

NCCC
GOVERNING BOARD AND
WORKFORCE INVESTMENT BOARD

DISPUTE RESOLUTION PANEL MINUTES
(per WIB and Governing Board Agreement Section Six: Dispute Resolution)

Colusa Indian Community Council Event Facility
3730 Highway 45, Colusa, CA
Wednesday, June 2, 2010
3:00 p.m.

PANEL INTRODUCTIONS

Self introductions of the panel members, NCCC's legal counsel, WIA consultant, Board chairs and staff to the Boards were made.

Panel Members

Bob Barkhouse, Former Yuba City Mayor and City Councilman
Tom Indrieri, Governing Board Member – Colusa County
Chris Paige, WIB Member – Public Sector
Joe Pelaez, WIB Member – Private Sector
Roger Abe, Governing Board Member – Yuba County

Other Participants

Andrew Compoginis, NCCC Counsel
John Chamberlin, NCCC WIA Consultant
Francene Kennedy, NCCC Executive Director
Doug Sloan, WIB Chair
Larry Munger, Governing Board Chair
Irma Sanchez, Staff to the Boards

NCCC COUNSEL OPENING REMARKS

Andrew Compoginis explained the purpose for convening the Dispute Resolution Panel as outlined in the Written Statement of the Issue that was provided to panel members. Two separate discussions were held on April 29, 2010 – one by the WIB and one by the Governing Board – about the awarding of a contract to operate WIA programs in Lake County. The motions made by both boards were:

WIB Action: On a motion by Ric Teagarden and seconded by Don Schrader the WIB voted to disqualify *(later clarified by NCCC counsel)* all three proposals and re-bid the Lake County program in an expedient manner.

Governing Board Action: On a motion by Tracey Quarne and seconded by Larry Munger, the Governing Board did not ratify the WIB's action and rather assigned John Chamberlin the task

of negotiating with the two remaining bidders – Lake County DSS and Mendocino PIC – and to report back to the Board within 30 days. Further, should Mr. Chamberlin not reach a satisfactory conclusion with the other two bidders then the option as suggested by the WIB’s motion would be pursued.

Being that these two motions are inconsistent, this triggered the dispute resolution panel under NCCC’s WIB and Governing Board Agreement, the language and process outlined in the Statement of the Issue that states the make-up of the panel shall consist of two representative from the Governing Board, two representatives from the WIB and a fifth impartial member. It is hoped that the panel will come to a resolution and a singular, consistent direction for the boards to move forward with awarding of a contract.

Before the panel these two options that have been passed by either board are presented. That does not preclude a third option that may come through discussion. Mr. Compoginis explained that because this process is called a Dispute Resolution should not infer that some kind of dispute or complaint has occurred between the boards, simply that one motion was carried by the WIB and a different motion was carried by the Governing Board and this panel has convened to move forward with a single motion on the issue.

PUBLIC COMMENT

Richard Birk, President of Lake One Stop Inc., addressed the panel. Mr. Birk noted that Lake One Stop Inc. has a formal appeal in progress with an appeal committee meeting scheduled Friday, June 4, 2010. (*Appeal withdrawn by Lake on 6/3/10*) Lake One Stop Inc. has also filed another action regarding The Brown Act which NCCC must respond to. (*Stated in error, see below for clarification*) Mr. Birk hoped that the public would be able to speak on the motions as they come forward and he was confident that this would be a fair process.

Andre Ross, a resident of Lake County, a member of the general public and counsel of record to Lake One Stop Inc. addressed the panel. Mr. Ross advised the panel that his firm is assisting Lake One Stop Inc. in response to NCCC’s Request for Proposal (RFP) that was disqualified on the basis of a brand new conflicts of interest rule adopted by the NCCC Governing Board in December. He stated this proceeding has great importance for how next year’s contract for Lake County will be allocated. Mr. Ross said that a formal appeal procedure has been initiated pursuant to the NCCC guidelines with the appeal being heard at a meeting Friday, June 4, 2010. (*Appeal withdrawn by Lake on 6/3/10*) They have not overruled the possibility of filing a formal grievance if an appropriate, fair, lawful efficient solution does not arise as a result of this process. Mr. Ross corrected Mr. Birk’s earlier statement and clarified that they have not filed anything alleging anything to The Brown Act; however, statutory notice has been provided to NCCC of their beliefs that there are problems with the way this new conflicts of interest rule that was adopted in December was agendized and discussed. Mr. Ross acknowledged that the panel is convened here today under a dispute resolution clause that exists in the agreement between the WIB and the Governing Board to resolve a dispute between WIB action and Governing Board action. Mr. Ross said he disagreed with the statement noted in the Written Statement of the Issue that read, “There is no time for protracted informal resolution...” He said that informal resolution process should have already been completed and they believe there is plenty of time to

