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The Senate of
The State of Texas

ID# 11757
SG

RD-32

February 25, 1991

The Honorable Dan Morales
Attorney General
Supreme Court Building
Austin, Texas 78701
Attention: Susan Garrison

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FEB 25 91

Opinion Committee

Dear General Morales:

In response to your letter of February 22, 1991, I have enclosed documentation from the Law Firm of Mayor, Day & Caldwell, legal counsel for the Houston Metropolitan Transit Authority. In their letter they site specific provisions in the Open Records Act to enable them to maintain proposals in confidential status.

This is to request an Attorney General Opinion as to whether the Houston Metropolitan Transit Authority has the authority to meet in private to review bids for a proposed rail system.

If the information I have provided you is not sufficient to render an AG Opinion, please call Diana Lolley at 463-0385, and we will forward additional information at once. I ask that this opinion be expedited as this is my second request.

Sincerely,

JOHN WHITMIRE
Chairman
Senate Committee on
Intergovernmental Relations

Enclosure

JW/dnl

rec ID#
11633

MAYOR. DAY & CALDWELL

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February 13, 1991

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FEB 14 1991

Mr. Bob Lanier
Five Post Oak Park, Suite 2220
Houston, Texas 77027

Dear Bob:

METRO's General Manager, Bob MacLennan, has asked that I respond to your letter of January 31st. Since you set forth various legal positions in the letter, he thought it was appropriate that, as General Counsel to METRO, I undertake to provide a response.

You first request an opportunity to review all proposals submitted in response to METRO's Request for Proposals ("RFP") for a Fixed Guideway Transit System. These proposals have been maintained in confidential status by METRO pursuant to Sections 3(a)(4) and 3(a)(10) of article 6252-17a, V.T.C.S. ("Open Records Act"). In fact, METRO has assured proposers in writing that their proposals will be kept confidential until the procurement process has been completed. The proposers were further advised that, after completion of the process, the proposals would be considered public documents, except for those portions specifically designated as proprietary. The approach employed by METRO in connection with the RFP is consistent with its customary practice of not disclosing competitive proposals prior to contract award. It is METRO Staff's view that in a competitive negotiation process, as opposed to a bid process, METRO has an interest in preventing a competitor from gaining an unfair advantage over other competitors.

Subsequent to your letter, METRO has advised all the proposers of its interest in releasing the entirety of the proposals. A copy of Mr. MacLennan's letter dated February 1st to the TGI Group is enclosed. Identical letters were sent to the other proposers. I am advised that, in response to the letters, three of the proposers--Decoma, Titan and ALT--have authorized the release of their proposals. Accordingly, these materials are now available for your inspection. Please call METRO's Staff Counsel, Mr. Dennis Gardner, if you desire to arrange to review this information.

February 13, 1991

The two remaining proposers--TGI and AEG-Westinghouse--have declined to authorize release of their submittals at this time. Accordingly, these materials are being forwarded to the Attorney General pursuant to the terms of the Open Records Act. Please note, however, that TGI has informally advised that it will authorize release of nearly all of its proposal after February 21st, which is the last day for submission of supplemental information by proposers. Further, METRO has been informally advised that AEG-Westinghouse is preparing a revised proposal omitting material which it claims is proprietary. This revision should be available shortly. Accordingly, substantially all of the proposals by TGI and AEG-Westinghouse should be available for public review prior to any Board consideration of this matter. 1152

Secondly, you have inquired about the rationale for the METRO Board's conducting an Executive Session on Wednesday, January 30th. This meeting was conducted pursuant to Section 2(r) of art. 6252-17 ("Open Meetings Act"), which authorizes a public body to confer with staff for the purpose of receiving information, provided "that no discussion of public business or agency policy that affects public business shall take place between the members of the governmental body during the conference." Attached is a copy of my letter to the Board members explaining the guidelines for the meeting. Further, counsel was present throughout the meeting and the contents of the meeting were in fact strictly "informational." No decisions of any kind were made by the Board in the meeting, nor were there any proposed decisions even discussed. The presentations by the RFP proposers were part of this information gathering process and were designed to provide each proposer the opportunity to present information which it claimed to be proprietary to all Board members at once. This kind of process has been discussed and approved in Attorney General Opinion JM-248(1984).

As you are aware, METRO Staff videotaped the executive session of the Board's session on January 30th. At METRO's urging, several of the proposers have subsequently agreed that their presentations contained no proprietary information and authorized the release of the portions of the videotape containing their presentations. This material is also available for public inspection through METRO Staff Counsel. METRO Staff anticipates that after February 21st ample information will be available by which the public can fully assess all proposals to be considered by the METRO Board.

Let me assure you that the METRO Staff and Board are being counseled by me and Dennis Gardner at every step of this process. While I recognize that there may be differences of opinion, both

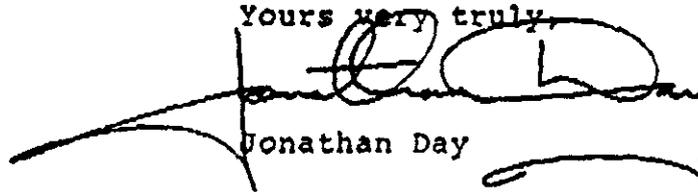
Mr. Bob Lanier

-3-

February 13, 1991

as to substance and procedure, Dennis and I are making every effort to assure that there are no violations of any legal requirements.

Yours very truly,

A handwritten signature in black ink, appearing to be 'Jonathan Day', written over a horizontal line. The signature is stylized and somewhat cursive.

Jonathan Day

JD:ts

Enclosures

cc: METRO Board Members
Bob MacLennan
Dennis Gardner

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