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11 Attorneys for Plaintiff

12
13 SUPERIOR COURT OF ARIZONA
14 MARICOPA COUNTY

15 PROFESSIONAL MEDICAL
TRANSPORT, INC. dba PMT
16 AMBULANCE, an Arizona
corporation,

17 Plaintiff,

18 v.

19 CITY OF MESA, an Arizona municipal
20 corporation,

21 Defendant.

CV 2009-036093

No.:

COMPLAINT

(Special Action)

22
23 For its Complaint, Plaintiff Professional Medical Transport, Inc. dba PMT
24 Ambulance alleges as follows:

25 **JURISDICTION, PARTIES AND VENUE**

26 1. This court has jurisdiction to entertain this special action and grant the relief

1 requested pursuant to A.R.S. §§ 39-121.02(A) and the *Arizona Rules of Procedure for*
2 *Special Actions*.

3 2. Plaintiff Professional Medical Transport, Inc. dba PMT Ambulance
4 (“PMT”) is an Arizona corporation that engages in the business of emergency
5 transportation services.

6 3. The City of Mesa (“Mesa”) is an Arizona municipal corporation.

7 4. This action arises out of conduct that occurred in Maricopa County, and
8 venue in this Court is proper pursuant to A.R.S. § 12-401 and Rule 4(b), *Arizona Rules for*
9 *Procedure Special Action*.

10 **GENERAL ALLEGATIONS**

11 5. On September 10, 2009, PMT requested that Mesa produce certain public
12 records relating to Request for Proposal #2009145 Regional Emergency Transportation
13 Services (the “RFP”) pursuant to A.R.S. § 39-121 *et. seq.* See Public Records Request
14 Form, attached as **Exhibit 1**.

15 6. As part of its document request, PMT requested that Mesa provide it with a
16 copy of the proposal SW General, Inc., dba Southwest Ambulance, Mesa AZ
17 (“Southwest”) submitted in response to the RFP.

18 7. On October 21, 2009, Mesa responded to PMT’s request for public records,
19 but refused to produce copies of all the documents requested, including the proposal
20 Southwest submitted in response to the RFP. See letter from Alfred J. Smith to Philip
21 Wooten dated October 21, 2009, attached as **Exhibit 2**.

22 8. Specifically, Mesa refused to produce the proposal submitted by Southwest
23 in response to the RFP because, “the regional partners are in the early stages of
24 negotiating an agreement with Southwest []” and that “it would be premature and not in
25 the best interest of the region to disclose the proposal received from Southwest [] at this
26 time.” See **Exhibit 2**.

1 *Armer v. Superior Ct.*, 112 Ariz. 478, 480, 543 P.2d 1107, 1109 (1975).

2 19. PMT is entitled to attorneys' fees and costs pursuant to A.R.S. § 39-
3 121.02(B).

4 **WHEREFORE**, PMT requests the following relief:


5 1. An order from this Court that Mesa must, within 3 business days,
6 produce all public records requested including but not limited to a copy of the
7 proposal Southwest submitted in response to the RFP.

8 2. Reasonable attorneys' fees and costs pursuant to A.R.S. § 39-
9 121.02(B).

10 3. Any other relief this Court deems just or proper.

11
12 DATED this 9th day of November, 2009.

FENNEMORE CRAIG, P.C.

14
15 By 
16 Timothy Berg
17 Andrew M. Federhar
18 Todd C. Wiley
19 Kristin Paiva
20 Attorneys for Plaintiff

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22
23
24
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Exhibit 1

Print Form

E-mail Form



Date: 9/10/09

PUBLIC RECORDS REQUEST FORM

Your Name: Philip R. Wooten Phone Number: 480-598-4330

Address: 3413 East Equestrian Trail City: Phoenix State: AZ Zip: 85044

I hereby certify under penalty of perjury that the requested records will not be used for commercial purpose as defined in ARS § 39-121.03
[X] Not for commercial purposes Date: September 10, 2009

The following information is needed before a records search can be conducted for your information. PLEASE PRINT CLEARLY

If the record will be used for a commercial purpose, please state that purpose below.

