



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2009

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

OR2009-02837

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# 336179 (MTA# 2009-0047, 2009-0063).

The Metropolitan Transit Authority of Harris County ("METRO") received two separate requests for five contracts between Parsons Transportation Group ("Parsons") and METRO. One request additionally sought any risk assessment document that METRO received from Price Waterhouse or the Federal Transit Administration (the "FTA"). You claim that the requested information is excepted from disclosure under sections 552.103, 552.104, 552.106, 552.110, and 552.111 of the Government Code. Furthermore, you also state this information may contain proprietary information subject to exception under the Act. Accordingly, you state, and have provided documentation showing, that you notified Parsons of METRO's receipt of the requests for information and of its right to submit arguments to this office as to why its information should not be released to the requestors. *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 Parsons. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments

from one of the requestors. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Initially, we note that you have not submitted any risk assessment document that METRO received from Price Waterhouse or the FTA. To the extent this information existed on the date METRO received the request, we assume you have released it. If you have not released this information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You seek to withhold the submitted information under section 552.104, which 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).

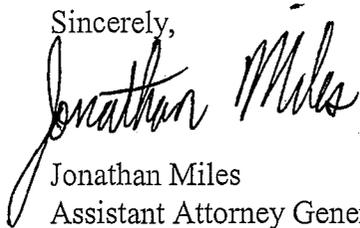
You state that the submitted information pertains to the final Development Agreement, which has not yet been entered into. You inform this office that METRO and Parsons are still negotiating the terms of the contract. You state that "[i]f METRO is not satisfied with the pricing and construction proposal of Parsons, then it can negotiate with the next qualified firm." You assert that the release of the submitted information would "put another firm at a competitive advantage because it could then base its proposal on Parson's proposal" and that "[s]uch a public disclosure would harm METRO's bargaining position." Accordingly, based on METRO's representations, we conclude that METRO may withhold the submitted information under section 552.104 of the Government Code until the agreement is finalized. As our ruling is dispositive, we need not address your remaining arguments against disclosure or Parson's arguments against disclosure.

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 at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned above the typed name and title.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 336179

Enc. Submitted documents

c: Requestor
(w/o enclosures)