



November 10, 1999

Mr. Michael S. Copeland
Assistant City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR99-3196

Dear Mr. Copeland:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130658.

The City of Denton (the “city”) received a request for “copies of bids submitted for Power Transformers manufactured by [two named companies],” “copies of the [city’s] formal bid evaluation details,” and “copies of any [city] internal information used in the bid evaluation process.” You indicate the request refers to bid number 2408, and that you have released information responsive to much of the request. You have provided for our review additional information that is also responsive to the request, specifically the bids of the two named companies. You assert the additional information is excepted from public disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. We have reviewed the information you have submitted and considered the exceptions you assert.

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). 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 at 2 (1991), 463 (1987), 453 at

3 (1986). 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 at 4 (1990), 520 at 4 (1989). A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 at 2 (1987). As the exception was developed to protect a governmental body's interests, that body may waive section 552.104. *See* Open Records Decision No. 592 at 8 (1991).

In this instance, you explain that the bidding process for bid number 2408 is still competitive. You inform this office that the deadline for submitting bids has passed, but "selection and approval of the successful bidder, together with contract negotiation and execution remain pending." You further explain: "[T]he Council might not approve any of the bids and direct re-bidding or some other action."

We have previously held that so long as negotiations are in progress regarding the interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to the proposed contract, bidding should be deemed competitive and therefore, information relevant thereto may be withheld under section 552.104 prior to the award of the contract. Attorney General Opinion MW-591 (1982); Open Records Decision No. 170 (1977); *see* Open Records Decision No. 541 (1990). Accordingly, you may withhold the remaining requested information under section 552.104 until the contract is executed.

Because we make a determination under section 552.104, we do not address your additional arguments against disclosure. 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.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 130658

Encl. Submitted documents

cc: Mr. Daniel L. Morgan
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(w/o enclosures)