



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-14792

Dear Ms. Byles:

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# 358670 (CFW PIR Nos. 4931-09, 5187-09).

The City of Fort Worth (the "city") received two requests for certain information pertaining to request for proposals ("RFP") 09-0012. You state that you have no information regarding award notifications and awarded proposals.¹ You claim that the submitted bid tabulation sheets are 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 required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

You state that the bidding process for RFP 09-0012 has closed, and finalists have been chosen, but that no single vendor has been selected and a final contract has not yet been executed. You state that until a final contract is signed, it is possible the proposals may be rejected and a new RFP issued. You assert that releasing the submitted bid tabulation sheets would harm the city's negotiating position regarding RFP 09-0012 because "[k]nowing the firms and proposals which were preferred or rejected at the current stage would allow the eventually selected bidder to deduce the limits of the [c]ity's willingness to contract and discourage the vendor from offering or accepting mutually beneficial terms." You also assert that releasing the submitted bid tabulation sheets would harm the city's ability to obtain genuinely competitive bids in the event that a new RFP was issued because vendors would be able to "emulate a bid that they know has been successful rather than giving their honest estimation of how they would perform the proposed services and how much compensation they would require." Based on your representations and our review, we conclude the city has demonstrated how release of the submitted bid tabulation sheets would harm its interests in a competitive situation. Accordingly, the city may withhold the submitted information under section 552.104 of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 358670

Enc. Submitted documents

c: Requestor (2)
(w/o enclosures)