

**MINUTES OF THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT**

**SPECIAL MEETING  
JANUARY 5, 1984**

**Councilors Present:** Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Oleson, Van Bergen, Waker, and Williamson.

**Also Present:** Rick Gustafson, Executive Officer.

**Staff Present:** Donald Carlson, Andrew Jordan, Warren Iliff, Andy Cotugno, Ray Barker, Doug Drennen, and Jennifer Sims.

A special meeting of the Council of the Metropolitan Service District was called to order by Presiding Officer Banzer at 5:40 p.m. for the purpose of considering agenda items continued from the December 20, 1983, regular meeting and the December 29, 1983, cancelled meeting.

**1. Consideration of approval of a contract with Bishop Contractors, Inc., for completion of the Alaskan Tundra Project.**

See after Agenda Item 5 for disposition of this matter.

**2. Consideration of Solid Waste Rate Review Committee appointments.**

**Motion:** Councilor Hansen moved appointment of Douglas K. Plambeck, George Hubel, David T. Chen and Alexis Dow to the Solid Waste Rate Review Committee. Councilor Kirkpatrick seconded the motion.

Councilors Kafoury, Van Bergen, and Bonner expressed concern about nominations they had made and the fact that their nominees had not received notification of consideration. Mr. Barker was instructed to review the nomination procedure and propose a policy for committee appointments.

Vote: The vote on the motion resulted in:

Ayes: Councilors Banzer, Bonner, Etlinger, Hansen, Kelley, Kirkpatrick, Oleson, Van Bergen, and Williamson.

Nays: Councilor Kafoury.

Absent: Councilors Deines and Waker.

Motion carried.

3. FY 1984-85 Budget Schedule and Process.

Councilor Kirkpatrick reported that the Council Coordinating Committee was recommending: 1) that the same process be adopted that was used for the 1983-84 budget; 2) that a budget orientation for the Council be conducted on February 2, prior to finalization of the staff's budget recommendations; and 3) that citizens be used in the budget process.

Motion: Councilor Kirkpatrick moved adoption of the FY 1984-85 Budget Schedule and Process as recommended by the Council Coordinating Committee. Councilor Williamson seconded the motion.

Vote: The vote on the motion resulted in:

Ayes: Councilors Banzer, Bonner, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Oleson, Van Bergen, and Williamson.

Nays: None.

Absent: Councilors Deines and Waker.

Motion carried.

4. Consideration of "on-the-job" injury coverage for Metro Councilors.

Jennifer Sims, Budget and Administrative Services Manager, presented the staff report, as contained in the agenda of the meeting. She outlined the three options available to the Council and responded to questions raised at the Council Coordinating Committee meeting:

- a) How would Workers' Compensation interface with other coverage carried by a Councilor? Response--Workers' Compensation would be the first carrier that would take precedence over any other coverage a Councilor might have.
- b) Could personal lawsuits be pursued by a Councilor? Response--Yes, but Councilors could not sue Metro for liability.
- c) What is level of disability? Response--Level of compensation is minimal because it is based only on Metro-related responsibilities. However, other coverage carried by a Councilor would supplement the Workers' Compensation, unless there was a specific exclusion.

Councilor Kafoury said she did not want to be precluded from being able to sue if Metro was liable. Councilor Hansen expressed concern about situations where a Councilor was covered by a union and how union coverage might be affected.

Councilor Waker said he initially raised the issue to make Councilors aware of the need to protect themselves if there were areas where personal insurance might not cover them.

Councilor Williamson requested that Ms. Sims look into the question of Metro's liability if a Councilor did something that might put Metro in the position of being sued.

Presiding Officer Banzer stated that if there was no motion, the Executive Officer's recommendation to provide Workers' Compensation for the Councilors would be implemented.

Councilor Kafoury requested that if it was possible, she would like to be excluded from coverage.

5. Ratification of appointments to Council Task Force on Metro/Tri-Met.

Councilor Waker presented his memorandum of December 15, 1983, regarding the Council Task Force on Tri-Met/Metro Relationship. He proposed a mission for the Task Force which would be: To develop a detailed set of alternatives for public debate on the future relationship of Tri-Met and Metro (a copy of the memo is attached to the agenda of the meeting).

Councilor Kelley expressed concern that the study might not be

broad enough. She suggested that the study be expanded to include: financing, bonding and taxing authority, governance evaluation, and operation and structure comparisons. She said the first charge of the task force should be that they come back with a scope of work and time frames.

Motion: Councilor Etlinger moved to take from the table the ratification of appointments to Council Task Force on Metro/Tri-Met. Councilor Bonner seconded.

Vote: The vote on the motion resulted in:

**Ayes:** Councilors Banzer, Bonner, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Oleson, Waker, and Williamson.

**Nays:** Councilors Deines and Van Bergen.

Motion carried.

Presiding Officer Banzer stated that there were two issues which needed to be resolved: the mission or charge of the task force, and the ratification of the appointments.

Motion Councilor Waker moved to adopt the mission of the Task Force as: Develop a detailed set of alternatives for public debate on the future relationship of Tri-Met and Metro, including issues involving legal authority, financial, political, and organizational aspects of the options. Councilor Williamson seconded the motion.

Councilor Kafoury stated she could not support the motion because she believes the study and discussion should occur outside Metro by an unbiased, external organization.

