



Office of the Attorney General  
State of Texas

January 16, 1995

DAN MORALES  
ATTORNEY GENERAL

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

OR95-006

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# 30435.

The Dallas-Fort Worth International Airport Board (the "board") issued a request for qualifications ("RFQ") from vendors for a new food and beverage concession program. You state that the board received 280 proposals in response to the Request for Proposal ("RFP") and selected 153 for further consideration. The board has received an open records request for the proposals that were submitted by three of the vendors still being considered. You contend that the requested proposals may be withheld from the public pursuant to section 552.104 of the Open Records.<sup>1</sup>

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." Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.,* Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information while the governmental officials are in the process of evaluating the proposals and may ask the competitors to clarify their bids. *Cf.* Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982); 184 (1978).

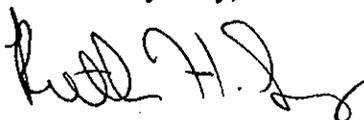
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<sup>1</sup>You submitted the RFQ to this office. We assume that the RFQ was submitted for informational purposes only and that the requested proposals are at issue.

Representative samples of the three requested proposals have been submitted to this office for review.<sup>2</sup> You state that the board has not yet made its recommendations for selection of vendors and no contracts have been awarded. You also indicate that during this time the vendors being reviewed may provide additional information concerning their proposals to the board. Under these circumstances, the board may withhold the requested proposals pursuant to section 552.104.<sup>3</sup> 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 for the contract or damage the board's ability to obtain truly competitive bids.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 30435

Enclosures: Submitted documents

cc: Ms. Ester Levy  
LT Hospitality Group  
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(w/o enclosures)

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<sup>2</sup>We assume that "representative samples" of the proposals that were submitted to this office are truly representative of the requested proposals as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each records contains substantially different information, all must be submitted).

<sup>3</sup>Because this information may be withheld under section 552.104, we do not address your arguments that the information also is excepted from disclosure under sections 552.110 and 552.101. You state that the board wishes "to reserve the option to raise arguments" under these exceptions should another request for the proposals be made. Pursuant to section 552.301, should the board receive another open records request for the proposals after the contract is in effect, the board should timely submit to this office a request for a decision.