

**REGULAR BOARD MEETING - BLOOMINGTON PUBLIC TRANSPORTATION CORPORATION (BPTC) MARCH 2, 2021, 5:30 P.M.
MINUTES**

Chair Obermeyer convened the special meeting of the Board of Directors of the Bloomington Public Transportation Corporation. The meeting was held electronically using a Zoom meeting accessed at:

<http://us02web.zoom.us/j/87951044947?pwd=WjFmYmFwVIN1SWdiTzI1RkZKYVhEQT09>

Meeting ID: 879 5104 4947
Password: 502865

The Zoom meeting was also accessible at the following phone numbers:

(312) 626-6799

Meeting ID: 879 5104 4947
Password: 502865

ROLL CALL

Board Members and staff present: Chair Nancy Obermeyer, Vice Chair Kent McDaniel, Board Member Marilyn Hartman, Secretary James McLary and Board Member Doug Horn. Also present were Lewis May, General Manager, Christa Browning, Controller, Brenda Underwood, Director of Human Resources and Marketing, Zac Huneck, Planning and Special Projects Manager and Eli McCormick, Customer Service Manager/BT Access Manager.

Members of the Public: no members of the public were present

PETITIONS AND COMMUNICATIONS ON NON-ACTION ITEMS

There were no petitions and communications on non-action items.

MESSAGES FROM BOARD MEMBERS

There was no comment from Board Members.

MESSAGES FROM BOARD MEMBERS

Chair Obermeyer opened the meeting noting the two things for discussion were recommendations from the General Legal Services Procurement Committee and the General Manager Succession Plan Committee update.

Board Member Hartman noted the committee consisting of Lew May, Kent McDaniel, and herself reviewed six responses to the Request for Proposal (RFP) for General Legal Services. She said the committee preliminarily scored the proposals and then conducted interviews of three finalists. Zoom interviews were set-up on March 1, 2021 that consisted of an hour for each firm to make a presentation. We had some questions that we asked. Afterwards the committee reached consensus as to which firm was best. She noted that all of the firms that the committee interviewed were very close but one firm in particular was more experienced in dealing with transit specific matters.

Mr. May shared the composite scorings from the first round of the six proposals. The composite scoring shows how the evaluation committee scored the first six proposals. The three highest scoring firms were interviewed. He noted on the second worksheet shows how the composite scoring for the three firms that we interviewed. The Rothberg Logan Warsco firm scored the highest. Secretary McLary asked what the hourly rate is of the firm the committee is recommending. Board Member Hartman said due to confidentiality she didn't want to give specific rates but there was a wide range with the lowest being \$235.00 per hour and the highest over \$500.00 per hour. Secretary McLary noted when we sign a contract it will be public record. Vice Chairman McDaniel said all Board Members should be privy to that information. Board Member Hartman said she is not opposed to disclosing the hourly rate of the firm we are recommending. There are some issues with one of the firms requesting confidentiality and she didn't have time to research our public records law provisions that they were referencing. So rather than go into that issue we are disclosing the rate of the firm we are recommending which will be in the contract. Secretary McLary asked what the rate is for the firm the committee is recommending. Vice Chairman McDaniel said the selected firm was not the lowest bidder but they were far from the highest bidder. Secretary McLary asked what is the range of the recommended firm. Mr. May noted that the recommended firm of Rothberg Logan Warsco proposed a year one partner rate of \$375.00 per hour and a year one associate rate of \$280.00 per hour. Those rates remain the same for the first three years. In years four and five which are option years the partner rate goes to \$385.00 per hour and the associate rate goes to \$285.00 per hour. Board Member Hartman noted on average the hourly rate for a firm is somewhere between \$275.00 and \$350.00. Board Member Hartman noted these rates are in line of what you would expect of a private firm. Board Member Horn said when he looked at the motion it is to be negotiated are we going to be consulted with some general language prior to the contract. Board Member Hartman said the "to be negotiated" language was put in there because lawyers do have to have some description of the types of services that are done. When you do an engagement letter it is really required when you're assuming an attorney client relationship to be able to define what it is you do. We anticipate a variety of different issues that the firm could help us with. The firm should have something along those lines that will allow the Board to have a better definition of the potential scope of services. Secretary McLary said he wants the contract to come back to the Board.

Board Member Horn noted there is that letter of engagement and understanding that, would the next thing be a Board Policy as to how the director or president of the Board interact with the attorney? When they can, when they should, and how they do it. We certainly don't want the director to come to us every time the person needs to ask a pertinent question. If the Board is uncomfortable with something and needs more on an issue what guidelines would we have for ourselves in terms of looking to counsel for that. He understands that it is a concern that we

don't overuse the service but we use it only as necessary and wondering if a policy might be able to help us understand that. Vice Chairman McDaniel said he would think that we could handle that in our contract and suggest that we only engage the law firm when we have approval from the General Manager or the Chair of the Board. Secretary McLary suggested that there be a dollar limitation on it. Vice Chairman McDaniel said that is not something we should put in the contract. Mr. May encouraged the Board to add the Controller as one of the authorized staff to be able to contact the outside attorney. Board Member Horn said we are looking for a Letter of Engagement to review at the next Board Meeting and the policy issues outside of that we will take up.

