



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2012

Mr. Bill Ballard
Assistant County Attorney
Brazos County
300 East 26th Street, Suite 325
Bryan, Texas 77803

OR2012-00264

Dear Mr. Ballard:

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# 441561.

Brazos County (the "county") received a request for the bid proposal submitted by America Cadastre, L.L.C. d/b/a AMCAD ("AMCAD") and the final awarded contract pertaining to the county's request for proposals for development of a Comprehensive, Integrated Justice Information Management System. You indicate the county does not have any information responsive to the request for the final awarded contract.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of AMCAD. Accordingly, you state, and provide documentation showing, you notified AMCAD of the request for information and of its right to submit arguments to this office as to why the submitted 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 AMCAD. We have considered the submitted arguments and reviewed the submitted information.

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

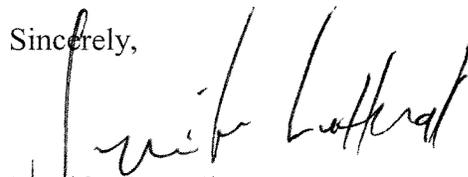
Section 552.104 of the Government Code protects from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations 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).

Although you state the county has chosen AMCAD for the project at issue, you state a contract has not yet been awarded. You state contract negotiations between the county and AMCAD are still in progress. You explain, however, that if the negotiations are unsuccessful, the county may begin contract negotiations with a different bidder. You indicate releasing the submitted bid proposal prior to the execution of a contract would harm the county’s ability to negotiate a final agreement. Based on your representations, we conclude the county may withhold the submitted bid proposal under section 552.104 of the Government Code.²

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 Luttrall
Assistant Attorney General
Open Records Division

JL/dls

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

Ref: ID# 441561

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Michael B. Battaglia
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AMCAD
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(w/o enclosures)