



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

Mr. Benjamin V. Lugg
San Antonio Housing Authority
818 South Flores Street
San Antonio, Texas 78204

OR2011-09648

Dear Mr. Lugg:

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# 423514.

The San Antonio Housing Authority (the "authority") received a request for information submitted in response to RFP# 1010-961-45-3370—Housing Quality Standards Inspection Services and scoring sheets evaluating each submission. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state release of some of this information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified CGI Federal, Inc. ("CGI") of the request for information and of its right to submit arguments to this office as to why its information should not be released. *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). We have received comments from CGI. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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).

Although you state the authority has received all bids in response to RFP# 1010-961-45-3370 and chosen a winning bidder, you further state the bidding process has not yet been completed because the contract with the winning bidder is still being negotiated and has not been executed. You assert that because the authority will have to select a new winner from the responses it already received or send out a new request for proposals if the current negotiations fail, release of the submitted information could harm the authority's bargaining position. Based on your representations, we conclude the authority may withhold the requested information under section 552.104 of the Government Code until such time as a contract has been executed.² *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 the public interest in the contract under negotiation).

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

²As our ruling is dispositive, we need not address CGI's arguments against disclosure.

Ref: ID# 423514

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Dorothy A. Shields
Senior Contracts Manager
CGI Federal, Inc.
12601 Fair Lakes Circle
Fairfax, Virginia 22033
(w/o enclosures)