

BEFORE THE MISSISSIPPI ETHICS COMMISSION

MISSISSIPPI JUSTICE INSTITUTE

COMPLAINANT

V.

CASE NO. M-18-010

CITY OF NATCHEZ, MISSISSIPPI

RESPONDENT

RESPONSE TO THE REPLY OF
MISSISSIPPI JUSTICE INSTITUTE

The City of Natchez disagrees with the Mississippi Justice Institute in classifying this case as a simple Open Meetings Act case. The City submits that the Mayor and Board of Aldermen do not operate in a vacuum during meetings of the Mayor and Board. The City submits that while it is obligated to comply with the Open Meetings Act, there are other statutory laws created by the Legislature that the Mayor and Board have to take into consideration in conducting its meetings. The Mississippi Justice Institute argues that this was simply a case of issuing a garbage contract. The Mississippi State Legislature developed a special procedure for issuing requests for proposals for waste collection in §31-7-13(w) of the Mississippi Code Annotated of 1972, as amended. The Legislature determined that governing authorities are allowed to obtain information in addition to the price which pertains to financial responsibility, technology, legal responsibilities and other prudent factors that are deemed appropriate by the governing authority.

The process for issuing Requests for Proposals for solid waste and recycling collection services for the City of Natchez was not a simple process. The City of Natchez had open meetings for the discussion of the process for solid waste and recycling services during the following meetings:

1. Special Call Meeting January 29, 2018, 4:30 P.M., the Board discussed the terms of the RFP for Waste Disposal and Recycling.
2. February 7, 2018, 4:30 P.M., a work session was held for public input to discuss RFP for

Waste Collection and Recyclables.

3. February 13, 2018, 11:00 A.M., Regular Meeting discussing garbage and recycling RFP.
4. March 9, 2018, 8:30 A.M., Special Call Meeting to approve RFP for Waste Collection and Recycling.
5. March 13, 2018, 11:00 A.M., Regular Meeting -approval of RFP for Waste Collection and Recycling for publication.

The Mayor and Board of Aldermen did not conduct any discussions of the RFP process in executive session during these meetings which established the procedure which would be used by the City.

As part of the Requests for Proposals, the notice specifically provided that the Proposals would be handled so as to avoid disclosure of contents to competing companies during the process of negotiations. As the Mayor and Board of Aldermen entered into the process of reviewing the Proposals and discussing the confidential information contained within the Proposals submitted by the various companies, it became necessary for the Board to discuss these matters outside the realm of the general public. In addition to protecting the confidential information of the various companies pursuant to Section 25-61-9 of the Miss. Code Ann. of 1972, as amended, the Legislature provided a procedure to maintain the confidentiality of competitive sealed Proposals. Section 25-61-5(1)(b) of the Miss. Code Ann. of 1972, as amended, provides that Proposals which have been submitted pursuant to a request for competitive sealed proposals can remain confidential during the negotiation process and do not have to be produced until seven (7) working days after the notice of intent to award is issued to the winning proposer.

Even if the Commission determines that §25-41-7(j) which provides an exception to the Open Meetings Act for the discussion in executive session for “the transaction of business and

discussions or negotiations regarding the location, relocation or expansion of a business, medical service or an industry” is not applicable, the Mayor and Board of Aldermen have an obligation to the companies submitting proposals to protect their confidential information as well as an obligation to the public to conduct negotiations of the Proposals in accordance with the statutory process to get the best negotiated price for the citizens of the City of Natchez. When you balance these statutory obligations with the mandates of the Open Meetings Act, the City of Natchez submits that the overriding factors of protecting confidential information and protecting the process of competitive sealed proposals process dictates the need to discuss these matters in executive session. The only aspect of the RFP process that was discussed in executive session was related to discussing confidential information of the companies and the pricing submitted by the companies.

In *Board of Trustees v. Mississippi Publishers Corp.*, 478 So. 2d 269 (Miss. 1985), the Mississippi Supreme Court weighed the negative aspects proposed by the Board of Trustees against the balance of the statutory declared public policy of openness as provided in the Open Records Act. Even though the Mississippi Supreme Court ruled against the Board of Trustees, the case establishes that you have competing issues to be reviewed to determine what is best for the citizens of the City of Natchez in the case at bar. The City of Natchez certainly feels that the legislative protections for the proposing companies and the legislative process providing for competitive sealed proposals outweigh the mandates of the Open Meetings Act with response to the limited discussions taken by the Mayor and Board.

The City of Natchez respectfully requests that the Complaint filed by the Mississippi Justice Institute be dismissed.

Respectfully submitted, this the 13th day of June, 2018.

CITY OF NATCHEZ, MISSISSIPPI

BY: 

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CERTIFICATE OF SERVICE

I, ROBERT C. LATHAM, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the foregoing instrument to:

Mr. Shadrack T. White
520 George Street
Jackson, MS 39202.

SO CERTIFIED, this the 13th day of June, 2018.


ROBERT C. LATHAM