



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 27, 1997

Ms. Roxanne Nemcik  
Acting City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842-9960

OR97-0637

Dear Ms. Nemcik:

You ask 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# 106350.

The City of College Station (the "city") received a request for "all proposals for a hotel and convention center project in College Station received by the city since January 1, 1997." You contend that the requested information is excepted from required public disclosure by section 552.104 of the Government Code. We have considered your arguments and have reviewed the information submitted.

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 and that the release of these proposals at this time will harm the competitive process, specifically as it relates to scheduled oral presentations. 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. Assuming that the bidding process is "still competitive" under the standard enunciated above, you may withhold, at this time, the requested information from required public disclosure under section 552.104. If the bidding process is no longer competitive, however, you may not rely on section 552.104 to withhold this information. 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. Under the circumstances presented to us, we conclude that you may withhold the requested information from required public disclosure under section 552.104 of the Government Code.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/alg

Ref.: ID# 106350

Enclosures: Submitted documents

cc: Mr. Joe Michael Feist  
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