

5/2/18 Mobility Cmte
Public Comment
from Chris Miles

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MEMORANDUM

TO: Susan Koppelman
FR: Knoll Lowney, Smith & Lowney PLLC
RE: Transparency in setting performance standard for Access RFP
DATE: April 26, 2018

This memo summarizes our research on the policy and legal necessity of transparency in King County Metro's setting of performance standards for the Access Request for Proposal ("Access RFP"). The performance standards at issue are at the heart of the Access RFP, because they will determine whether the County's Access transportation system will provide a level of service that complies with the Americans with Disabilities Act ("ADA") and preserves the ability of elderly persons and persons with disability to live independently and to their full potentials.

Most importantly, our research has revealed no basis for the claim that the performance standards for the Access RFP should or must be developed in secret. We similarly found no legal support for requiring subcommittee members working on the performance standards to sign a non-disclosure agreement. To the contrary, our research suggests that there are critical legal and policy reasons to allow advocates and the public to participate in setting these performance standards, including the following:

Setting the performance standards involves the development of a *public policy* which will have critical impacts on the elderly and persons with disability throughout King County. If the performance standards are set below what is needed by the impacted community, people will be deprived of their ability to live independently and to their full potential. The fact that the ADA governs these performance standards shows that these standards are not merely a contracting issue. Importantly, because the performance standards will apply equally to all submitting proposals under the Access RFP, there is no justification for cloaking these discussions under an NDA or excluding members of the public.

Transparency is a prudent measure to protect the County. Advocates previously demonstrated that the original Access RFP was legally vulnerable because it lacked performance standards necessary to comply with the ADA. By setting performance standards in a public process, the County is much more likely to develop a legally defensible Access RFP. While cloaking discussions in secrecy may be expedient in finalizing the RFP, it would almost certainly be slower in the