



April 26, 2000

Ms. Harlene S. Kennedy  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2000-1633

Dear Ms. Kennedy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135561.

The City of San Antonio (the "city") received two written requests for the rating sheets and a list of firms for the "1999 Bonds, 2003 MPO, and 25<sup>th</sup> year CDBG Projects." You explain that the city issued a "Request for Qualifications" for thirty-five different projects funded by the above referenced monies and that ninety-three companies responded to the RFQ. You further explain that the city will review the proposals of twenty-nine bidders, accept or reject each, and then negotiate a contract for those proposals that the city accepts. Once the city council approves each individual contract, the respective contract will be executed. You contend that the requested information is exempt from disclosure at this time pursuant to section 552.104 of the Government Code.

Section 552.104 protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is generally invoked to exempt 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, exempt bid or proposal information from disclosure once the bidding is over and the contract is in effect, Open Records Decision Nos. 306 (1982), 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978).

Because you state that the city has not yet awarded contracts regarding the various construction projects, we conclude that the city may withhold the requested information at this time pursuant to section 552.104. 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 city's ability to obtain truly competitive bids.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

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<sup>1</sup>However, once each respective contract is in effect, section 552.104 will no longer serve to protect information pertaining to that particular project.

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Patricia Michels Anderson".

Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/RWP/ljp

Ref: ID# 135561

Encl. Submitted documents