



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 22, 1998

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
Office of the City Attorney
1000 Throckmorton Street
Fort Worth, Texas 77553

OR98-0203

Dear Mr. Davis:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111834.

The City of Fort Worth (the "city") received a request for copies of any M/WBE Utilization Forms, Prime Contractor Waiver Forms, or Good Faith Effort Forms regarding Project No. PS46-070460410260. You assert that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.104 of the Government Code. We have considered your arguments and have reviewed the submitted information.¹

Section 552.104 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is generally invoked to except information relating to competitive bidding situations involving specific commercial or contractual matters. Open Records Decision No. 463 (1987). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 (1990) at 4, 520 (1989) at 4. Governmental bodies may withhold

¹We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

bid information while governmental officials are in the process of evaluating the proposals and asking competitors to clarify their bids. 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).

You state that the documents requested are required submissions to the city as that part of the competitive bidding process which ensures compliance with the city's Minority/Woman Business Enterprise ordinance. You argue that "it is obvious what damage to the competitive process would be done if any project bidder could acquire the list and amounts of the proposed M/WBE subcontracts of its competitors and, say, offer them an extra 3% to drop the old bidder and do an exclusive for the acquisitive bidder. Such a scenario looms in the instant case." You also inform this office that the contract for the project involved has not been awarded. Upon review of the information submitted and the facts presented, we conclude that the city may withhold the requested information under section 552.104.²

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.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 111834

Enclosures: Submitted documents

cc.: Mr. Harry N. Monck
Corporate Counsel
Enviro Remediation Coatings Services, Inc.
19951 Sand Creek Court
Katy, Texas 77449
(w/o enclosures)

²As we resolve your request under section 552.104, we need not address your section 552.101 argument.