



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2011

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

OR2011-05437

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# 414827 (MTA Nos. 2011-0105 and 2011-0132).

The Metropolitan Transit Authority of Harris County (the "authority") received requests from two different requestors for the proposals submitted in response to and the evaluation scoring sheets pertaining to RFP No. RP1000027 for METROLift Transportation Services. You claim the submitted proposals and evaluation scoring sheets are excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of First Transit, Inc. ("First Transit"); MV Transportation, Inc. ("MV"); and Veolia Transportation. Thus, pursuant to section 552.305 of the Government Code, you notified these companies of the request and of their rights to submit arguments to this office as to why the submitted information should not be released. 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 to disclosure in certain circumstances). We have received comments from First Transit and MV. We have considered the submitted arguments and reviewed the submitted information

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes

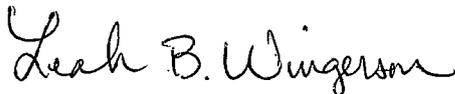
to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

Although you indicate a bidder has been chosen for the project at issue, you state a contract has not yet been awarded. You state the authority is currently negotiating the final terms and conditions of the contract. You explain, however, that if the negotiations are unsuccessful, the authority would begin contract negotiations with the next chosen bidder. You assert releasing the submitted bid proposals and evaluation scoring sheets prior to the execution of a contract would harm the authority's ability to negotiate a final agreement. Based on your representations, we conclude the authority may withhold the submitted information under section 552.104 of the Government Code.¹ However, the authority may no longer withhold the submitted information under this exception to disclosure once a contract has been executed. *See* ORD 541 at 5.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

¹As our ruling is dispositive, we need not address your remaining argument, or First Transit's and MV's arguments, against disclosure.

Ref: ID# 414827

Enc. Submitted documents

c: Requestors
(w/o enclosures)

Mr. Dick Alexander
Veolia Transportation
720 East Butterfield Road, # 300
Lombard, Illinois 60148
(w/o enclosures)

Mr. Jeremy A. Klotz
First Transit, Inc.
600 Vine Street, #1400
Cincinnati, Ohio 45202
(w/o enclosures)

Mr. Daniel Lee
MV Contract Transportation, Inc.
2024 College Street
Elk Horn, Iowa 51531
(w/o enclosures)
