



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2010

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2010-01764

Dear Ms. Shortall:

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# 369358.

The City of Arlington (the "city") received a request for evaluation criteria, evaluation results, and RFP bid responses for the top five bid responders for RFP 09-104, excluding Aurigo. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also indicate that the submitted information may implicate the proprietary interests of third parties. Accordingly, you state that you have notified CIP Planner Corporation; e-Builder, Inc.; EMA, Inc.; and Skire, Inc. ("Skire") of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received comments from Skire. We have also received and considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that the requestor has specifically excluded Aurigo's RFP bid response from his request for information. Thus, Aurigo's RFP bid response is not responsive to the present request. This decision does not address the public availability of the non-responsive information, and that information need not be released in response to the present request.

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, including where the governmental body may wish to withhold information

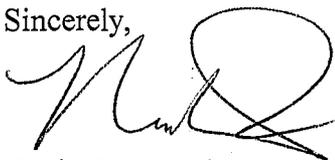
in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, 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 state that the submitted information is related to a competitive bidding process that is still ongoing. You assert that release of the information at issue prior to the execution of a contract would be detrimental to the city's negotiating position and interest in obtaining the best offer. Based upon your representations, we conclude that 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 and is in effect. *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).¹

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

¹Because the city's section 552.104 assertion is dispositive, we do not consider Skire's argument against disclosure for this information.

Ref: ID# 369358

Enc. Submitted documents

cc: 5 Requestors
(w/o enclosures)