I would like to: [] Review requested documents [X] Obtain photocopies of requested documents
(There is a charge of 20 cents per page for 8 1/2 x 11 photocopies and \$5 per page for microfilm copies)

Documents requested (please be as specific as possible):
The City of Mesa's web site describes the following:
"CITY OF MESA ACKNOWLEDGMENT OF PROPOSALS RECEIVED MONDAY, AUGUST 3, 2009 REGIONAL EMERGENCY TRANSPORTATION SERVICES (REQUEST FOR PROPOSAL #2009145)
The following proposals were received on Monday, August 3, 2009:
SW General, Inc., dba Southwest Ambulance, Mesa, AZ"
Please provide me with copies of (1) the proposals referenced above which the City of Mesa received from SW General, Inc., dba Southwest Ambulance ("SWA"), Mesa, AZ, and (2) any correspondence (including but not limited to electronically generated correspondence such as email) between the City of Mesa and SWA concerning such proposals. Thank you.

REQUESTER, PLEASE DO NOT WRITE BELOW THIS LINE

Amount received \$ Payment received in form of: Cash Check Other

Employee(s) who filled this request:

Date request filled: () Picked up by requester on () Left in requester's media box () Other

() Enclosed is the record you requested. The record was not edited.
() Per Arizona Supreme Court guidelines, the attached record has been edited due to confidentiality rights of individuals named within.
The following information was redacted
() No record was found based on the information you provided.
() Other

Exhibit 2

RECEIVED OCT 22 2009



20 E Main St Ste 850
PO Box 1466
Mesa, Arizona 85211-1466

October 21, 2009

Philip R. Wooten, Esq
3413 E. Equestrian Trail
Phoenix, Arizona 85044-3403

Re: Public Records Request-Regional Emergency Transportation Services RFP #2009145

Dear Mr. Wooten:

Pursuant to your public records request I am providing you with the relevant email correspondence of City of Mesa employee Diane Ross, a buyer in our Purchasing Division. Ms. Ross was the point of contact in our purchasing office regarding the above referenced RFP. I am also enclosing a copy of a September 21, 2009 city Council Report and the supporting City Council resolution. These documents relate to the City Council action taken on September 21, 2009 wherein City Council authorized the City Manager to enter into negotiations with Southwest General, Inc. dba Southwest Ambulance ("Southwest Ambulance") for a Regional Emergency Transportation Services agreement.

Regarding your request for a copy of the Southwest Ambulance proposal, I am unable to provide you with a copy at this time. The regional partners are in the early stages of negotiating an agreement with Southwest Ambulance. As you are aware, after an agreement is finalized, the region will then need to submit the "final" agreement to the Arizona Department of Health Services ("ADHS") for its review and approval. Only after ADHS gives its approval can the agreement be considered final. Thus it would be premature and not in the best interests of the region to disclose the proposal received from Southwest Ambulance at this time.

Very truly yours,

Alfred J. Smith
Deputy City Attorney
City of Mesa Attorney's Office

AJS:am

Encls.

480 644.2342 (tel)
480 644.2499 (fax)

Exhibit 3

PHILIP R. WOOTEN, P.C.

A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

3413 EAST EQUESTRIAN TRAIL, PHOENIX, ARIZONA 85044-3403
(480) 598-4330 • (480) 598-4331 (Fax)
philip.wooten@azbar.org

October 24, 2009

VIA FACSIMILE AND REGULAR MAIL

Alfred J. Smith, Esq.
Deputy City Attorney
City of Mesa Attorney's Office
P O Box 1466
Mesa AZ 85211-1466

Re: Request for Proposal #2009145 ("RFP")
Professional Medical Transport dba PMT Ambulance ("PMT")
SW General, Inc., dba Southwest Ambulance ("SWA")
Public Records Request dated 9/10/09 ("Request")

Dear Mr. Smith:

I write in response to your October 21, 2009, letter to me.

