



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1994

Ms. Donna M. Atwood
Legal Counsel
D/FW International Airport Board
P.O. Drawer 619428
Dallas, Texas 75261-9428

OR94-656

Dear Ms. Atwood:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27936.

You state that seven public entities in the Dallas/Fort Worth Metroplex (the "member entities") jointly solicited proposals for consultant services relating to a program designed to "assist interested and qualified small or DMW [disadvantaged/minority/women-owned] business enterprises to increase bonding capacity and to obtain acceptable bonding in connection with [m]ember entity contracts." You indicate that the proposed program, the Regional Surety Support Program, would be contracted for through an interlocal agreement among the member entities. The consultant selected by the member entities would be responsible for designing, marketing, implementing and administering the program. You state that the member entities have interviewed consultants and conducted second interviews with some of the consultants, but have not yet awarded a contract.

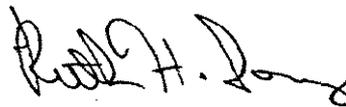
The Dallas-Fort Worth International Airport Board (the "airport board") served as the lead entity for soliciting and receiving proposals ("RFPs") for the consultant services. The airport board received an open records request for the proposals submitted by each consultant selected for a second interview, and copies of the evaluations on each consultant. You contend that this information may be withheld from disclosure pursuant to section 552.104 of the Government Code. You state:

The overall selection process for the proposed contract entails initial review of written proposals, interviews, selection of a most preferred firm, and negotiations with that proposer; in the event agreement cannot be reached with the most preferred firm, negotiations begin with the next preferred firm, and so on. During contract negotiations, the proposer may be asked (and is at liberty) to furnish additional information

Section 552.104 of the Open Records Act protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental entity's interests in a commercial context by keeping some competitors from gaining unfair advantage over other competitors. Open Records Decision Nos. 592 (1991) at 8; 541 (1990) at 4. Release of this information during the time that competitors may clarify, modify, or withdraw their proposals could result in an advantage to the other competitors or damage the member entities' ability to obtain truly competitive bids. The evaluations and proposals may therefore be withheld from disclosure at this time under section 552.104.¹ However, we note that section 552.104 does not provide an exception from disclosure once the contract is signed and in effect. Open Records Decision Nos. 306 (1982); 184 (1978).

We are resolving this matter with this informal letter ruling rather than with a published open records decision.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 27936

Enclosures: Submitted documents

¹Because this information may be withheld from disclosure under section 552.104, we do not need at this time to address your arguments that the information is excepted from disclosure under sections 552.101, 552.110, and 552.111.

cc: Mr. Calvin W. Stephens
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