



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2013

Ms. Griselda Sánchez
Assistant City Attorney
City of San Antonio
9800 Airport Boulevard, MO63
San Antonio, Texas 78216-4897

OR2013-11542

Dear Ms. Sánchez:

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# 492438 (COSA File No. WO14590).

The City of San Antonio (the "city") received a request for the proposals pertaining to a specified request for proposals.¹ Although we understand you to take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Air Star Concessions, Ltd. ("Air Star"); CI/TAGS, L.L.C. ("CI/TAGS"); Host International ("Host"); and Fresquez Concessions ("Fresquez") of the request for information and of their 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). You have submitted

¹We note the city asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

comments from CI/TAGS, Host, and Fresquez. We have considered the submitted comments and reviewed the submitted information.

Initially, we note the requestor has excluded the following types of information from her request: company and personal financial information, client lists, tax identification numbers, social security information, insurance certificates, insurance policy numbers, proposal bonds, bond numbers, and discretionary contracts disclosures. Accordingly, these types of information are not responsive to the instant request. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, we have not received comments from Air Star explaining why its information should not be released. Therefore, we have no basis to conclude Air Star has a protected proprietary interest in the responsive information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the responsive information at issue on the basis of any proprietary interest Air Star may have in it.

Although CI/TAGS states it is "not willing to release" specified responsive portions of its proposal and Fresquez states it would like the city to withhold "all company and personal financial information," neither CI/TAGS nor Fresquez has raised any exception to disclosure of their information under the Act or provided any arguments against disclosure. Thus, we are unable to conclude either CI/TAGS or Fresquez has a protected proprietary interest in any portion of the submitted information. *See Gov't Code § 552.110; ORDs 661 at 5-6* (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any portion of the responsive information based upon the proprietary interest of CI/TAGS or Fresquez.

We understand Host to raise section 552.110(b) of the Government Code as an exception to disclosure of portions of its responsive information. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Gov't Code § 552.110(b)*. This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations,

that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm).

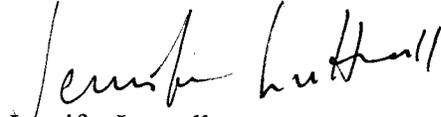
Host seeks to withhold the identities of its clients. However, we note Host has published the identities of all of its clients on its website, making this information publicly available. Host does not explain how release of any of the information it has made public on its website would cause the company substantial competitive harm. Further, we find Host has made only conclusory allegations that the release of any of its responsive information would result in substantial damage to the company's competitive position. Thus, Host has not demonstrated that substantial competitive injury would result from the release of any of its remaining information at issue. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Further, we note Host was the winning bidder for the request for proposals at issue. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Further, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Accordingly, none of Host's responsive information may be withheld under section 552.110(b) of the Government Code. As no further exceptions have been raised, the responsive 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 492438

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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