



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 15, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-00659

Dear Mr. Phillips:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 332320 (Public Information Request No. 0294-09).

The City of Fort Worth (the "city") received a request for specified bid documents pertaining to the Westside Water Treatment Plant. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Furthermore, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

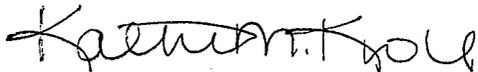
You inform us the city advertised for bids in September 2008 for the construction of the Westside Water Treatment Plant, and the bids were to be received by the city in October 2008. You state the city is in the process of evaluating the bid proposals, and once the

evaluation is complete, the city staff will make a recommendation to the city council. You further state that until a final written contract is signed, the recommendation of city staff may change, the recommendation may be rejected by the city council, or negotiations with the eventually selected bidder may fail. You argue release of the submitted information will harm the city's negotiation position in the next phase of the contracting process, and in the event a revised request for proposals is needed, would harm the city's ability to obtain genuinely competitive bids. Based upon your representations and our review, we conclude the submitted information may be withheld from the requestor under section 552.104 of the Government Code until such time as the contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress 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 under negotiation).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/egg

Ref: ID# 332320

Enc. Submitted documents

c: Requestor
(w/o enclosures)