



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-01345

Dear Ms. Evans:

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# 443585 (GC# 19109).

The City of Houston (the "city") received a request for information pertaining to the evaluation of Housing Opportunities for Persons with AIDS proposals. You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Goodwill Industries of Houston ("Goodwill"). Accordingly, you state, and provide documentation showing, you notified Goodwill 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 considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code 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. Open Records Decision No. 541 at 4 (1990). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract is in effect. *See, e.g.*, Open Records Decision Nos. 541 (1990), 514 (1988), 306 (1982), 184 (1978), 75 (1975).

You state the submitted information pertains to a competitive application process for the award of a grant from the city's Housing and Community Development Department, including the submitted proposals. You state although a finalist has been selected, the city council has not yet finalized the contract arising from that process. Thus, you state there is a possibility that the city will be forced to submit a new request for proposals. You claim release of the information at issue would compromise the quality of future proposals because new proposers would have the advantage of knowing the terms and evaluation results of previous submissions. Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the information at issue. Accordingly, the city may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *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 expense of others and could be detrimental to public interest in 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 443585

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Vivian Bush
Goodwill Industries of Houston
10795 Hammerly Boulevard
Houston, Texas 77043
(w/o enclosures)