



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2010

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2010-13736

Dear Mr. Hager:

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# 393119 (RO File Ref. 44226).

The City of Red Oak (the "city"), which you represent, received two requests from different requestors for information related to the city's invitation to bid for wrecker and towing services. The first requestor seeks the bid requirements and all bid proposals submitted, while the second requestor seeks the bid proposal submitted by 24 Hour Wrecker Service. You claim the submitted bid proposal information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you seek to withhold the submitted bid requirements and blank bid proposal forms. This information, however, was provided to all vendors who wished to submit bid proposals for the project at issue. The Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Although you seek to withhold the submitted bid requirements and blank bid proposal forms

under section 552.104 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 592 at 8 (1991) (statutory predecessor to section 552.104 subject to waiver). As such, section 552.104 neither expressly prohibits the release of information to the public nor makes information confidential under law. Therefore, because the city previously voluntarily released the submitted bid requirements and blank bid proposal forms to members of the public, it may not now withhold this information from the first requestor under section 552.104 of the Government Code. As you have not claimed any other exceptions to disclosure for this information, it must be released.

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. 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 awarded. *See* Open Records Decision No. 541 (1990).

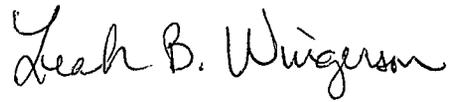
You state the bidding process for the project at issue is not complete and a contract has not been awarded. You explain the Red Oak City Council decided to not award a contract to either of the vendors who submitted proposals and, instead, start over with the bidding process. You further explain additional vendors will have the opportunity to submit bids for the project. You assert release of the submitted bid proposals at this stage in the bidding process would give each bidder an unfair advantage and would harm the city's ability to negotiate a final agreement. Based on your representations and our review, we conclude the city has demonstrated release of the submitted vendor bid proposals could harm the city's interests with respect to this project. Therefore, the city may withhold the submitted vendor bid proposals under section 552.104 of the Government Code.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 393119

Enc. Submitted documents

c: Requestors
(w/o enclosures)