



Office of the Attorney General

State of Texas

December 9, 1996

DAN MORALES
ATTORNEY GENERAL

Ms. Amy L. Whitt
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 78457

OR96-2329

Dear Ms. Whitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102462.

The City of Lubbock (the "city") received a request for "all proposals from the finalists" regarding the city's RFP#13676. You contend that the requested information is excepted from required public disclosure under sections 552.104 and 552.110 of the Government Code.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 (1991) at 2. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision 541 (1990) at 4.

You state that a contract has not yet been awarded, that negotiations may continue, and that public release of the requested information "would be a disadvantage to the City in negotiating a contract with [a competitor], including that limitations on alternate sources and costs to the City would be exposed." In Open Records Decision No. 170 (1977), this office stated that

[s]o long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding should be deemed competitive. Release of the bids while the bidding is still competitive would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract being let.

Open Records Decision No. 170 (1977) at 2.

Under the circumstances presented to us, we conclude that the bidding process is still competitive. Therefore, you may withhold the requested information from required public disclosure under section 552.104 at this time. However, once the competitive bidding process is completed and a contract has been awarded, you may not continue to withhold this information under section 552.104. Open Records Decision No. 541 (1990) at 5.¹

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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 102462

Enclosures: Submitted documents

cc: Mr. Steve Dersch
Quote Underwriting Supervisor
Ted L. Parker & Associates, Inc.
3223 S. Loop 289, Suite 450
Lubbock, Texas 79423
(w/o enclosures)

¹As we resolve this matter under section 552.104, we need not address your arguments under section 552.110. However, the requested information may contain trade secrets or commercial or financial information. Therefore, if the city receives another request for this information after the contract has been awarded, the city should seek a ruling from this office on whether the information must be withheld under section 552.110 prior to releasing the information.