



July 20, 1999

Mr. Jim L. Lambeth
Assistant Criminal District Attorney
Smith County
Smith County Courthouse
100 North Broadway, 304
Tyler, Texas 75702

OR99-2035

Dear Mr. Lambeth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127505.

Judge Larry Craig ("Judge Craig") received a request for "any and all architectural/construction invitations for bids and/or bids received by the county in related [sic] to either said property." You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 at 4 (1990), 520 at 4 (1989). A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 at 2 (1987). As the exception was developed to protect a governmental body's interests, that body may waive section 552.104. *See* Open Records Decision No. 592 at 8 (1991).

In this instance, you explain that the bidding process for architectural/construction work is still competitive. You inform this office that the date the Smith County Commissioners Court will publicly interview and evaluate the proposals is on July 29, 1999.

We have previously held that so long as negotiations are in progress regarding the interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to the proposed contract, bidding should be deemed competitive and therefore, information relevant thereto may be withheld under section 552.104 prior to the award of the contract. Attorney General Opinion MW-591 (1982); Open Records Decision No. 170 (1977); *see* Open Records Decision No. 541 (1990). You may withhold the requested information under section 552.104 until the contract is executed.

Because section 552.104 of the Government Code is dispositive, we need not address your claims under sections 552.101 and 552.110. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact this office.

Sincerely,



Sue M. Lee
Assistant Attorney General
Open Records Division

SML\nc

Ref: ID# 127505

Encl: Submitted documents

cc: Mr. Jeff Judson
President
Texas Public Policy Foundation
8122 Datapoint, Suite 816
San Antonio, Texas 78229
(w/o enclosures)