In the first paragraph of your letter, you describe the documents that you produced with your letter in response to the above referenced Request. For clarity, I reproduce as follows the body of the Request describing the documents I requested:

The City of Mesa's web site describes the following:

"CITY OF MESA ACKNOWLEDGMENT OF PROPOSALS RECEIVED MONDAY, AUGUST 3, 2009 REGIONAL EMERGENCY TRANSPORTATION SERVICES (REQUEST FOR PROPOSAL #2009145)

The following proposals were received on Monday, August 3, 2009:
SW General, Inc., dba Southwest Ambulance, Mesa, AZ"

Please provide me with copies of (1) the proposals referenced above which the City of Mesa received from SW General, Inc., dba Southwest Ambulance ("SWA"), Mesa, AZ, and (2) any correspondence (including but not limited to electronically generated correspondence such as email) between the City of Mesa and SWA concerning such proposals. Thank you.

Alfred J. Smith, Esq.
Deputy City Attorney
October 24, 2009
Page 2

In your October 21 letter, you advise me of Mesa's refusal to provide the SWA proposal. Unless you promptly advise me otherwise in writing, I will assume that you are referring to a proposal submitted by SWA on August 3, 2009, as announced on Mesa's web site. That web site references "proposals" in the plural. Demand is hereby made that no later than Wednesday, October 28, 2009, you advise me in writing if there was only one proposal submitted by SWA, or if there was more than one proposal, then provide me by that date with a description or index identifying all of SWA's proposals which were received. See A.R.S. § 39-121.01(D)(2).

Demand is further made that no later than Wednesday, October 28, 2009, you advise me in writing the specific facts and legal authorities supporting the statement in the second paragraph of your letter that "it would be premature and not in the best interests of the region to disclose the proposal received from Southwest Ambulance at this time." In preparing your response to this demand, I ask that you consider the following:

1. There is no "region" nor any legal entity bearing that name. In my exchange of letters with Mesa regarding PMT's protest, Mesa admitted that no intergovernmental agreement ("IGA") has been entered into. Thus, the Region does not exist. Please explain how you or Mesa can determine what is or is not in the best interests of any entity which does not exist.

2. Regardless of whether your letter is on behalf of Mesa, or the so-called region, or both, the burden is upon your client(s) to show that production of SWA's proposal is detrimental to the best interests of your client(s). See Phoenix Newspapers, Inc. v. Ellis, 215 Ariz. 268, 273, 159 P.3d 578, 583 (App. 2007). SWA's proposal is without question a public record. A.R.S. § 41-1350. Thus, the strong presumption in favor of disclosure can only be overcome by your client(s) providing proof of the probability of specific, material harm that will result from disclosure. See Phoenix Newspapers, 215 Ariz. at 273, 159 P.3d at 583. Your letter merely states a conclusion, but provides none of the facts and law on which your client(s) have the burden of proof.

3. Substantively, the conclusion in your letter makes no sense. SWA's proposal is what it is. Any further negotiations between Mesa, the so-called region, and SWA and/or any changes required by ADHS will not change the fact that SWA's proposal is obviously a public document which Mesa received on August 3, 2009, and which is the subject of the City Council Report you provided to me, and that SWA was the only responder to the RFP.

Alfred J. Smith, Esq.
Deputy City Attorney
October 24, 2009
Page 3

4. Mesa has already substantively considered and taken action on SWA's proposal. Mesa concluded that SWA's proposal was responsive and on that basis has decided to enter into further negotiations with SWA.

There may also be another failure of Mesa to produce the public documents described in part (2) of the Request. In the first paragraph of your letter, you seem to be limiting the scope of my Request for correspondence. I did not limit the Request to correspondence regarding SWA's proposal(s) in which Diane Ross was involved. The Request seeks all the described correspondence. Demand is hereby made that no later than Wednesday, October 28, 2009, you advise me in writing if any correspondence described in the Request has been withheld.

Mesa's position is untenable. If all of the documents described by my Request are not produced to me by Wednesday, October 28, 2009, then PMT will file a lawsuit against at least Mesa and seek at least attorneys' fees and costs. See A.R.S. § 39-121.02.

Very truly yours,



Philip R. Wooten

cc (via telefax): Mr. Bob Ramsey