



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2010

Ms. Susan Denmon Banowsky
Vinson & Elkins
2801 Via Fortuna, Suite 100
Austin, Texas 78746-7568

OR2010-11064

Dear Ms. Banowsky:

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# 387774.

The Denco Area 9-1-1 District (the "district"), which you represent, received a request for a named company's summary pricing response submitted in response to a specified RFP. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of a third party, Verizon Business Network Services, Inc. ("Verizon"). Accordingly, you state, and provide documentation showing, you notified Verizon of the district's receipt of the request for information and of its 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). Verizon has responded to this notice. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public 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. *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 awarded. *See* Open Records Decision No. 541 (1990).

You state that the district is still in negotiations with Verizon and has not yet approved a final agreement under the terms of the request for proposals. You state that in the event negotiations with Verizon fail, release of the submitted pricing response would result in an advantage to other proposers and hinder the district's ability to receive the best possible offer. Based on these representations, we find that the district may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *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 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,



Kate Hartfield
Assistant Attorney General

¹As our ruling is dispositive, we need not address the remaining argument against disclosure.

Ms. Susan Denmon Banowsky - Page 3

Open Records Division

KH/em

Ref: ID# 387774

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)