ensure that there is a fair, effective and efficient resolution of this matter and they are here to participate in this process the best way they can to soldier that.

Francene Kennedy commented on Mr. Ross' reference to protracted informal resolution. Ms. Kennedy stated that informal is not defined. If you want to have an informal conversation with two board bodies, it is not done in an informal way. Being brought together at a board meeting is no longer informal. The best way is to publicly have this dialogue and come to a discussion around the issue making formal board motions needed and move forward. Mr. Ross' referenced Section Six of the WIB and Governing Board Agreement that addressed Dispute Resolution. He said his only objection was in the Written Statement of the Issue that read, "There is no time for protracted informal resolution efforts and a subsequent reconvening of both the WIB and Government Boards to rehash this issue." Mr. Ross's point was if the rules are followed the informal attempts should have already been undertaken and the panel today should be able to resolve the issue. They think there is plenty of time to see that next year's contract for Lake County is allocated in a fair, reasonable and lawful manner and they are here to participate in that.

John Chamberlin noted that this meeting is not to hear the appeal by Lake One Stop Inc. but for the sole purpose of reconciling these two differing motions made by both boards on April 29th. Mr. Chamberlin stated he did not know how you can resolve two motions made in open board meetings informally without reconvening both boards to have a new vote. He added that a service provider must be in place in Lake County on July 1; it is not permissible to have any gap in services. The Dispute Resolution Panel needed to convene as soon as possible so decisions are made to reconcile these two motions in whatever way works best so that NCCC can proceed to let a contract.

DISCUSSION SPECIFIC TO LAKE COUNTY RFP MOTION REGARDING WIB AND GOVERNING BOARD MOTIONS OF APRIL 29, 2010 UNDER AGENDA ITEM 15.
Approval Of The 2010 RFP Funding Recommendations For One Stop Operators In Each Of The Counties Of Colusa, Glenn, Lake, Sutter And Yuba

Francene Kennedy stated the open discussion would be among the four WIB and Governing Board panel members and facilitated by Bob Barkhouse. If the panel came to a conclusion where there is no majority agreement, then the issue would go to Mr. Barkhouse for the deciding vote.

Chris Paige asked if the panel reached a consensus, would that be the resolution or would the consensus go back to both boards for a final decision. It was noted that the panel's decision would be a binding resolution. Mr. Paige asked if Mr. Chamberlin had reported back to the Governing Board on negotiation outcomes with Mendocino PIC and Lake County DSS as requested in the Governing Board motion. Mr. Chamberlin replied that he elected not to proceed with the meetings with Mendocino PIC and Lake County DSS until this issue was resolved and he had clear direction.

Bob Barkhouse inquired why Ric Teagarden voted to disqualify (*clarified by NCCC counsel in this discussion*) all three proposals in his motion while the Governing Board in their motion only

