



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2011

Ms. LeAnn M. Quinn, TRMC
City Secretary
City of Cedar Park
600 N. Bell Boulevard
Cedar Park, Texas 78613

OR2011-08616

Dear Ms. Quinn:

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# 421338 (Ref. No. 11-443).

The City of Cedar Park (the "city") received a request for the following information related to the Request for Proposals for the Construction of the New Field Operations Building: (1) the proposals, excluding financial information, submitted by all contractors; (2) the scoring evaluations of all contractors; and (3) the criteria and scoring information from the contractor interviews.¹ You state some of the responsive information will be released to the requestor. You claim the remaining responsive information is excepted from disclosure under section 552.104 of the Government Code. You also state that this request for information may implicate the proprietary interests of third parties.² You inform us that

¹You state, and provide documentation showing, the city asked for and received clarification of the request. See Gov't Code § 552.222(b)(providing that if request for information is unclear, governmental body may ask requestor to clarify the request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed)

²You inform us that the interested third parties are American Constructors; Braun & Butler; FJW Construction; FTWoods Construction; Harvey Cleary Builders; JeDUNN; JJC (J * Jacobs); Martin Harris; Spaw Glass; and STR Constructors.

the interested parties were notified of this request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 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 considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor has excluded financial information submitted by the contractors from his request. Accordingly, this type of information is not responsive to the request. This ruling does not address the public availability of nonresponsive information, and the city is not required to release nonresponsive information in response to this request.

Next, you seek to withhold Exhibits E through P under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). 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). Moreover, 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). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the city is currently negotiating with the successful bidder, but the contract has not been executed. You also explain that if negotiations break down, release of the information would jeopardize the city's bargaining position if it were to enter into negotiations with another bidder or if it were to issue a new request for proposals. Based on your representations and our review, we conclude the city may withhold Exhibits E through P under section 552.104 of the Government Code. However, we note that this information may no longer be withheld under this exception once the contract has been executed and is in effect. *See* ORD 541 at 5.

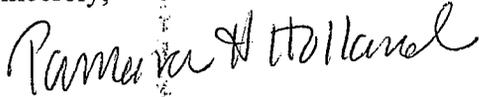
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bs

Ref: ID# 421338

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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President
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