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Attorney General Yost  
c/o Opinions  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, OH 43215

Dear Attorney General Yost,

Multiple contracting authorities within Butler County in addition to the Board of Commissioners regularly issue requests for proposals pursuant to R.C. §307.862. Duties imposed upon the contracting authority or its designated committee include but are not limited to:

1. Ranking each proposal R.C. §307.862(A)(6)
2. If necessary, conduct discussions with offerors R.C. §307.862(A)(7)
3. Negotiate with the offeror who submits the proposal that is determined most advantageous R.C. §307.862(A)(9)

The contracting authority itself may perform these tasks or delegate those tasks to a ranking and selection committee who would then make a recommendation of award to the contracting authority.

It appears clear from the language of R.C. §307.862(C) that the submitted proposals themselves are not subject to public disclosure until after a contract is awarded. See also 2012 Ohio Op. Atty. Gen No. 2012-036. Furthermore, R.C. §307.862(A)(8) states, “[i]f the contracting authority determines that discussions described in division (A)(7) of this section are necessary, avoid disclosing any information derived from proposals submitted by competing offerors during those discussions[.]”

Ohio Revised Code § 121.22(A) requires, “public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.” Revised Code § 121.22(B) defines a public body in part as:

- a. Any board, commission, committee, council, or similar decision-making body of a state agency, institution or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county,

township municipal corporation, school district, or other political subdivision or local public institution

- b. Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

The Tenth District Court of Appeals, while not ruling conclusively on the questions below, strongly indicated that it believed any meeting by a contracting authority or its designated committee would not qualify to be held in executive session. *Wheeling Corp. v. Columbus & Ohio River RR. Co.*, 147 Ohio App.3d 460 (2001). The Court stated, “even if we accepted ORDC’s assertion that all the matters discussed were confidential under R.C. 121.22(G), which we do not, there is no dispute that the Selection Committee did not follow the requirements for holding an executive session.” *Id.* at 473. The court reiterated its skepticism at a later point, “ORDC further asserts that, even if there were deliberations over the operating agreement and resolution during executive session, such deliberations fell under the exception contained in R.C. 121.22(G)(5). However, even if we were to accept this as true (which we do not necessarily accept), there exists a violation of the OMA.” *Id.* at 476.

I am respectfully requesting an opinion on the following questions:

1. Are contracting authorities and appointed selection committees subject to R.C. § 121.22 when evaluating, ranking, discussing and negotiating proposals submitted pursuant to R.C. 307.862?
2. If question one is answered in the affirmative, is it lawful to conduct evaluations, rankings, discussions, negotiations and awards in executive session pursuant R.C. § 121.22(G)?
3. When, if ever, would any records generated as a result of an executive session or otherwise non-public meeting to evaluate, rank, discuss, negotiate, aside from the submitted proposals themselves, become public record?

Your assistance in this matter is greatly appreciated.



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