mentions two bidders. Andrew Compoginis clarified the use of the word ‘disqualify’ may have been inappropriate and what Mr. Teagarden might have meant to say was to cancel the RFP entirely and re-let it out. Andre Ross suggested that NCCC counsel explain to Mr. Barkhouse, as a new member of the panel, what actually led to Lake One Stop Inc.’s proposal being disqualified. Mr. Compoginis summarized that a board motion made at the December 10th Governing Board meeting which effectively precluded any member of the Governing Board or the WIB from voting or discussing the parameters of the RFP and how each bid was to be evaluated, and precluded them from later participating or submitting a bid in that same RFP. One WIB board member participated in the discussion and made the motion prior to the Governing Board’s motion pertaining to the rules by which the RFP would be evaluated, sometime later left the WIB and became affiliated with a bidder and submitted a bid. By authorization of that Governing Board motion the bid submitted on behalf of that contractor was disqualified as a result, leaving two remaining bidders. The WIB proposed to cancel the entire RFP and let a new RFP. The Governing Board disagreed with the WIB’s motion and directed NCCC to negotiate with the two remaining bidders and report back to the board. As previously mentioned by John Chamberlin, the negotiations were halted until today’s resolution of the issue had concluded. It was noted that the member of the WIB who made the motion on December 10th was not at that time affiliated in any way with the bidding entity that submitted a proposal.

Joe Pelaez felt that disqualifying all three proposals would not have been fair to Mendocino PIC and Lake County DSS. Chris Paige commented that Ric Teagarden in making his motion may have felt the process was flawed and wanted to restart a new process. Mr. Paige added that some board members noted that planned performance from the Lake One Stop was quite a bit higher than the other two bidders. His opinion was that board members who voted in favor of the motion were essentially saying to not vote for it meant they were not for the best interest of the participants and were willing to accept a less effective service provider. That may have led to direction given to NCCC to see if through negotiations there was a chance for the other bidders to increase their planned performance or meeting the same performance projected by the incumbent.

Tom Indrieri commented on RFP processes at the county level and noted that NCCC does have the right to cancel all or any part of the RFP. If the decision were to re-let a new RFP it may give the bidders an opportunity to put together a better bid. Roger Abe concurred with Mr. Indrieri’s comments and added that the overriding goal of the One Stops is to provide the most effective and best services possible to its participants. He said you can look at the remaining proposals after one proposal has been disqualified, and it may appear that what is left may not provide the best possible services. So a new RFP can be issued in order to see if a provider can be found that will provide more effective services to the residents of Lake County. Echoing Tom Indrieri’s comments, Roger Abe said this would give Mendocino PIC and Lake County DSS a second opportunity to look at their proposals in light of how they scored, and increase the quality of their services to Lake County residents. If Lake One Stop Inc. is able to abide by and follow the terms and conditions of the process, submit a qualified proposal and if selected the end result would be the best services for Lake County residents.

Chris Paige asked if the RFP was reissued as was being discussed, could the current provider’s contract be extended another quarter in order to have the selected provider in place by October 1,

2010. Francene Kennedy responded that a motion today would be necessary under these special circumstances to extend the contract of the current Lake County service provider to continue the services until this issue is resolved. Ms. Kennedy said if that should be the panel's decision, she suggested the contract be extended for at least two quarters to allow time to put together a fair RFP and have continued services through the summer. John Chamberlin stated it is NCCC's obligation to keep services going. He said NCCC could enter into a noncompetitive procurement with Lake One Stop to continue services for the time it takes to let an RFP and conclude the process and add in funding for those one or two quarters. He would not have difficulty in writing and defending a sole source rationale for six months.

Tom Indrieri asked what changes would be made if a new RFP were to be released, since he assumed the RFP that just concluded would not be reissued. Francene Kennedy made reference to the 10 to 7 WIB vote on April 29th stating that it was not necessarily that those 7 WIB members did not want to re-let an RFP, where there was concern was if to re-let an immediate RFP and possibly come right back to the same bidder. If the panel should choose to re-let an RFP, NCCC would ensure there's a new review panel in place, include language for any potential conflict and consider what the parameters would be for the new RFP. It would be a new competition with opportunities for each bidder to come in and re-look at their first bid and offer a new one. Chris Paige inquired that in light of the current circumstances, could there be anything that would give any particular bidder an advantage or disadvantage. He also asked if the scoring and review information of the RFP had been disseminated. Francene stated that the information has not been released since negotiations are still in progress but once a decision has been made the review materials could be released. As for bidders having a fair competition, Ms. Kennedy said the RFP process was quite fair and the new RFP can be structured openly making former bids available for review.

Tom Indrieri stated that he would vote to put the RFP back out and give everyone a fair chance with a different review panel and a six month extension to the current service provider. Joe Pelaez agreed with Mr. Indrieri and encouraged a unanimous decision from the panel. Chris Paige also supported reissuing an RFP as discussed.

