



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2010

Ms. Jacqueline Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2010-04513

Dear Ms. Hojem:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 376259 (MTA No. 2010-0102).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for information pertaining to RFP0700007 for high occupancy vehicle lanes to high occupancy toll lanes/managed lanes modification project, particularly (1) all technical and price proposals submitted in response to this RFP, (2) all METRO evaluation team scoring documents and evaluation notes, and (3) all executed contracts and schedules related to this RFP. You state you have released evaluation team scoring documents and the responsive executed contract. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. Furthermore, you state this information may contain proprietary information subject to exception under the Act. Accordingly, you have notified Raytheon Company, TransCore, and Electronic Transaction Consultants (collectively, the "third parties") of METRO's receipt of the request for information and of the third parties' right to submit arguments to this office as to why their information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see*

also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the third parties. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information was the subject of a previous request received by METRO, as a result of which this office issued Open Records Letter No. 2009-06628 (2009). In that ruling we concluded METRO may withhold the technical and price proposals under section 552.104 of the Government Code and the evaluation notes under section 552.111 of the Government Code. We note since the issuance of Open Records Letter No. 2009-06628, one of the two contracts to be awarded under RFP0700007 has been executed. Accordingly, the facts and circumstances have changed with regards to the submitted proposals since the issuance of the previous ruling, and METRO may not continue to rely on Open Records Letter No. 2009-06628 as a previous determination for this information. *See* Open Records Decision No. 673 (2001). Accordingly, we will address the submitted arguments against disclosure of the submitted proposals.

With respect to the evaluation notes subject to the previous ruling, which you have submitted as Exhibit 4, as we have no indication that the laws, facts and circumstances have changed with regards to that information since the issuance of the previous ruling, METRO may continue to rely on Open Records Letter No. 2009-06628 as a previous determination and withhold the evaluation notes in accordance with that ruling. As our ruling is dispositive for Exhibit 4, we do not address your claim under section 552.111 of the Government Code for this information.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Furthermore, section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision No. 541 at 4 (1990).

You state Exhibit 3 consists of the proposals submitted to METRO in response to RFP0700007. You further state two contracts are contemplated under RFP0700007. You inform us only one contract has been executed. You assert releasing the bid proposals at this time would harm METRO because if the second contract is not awarded, METRO will have to issue a new RFP. You state releasing the bid proposals prior to awarding the second

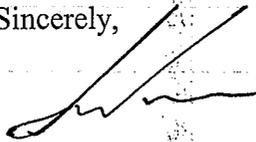
contract would give a competitive advantage to a competitor or other bidder, and argue there is a clear threat of harm to METRO's ability to obtain the lowest price and most favorable terms commercially possible. Based on your representations and our review of the information at issue, we conclude METRO may withhold Exhibit 3 under section 552.104 of the Government Code until such time as the second contract has been executed.¹ See Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

In summary, with regards to Exhibit 4, METRO may continue to rely on Open Records Letter No. 2009-06628 as a previous determination and withhold or release Exhibit 4 in accordance with that ruling. METRO may withhold Exhibit 3 under section 552.104 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

¹As this ruling is dispositive, we need not address the third parties' arguments against disclosure of their submitted proposals.

Ref: ID# 376259

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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