeting on September 29, 2014.

**10. Recess as Policy Advisory Committee - Reconvene as RTPA - Ratify Action of Policy Advisory Committee.** Upon motion by Sanders, second by Pinches, and carried on roll call vote (*4 Ayes – Thomas, Sanders, Pinches, Ranochak; 3 Noes - Hammerstrom, Stranske, and Gjerde; 0 Abstaining; 0 Absent*): IT IS ORDERED that the actions taken by the Policy Advisory Committee are ratified by the MCOG Board of Directors.

**11. Adjournment.** The meeting was adjourned at 3:03 p.m.

Submitted: PHILLIP J. DOW, EXECUTIVE DIRECTOR

By Janet Orth, Deputy Director for Administration