



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2013

Ms. Katinka Howell
Assistant City Attorney
City of San Antonio
Department of Aviation
9800 Airport Boulevard, MO63
San Antonio, Texas 78216-4897

OR2013-07438

Dear Ms. Howell:

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# 487754 (COSA File No. WO13855-030613).

The City of San Antonio (the "city") received a request for the project summary sheets submitted to the city by J3 Company in response to a Formal Invitation for Bids (IFB) for Project No. 33-00160. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains documents that are not responsive to the present request. The present request seeks only the project summary sheets. Accordingly, any additional information is not responsive to the request. We have marked this non-responsive information. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

Section 552.104 of the Government Code excepts from required public 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 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) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a

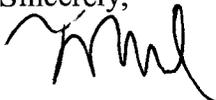
particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, this office has determined in some circumstances section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *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 at issue relates to an IFB for which a winning bidder has been selected, but no final agreement had been executed as of the date of the instant request. You argue that release of this information would reveal the minimum requirements required by the city to be determined a "responsible bidder" pursuant to section 252.043 of the Local Government Code. *See* Local Gov't Code § 252.043(d). You further assert release of this information would give bidders an unfair advantage in reviewing the information and formulating arguments as to why the contract should be awarded differently than per the city staff's evaluation and recommendation. Upon review of your arguments and the information at issue, we conclude you have demonstrated that public release of the responsive information would cause specific harm to the city's interests in a particular competitive bidding situation. Thus, we conclude the responsive information may be withheld 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 487754

Enc. Submitted documents

c: Requestor
(w/o enclosures)