



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2010

Ms. Cary Grace
Assistant City Attorney
City of Austin, Law Department
P.O. Box 1088
Austin, Texas 78767-8828

OR2010-07925

Dear Ms. Grace:

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# 381091.

The City of Austin (the "city") received a request for copies of outreach advertisements placed by VCC, LLC ("VCC") regarding the Animal Services Center project, communications VCC used in soliciting participation in the project from African American contractors, and copies of forms received from African American contractors to verify VCC's project solicitation and outreach efforts. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

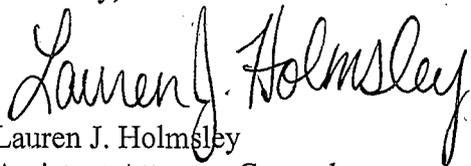
Furthermore, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

The submitted representative sample of information includes follow up forms verifying that VCC made a good faith effort to comply with the city's program of encouraging small, minority-owned and women-owned businesses to participate in city contracts, which include the subcontractors' bid information. The submitted information also includes contacts between VCC and potential subcontractors. You state that the city has selected VCC as its prime contractor, but that a final contract has not yet been executed. You state that until a final contract is signed, it is possible the negotiations with VCC may fail, leaving the city unable to enter into a final contract and requiring the city to re-bid the project. You assert that, until a contract is signed, releasing the submitted information would harm the city's negotiating position if the city has to re-bid the contract. Upon review, we find the submitted information reflects VCC's good faith compliance with the city's program. The submitted information does not include any of VCC's bid information nor does it reflect which, if any, of the subcontractors VCC chose. You inform our office that compliance with the program is required for bidders to be considered for the contract. Thus, you have not explained how the release of the information at issue would harm the city's interests in a competitive situation. Accordingly, the city may not withhold the submitted information under section 552.104 of the Government Code. As you raise no further exceptions to disclosure, we find the submitted information must be released.

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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 381091

Enc. Submitted documents

c: Requestor
(w/o enclosures)