Roger Abe made a motion for a six month extension of the current Lake County service provider's contract and during that time period NCCC issue a new RFP for Lake County, a new review board be assembled and move forward with the process. Joe Pelaez second. It was noted that the six month extension for the current Lake County provider, Lake One Stop Inc., would be for the period July 1, 2010 through December 31, 2010.

Discussion continued. Regarding the statement giving everyone a fair chance, Andre Ross inquired if that includes Lake One Stop Inc. Mr. Ross stated that on April 29th a decision was rendered to disqualify that applicant on the basis of a perceived conflict of interest. They dispute the existence of any real or perceived conflict of interest but for the sake of clarity, if the panel is going to consider a resolution that gives everyone, perhaps specifically defining that to include an applicant that was previously disqualified by board action. Andrew Compoginis said this was discussed briefly at the April 29th meeting and he stated then that motion was still binding and in effect. That is to mean that anybody that participated or discussed that motion on December 10th cannot participate and submit a bid for this RFP or a later RFP for that contract. If Lake One

Stop Inc. is consistent and complies with that motion there is no reason for them not to submit a bid for a new RFP. Andre Ross read from the approved December 10th meeting minutes, “The Governing Board further insisted that any person who participated in voting on the previous or in the current motion from the WIB or Governing Board not be allowed to participate in the RFP process or submit a proposal to provide services.” Mr. Ross stated Lake One Stop did not vote in that process and any prohibition that applies to WIB members or Governing Board members travels with those members not with the applicants further down the stream. John Chamberlin said it’s that motion unless it’s revoked that stands. Lake One Stop’s bid would not be disqualified in the next RFP cycle unless there is a new violation of that motion. Roger Abe clarified that if somebody who participated in the December 10, 2009 WIB or Governing Board motions either now or sometime between now and when the new RFP process goes forward on behalf of Lake One Stop or any other person submitting a bid was a member of the WIB or Governing Board became a member or employee of a new bidder, that bid would be disqualified under that existing motion and rules set by the WIB and Governing Board. It would not disqualify Lake County because of their actions in the previous RFP process. Only in this new RFP process if some current or former board member participated in that vote, went to work for a new bidder and submitted a bid in this new RFP process, that bid would be disqualified.

Roger Abe stated that if it’s important that the motion be amended to say that any past violations of that rule in the previous RFP would not affect bids submitted in the new RFP he would add that to the motion. Joe Pelaez agreed.

PANEL RESOLUTION

On a motion by Roger Abe and seconded by Joe Pelaez, the NCCC Dispute Resolution Panel granted a six month extension to the current Lake County service provider’s contract, Lake One Stop Inc., for the period July 1, 2010 through December 31, 2010 and during that time period authorized NCCC to issue a new RFP for Lake County, with a new review board and move forward with a new RFP process. Any past violations in the previous RFP would not affect bids submitted in the new RFP. *Motion Carried.*

Roll Call Vote: Yes – 4; No – 0

<i>Roger Abe</i>	<i>Yes</i>	<i>Chris Paige</i>	<i>Yes</i>
<i>Joe Pelaez</i>	<i>Yes</i>	<i>Tom Indrieri</i>	<i>Yes</i>

Francene Kennedy thanked the panel members for their participation. Ms. Kennedy announced that the appeal hearing for Lake One Stop Inc. was scheduled for Friday, June 4th at 2:00 pm. It was noted that scoring materials from the previous RFP would be released to any Lake County bidder upon request once current contract negotiations have concluded. Richard Birk thanked the panel members for reaching a reasonable solution to this issue.

A question was raised about the release of the proposals submitted by the bidders in the previous RFP. Normally, records are made available to the public once contract negotiations have concluded. Since the process did not result in the awarding of a contract in Lake County, NCCC

legal counsel was asked to look into seeing if each bidder's proposal is still proprietary and not subject to be released publicly.

Representatives in attendance from Mendocino PIC were asked if they wished to comment. There was no comment from Mendocino PIC.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:10 p.m.