



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2010

Ms. Pauline E. Higgins
Senior Vice President and General Counsel
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

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OR2010-04902

Dear Ms. Higgins:

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# 375423 (MTA No. 2010-0091).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for the following information pertaining to RFP0700007 for the high occupancy vehicle lanes to high occupancy toll lanes/managed lanes modification project: (1) the contract awarded to TransCore and all related amendments and change orders; (2) the evaluations of all submitted cost and technical proposals; (3) the cost and technical proposals submitted by TransCore; and (4) the oral presentation materials, handouts, and oral transcripts submitted by TransCore. You state you have released information responsive to the first two categories of the request. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Furthermore, you state the submitted documents may contain proprietary information subject to exception under the Act. Accordingly, you have notified TransCore of METRO's receipt of the request for information and of the company's right to submit arguments to this office as to why its 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 TransCore. We have considered the submitted arguments and reviewed the submitted 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 the submitted information consists of the proposals and presentation materials submitted by TransCore to METRO in response to RFP0700007. You inform us that two contracts are contemplated under RFP0700007, and that only one of the contracts has been executed at this time. You state that METRO has not yet awarded the remaining contract and METRO's deliberations are ongoing. You assert releasing the submitted proposals and related presentation materials 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 you argue that 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 the submitted information 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).

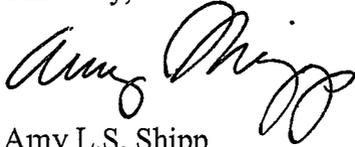
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As this ruling is dispositive, we need not address TransCore's arguments against disclosure of its submitted information.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 375423

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

c: Mr. Whitt Hall, P.E.
Associate Vice President
TransCore
4903 West Sam Houston Parkway North
Houston, Texas 77041
(w/o enclosures)