

Transportation Demand Management, Inc.

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Seattle, Washington 98118
Office (206) 763 5817

June 28, 2016

Steve King
Executive
Director/Secretary
Washington Utilities and Transportation Commission
1300 S Evergreen Park Drive SW
Olympia, WA 98504

Dear Mr. King;

Re: Petition for Forbearance

Transportation Demand Management, Inc. (TDM) presently hold a certificate of authority (C-1078) to operate scheduled service in Eastern Washington between Moscow, ID and Spokane, WA. TDM was recently awarded a contract to run the commuter bus service between Yakima and Ellensburg and is seeking forbearance from UTC rate regulation for this service.

Commuter Service History:

In early 2012 the UTC granted Hopesource (Docket TC-111928) authority to run a commuter bus service between Yakima & Ellensburg. The service was primarily funded through a grant from the Washington Department of Transportation, Central Washington University and the City of Yakima. The passenger fare was \$4 per ride. 2013 fares covered about 30% of the cost of the service.

Hopesource started service in June of 2012 and in March of 2013 operating budget overspending caused concerns for the WSDOT and the city of Yakima. In early April Hopesource gave notice that it would discontinue operations. In mid-April, 2014 the WSDOT and the city of Yakima released an RFP with the hope that the service could be saved. In mid-May, 2014, CWA, Inc. was awarded the contract (Docket # TC-141093) to run the commuter service for 2 years.

In May, 2016 the City of Yakima put out a request for proposals for service beginning July 1, 2016. However due to time constraints in requesting forbearance from your agency, the start date has been delayed until September 1, 2016 in order for TDM to make the request. On June 22, 2016, the contract was awarded to Transportation Demand Management, Inc. DBA A & A Motorcoaches (see attached reward Notice).

The majority of the passengers are students that travel between the two cities to attend classes at Central Washington University or either of the two Yakima technical colleges. Additional passengers have included employees, seniors and disabled citizens that are using the service to commute to their jobs, to medical facilities or for recreation.

TDM Operations:

Operations and logistics for this service will be tracked independently from our Eastern Washington service. The commuter service will have a unique fleet, driver pool and operations back end (operating & passenger data collection & accounting). We will report on these operations to the city of Yakima, who will report to both the Washington State and Federal DOT's. Rates are set by the City of Yakima. Currently passengers will pay \$5/ride or approximately 30% of the cost. Grants from the WSDOT, the City of Yakima and Central Washington University will provide the balance of the funding.

Request:

This commuter contract is largely funded by a grant from the Washington State Department of Transportation (DOT). Under RCW 81.68.015 service that is funded by a grant that is issued by the DOT and is otherwise in the public interest can be granted forbearance from rate regulation. As such TDM is requesting that the Commission grant us this forbearance with an effective date as soon as possible.

Sincerely

A handwritten signature in black ink, appearing to read 'Gladys T. Gillis', written over a light blue horizontal line.

Gladys T. Gillis
Chief Executive Officer



DEPARTMENT OF PUBLIC WORKS
 2301 Fruitvale Blvd., Yakima, Washington 98902
 Phone (509) 575-6005

CITY OF YAKIMA
 DEPARTMENT OF PUBLIC WORKS
 (Yakima Transit)

**CITY OF YAKIMA'S RESPONSE TO PROTEST PRESENTED BY A & A
 MOTORCOACH, INC.**

City of Yakima RFP 11615-P (Ellensburg-Yakima Commuter Service)

I. **Introduction.** Yakima Transit, 2301 Fruitvale Boulevard, Yakima, Washington 98902, is a division of the City of Yakima Department of Public Works. The undersigned, Scott Schafer, is the Public Works Director, and serves as the Department Head designated to respond to the Protest (Step II) filed by A & A Motorcoach referenced herein.

II. **RFP 11615-P.** The City of Yakima published the above-referenced Request for Proposals, inviting qualified providers to submit proposals for the Ellensburg-Yakima Commuter Service. The successful contractor would enter into an Agreement to provide such service with a term from July 1, 2016 through June 30, 2017, with City of Yakima options to renew for additional terms. A & A Motorcoach, Inc., 2410 South 26th Avenue, P.O. Box 9364, Yakima, Washington 98909, timely submitted a proposal in response to the City's Request for Proposals.

CWA, Inc., 1416 Whitehorn Street, Ferndale, Washington 98248, also timely submitted a proposal in response to the Request for Proposals. CWA, Inc. is the City's current contract provider for the Ellensburg-Yakima Commuter Service. The current Agreement with CWA, Inc. expires by its terms on June 30, 2016.

