



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2011

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-10101

Dear Mr. Wallach:

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# 423968.

The City of Fort Worth (the "city") received a request for the "submittals for the firms that were awarded the contract" with respect to a specified solicitation. You claim the submitted information is excepted from disclosure pursuant to section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code, which 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 the 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 executed. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

You state the submitted information relates to a RFQ for geotechnical, construction materials, and environmental testing services. You inform us nineteen firms responded and the city has narrowed its interest to eight firms. You state the city is negotiating the contracts with the preferred firms regarding various terms of the final agreements. You explain that, if the city fails to reach agreements with the preferred firms, the city may select alternate firms or issue a new RFQ. You contend the release of the submitted information would harm the city's negotiation position and ability to obtain genuinely competitive responses. Based on your representations and our review, we conclude the city may withhold the submitted information under section 552.104 of the Government Code, until such time as the contract has been executed.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 423968

Enc. Submitted documents

c: Requestor
(w/o enclosures)