Councilor Deines asked who would be staffing the task force and how it would be funded.

Presiding Officer Banzer responded that Mr. Barker and the Executive Officer would provide assistance.

Councilor Etlinger suggested that the motion be amended to add the utilization of the Project Initiatives Program methodology and that the task force seek to measure all options against their ability to implement the adopted Regional Transportation Plan.

Presiding Officer Banzer suggested that Councilor Etlinger's ideas be forwarded to the Chair of the Task Force. She said the chair should be allowed the flexibility to determine the methodology for the study.

Councilor Bonner stated that a detailed work plan with budget should be reviewed by the Council. He said the Council should commit the resources to fulfill the work plan or the study should be dropped.

Vote: The vote on the motion to adopt a mission for the Council Task Force on Metro/Tri-Met, resulted in:

Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kelley, Kirkpatrick, Oleson, Waker, and Williamson.

Nays: Councilors Kafoury and Van Bergen.

Motion carried.

Motion: Councilor Oleson moved the ratification of Councilors Banzer, Bonner, Kelley, Kirkpatrick, Waker, and Williamson to the Council Task Force. Councilor Bonner seconded the motion.

Vote: The vote on the motion resulted in:

Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Kelley, Kirkpatrick, Oleson, Van Bergen, Waker, and Williamson.

Nays: Councilors Hansen and Kafoury.

Motion carried.

1. Consideration of approval of a contract with Bishop Contractors, Inc. for completion of the Alaskan Tundra Project.

Andrew Jordan, Legal Counsel, presented the staff report, as contained in the agenda of the meeting. He said the recommendation was to approve a contract with Bishop Contractors, Inc. to complete the Alaskan Tundra Project.

Councilor Kafoury asked why the surety for the company which had defaulted was not presenting Metro with a contract to finish the project or accepting responsibility for liability.

Mr. Jordan responded that the surety's response had been that they were reserving all rights to contend that they were not responsible under the bond. He said the surety was probably investigating the possibility of whether or not Metro had made any errors in awarding the bid in order to get out of their liability.

Councilor Williamson said it seemed to him that Metro should require the surety to present a contract as required by the bond. Mr. Jordan responded that the only way to do that was to go to court. He said that would take time and the project would sit. He said he did not believe there was any way the surety could get out of the bond, although it might require litigation to get fulfillment.

Warren Iliff, Zoo Director, stressed that time was important to the project--that there was a need to protect the investment and money already spent.

Councilor Waker asked if Metro was obliged to go through a public bidding process if a new contract was awarded. Mr. Jordan responded that it was his opinion that it wasn't necessary. He said when default occurred, there was no obligation on Metro's part to go through the public bidding process again. He said that was the surety's responsibility and the requirement had been met.

Motion: Councilor Kafoury moved that the Council accept the recommendation of the Executive Officer to approve a contract with Bishop Contractors, Inc. in the amount of \$1,349,622.00. Councilor Kirkpatrick seconded the motion.

Councilor Van Bergen said he was concerned that Metro may end up paying \$700,000 more than it had budgeted for the project. Mr. Jordan reiterated that Metro would demand payment from the surety company and, if need be, go to court to get the bond company to fulfill its obligation.

Motion Councilor Hansen moved to amend the main motion to  
to require that the contractor use 10% disadvantaged  
amend: business contractors for all new subcontracts issued under the new contract. Councilor Etlinger seconded the motion.

Rick Gustafson, Executive Officer, said he also was concerned about Disadvantaged Business Enterprises. He said 50-60% of the contract with Bishop would continue with the subcontractors

hired under the original contract. He said the reason for continuing with those subcontractors was to maintain continuity with what had already been done on the project. He said the project had already met its 10% DBP goal with the initial contract. He suggested in lieu of the proposed amendment that regular reports to the Council on the contract's progress, performance and DBP participation be made.

Councilor Williamson commented that the contract may cost Metro more if there was the addition of the amendment to the contract, which the surety might not be willing to pay. Councilors Waker and Kafoury agreed and Councilor Waker said he was satisfied that the 10% goal had been met with the original contract.

Councilor Bonner said that while they had met the minimum requirement of 10% participation, the Executive Officer should try to get as much disadvantaged business participation as possible.

Motion: Councilor Williamson moved the previous question. Councilor Waker seconded the motion.

Vote: The vote on the motion resulted in:

Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Oleson, Van Bergen, Waker, and Williamson.

Nays: None.

Motion carried.

Vote: The vote on the amendment to the main motion resulted in:

Ayes: Councilor Hansen.

Nays: Councilors Banzer, Bonner, Deines, Etlinger, Kafoury, Kelley, Kirkpatrick, Oleson, Van Bergen, Waker, and Williamson.

Motion to amend failed.

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Vote: The vote on the main motion to approve a contract with Bishop Contractors, Inc. resulted in:

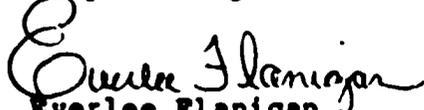
Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Oleson, Van Bergen, Waker, and Williamson.

Nays: None.

Motion carried, contract approved.

There being no further business, the meeting adjourned at 7:20 p.m.

Respectfully submitted,

  
Everlee Flanigan  
Clerk of the Council

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