III. **Evaluation of Proposals.** The Proposal Evaluation consisted of five (5) elements described, weighted and scored as follows:

<u>Element</u>	<u>Scores</u>	
	<u>A & A Motorcoach</u>	<u>CWA, Inc.</u>
(1) The lowest average rate over the proposed term of contract.	85	74



(2) The Proposer's demonstrated understanding of the contractual undertaking, including the Proposer's approach to the project, management plan, transition, and alignment to the scope of work.	37	39
(3) Qualifications and experience of firm, firm officers, management personnel, and key personnel assigned to the project.	41	40
(4) Financial capacity and overall risk/benefit assessment.	53	49
(5) Ability to start by July 1, 2016.	0	90
<u>TOTALS:</u>	216	292

IV. **A & A Motorcoach, Inc. Protest.** By letter dated June 15, 2016 (and received by the City of Yakima on June 16, 2016), A & A Motorcoach, Inc. submitted a "Protest to the Award of RFP 11615-P" (hereafter "Protest"). The Protest procedure is set forth in Article IV Evaluation and Contract Award, subsection K (page 14) of RFP 11615-P. The undersigned finds that the Protest was timely submitted by A & A Motorcoach, Inc. A copy of the Protest is attached to this Decision.

The Protest states two grounds of protest summarized as follows: (a) a challenge to the sufficiency of the RFP alleging that the RFP failed to properly disclose that the successful proposer must obtain the necessary forbearance from the Washington State Utilities and Transportation Commission (UTC) under RCW 81.68.015 before being eligible to commence service under the Ellensburg-Yakima Commuter Service contract; and (b) the timing of contract award (June 9, 2016) made it impossible for any new provider to obtain the necessary forbearance from the UTC prior to July 1, 2016, the commencement date of the commuter service.

V. **Discussion.** The City of Yakima has reviewed the provisions of the subject RFP, the evaluation elements, and has conferred with representatives of the

UTC regarding the forbearance from rate and service regulations required by RCW 81.68.015. The UTC has described the required elements and process as follows:

- (a) Every time there is a new contract awarded the successful bidder will need to request forbearance from the UTC. The reasoning is the *commission must find it is in the public interest and a new grant or contract must be reviewed in that light*. Further, although the apparent successful bidder can request the forbearance before the contract is signed, the commission will not issue the certificate of authority until it has a copy of the signed contract.
- (b) The selected company must request forbearance in writing from the UTC; public notice will be issued; the UTC will find it is or is not in the public interest and issue an order granting (or not granting) forbearance from rate regulation under RCW 81.68.015; the commission will issue a certificate to the successful bidder that states forbearance has been granted for the applied for service. Even if the commission grants forbearance, the company awarded the contract must have charter authority under Chapter 81.70 RCW.

In the present case, both CWA, Inc. and A & A Motorcoach, Inc. currently have charter authority under Chapter 81.70 RCW, so the necessary request to the UTC is simply forbearance from rate regulation.

That being said, the UTC process will not allow consideration of a request of forbearance until July 7, 2016 at the earliest (assuming timely written request is submitted).

Therefore, the Evaluation Element awarding points for “[a]bility to start by July 1, 2016” is null and impossible to complete as set forth in the City’s RFP and designated timeline. That being the case, the remedy is to strike Evaluation Element No. 5 and to eliminate the points available for such element. Applying this remedy leaves the following evaluation point balances:

A & A Motorcoach, Inc.
216

CWA, Inc.
202

VI. **Decision.** It is my decision that the Protest presented by A & A Motorcoach, Inc. has merit, and that the Evaluation Element No. 5 was not capable of performance – by either Proposer. Under applicable UTC directives, the selected contractor (whether A & A Motorcoach, Inc. or CWA, Inc.) would have been required to submit written application for forbearance from the UTC – *which application could not have been timely processed by the UTC to enable commencement of the contract work by July 1, 2016.*

Even assuming the CWA, Inc., the current contract provider, could have secured the necessary rate forbearance in time to commence the contract work by July 1, 2016, the effect of the RFP's requirement that the successful Proposer be available and able to commence contract service by July 1, 2016, coupled with a proposed Notice of Award of Contract on June 9, 2016, effectively eliminated A & A Motorcoach, Inc.'s ability to fairly compete for the contract. Under UTC's directive, the commission could not take action to consider any request for forbearance from A & A Motorcoach, Inc. until a written contract had been approved by the City of Yakima. The next scheduled regular meeting of the Yakima City Council was June 21, 2016. This means that A & A Motorcoach, Inc. could not submit a complete application to UTC until after June 21, 2016, which would result in a hearing before the UTC of the forbearance on July 7, 2016 – at the earliest.

The impossibility of opportunity to satisfy the July 1, 2016 contract commencement date requires the elimination of that Evaluation Element and the points awarded to CWA, Inc. for that element.

Based on the above analysis, I recommend that a notice of award of contract be given to A & A Motorcoach, Inc.

DATED AND EXECUTED this 22th day of June, 2016.



Scott Schafer, Director of Public Works
and Yakima Transit, CITY OF YAKIMA