OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 22, 2003

Mr. Bill Ainsworth
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2003-0428

Dear Mr. Ainsworth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175306.

The City of Corpus Christi (the "city") received two written requests for certain information submitted to the city by companies responding to a current RFP. You contend that the requested information is excepted from required disclosure pursuant to sections 552.101 and 552.104 of the Government Code.

Section 552.104 of the Public Information Act (the "Act") protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.,* Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information while the governmental officials are in the process of interpreting the proposals and the competitors are free to furnish additional information. *Cf.* Open Records Decision No. 170 (1977). Section 552.104 is a permissive exception; you are not required under the Act to withhold this information. Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect, Open Records Decision Nos. 306 (1982); 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978).

You explain that the city is currently

> attempting to negotiate a contract with the selected offeror. Modifications to the contract proposal are permitted under [section 271.116 of the Local Government Code], and will be called for in this case. If no agreement is reached with the selected offeror . . . the City will begin negotiations with the next highest-ranked contractor. Because all the contractors' bids were over the City's budget, it is quite possible that they will end up negotiating terms with the second- or even third-ranked contractor. Therefore, the current

> situation is certainly not one in which the bid process is completed and the contract awarded. . . . The City would definitely be harmed by disclosing the information requested, in its negotiations with the selected offeror and, should we not be able to negotiate a contract with that contractor, also in our negotiations with the other contractors to try and reach an acceptable contract.

Based on these representations, we conclude that you have demonstrated the applicability of section 552.104 in this instance. Accordingly, the city may withhold the requested information at this time pursuant to section 552.104. Release of this information during the time that competitors may clarify, modify, or withdraw their proposals could result in an advantage to the other competitors for the contract or damage the city's ability to obtain truly competitive bids.[1]

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

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[1]Because we resolve your request under section 552.104, we need not address your other arguments for non-disclosure.

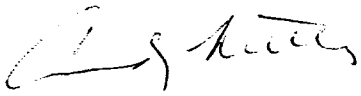
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CMN/RWP/lmt

Ref: ID# 175306

Enc: Submitted documents

c: Mr. Ralph Durden
Arana/Durden General Contractor
615 North Upper Boradway, Ste. 1820
Corpus Christi, Texas 78401
(w/o enclosures)