



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2010

Mr. Hyatte O. Simmons
General Counsel
Dallas Area Rapid Transit
P. O. Box 660163
Dallas, Texas 75266-0163

OR2010-00035

Dear Mr. Simmons:

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# 366090.

Dallas Area Rapid Transit ("DART") received a request for a specified contract. You indicate that the submitted information may contain a third party's proprietary information subject to exception under the Act. Accordingly, you have notified Dikita Management Services ("Dikita") of this request for information and of its right to submit arguments to this office explaining why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Dikita. We have considered these arguments and reviewed the submitted information.

We note a portion of the submitted information, which we have marked, is not responsive to the instant request for information because it does not constitute the contract specified in the request. This ruling will not address such non-responsive information and DART need not release it in response to this request.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Dikita

argues that a portion of the submitted information is excepted from disclosure under section 552.101 in conjunction with sections 2254.003 and 2254.005 of the Government Code. Section 2254.003 of the Government Code provides as follows:

(a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

(1) on the basis of demonstrated competence and qualifications to perform the services; and

(2) for a fair and reasonable price.

(b) The professional fees under the contract may not exceed any maximum provided by law.

Id. § 2254.003(a), (b). Section 2254.005 of the Government Code provides that “[a] contract entered into or an arrangement made in violation of this subchapter is void as against public policy.” *Id.* § 2254.005. In general, section 552.101 only excepts information from disclosure where the express language of a statute makes certain information confidential or states that information shall not be released to the public. Open Records Decision No. 478 (1987). The plain language of sections 2254.003 and 2254.005 does not expressly make any information confidential. Sections 2254.003 and 2254.005 only prohibit the award of certain government contracts on the basis of competitive bidding. Accordingly, we determine that no portion of Dikita’s information is confidential pursuant to section 2254.003 or section 2254.005. Thus, DART may not withhold any portion of Dikita’s information pursuant to section 552.101 of the Government Code in conjunction with section 2254.003 or section 2254.005 of the Government Code.

Dikita also asserts that portions of the submitted information are excepted under section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Dikita argues that release of a portion of the submitted information would cause it substantial competitive harm. Upon review, we find that Dikita has not made the specific factual or evidentiary showing required by section 552.110(b) that release of the submitted information would cause the company substantial competitive harm. *See* Open Record Decision

Nos. 661 at 5-6 (business entity must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). We note that Dikita was the winning bidder in this instance. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). See Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); see generally Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). We therefore conclude that DART not withhold any of the submitted information pursuant to section 552.110(b) of the Government Code. As no further exceptions to disclosure are raised, DART must release the submitted responsive information.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eb

Ref: ID# 366090

Enc. Submitted documents

c: Requestor
(w/o enclosures)