



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2011

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

OR2011-14176

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# 431869.

The City of Cedar Park (the “city”) received a request for the winning proposal and approved budget for the city’s website redesign. You claim some of the submitted information is excepted from disclosure pursuant to section 552.104 of the Government Code.¹ In addition, you state some of the submitted information may implicate the proprietary interests of a third party. Accordingly, you inform us you have notified Vision Internet (“Vision”) of the request and of its right to submit comments to this office as to why the submitted information should not be released to the requestor. *See* Gov’t Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). 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

¹Although you also raise sections 552.101, 552.110, and 552.114 of the Government Code, you have provided no arguments regarding the applicability of these exceptions; therefore, we assume you have withdrawn them. *See* Gov’t Code §§ 552.301(b), (e), .302.

(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 information in Exhibit D relates to a request for proposals for redesign of the city's website. You inform us fourteen vendors responded, three vendors were interviewed, and Vision was selected as the highest-ranked vendor. You state negotiations with Vision remain ongoing and a contract has not yet been executed. You explain that, if the city fails to reach an agreement with Vision, the city may utilize another vendor or issue a new request for proposals. We understand you to contend the release of the information in Exhibit D would place the city at a competitive disadvantage in future negotiations. Based on your representations and our review, we conclude the city may withhold the information in Exhibit D under section 552.104 of the Government Code, until such time as the contract has been executed. As you raise no further exceptions to disclosure, the remaining information must be released.

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# 431869

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Ashley Fruechting
Senior Account Executive
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(w/o enclosures)