



ROD UNDERHILL, District Attorney for Multnomah County

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August 11, 2017

Steve Law
The Portland Tribune
6605 S.E. Lake Road
Portland, Oregon 97222

Michelle Bellia
Office of the Metro Attorney
600 N.E. Grand Avenue
Portland, Oregon 97232

Re: Petition of Steve Law, for The Portland Tribune, requesting Metro to release records submitted to the agency RFP No. 3113 Food Waste Processing Facilities

Dear Mr. Law and Ms. Bellia:

In his public records petition, dated August 2, 2017, petitioner Steve Law requests this office order Metro to disclose copies of the following records:

Submitted responses to the agency Request for Proposals (RFP) No. 3113, Food Waste Processing Facilities.

Metro is a metropolitan service district, comprising urbanized portions of Clackamas, Multnomah and Washington counties. One of its responsibilities is “the management and disposal of solid waste generated within its jurisdictional boundary.” Metro RFP 3113 Food Waste Processing Services, page 4 of 40. Metro issued an RFP on May 25, 2017, seeking “a company...to develop a food waste processing facility that can process up to 50,000 tons of commercial food waste per year.” Metro, *supra* page 6 of 40. The period to submit a proposal ended July 26, 2017.

Petitioner requested from Metro all of the submitted RFP responses on July 26, 2017, and again on July 27, 2017. Metro only disclosed the names of the seven organizations that submitted responses.

Petitioner argues that it is in the public interest to immediately, and publicly, examine all of the submitted materials of the seven organizations, including the technology proposed, past projects, company background, the team involved, costs, requests for public subsidies and possible location sites.

Metro claims that the records sought by petitioner are exempt from public disclosure under ORS 279B.060(6) until the Notice of Intent to Award is issued in October of 2017. Metro also claims that some of the records will remain exempt from public disclosure subsequent to the Notice of Intent to Award, such as trade secrets under ORS 192.501(2) and confidential information under ORS 192.502(4).

DISCUSSION

A. Disclosure Restricted Under Oregon Law – ORS 192.502(9)(a)

ORS 192.502(9)(a) exempts, “Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.”

“The confidentiality protection of any record covered by an Oregon statute outside of the Public Records Law is incorporated into the Public Records Law by ORS 192.502(9)(a). Such a record is exempt, conditionally exempt or partially exempt from disclosure to the extent provided in the incorporated statute.” *Attorney General’s Public Records and Meetings Manual* (2014), page 91.

ORS 279B.060(6)(a), which addresses competitive sealed proposals, provides:

Notwithstanding ORS 192.410 to 192.505, proposals may be opened in a manner to avoid disclosing contents to competing proposers during, when applicable, the process of negotiation, but the contracting agency shall record and make available the identity of all proposers as part of the contracting agency’s public records after the proposals are opened. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued. The fact that proposals are opened at a meeting, as defined in ORS 192.610, does not make the contents of the proposals subject to disclosure, regardless of whether the public body opening the proposals fails to give notice of or provide for an executive session for the purpose of opening proposals.

This statute, which references the Public Records Law, exempts from disclosure competitive sealed proposals until after the Notice of Intent to Award. “The Public Contracting Code provides for the confidentiality of proposals until after the contracting agency issues notice of intent to award a contract.” *Manual*, page 93. The legislature did not incorporate a public interest test into this exemption to Oregon Public Records Law.

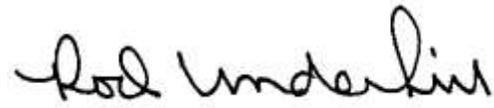
Petitioner points out that the RFP states at page 8, “In accordance with Oregon Public Records Law (ORS 192), proposals submitted will be considered part of the public record, except to the extent they are exempted [sic] from disclosure.” These records are a part of the public record at the time of submission to a public body, but the statute clearly states at what point those records then become available for public inspection, which is “after the notice of intent to award a contract is issued.” ORS 279B.060(6)(a). See also, *Petition of Allison Campbell*, MCDA PRO (July 24, 2013).

Metro has made two other arguments against disclosure of these records, which include the conditional exemption for Trade Secrets under ORS 192.501(2) and the exemption for Confidential Submissions under ORS 191.502(4). As we find that the requested records are exempt from disclosure due to ORS 279B.060, as incorporated by ORS 192.502(9), we do not need to address these further arguments at this time. Metro has conceded that portions of the requested records will be available for public inspection once the Notice of Intent to Award is issued.

ORDER

Accordingly, your petition is denied.

Very truly yours,

A handwritten signature in black ink that reads "Rod Underhill". The signature is written in a cursive style with a horizontal line underneath it.

ROD UNDERHILL
District Attorney
Multnomah County, Oregon