



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2010

Mr. Daniel Bradford
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2010-14155

Dear Mr. Bradford:

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# 393969.

Travis County (the "county") received a request for the proposals from the top three ranked firms for a specified project. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state that release of this information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, that you notified AECOM, Huitt-Zollars, Inc. ("Huitt"), and Kellog, Brown & Root Services, Inc. ("KBR") of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received correspondence from representatives of Huitt and KBR. We have considered the submitted arguments and have reviewed the submitted information.

Initially, we address comments by the requestor. The requestor asserts that the county failed to timely respond to a previous request for information contained in an e-mail communication between the requestor and the county. The requestor has attached a copy of this e-mail communication, which he states was sent to a named individual in the purchasing

department, with his present request. However, the Act requires that a request for public information sent by electronic mail be submitted to the officer for public information or that person's designee. Gov't Code § 552.301(c). You state that the first e-mail was not sent to the county's public information officer or the officer's designee. *See id.* (stating that a written request includes a request in writing that is sent to the officer for public information, or the person designated by that officer, by e-mail or facsimile). Thus, we find that the requestor's original e-mail communication was not a valid request pursuant to section 552.301(c) and the county did not violate the procedural requirements of section 552.301 of the Government Code by not responding to this e-mail communication. *See generally id.* § 552.301 (enumerating the responsibilities a governmental body incurs upon receipt of a written request for information that it wishes to withhold). Accordingly, we will address the county's claim against disclosure of the submitted information.

The county and Huitt argue that the submitted information is excepted under section 552.104 of the Government Code. We note that section 552.104 only protects the interests of a governmental body and is not designed to protect the interests of private parties that submit information to a governmental body. *See Open Records Decision No. 592 at 8-9 (1991)*. Accordingly, we will only consider the county's argument under this exception. Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See ORD 592*. 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)*. Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See ORD 541*.

You inform us that the county has not executed a contract with a vendor for the project at issue. Further, you state that in response to action by the Travis County Commissioners Court, the "purchasing office has suspended the contract award." You also inform us that release of the submitted information "will interfere with the [county's] ability to negotiate a final contract on this project in the future." Therefore, we conclude that the county may withhold the submitted information under section 552.104 of the Government Code.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

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

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 393969

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Michael Aulick
Vice President
Huitt-Zollars
3701 Executive Center Drive, Suite 101
Austin, Texas 78731
(w/o enclosures)

Ms. Hazel Scalia
Attorney
KBR
4100 Clinton Drive
Houston, Texas 77020
(w/o enclosures)

Ms. Lorena Echeverria
AECOM
400 West 15th Street, Suite 500
Austin, Texas 78701
(w/o enclosures)