Next, Board Member Hartman introduced a discussion about the General Manager Succession Plan Committee. She wanted to relay part of the discussion the committee, consisting of Secretary McLary, Controller Browning, and herself, had particularly with the Rothberg firm related to their current search for a General Manager and what sort of road they have chosen in order to find somebody suitable to serves as General Manager for Fort Wayne. They are using an executive search firm and they actually were very supportive of that approach. They were very satisfied with the candidates that were brought to their attention by the firm. The fees that were charged were \$25,000. They did actually bid the services out and they were very satisfied with the cost. Secretary McLary said the committee had a discussion with Scott Bogren, Executive Director of the Community Transportation Association of America (CTAA). We asked him if he knew of anybody who has done a parallel search where a management RFP is issued while at the same time making a concerted effort to recruit our own general manager. Mr. Bogren said to his knowledge he's not aware of any transit system conducting such parallel efforts but it doesn't mean it hasn't happened. Mr. Bogren suggested he contact another source who may be more informed on such a matter. Mr. Bogren later reached out to Paul Comfort, and Mr. Comfort said he knew of nobody who has done it that way and he would recommend that the Board take one path or the other. Vice Chairman McDaniel said he thinks part of what's confusing the situation is his suggestion to do both and as such Mr. McDaniel said he has changed his mind of that. Mr. McDaniel recommended that we issue an RFP for a management company and if that doesn't work out then we can go and look for a general manager. There are multiple ways to look for a general manager. Secretary McLary agreed with issuing an RFP see what the response is and if we don't like the response then go out and make efforts to hire our own general manager.

Board Member Hartman said she would still like to see what is out there and the cost for some sort of executive search firm to see what they can do. That is the direction the Fort Wayne Board went and it wasn't clear why they opted to do that. She would like to get a better sense even if we could make contact with some of the Fort Wayne Board Members to see what was more attractive going that direction than looking at a management company. Secretary McLary said he feels like what we have done here at Bloomington Transit for the last 30 years has worked quite well. He added that with the stage we are in right now, we should move forward with an RFP. He suggested that we try it and if we don't like what we get we can go the other direction. Mr. McLary added that it is unknown what the market is right now for general managers and if we go on a parallel track it is not going to give the right message to the industry. Vice Chairman McDaniel agreed that we should not do the parallel track but we have a number of months before Mr. May retires and the RFP process takes three or four months. Board Member Hartman noted she does not want an RFP to go out unless our legal counsel looks at it. She noted that seeing as

how the Rothberg firm has just gone through these kind of issues in Fort Wayne she would really like to see the RFP looked at by somebody that has been doing this for a while. Secretary McLary said that City Legal has reviewed the legal requirements. Board Member Hartman said she is not talking about the legal requirements. How we define what it is we are really looking for and that is where somebody should look at the RFP. The issue of the legal requirements that's not it. Ms. Hartman noted that the Rothberg firm has some experience and has done this before. Secretary McLary asked at has not worked with our current management arrangement. Board Member Hartman said we have had the same manager for 23 years. Vice Chairman McDaniel's comment was you want to hire someone to come in here and tell us what to do and how to make policy. Vice Chairman McDaniel noted that we are the experts and we are the ones that know best how the current arrangement has worked. Board Member Hartman said she does not want to rely upon the Board for this. Chair Obermeyer noted we do have two board members who have been working in public transit for forty years. Vice Chairman McDaniel said we have the three of the most educated and experienced board members in the state. He added, there is no need to pay someone to tell us what to think. Secretary McLary noted he is not convinced they can add anything to the RFP that would change what we are doing now. Board Member Hartman said we just went through an RFP and it turned out certain kinds of provisions did not apply that we had stuck in there. Board Member Horn said the product of this RFP could end up being a multimillion dollar obligation in contract depending on the time we engage in. He added that he understands it is a three-year base period with renewals. He noted further that it is not a false economy to employ the legal firm for 3 hours or about \$1,000 to make certain that what we align the RFP with the correct legal format in the industry. It would be wise for us to consider having it quickly looked at to make certain that we have what we need in there. This is not saying that I don't respect all the experience and understanding that the Board has on its own. Vice Chairman McDaniel noted that Mr. May and Ms. Browning have done an outstanding job. He suggested we can issue the RFP and when we get the proposals the Board can still pursue legal counsel if we feel there is some legal issue that needs to be addressed. Vice Chairman McDaniel said there is no reason why we don't get started now. Secretary McLary said we have been talking about this for seven months. It is time to make a decision and move forward and we need to do so and see what happens. Chair Obermeyer said particularly since we are just about ready to award a contract for legal services to a company that does legal services for public transit. The point about following up and having them have a look later if necessary is reasonable. Board Member Hartman said it would be better to do it before issuing the RFP Vice Chairman McDaniel said there are opportunities for further legal review before signing the contract. Board Member Horn asked are the proposals not specific to the language of the RFP. Secretary McLary said they are except if it is a negotiated contract. Board Member Hartman said when you do an RFP at least the one that we did here we were incorporating all of the provisions of the RFP into the contract. So do you see my concern when you have people who aren't trained to do this kind of stuff? It is an issue of liability. Chair Obermeyer said this was a topic for discussion not necessarily coming to any agreement and clearly we are not coming to any agreement. We will put on the agenda for next month.

PUBLIC COMMENT – ACTION ITEMS

There was no comment from the public.

NEW BUSINESS – ACTION ITEMS

Secretary McLary made a motion to approve Resolution 21-06; a resolution awarding a contract for general legal services subject to the successful negotiation of a contract with the Rothberg Logan Warsco firm. The motion was seconded by Vice Chairman McDaniel. The motion was approved unanimously.

ADJOURNMENT

APPROVE:



Nancy Obermeyer, Chair
Board of Directors BPTC

04-20-21

ATTEST:



James J. McLary, Secretary
Board of Directors BPTC

04-20-21