



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2012

Mr. Matthew C. G. Boyle
Boyle & Lowry, L.L.P.
Counsel for the City of Hurst
4201 Wingren, Suite 108
Irving, TX 75062-2763

OR2012-08616

Dear Mr. Boyle:

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# 456190 (PIR Nos. 2012-83 & 2012-99).

The City of Hurst (the "city"), which you represent, received two requests from two different requestors for information pertaining to proposals submitted to the city for request for proposal ("RFP") number 12-009. The first requestor seeks all proposals submitted to the city for RFP number 12-009, while the second requestor seeks page 21 from all proposals submitted to the city for RFP number 12-009. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.¹ In addition, you state some of the submitted information may implicate the proprietary interests of third parties. Accordingly, you inform us you have notified the interested third parties of the request and of their right to submit comments to this office as to why the submitted information should not be released to the requestor.² *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to

¹Although you raise section 552.101 of the Government Code, you provide no arguments to support this claim. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested). Accordingly, we do not address your assertion of section 552.101 for the submitted information.

²The notified third parties are: Tele-Works, Inc.; Paymentus Corporation; Invoice Cloud; CCS Presentment and Payment Solutions; VisualGov Solutions; and Best Practice Systems.

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 received comments from attorneys representing Tele-Works, Inc. and Paymentus Corporation. We have considered the claimed exceptions 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. The purpose of section 552.104 is to protect a governmental body’s interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body). 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).

You state the submitted information pertains to proposals submitted for Utility Billing Payment Acceptance & Processing Services for the city. You state the city has not selected a proposal and therefore indicate a contract has not yet been awarded. You assert release of the submitted information at this stage in the bidding process would give bidders a competitive advantage and would harm the city’s ability to select the most advantageous proposal. You also state release of the information risks a threat of actual or potential harm to the city’s interests. Based on your representations and our review, we find the city has demonstrated release of the submitted information could harm the city’s interests in a particular competitive situation. Accordingly, we conclude 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). As our ruling under section 552.104 is dispositive, we do not address the remaining submitted arguments.

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,

A handwritten signature in black ink that reads "Sean Opperman". The signature is written in a cursive, flowing style.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/eb

Ref: ID# 456190

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Ms. Brenda T. Cabbage
Spencer Crain Cabbage Healy & McNamara, PLLC
1201 Elm Street, Ste. 4100
Dallas, Texas 75270
(w/o enclosures)

Mr. Warren W. Garden
Block & Garden, LLP
5949 Sherry Lane, Suite 900
Dallas, Texas 75225
(w/o enclosures)