



THE ATTORNEY GENERAL
OF TEXAS

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August 30, 1990

Mr. Lias "Bubba" Steen
Executive Director
State Purchasing and General
Services Commission
P.O. Box 13047, Capitol Station
Austin, Texas 78711-3047

OR90-418

Dear Mr. Steen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 7089.

The State Purchasing and General Services Commission (SPGSC) received an open records request for all information held by the commission relating to a "Request for Information for video services," specifically a video conference system for the State of Texas, i.e., a proposal by a private company to provide video services to the state. Two companies submitted proposals. Each proposal carried a notice of proprietary data or trade secrets intended to prohibit disclosure, duplication, or use by the recipient (here, the SPGSC) of the data within the proposal.

GTE Spacenet Corporation (GTE), one of the companies who submitted a proposal, claims that the information it provided to SPGSC is excepted from disclosure under sections 3(a)(4) and 3(a)(10) of the Open Records Act. The other company, Videoconferencing Systems, Inc. (VSI), did not respond to a request from SPGSC to offer arguments why its proposal should be excepted from disclosure. The SPGSC takes no position as to the releasability of the information. Therefore, information submitted by VSI must be released.

Section 3(a)(4) of the act protects from required public disclosure information which, if released, would give advantage to competitors or bidders. The purpose of section 3(a)(4) is to protect the governmental body's purchasing interest by preventing a competitor or bidder from gaining

an unfair advantage over other competitors or bidders. It is not designed to protect the commercial or financial interests of private individuals or entities. See Open Records Decision Nos. 463 (1987); 331 (1982). Section 3(a)(4) does not apply after bidding is over and a contract has been awarded. Open Records Decision No. 406 (1984). Consequently, if the specific contract in question here has been awarded, section 3(a)(4) does not apply.

Section 3(a)(10) excepts from required public disclosure

trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

This section protects two distinct categories of information: trade secrets and commercial or financial information. GTE does not allege that any trade secrets are at issue here. GTE contends only that release of certain commercial and financial information is confidential and released only to prospective customers, such as the State of Texas, and not to the general public. GTE contends that the material would provide a competitive advantage to anyone acquiring the information because such a person or entity would gain insight GTE's management organizational structure and resources, its technical approach to the state's video conference needs, performance methods and systems and its pricing strategy. GTE also contends that disclosure of the information would impair the ability of SPGSC to obtain this type of information in the future.

Commercial or financial information is excepted under section 3(a)(10) if disclosure of the information is likely to impair the government's ability to obtain necessary information in the future or to cause substantial harm to the competitive position of the person or entity from whom the information was obtained. See Apodaca v. Montes, 606 S.W.2d 734; Open Records Decision Nos. 406 (1984); 306 (1982). The portions of the proposal marked by GTE contain details of the company's methodology, implementation and development assistance and services. Included is detailed information about the company's contents, operation and staffing, its monitor and control system and its tracking system. As release of this information could harm the competitive position of the company, those portions of the proposal it marked may be withheld under section 3(a)(10). The rest must be released. The proposal by VSI must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-418.

Yours very truly,

David A. Newton

David A. Newton *by S G*
Assistant Attorney General
Opinion Committee

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Ref.: ID# 7089

Enclosure: Documents Submitted

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