



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2010

Mr. David M. Feldman
Feldman, Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2010-04949

Dear Mr. Feldman:

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# 375262.

The Fort Bend Independent School District (the "district") received a request for: 1) all documents and records under review by the feasibility committee and/or any committee that followed the feasibility committee in addressing the issue of constructing the proposed district Global Science and Technology Center; 2) the feasibility committee's meetings, e-mails, and records; 3) a list of all committed partnering companies and the amounts they have already committed or donated to this project; 4) all recorded information and e-mails regarding why the feasibility committee appointments and meetings were not open to the public; 5) all communications between members of the feasibility committee, PBK company representatives, Mr. Jenney, and the developer, Mr. Wallace, the director of the "feasibility committee"; 6) all records of the paid relationship between the vendor company and any member of the feasibility committee; 7) the complete financial disclosures statements since 2007 for Mr. Jenney; and 8) all previous records that the district's attorney, Mr. Feldman, claims to have made available to the requestor, but has not released. You state the district is releasing documents that are responsive to parts two through eight of the request. You claim the submitted proposals are excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also state release of the submitted proposals may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Anslow Bryant Construction, Ltd. ("Anslow Bryant"); Bartlett Cocke, LP; Brookstone, LP ("Brookstone"); Burton Construction Co., Inc.; Cadence

McShane Corp.; Drymalla Construction Co., Ltd. ("Drymalla"); Durotech, LP; Gamma Construction Co. ("Gamma"); Gilbane Building Co.; Hoar Construction, LLC ("Hoar"); J.E. Dunn Construction Group; Linbeck Group; Marshall Construction Co., Ltd.; Miner-Dederick Construction, LLP; Purcell Construction, Inc.; and Turner Construction Co. of the district's receipt of the request for information and of each company's right to submit arguments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted comments and reviewed the submitted proposals.

Section 552.104 of the Government Code exempts 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 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 executed. *See* Open Records Decision No. 541 (1990).

You inform us the submitted proposals were received by the district in response to the district's request for proposals for a construction manager-at-risk. You state the district is currently in contract negotiations with Drymalla and that no final contract has been awarded. You explain the release of the proposals would harm the district's negotiation position because Drymalla may be less willing to negotiate the terms in a manner that is favorable to the district if it becomes aware of the terms in the proposals of other companies. Based on your representations and our review, we conclude the district has demonstrated how release of the submitted bid proposals would harm its interests in a competitive situation. *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). Accordingly, the district may withhold the submitted bid proposals under section 552.104 of the Government Code until such time as the contract has been executed and is in effect. As our ruling is dispositive, we need not address any remaining arguments against disclosure of the submitted bid proposals.

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# 375262

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Alan J. Rosenberg
Stuber Cooper Voge PLLC
2600 Network Blvd, Suite 305
Frisco, Texas 75034
(w/o enclosures)

Mr. Brad Burton
Burton Construction Company
4660 Sweetwater Boulevard, Suite 200
Sugar Land, Texas 77479
(w/o enclosures)

Mr. William Bayne
Bartlett-Cocke, LP
8706 Lockway
San Antonio, Texas 78217
(w/o enclosures)

Mr. Charles White
Cadence McShane Corporation
7701 West Little York Road, Suite
Houston, Texas 77040
(w/o enclosures)

Mr. Earl W. Pitchford
Drymalla Construction Company
608 Harbert
Columbus, Texas 78934
(w/o enclosures)

Mr John Carson
Brookstone Construction Managers
3715 Dacoma Street
Houston, Texas 77092
(w/o enclosures)

Mr. Larry Purcell
Purcell Construction, Inc.
277 Dennis Street
Humble, Texas 77338
(w/o enclosures)

Ms. Elizabeth M. Debaillon
Cokinos, Bosien & Young
1221 Lamar Street, 16th Floor
Houston, Texas 77010
(w/o enclosures)

Mr. John Ros
Gilbane Building company
1331 Lamar Street, Suite 1170
Houston, Texas 77010
(w/o enclosures)

Mr. David Marshall
Marshall Construction Co.
P.O. Box 7538
Houston, Texas 77270-7538
(w/o enclosures)

Mr. William Scott III
Linbeck group
3900 Essex, Suite 1200
Houston, Texas 77027
(w/o enclosures)

Mr. David Rowe
Durotech, Inc.
11931 Wickchester Lane, Suite 205
Houston, Texas 77043
(w/o enclosures)

Mr. Joseph Glowacki
Turner Construction Co.
4263 Dacoma Street
Houston, Texas 77092
(w/o enclosures)

Ms. Julia Odell
Miner Dederick Construction
1532 Peden
Houston, Texas 77006
(w/o enclosures)

Mr. Kamal Ariss
J.E. Dunn
3500 South Gessner, Suite 200
Houston, Texas 77063
(w/o enclosures)

Mr. R. Allen Kilgore, Jr
Hoar Construction
2 Metroplex Drive, Suite 400
Birmingham, Alabama 35209
(w/o enclosures)